



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to have the landlords comply with the *Residential Tenancy Act (Act)*, regulation and tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and three agents for two of the named landlords.

At the outset of the hearing the landlord clarified that despite the tenant naming 4 respondents in his Application there are only 3 actual parties representing the landlord: the landlord numbered company; the "foundation" and the "group". The landlord submitted that the tenant had used two different names for the "group" and provided the correct name for the "group". As such, I amended the tenant's Application to name only 3 respondents, as noted above.

Within the tenant's evidence it was apparent, prior to the hearing, that the tenant had intended to file his Application for Dispute Resolution on behalf of a number of tenants who have tenancies with these landlords at the residential property address. At the outset of the hearing I clarified, for both parties, that in order to have disputes heard on behalf of a number of tenants, each tenant must submit their own individual Application and request that the files be joined.

I further clarified that as a result, I would adjudicate this Application in relation to the applicant's tenancy only. The other tenants named only in the tenant's evidence remain at liberty to file their own Applications and seek to have those applications joined if they so wish.

One of the agents, GW, of one of the named landlords testified that he had not received any evidence directly from the tenant but that it had been received by one of the other named landlords who had forwarded it to him. The agent, GW, noted that the tenant's evidence had been served to the residential property on-site office and not his address.

The tenant confirmed that he served 4 packages to the on-site office, as he had no other addresses for any of the parties. The landlord's agent, GW, indicated that all tenants had been provided their address in late fall 2014. GW, however, confirmed that he had the evidence and was prepared to proceed with the hearing.

The tenant indicated that he had not received any evidence from the landlord. The landlord's agent, ER, originally testified that their evidence was served by another agent, SM, for the landlord by mail but she could not confirm a date it was mailed. During the hearing the agent, ER, contacted the agent SM who served the landlord's evidence and she joined the hearing.

The second agent testified that she had served the evidence by posting it on the door of the tenant's rental unit on April 15, 2015 in the mid-afternoon and that this service was witnessed by another agent for the landlord.

The tenant pointed out that his address for service for documents related to his Application, as listed on his application, was a different address than his rental unit's address and that he received no evidence at his rental unit or his service address.

As per the landlord's agent's testimony and the tenant's submission that he did not receive any evidence I find the landlord has failed to serve the tenant at the tenant's identified service address. As a result, I have not considered the landlord's documentary evidence for this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to Sections 4, and 5 of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the tenant and a previous landlord on August 21, 2012 for a 2 month and 17 day fixed term tenancy for a monthly rent of \$425.00 due on the 1st of each month with a security deposit of \$200.00 paid. The tenant submitted that he has lived in this unit on a month to month basis since the expiry of the fixed term; and
- A copy of a document entitled "Safe and Supportive Program Housing Policies – Tenant commitment". The document is signed by the tenant and dated October 30, 2014. The document lists a number of behaviours and building rules that the tenant must follow, including restricting guest access; requiring the tenant to ensure that their floor, bed, and table tops be visible at all times; and requiring the tenant to accept addiction and mental illness treatment if an addiction or mental illness has caused the tenant to "disrupt the peace of the building". The document also contains the following clause:

“I understand that this building is operated under the guidelines of the [housing program] with a continuum of transitional housing flow that is not governed by the Residential Tenancy Act. I agree to live in this building under the terms of this tenancy agreement which begins on the day of November 1, 2014.”

The parties agreed that this tenant had approached the “foundation” last year to propose that the “foundation” take over the management of the residential property. The “foundation” and the owner of the property (the numbered company) entered into an agreement to manage the property and the “foundation” managed the property for a few months in the fall of 2014. The agent, GW, further explained that the “foundation” handed-off day to day management of the property to the “group”.

The landlords submitted that they provide transition housing that assists their tenants to move from unstable housing to more permanent and stable situations. The landlords also testified that due to the lack of availability of affordable housing they do not limit their tenants’ stay in their program and they do not evict tenants. The agents explained that even if their transition housing program tenants give the landlord reason to end the tenancy they will ensure those tenants are moved to a more suitable arrangement.

