



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway of Hope of the Salvation Army
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, OLC, OPT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an Order of Possession of the rental unit pursuant to section 54.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The Applicant's advocate (the advocate) testified that the Applicant attempted to hand one of the Respondent's representatives who attended this hearing (LM) a copy of the tenant's dispute resolution hearing package on July 18, 2013. She said that LM refused to accept that package. The advocate testified that she sent the Respondent a copy of the hearing package by registered mail on July 18, 2013. The Respondent's lawyer confirmed that the Respondent received the Applicant's dispute resolution hearing package by registered mail on July 19, 2013. Both parties also testified that they served and received one another's written evidence packages. I am satisfied that the parties served the above documents in accordance with the *Act*.

At the commencement of the hearing, the Applicant and her advocate confirmed that the Applicant was forced to vacate the premises on July 18, 2013, shortly after receiving the Respondent's second notice of eviction. The Applicant confirmed that she received a return of her security deposit and a pro-rated return of the remaining portion of the payment she made to the Respondent for July 2013. As such, the Applicant withdrew her application for the recovery of her security deposit. The application to obtain a return of her security deposit is withdrawn.

Despite the Applicant's occupancy/tenancy ending on July 18, 2013, the Applicant testified that she was still interested in obtaining an Order of Possession allowing her to return to live in the Respondent's transitional housing in the facility she recently vacated.

Eight days before this hearing, the Respondent's lawyer submitted a written request to be granted permission to have a court reporter make an official recording of this hearing, at the Respondent's expense. When I noted receipt of this request at the commencement of this hearing, the Respondent's lawyer advised that the Respondent did not wish to delay these proceedings further to arrange for the attendance of a court reporter. I proceeded to hear this application without the attendance of a court reporter.

Issues(s) to be Decided

Is this a tenancy that falls within the jurisdiction of the *Act*?

Background and Evidence

The Applicant entered into an Occupancy Agreement with the Respondent, a religious organization, for an Opportunities Program Housing Placement. In the Occupancy Agreement, the facility in question was described as a "second-stage residential facility providing transitional housing (maximum TWO year stay) made available in the course of providing rehabilitative services and other supports to people in a variety of circumstances, including men and/or women who have attended and graduated from a residential treatment facility, and are ready to move to the next level of stability and self-reliance." This facility established with support from BC Housing and other public organizations in the community was described in the Agreement as "a critical part of the spectrum of services available to those in need of housing and rehabilitative services in our community." The Agreement noted that "anyone who wants to live in the transitional housing we provide has to be committed to actively participating in the Opportunities Program and must be committed to living free from illicit drugs and alcohol."

The initial term of the Agreement was for a one-month period beginning on December 18, 2012. The monthly occupancy charge to the Applicant was set at \$375.00. The remainder of the economic rent as established by BC Housing, identified by LM at the hearing as \$1,221.00, was paid by BC Housing directly to the Respondent. The total economic rent was set at \$1,596.00 (i.e. \$375.00 + \$1,221.00 = \$1,596.00). The Applicant also paid a \$187.50 security deposit, which has subsequently been returned to the Applicant.

The Agreement called for the continuation of the occupancy on a "month to month basis" subject to the terms and conditions of the Agreement "until the Operator

determines that the objectives of the services have been met or will be met, or the Operator (or the Resident) otherwise decides to terminate the occupancy of the Resident.” The Applicant signed a Participant Rules and Regulations statement for the Opportunities Program on December 20, 2012. As was noted above, the maximum period whereby an occupant could reside in this transitional housing facility was two years. The Respondent’s representative LM testified that the Applicant was informed when she moved into this facility that the intention was that her occupancy would be for a three-month period while she sought alternative housing accommodations. He said that this three-month period was subsequently extended to a second three-month period, but that the Applicant realized that she would not be allowed to remain in this facility beyond that point. The Applicant acknowledged that there had been some discussion regarding the three-month period, but that she did not understand the Agreement as limiting her to a three-month period of occupancy.

