



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenant on October 3, 2014.

Issue(s) to be Decided

The issues to be decided are:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties have signed three tenancy agreements all of which provide that the rental property is a transitional apartment building and "Transitional Apartment Buildings DO NOT fall under the scope of the Residential Tenancy Branch." The form of the tenancy agreement(s) and the conduct of the parties raise the issue as to whether an arbitrator has jurisdiction under the Residential Tenancy Act to hear this application?

Preliminary Manner:

Some housing situations are excluded from the application of the Residential Tenancy Act. Section 4(f) of the Residential Tenancy Act provides the following:

“What this Act does not apply to

4. This Act does not apply to

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

Facts:

The representative of the landlord testified the policy of the landlord in this building is for clients to stay for a maximum of 2 years and then they must move on.

On August 9, 2012 the parties entered into a two year fixed term tenancy agreement for the rental of another unit in the rental property in the building. That tenancy agreement provides that the tenancy was to start on August 13, 2012 and end on August 13, 2014. The rent was \$375 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$500. The heading of the tenancy agreement states **GEORGIAN COURT - FIXED TERM PROGRAM TENANCY AGREEMENT** and includes the following provision:

“The John Howard Society, Thompson Region owns and operates Georgian Court in partnership with BC Housing. Georgian Court is a transitional apartment building. Transitional Apartment Buildings DO NOT fall under the scope of the Residential Tenancy Branch. All tenants agree to a two year (24 month) tenancy with the John Howard Society, at the end of the two years the tenant shall move from the premises known as Georgian Court.”

Page 2 in the section TENANT PROGRAM sets out the transitional nature of the housing and the types of programs that are available to the tenant.

“TENANT PROGRAM: The transitional nature of housing at Georgian Court is to give a tenant an opportunity to address the root cause of homelessness or at risk of homelessness in a safe affordable setting while working on the skills needed to regain and maintain themselves in the community. The program is designed by the tenant and

the agency to afford the tenant an opportunity (but not limited to) furthering their education, employment, stabilize a mental condition or conquer drug and/or alcohol related issues or perhaps reconcile with estranged family. The program will have reportable results and timelines as laid out in the actual plan. The tenant must demonstrate active continuous participation and progress or the landlord has the right to end the tenancy.”

In 2013 the tenant transferred to the rental unit which is the subject of this dispute. On August 26, 2013 the parties entered into a second fixed term tenancy agreement that referenced the previous agreement and stated the tenancy ended on August 13, 2014. The start of the tenancy agreement is similar but not identical to the original agreement. The provision dealing with TENANT PROGRAM appears to be identical with the exception of an additional line dealing with a Forensic Tenant. The second agreement is confusing in that while it states this does not fall under the scope of the Residential Tenancy Branch there are sections in the tenancy agreement such as paragraph 5 (referring to the Notice of Rent Increase in the form available from the office of the Residential Tenancy Branch) and paragraph 8 (ending the tenancy only in the manner set out in the Residential Tenancy Act). This confusion may be explained as it appears the landlord uses the same form of tenancy agreement for three buildings and only one is acknowledged to be transitional.

The tenant failed to vacate the rental unit as provided in the tenancy agreement and the parties signed a third agreement that extended the end of tenancy date to September 30, 2014. All three tenancy agreements include the provision referred to above that this is transitional housing that does not fall under the scope of the Residential Tenancy Branch and that after the end of two years the tenant must move from the premises.

All three tenancy agreements refer to a TENANT PROGRAM and the transitional nature of housing at Georgian Court.

Analysis:

After carefully considering all of the evidence presented I determined that this matter is excluded by section 4 of the Act and an arbitrator does not have jurisdiction for the following reasons:

- All three tenancy agreements signed by both parties provided that the rental property was a transitional apartment building and it does not fall under the scope of the Residential Tenancy Branch.
- Clients are to stay for a maximum of 2 years in the rental property.
- The tenancy agreement(s) provides that the tenancy is for a fixed term and the tenant must leave after the expiry of that fixed term.
- The tenancy agreement(s) refer to the tenant programs which are to give tenants an opportunity to work on skills needed to retain and maintain themselves in the community. This is the essence of a transitional housing situation.
- The reference to the Notice of Rent Increase in the form available from the office of the Residential Tenancy Branch in paragraph 5 and ending the tenancy only in the manner set out in the Residential Tenancy Act in paragraph 8 of the second and third tenancy agreements do not change the basic nature of this relationship as being more than transitional housing and do not extend this to a residential tenancy relationship.
- The oral evidence of the parties is consistent with the rental unit being part of a transitional housing program.

I determined this is a transitional housing building and the Residential Tenancy Act does not apply as set out in section 4(f) of the Residential Tenancy Act. **As a result I determined that I do not have the jurisdiction to make a decision.**

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: October 30, 2014

Residential Tenancy Branch

