



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Community Builder Foundation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, AAT, LAT, RR

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking orders to have the landlord complete repairs; to allow access to the rental unit by the tenant's guests; to change locks; and a rent reduction.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

The hearing was originally convened on October 30, 2014, however the issue of jurisdiction was raised in that the landlord submits they are transitional housing. In order to determine whether or not I could accept jurisdiction I adjourned that hearing so that the landlord could provide any evidence on the issue of jurisdiction.

The landlord submitted a copy of a tenancy agreement signed by the parties on March 26, 2009 for a "fixed term tenancy of one month" beginning on April 1, 2009. The tenancy agreement stipulates that the tenant understands that "this building is transitional housing."

The landlord submits that they no longer refer to transitional housing in their tenancy agreements but rather they call it "program housing". The landlord testified this housing is governed under the *Program Housing Act* but did not provide a copy of the act and was unable to advise what Ministry had oversight responsibilities for it. The landlord submits that their tenants are provided housing with programs that will prepare them to be able to move into more permanent independent living arrangements.

The landlord submits that all tenants may live in their rental situations as long as they require to either develop the necessary skills or to obtain housing through a subsidized housing provider. The landlord submits that some housing waitlists can be 10 years in duration.

The landlord indicates that various types of programs are available, including a breakfast program; community watch program and mental health services. The tenant testified that he was unaware of any of these programs or that they were available from the landlord.

In relation to this specific tenancy the landlord agrees the tenant has resided in this rental unit for 5 or 6 years and that he is welcome to stay as long as he likes because he is currently following all of the “rules”. The landlord also confirms that the tenant is not in need of any of the offered programs.

The agents for the landlord confirm the landlord is a registered charity and that while they operate buildings owned by the local municipal government the dispute address is owned and operated solely by the charity. The tenant did not dispute this.

Section 4 of the *Residential Tenancy Act (Act)* stipulates the *Act* does not apply to living accommodation:

- (a) rented by a not for profit housing cooperative to a member of the cooperative,
- (b) owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) included with premises that
  - (i) are primarily occupied for business purposes, and
  - (ii) are rented under a single agreement,
- (e) occupied as vacation or travel accommodation,
- (f) provided for emergency shelter or transitional housing,
- (g) living accommodation
  - (i) in a community care facility under the *Community Care and Assisted Living Act*,
  - (ii) in a continuing care facility under the *Continuing Care Act*,
  - (iii) in a public or private hospital under the *Hospital Act*,
  - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
  - (v) in a housing based health facility that provides hospitality support services and personal health care, or
  - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) in a correctional institution, or
- (i) rented under a tenancy agreement that has a term longer than 20 years.

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. However, I find the tenant has been living in this accommodation for at least 5 years and the landlord does not require that he even attempt to find other accommodation or avail himself of any of the programming

required. As such, I find that the rental arrangement for these parties is not transitional in nature and is therefore not exempt from jurisdiction under Section 4.

I also find that based on the evidence and testimony provided by the landlord there is no other subsection of Section 4 that would exempt this tenancy from jurisdiction, specifically the *Act* named by the landlords is not exempt nor are the programs provided exempted.

As a result, I accept jurisdiction over this tenancy.

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled orders to have the landlord complete repairs; to allow access to the unit for the tenant or the tenant's guests; authorize the tenant to change locks; and to allow the tenant to reduce rent for repairs, agreed upon but not provided, pursuant to Sections 28, 29, 30, 31, 32, 65, 66, and 70 of the *Residential Tenancy Act (Act)*.

#### Background and Evidence

At the outset of the hearing the parties confirmed that the repairs requested (change the lock on the rental unit door and the window) have been completed. However, the tenant seeks to have the lock changed without providing the landlord a key.

The tenant submits that he seeks changing the locks again without providing the landlord a key because the landlord has had staff enter his room and remove belongings. He states that he has had money; a rotary tool; and foods go missing and he suspects the landlord's staff. The tenant has provided no evidence to confirm that any items have gone missing or if they have who took them.

The landlord submits that they would not be able to assist the tenant if there were an emergency in his rental unit without either trying to locate the tenant or by breaking down the door if they were not entitled to have a key to the rental unit.

The tenant also seeks access for his guests without interruption from the landlord. The parties confirmed that guests must first register with the landlord by giving the landlord their identification and that no guests are allowed after 10:00 p.m. or before 9:00 a.m.

The tenant seeks compensation in the form of a rent reduction for the landlord's failure to repair the window in the rental unit in a timely fashion. The parties confirmed the windows were repaired this past summer over a period of 3 or 4 months.

The tenant submits that the landlord was ordered, in a previous hearing, to repair the window. I note that the relevant decision was dated May 5, 2010 and states in part:

“The evidence supports there is a gap between the window panes in the Tenant’s room and that the temporary fix of duct tape, provided by the Landlord, has loosened off allowing the draft to come into the room once again. Based on the aforementioned I find that further investigation and repair is required by the landlord, as an interim measure to prevent the draft as much as possible, until such time as the landlord replaces the window as currently planned.”

The landlord’s agents attending the hearing were not aware of how long the window had required repair.

### Analysis

Section 31 of the *Act* restricts both parties from changing the locks that give access to the rental unit unless the other party agrees or in the case of a tenant if they have an order to allow the change of locks. Section 70 states that if satisfied that the landlord may enter the rental unit other than as authorised under Section 29 an arbitrator may authorise the tenant to change the locks and prohibit the landlord from replacing the locks or obtaining keys to the unit.

While I accept the tenant has suspicions that the landlord or some of the landlord’s staff is entering his rental unit and removing items I find that the tenant has not provided sufficient proof to establish this assertion as fact. As such, I am not satisfied that the landlord has or will enter the unit unless authorised under Section 29. I dismiss this portion of the tenant’s Application.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 30 of the *Act* stipulates a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant.

As I have determined that this tenancy falls within the jurisdiction of the *Act*, I note that this means the tenant is entitled to all of the rights granted under the *Act*, including the right to exclusive possession and the right to have any guests he sees fit to enter his rental unit, provided the tenant and/or his guests do not contravene any of the obligations the tenant has under the *Act*.

I find the practice of the landlord restricting the times that the tenant can have guests in his rental unit as contrary to the rights granted to the tenant under Section 28 and 30 of the *Act*. Further, I find that the landlord is not entitled to screen or prevent any of the tenant’s guests from entering the tenant’s rental unit. As such, I find the practice of

requiring the tenant's guests to give identification to the landlord's agents as contrary to the tenant's rights under Section 28 and 30.

As to the rent reduction, I find that as the landlord was ordered in 2010 to repair the window and the landlord chose to not do so until 2014 the tenant is entitled to a retroactive rent reduction. Due to the length of time it took to complete the repair, I find the tenant is entitled to a rent reduction in an amount that is equivalent to that of one month's current rent.

### Conclusion

Based on the above, I order the landlord to allow the tenant's guests unfettered access to the rental unit. I caution the tenant, however, that along with this right the tenant is obligated to be responsible for the behaviour of any guests that he allows on the residential property or into the rental unit.

I also order the tenant may deduct the amount of the above rent reduction from a future rent payment, pursuant to Section 72(2)(a) of the *Act*.

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: December 10, 2014

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Residential Tenancy Branch