The Applicant did not sign the Agreement until January 14, 2013, a few days before her initial one-month occupancy was to end. The Respondent’s lawyer entered written evidence and LM provided sworn testimony that the Applicant refused to sign the Agreement initially because she wanted to seek legal advice before doing so. The Applicant confirmed that she had told one of the Respondent’s representatives that she wanted to obtain “clarity on the legal issues” that she was being asked to sign. She said that she did not obtain any legal advice between the date she initially refused to sign the Agreement and when she signed it on January 14, 2013. At the hearing, the Applicant testified that the Respondent’s representative who was then dealing with her advised her that if she did not sign it before the end of the first monthly term, she would have to discontinue participating in the Opportunities Program and would have to vacate the premises. Although she signed the Agreement, she added the following statement to her signature:

In signing this document I am informed that not signing it will result in an immediate state of homelessness.

Respondent representative LM stated that emergency shelter spaces are available elsewhere in this same facility for any member of the public who needs shelter.

The Respondent’s lawyer submitted a lengthy written submission, complete with hundreds of pages of attachments, including program descriptions, documents and decisions from Dispute Resolution Officers, Arbitrators and Adjudicators from multiple provinces and the Northwest Territories. Some of these documents were helpful; the significance and relevance of many of these documents was of limited assistance.

Due to the length and range of the written materials provided by the Respondent's lawyer, I cannot hope to properly capture all of the points raised by him in this decision. I have reviewed his written submission and those portions of the attachments and appendices that I found relevant to my consideration of whether or not I have jurisdiction over the matters raised in this application for dispute resolution. I have also considered the advocate's written submission in reaching my decision.

In essence, the Respondent's lawyer submitted that this application for dispute resolution does not fall within the *Act*. He maintained that this was so because this type of housing is exempt from the *Act* because it is both transitional housing and made in the course of providing "rehabilitative or therapeutic treatment or services." On these points, the following sections of the *Act* exempt housing that falls into these categories from the jurisdiction of the *Act*.

4 This Act does not apply to

(f) living accommodation provided for emergency shelter or transitional housing,

(g) living accommodation...

(vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,...

The Respondent's lawyer provided written evidence that the premises in question were established as transitional housing units in concert with a number of provincial and community partners. The Respondent's lawyer noted that the Applicant signed an Occupancy Agreement which specifically referred to the premises as transitional housing and for rehabilitative treatment and was given ample opportunity to seek legal advice that she indicated she wished to secure before she signed the Occupancy Agreement. He also noted that this was a one-month Occupancy Agreement that could be continued on a month-to-month basis, but could not exceed two years. The Respondent's lawyer and Representative LM testified that the Applicant knew from the commencement of this arrangement that the Respondent was not planning to extend this occupancy beyond the initial three-month period.

The Respondent's lawyer also submitted extensive information regarding the types of programming and services provided by the Respondent as part of the Opportunities Program. The Respondent's lawyer noted that this programming and services were a critical part of the Opportunities Program and that the housing offered to the Applicant was in the course of providing rehabilitative or therapeutic treatment or services, and thus subject to exemption from the *Act* pursuant to section 4(g)(vi).

The Applicant testified that many of the services and programs typically provided to Opportunities Program participants were not provided to her as the service plan she developed with the Respondent was focussed primarily on allowing her to live at the premises while she sought a more permanent place to live. Landlord's representative LM testified that the only specific segment of the Opportunities Program where the Applicant was allowed to opt out of programming was the requirement to attend chapel services, due to her religious beliefs.

The Respondent's lawyer and LM also stated that the tenant remains eligible to use the emergency shelter in another portion of this same building if she remains homeless, as she stated was the case.

The advocate entered into written evidence and made representations at the hearing that this application falls within the jurisdiction of the *Act*. She asserted that the *Act* does not define "transitional housing" and noted that the Oxford English Dictionary definition of transition is "the process or a period of changing from one state or condition to another." She submitted that "any transitional housing would have to fit the plain meaning definition of the term, namely non-permanence." She also maintained that the lack of a fixed end date or point of termination of the Occupancy Agreement prevented this residency from being declared transitional housing. Despite the Respondent's claim that this was transitional housing, she claimed that this was not so, correctly noting that parties cannot contract outside of the *Act*. She further alleged that because neither emergency shelters nor transition houses (designed primarily for women and children fleeing abuse) require payment of rent or security deposits, the intention of the legislation was to exclude these types of accommodations from the *Act* based on the lack of financial transactions involved in securing them. She asserted that "the term transitional housing is intended to apply to short term accommodation intended to provide support in times of emergency and that this is often a free service." Since the Applicant was paying both a damage deposit and monthly rent and had no fixed end date to her tenancy, the advocate claimed that the exclusions from the *Act* claimed by the Respondent's lawyer were not applicable to this situation. She summarized her arguments on the issue of transitional housing as follows:

