



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPT, MNDC, MNSD, OLC, O, RPP

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order of possession, a monetary order, and an order to return the tenant's possessions.

The hearing was conducted via teleconference and was attended by the tenant, his agent and the landlord's agent.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the tenant's request for an order of possession and the reinstatement of this tenancy is not sufficiently related to the tenant's claim for the return of security deposit; rent; and compensation. The parties were given a priority hearing date in order to address the tenant's request for an order of possession.

I exercise my discretion to dismiss the tenant's claim for compensation and the return of his possessions. I grant the tenant leave to re-apply for these remaining claims.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order of possession for, pursuant to Section 54 of the *Residential Tenancy Act (Act)*. However, prior to this decision it must be determined whether this tenancy falls within the jurisdiction of the *Act* pursuant to Section 4 of the *Act*.

Background and Evidence

The parties agree the tenancy began as a month to month tenancy for the monthly rent of \$375.00 due on the 1st of each month. The parties disagree on a number of details of the tenancy including start date (Tenant – November 13, 2014; Landlord – November 15, 2014); when the tenant was removed from the rental unit (Tenant – June 2, 2015;

Landlord – June 3, 2015); and amount of security deposit (Tenant - \$375.00; Landlord - \$187.50).

The landlord submitted into evidence a copy of a document entitled “Safe and Supportive Program Housing Policies – Tenant commitment”. This document outlines a number of rules and behaviours that the tenant must agree to and includes the amount of rent and security deposit and when rent is due and that the tenancy began on November 13, 2014.

This document also states that the building is operated under the guidelines of the Program “with a continuum of transitional housing flow that is not governed by the Residential Tenancy Act”. The document states that the tenant understands that if he does not comply with the house rules his tenancy can be terminated immediately.

The landlord states that other than an ITR (or a Shelter Information Form from the Ministry of Social Development) there is no other document outlining the terms of this tenancy. She submits that at the start of this tenancy the landlord verbally informed that the building would be closing down at the end of November 2016.

In support of their position on jurisdiction the landlord has submitted the following documents:

- A decision dated March 5, 2014 from an arbitrator with the Residential Tenancy Branch declining jurisdiction. I note that this decision stated: “The landlord said that tenants can expect to remain with them for up to 3 years; depending upon their individual needs. The landlord provides housing until the tenant can obtain subsidized housing through BC Housing, until they can enter treatment programs, while they under treatment or awaiting transition to nursing homes. The landlord operates 6 buildings in Vancouver, all with the same goal of assisting individuals to transition to more permanent subsidized or market housing.”;
- A screen printout of a website that describes the landlord’s program as existing to “provide safe and supportive housing for persons that are at risk to homelessness through self-sustaining, social housing networks.” The page goes on to explain the services provided include: tenant support; in-house medical; addiction counselling; affordable rent; neighbour watch; housekeeping services; advanced pest control; on-site breakfast; laundry services; and work placements; and
- A copy of a letter dated October 16, 2014 from the local city government that describes the dispute property as temporary housing. The letter goes on to say that the city has leased the address as temporary housing for a two year term. Over this time tenants will work with housing outreach for a final move into permanent housing and that temporary housing offers people who are homeless or living in shelters a place to live until more permanent housing becomes available.

The landlord testified that for tenants who following the rules set forth in the tenant commitment document are allowed to stay until suitable permanent housing can be secured for them. The landlord submits that the time this takes can vary depending on individual needs. She states that they have some tenants who have been with them for as many as 5, 6, or 7 years.

The landlord submits that in this tenancy the tenant was advised prior to signing the tenant commitment agreement that the property would be closing at the very latest by November 2016. The landlord further testified that for any tenants of this residential address who follow the rules and for whom permanent housing has not been found by November 2016 the landlord will provide ongoing accommodation until suitable permanent housing will be found.

The tenant submits that because there is no end date or a fixed point in time that the tenancy is to end that it cannot constitute transitional housing. The tenant also submits that because the landlord has received a security deposit the tenancy cannot be considered as transitional.

The tenant provided into evidence a copy of a letter dated June 2, 2015 from the landlord stating:

“This letter is to act as written notice that you are to immediately vacate your residence at [dispute address]. After much deliberation we have decided that at this time you are unable to comply with the housing policies in our program.

[CB] will be happy to offer you future tenancy if you should find yourself in a position where our housing program will work for you.

Please arrange with [CO] to pick up your remaining belongings and arrange for future housing possibilities.

The tenant submitted that he was escorted out of the residential property by police and that he has not yet contacted CO to arrange for new accommodation or to retrieve his belongings. The tenant submits he has remained homeless since he was forced out of his rental unit.

The parties each provided testimony in regard to the reasons the landlord gave as their cause to end the tenancy.

Analysis

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 landlord’s testimony that the landlord is a social service agency and they are providing this housing. I find that the intention of the program is for the landlord to provide supportive services to tenants and to ready them to move into other housing arrangements, when it becomes available.

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 landlord’s testimony confirms that they would never end a tenancy until suitable, affordable housing is secured regardless of the length of time, unless the tenant fails to follow the rules imposed upon them.

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*, I find that 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 this tenancy is within the jurisdiction of the *Act*, I find that in order for the landlord to end the tenancy they must do so in accordance with the requirements of Section 52 of the *Act*.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

From the testimony provided by the parties I find that the landlord’s intent was to end the tenancy based on cause as allowed under Section 47 of the *Act*. As such, the landlord was required to provide the tenant with a 1 Month Notice to End Tenancy for Cause, available on the Residential Tenancy Branch website.

As the landlord had, to the date of this hearing, not issued a notice that is compliant with either Section 47 or 52 and the tenant only vacated the rental unit as a result of the

actions taken by the landlord I find the tenancy has not ended in accordance with the *Act* and the tenant is entitled to an order of possession, pursuant to Section 54.

Section 54 of the *Act* states a tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution and that the director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

As the landlord has identified the rental unit is currently occupied by a new tenant, I find it necessary to grant occupancy to this tenant with as little impact on the third party tenant as possible. As such and allowing for the landlord to end the tenancy with the third party tenant in accordance with Section 47(1)(k) of the *Act*, I find the earliest this tenancy may begin is September 1, 2015.

Further, I note the parties are at liberty to discuss and mutually agree to alternate living arrangements for the tenant until the effective date of possession or permanently. In addition, the parties remain at liberty to mutually agree to a financial settlement in lieu of the tenant enforcing the order of possession.

Conclusion

I find the tenant is entitled to an order of possession effective **September 1, 2015 after service on the landlord**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: July 06, 2015

Residential Tenancy Branch

