



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Henry Leland House  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      O

### Introduction

This hearing dealt with an Application for Dispute Resolution seeking an order that would not require the applicant to move between rental units.

The hearing was originally convened on April 22, 2013 via teleconference and was attended by the applicant and the respondent's agent. The hearing was adjourned to allow the parties an opportunity to prepare arguments and evidence on the issue of jurisdiction.

The hearing was reconvened on May 13, 2013 and both parties provided oral arguments regarding jurisdiction and the issue under dispute.

The respondent had submitted additional documentary evidence that had been provided to the applicant and to the residential tenancy branch on May 10, 2013. The applicant had provided additional evidence to the respondent and to the Residential Tenancy Branch on May 13, 2013.

As neither party served the other party with their documentary evidence at least 5 days prior to the hearing I have not considered any of the additional evidence. However, I advised both parties they were allowed to provide verbal testimony in regard to anything in their documentary evidence.

### Issue(s) to be Decided

Prior to the adjudication of any dispute issues it must be decided if the agreement between the parties falls within the jurisdiction of the *Residential Tenancy Act (Act)*, specifically under to Section 4 of the *Act*.

If jurisdiction is established it must be decided whether the applicant is entitled to an order disallowing the respondent from requiring him to move to a different rental unit, pursuant to Section 62 of the *Act*.

## Background and Evidence

The applicant submits he moved into the residential unit on December 5, 2012 and that his rent has been paid directly to the respondent by the Ministry of Social Development (MSD) and that the MSD also paid the respondent a security deposit directly.

The applicant submitted into evidence a document entitled "Supportive Housing Agreement" and subtitled "Supportive Housing Program - Program Participation Agreement" signed by him on December 12, 2012.

Pages 3 and 4 of the submitted document outline the following:

1. Comprehensive Case Management for Program Participants – this section identifies services that will be delivered to the participant that are critical to the stabilization of each program participant.
2. Program Participant Wellness Plans – each participant must work with a staff member to develop a Wellness Plan which will include the problems in the participant's life, the goals and strengths the participant has and what efforts are required to meet those goals.
3. Recreational Group Activities – optional programs for various repeated or one-time activities coordinated by the program staff.
4. Individual and Group Supports – staff will be available for one-on-one discussions about substance use-related issues and Life Skills Workers will help participants establish support groups.
5. Service specific to Mental Health Needs – participants are encouraged to continue their existing services and the program will attempt to have their service providers attend the program. The participant; their mental services providers and program staff will meet to determine approaches to assist in treatment compliance.
6. Money Management – program staff will encourage participants to develop and follow a money management plan.

The participation agreement also outlines a specific term of one year, beginning December 2012 to December 2013 with the possibility of a maximum extension of one year. During the term the program provider will provide the participant with "occupancy rights" to a specific rental unit.

The occupancy component of the agreement, however, specifically stipulates that the program provider may move the participant to another unit in the current building or in another building operated by the program provider. The agreement stipulates the amount of rent at \$375.00 plus \$20.00 for hydro and a security deposit of \$175.00 is required.

The respondent submits that the program and residents who obtain occupancy to the facility under a program participation agreement do not fall under the jurisdiction of the Act specifically because it is a transitional program and the program provides living

accommodation that is made available in the course of providing rehabilitative or therapeutic treatment or services.

The respondent acknowledges that they run various programs and currently two specific buildings. The respondent provides a program that is a part of a provincial homelessness initiative sanctioned by BC Housing for participants with mental health and/or addiction issues.

The aim of the program is provide support to citizens who are either homeless or at risk of homelessness due to their mental health or addiction issues and stabilize them; start them into a highly supported environment for a short period of time; progress them into a less intensive supportive environment; and eventually into unsupported living.

To this end the respondent submits they have two buildings, in the building that the dispute arises, the services are provided on a 24 hour/7 day basis and are highly intensive. When it is determined that the participant no longer requires the intensive support they are moved into an alternate building where less intense supports are provided.

The respondent submits that also in the second building they do have units available that are for traditional long term tenancies, should the program participants be considered for if they no longer need any supports. The respondents submit that these traditional tenancies do fall under the jurisdiction of the *Act* as they are ongoing and no rehabilitative or therapeutic services are provided.

The respondent stipulates that participants generally sign up for the programs for a 1 year period and may be considered for an extension at the end of that year for a maximum of 1 year but that no further extension can be provided.

The applicant submits that the respondent does not have any of the following medical professionals on staff: practical nurse; registered nurse; psychologist; psychiatrist; physiotherapists; speech therapists. The respondent confirmed this however submits that they work in partnership with local health authorities to ensure any of their residents receive any medical and psychological support they need.

The applicant submits the unit in which he had been living looks like any other apartment building and that they have 24 hour staff. The applicant asserts that he obtained a security deposit for the respondent through the MSD and that the MSD does not provide security deposits to a landlord who is not covered by the *Act*. The applicant did not provide any documentary evidence to support this assertion.

The applicant submits that websites for BC Housing and the Canadian Mental Health Association do not provide any information regarding any of the programs the respondent asserts are a part of these supportive programs. The respondent submits that the information provided by the applicant appears to be outdated from those

websites. The applicant submits that on the respondent's website the word "tenant" is used to describe the residents in the program.

The applicant submits that the respondent is not registered like some local drug and alcohol treatment facilities and they do not have sufficient licensing to be considered therapeutic or transitional. The applicant submits the respondent only has a residential business license. The applicant has provided no evidence of what type of licensing he believes would be required to run the programs the respondent submits that they provide.

The applicant also submits that while he was in residence in the dispute address he did not participate in any programs provided by the respondent. The respondent submits that this is precisely why they felt the applicant would be suitable to move to the less intensive support provided in their alternate location.

### Analysis

Section 4 of the *Act* stipulates that the *Act* does not apply to, among other things:

1. Living accommodation provided for emergency shelter or transitional housing; or
2. Living accommodation that is made available in the course of providing rehabilitative or therapeutic treatment or services.

Based on both the respondent's testimony and the Program Participation Agreement I accept that the maximum duration that anyone can receive living accommodation as a direct result of this Agreement is 2 years. I find by providing this maximum extension period the respondent intends for this occupancy to be for a short and finite term only.

In the absence of any evidence provided by either party as to a definition of transitional housing I must rely upon common usage for the term. The Canadian Oxford Dictionary defines transition as a "passing or change from one place, state, condition etc., to another." The dictionary also defines a "transition house as a home operated by a social service agency."

I accept, based on the testimony of both parties that the respondent is a social service agency and they are providing this housing. I also accept that the intention of the program for which the parties entered into the Participation Agreement was to provide supportive services to "transition" the participant from an unstable state, unable to manage his affairs in securing and maintaining rental accommodation to one where the participant has stabilized to the point that he can manage his own rental affairs.

As such, I accept that the housing provided as a consequence of the applicant entering into the Program Participation Agreement is for transitional housing and is therefore the *Act* does not apply to this living arrangement.

In addition, I find the respondent does provide, through its local, community and provincial partners, services that can be considered both rehabilitative and therapeutic in nature. I find the applicant has failed to provide any evidence that any licensing or any level of medical professional staffing is required to meet this requirement.

Conclusion

For the reasons noted above, I decline jurisdiction on matters related to this agreement between these parties.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 21, 2013

---

Residential Tenancy Branch