I submit that recognizing the tenancy at hand as a form of transitional housing will result in an absurd, ridiculous and illogical interpretation. It does not meet the substantive requirements of non-permanency, yet (only) nominally meets the requirement of 'transitional.' Such recognition would also be incoherent with the specific and general purposes of the Act.

Analysis

The principal issue before me is whether the relationship established between the parties in the Occupancy Agreement is one that falls within the jurisdiction of the *Act*.

At one level, I cannot help but take into account the fact that the Applicant did sign the Occupancy Agreement, despite the comments that she attached to her signature. After stating that she wanted time to seek advice on the legal implications of her signing the Occupancy Agreement, she did not seek such advice, even though the Respondent gave her almost a month to do so. The Occupancy Agreement the Applicant signed clearly noted from the outset that this Agreement was for transitional housing that was not covered under the *Act*.

However, the Applicant's advocate is correct in noting that the Respondent's inclusion of this provision in the Occupancy Agreement and insistence that the Respondent sign this Agreement in order to remain in these accommodations does not on its own result in a finding that this was not a tenancy under the *Act*. Similarly, definitions of transitional housing gleaned from others involved in approving the Opportunities Program is also not determinative as to whether the meaning attached to these terms by other agencies, including BC Housing, does in fact exempt this housing from the *Act*.

Separate from the specific exclusions cited by the Respondent's lawyer under section 4 of the *Act*, I am also tasked with assessing the extent to which the Occupancy Agreement is a landlord/tenant agreement under the *Act*. I find that there are many features that distinguish the relationship entered into between the Applicant and the Respondent in this Occupancy Agreement with those of a typical Tenant and Landlord in a standard Residential Tenancy Agreement. The Occupancy Agreement and the Program Rules and Regulations signed by both parties when the Applicant commenced living at these premises included the following provisions, none of which would be characteristic or even enforceable in a standard Residential Tenancy Agreement:

- an 11:00 p.m. curfew was placed on the Applicant;
- restrictions were placed on the Applicant's authorization to bring visitors to portions of the common area of this complex;
- the Applicant agreed to testing for illegal drugs and alcohol at the Respondent's request;
- the Applicant agreed that the Occupancy Agreement would end immediately if she received a positive test for illegal drugs or alcohol or if she refused to submit to the Respondent's request for testing for illegal drugs and alcohol;

- the Applicant agreed to participate in the programming provided by the Respondent and agreed that the Respondent could end her occupancy on short notice if she refused to do so;
- the parties agreed that the Respondent could change, remove or add portions of the programming and services offered at this facility without any recourse to the Applicant for the substitution of equivalent programming or services or to allow the Applicant to reduce any portion of her monthly occupancy charge for services or facilities the Respondent committed to provide during the Applicant's occupation of premises in this complex.

There are many other provisions in the Occupancy Agreement that also establish different sets of rules and requirements, particularly as they relate to recourse available for breaches of terms of the Occupancy Agreement or Program Rules and Regulations, than would be available under the *Act*.

I find that the bundle of services, programs and facilities provided by the Respondent to the Applicant in the Opportunities Program includes accommodation, which would also be conveyed in a standard Residential Tenancy Agreement. However, these services, programs and facilities extend far beyond those which would be typically conveyed to a tenant by a landlord. Whether or not the Applicant enjoyed each and every potential service that could be offered as part of the Opportunities Program does not appear central to the basic differences between the Occupancy Agreement and a standard Residential Tenancy Agreement. Although the Applicant testified that her service plan with the Respondent allowed her to opt out of much of the general programming provided to participants in the Opportunities Program, she also said that she participated voluntarily in many of these programs, citing examples of such at the hearing.