The landlords testified that in the fall of 2014 they asked all tenants in the residential property to sign the “Tenant commitment” document noted above. They stated that for those tenants who did not sign the documents the landlord accepts that these tenancies fall within the jurisdiction of the *Act*. The agents confirmed that for those who did sign the documents they are considered as tenants under their transition housing program and the *Act* does not apply, due to the exemption under Section 4 of the *Act*.

The landlords submit that, as part of their transition housing program, tenants are provided with a myriad of support services and/or referrals to support programs and services appropriate to the individual’s needs and requests.

The tenant submits that despite the landlord’s claims of the provision of these support services he has never been provided with any of these services on site. The tenant submits that he has never been provided with medical or psychiatric support. He also testified that despite requesting assistance in completing his disability application he has never received any help.

One of the landlord’s agents submitted that they had offered to help the tenant but that he has never asked her for any assistance with anything. A second agent testified that the tenant had requested assistance with his disability application and she referred him to a local community centre that does provide assistance with such applications. Both agents testified that they had never been made aware that the tenant wanted or required psychiatric assistance/support.

Analysis

Section 16 of the *Act* stipulates the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Based on the undisputed testimony from the tenant, I accept the tenant has been in a continuous tenancy at this address since August 14, 2012. As such, I find that the parties to the tenancy, regardless of any changes in ownership or management of the property, were bound to their respective rights and obligations under the tenancy agreement and the *Act* until such time as the tenancy would end in accordance with the *Act*.

As there is no evidence before me that the tenant issued to the landlord a notice to end the tenancy in accordance with Section 45 of the *Act* and there is no evidence before me the landlord has issued any notice to end the tenancy (allowed under the *Act*) or that the tenant has, at any point, abandoned the dispute address I find that at the time the tenant signed the landlord's "Tenant commitment" document the tenancy fell under the jurisdiction of the *Act*.

Section 4(f) of the *Act* provides that living accommodation provided for emergency shelter or transitional housing is exempt from the *Act*.

In the absence of any definition of transitional housing in the *Act*, 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." I also accept that *transitional housing* implies the accommodation is temporary or time limited. The dictionary also defines a "transition house as a home operated by a social service agency."

I find, based on the landlords' testimony that the parties currently providing property management services to the landlord are a social service agency and they are providing this housing. However I find that the actual owner of the property is not a social service agency. I also find that the intention of the program for which the owner and social service agency entered into the agreement was to provide supportive services to specific tenants and to ready them to move into other housing arrangements.

However, based on the evidence and testimony provided from the landlord, I find that there is no limitation on the amount of time that a participant may stay in the tenancy. Specifically, I find the landlords' agents' testimony confirms that they would never end a tenancy until suitable, affordable housing is secured regardless of the length of time. I also find the landlord's themselves are skeptical as to whether or not suitable housing may ever be found due to limitations of the local supply of such housing.

For these reasons, I find that while the landlord has established that they provide supportive services they have failed to establish that the housing provided in the case before me is intended to either be temporary or transitional in nature. I therefore find that this tenancy is not exempt for the *Act*, pursuant to Section 4(f).

While I accept that the tenant signed the “Tenant commitment” document that states the agreement is not subject to the *Act*, Section 5 of the *Act* prohibits the parties to a tenancy agreement from contracting out of the *Act* and that any attempt to do so is of no effect.

As I have found that this tenancy is not a transitional in nature within the meaning or intent of the *Act* and the tenancy is not exempt from the *Act*, I find the “Tenant commitment” document is an attempt to contract outside of the *Act* contrary to Section 5. Therefore, I find the “Tenant commitment” document is of no effect and any and all disputes between the parties may be resolved through the application of the *Act*.

I note however, that any of the terms in the “Tenant commitment” document that do comply with both the *Act* and the original tenancy agreement, between the parties, *may* be enforceable, regardless of my finding above.

Conclusion

Based on the above, I order that the landlord comply with the *Act* in all matters related to this tenancy.

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 1, 2015

Residential Tenancy Branch