The consequences of excluding any type of housing arrangement from the jurisdiction of the *Act* was considered by the Legislature with the result that a decision was made to exclude certain types of occupancy arrangements where it was decided that there existed a benefit to society as a whole which outweighed the detriment to those tenants who would be affected by the decision to exclude them. This forms the basis for the claim by the Respondent's lawyer's that the Respondent is exempt from the *Act* by way of sections 4(f) and 4(g)(vi) of the *Act*. As outlined above, I find that the relationship between the parties as set out in the Occupancy Agreement is very different from that to be found in a Residential Tenancy Agreement.

I have given careful consideration to the position taken by the Applicant's advocate with respect to her claim that the type of housing provided to the Applicant does not qualify

as transitional housing under the *Act*, and, as such, does not qualify for the exemption from the *Act* provided by section 4(f) of the *Act*. Although I understand the argument submitted by the Applicant's advocate, I do not share her view that the dictionary definition she provided equates to the "non-permanence" of the housing. In fact, I find that even the dictionary definition she provided of transition allows ample room to interpret the type of occupancy in this case as one where there is "a period of changing from one state or condition to another." Contrary to the position taken by the Applicant's advocate, I find that there is very clear evidence from the Occupancy Agreement, the other documents entered into written evidence and the sworn testimony of the parties, that this was an offer of transitional housing. The stated length of the initial term of occupancy was identified as covering the period from December 18, 2012 until January 18, 2013. The Occupancy Agreement specifically stated that it could not continue for longer than two years and both parties agreed that there was at least some discussion of a review process at three month intervals. The broad latitude granted to the Respondent to end the Occupancy Agreement for any number of reasons and on the basis of the Respondent's unilateral decision establishes an even stronger foundation for determining that this living arrangement was intended as a transitional measure. The Respondent committed to assist the Applicant over a relatively short period of time and dependent on the steps she was taking to transition to a more independent living style. I find none of these provisions at odds with the Respondent's clear position as stated in the initial portion of the Occupancy Agreement that the Respondent's offer was for transitional housing not covered by the *Act*. For these reasons and on a balance of probabilities, I find that the relationship between the parties is exempt from the *Act* by way of section 4(f) of the *Act* as it is transitional housing. This type of housing is specifically excluded under the *Act* and accordingly I decline to take jurisdiction.

My finding that I have no jurisdiction under section 4(f) of the *Act* to consider this application for dispute resolution renders it unnecessary for me to make a finding with respect to the Respondent's lawyer's claim that I am also prevented from considering this application because the relationship between the parties is also exempt under section 4(g)(vi) of the *Act*. In the event that I am wrong with respect to my finding with respect to section 4(f) of the *Act*, I have also considered the claim that section 4(g)(vi) of the *Act* also prevents me from assuming jurisdiction of this application for dispute resolution as this housing was made available in the course of providing rehabilitative or therapeutic treatment or services.

As was the case with the references to transitional housing in the Occupancy Agreement, this Agreement is also replete with frequent references to the rehabilitative services and treatment purposes of the Opportunities Program. With respect to the position taken by the Respondent's lawyer regarding the exemption for housing

provided in the course of providing rehabilitative or therapeutic services, I note that the Applicant's advocate made only nominal objections. In fact, the Applicant herself raised the strongest objections to this portion of the Respondent's position when she claimed that her service plan varied considerably from those of others in the Opportunities Program as it was focused almost solely on her attempt to find suitable housing. She also claimed that the Respondent provided very little real help in this regard.

Despite the above-noted limited objections raised by the Applicant, I find that many of the provisions of the Occupancy Agreement are designed to facilitate the Respondent's operation of rehabilitative and therapeutic services for those residing in this transitional housing building. By the Applicant's own admission, she did participate, although "voluntarily" in many of these programs and did live in a pod where learning to co-exist with other residents was a goal in transitioning to other types of housing. Based on a balance of probabilities and on the Respondent's essentially undisputed written evidence regarding the range of rehabilitative programs and therapeutic assistance provided through the Opportunities Program, I find that the Respondent's housing was extended to the Applicant in the course of providing rehabilitative and therapeutic treatment or services. As such, I find that this type of housing is specifically excluded under section 4(g)(vi) of the *Act* and I again decline to take jurisdiction for this reason.

Conclusion

I find that I have no jurisdiction to consider this application for dispute resolution.

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: August 21, 2013

Residential Tenancy Branch

