



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 MT, CNC, AAT, LAT

Introduction

This hearing was convened in relation to the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Appearances

The tenant and his advocate NG appeared. The agent BD made submissions and provided evidence on the landlords' behalf. The advocate DZ attended briefly for the specific purpose of advising me on the status of the Supreme Court application.

Procedural History

This hearing occurred over two days. The hearing was adjourned to allow the landlord to provide a copy of the petition and supporting documents from the British Columbia Supreme Court matter regarding the same tenancy.

The tenant filed a petition in the British Columbia Supreme Court in February 2016. The tenant was granted an interim order of the Court following his application heard 11 February 2016. That order enjoined the landlord from removing the tenant's belongings from the rental unit or taking possession of the rental unit. The application was adjourned and reconvened on 11 March 2016.

The Supreme Court matter was heard the morning of 11 March 2016. The parties report that the Madam Justice Sharma provided an order that conferred jurisdiction in this matter to the Residential Tenancy Branch. The order provided the tenant with access to the rental unit until a determination by the Residential Tenancy Branch was made. The landlord did not provide the tenant with access to the rental unit until after the 11 March 2016 hearing.

Service of Evidence

When the tenant filed his application for dispute resolution, he used his rental unit as his address for service. The tenant did not update this address or provide an alternate address for service to the landlord. This is the same address for service that is set out in his British Columbia Supreme Court application.

The agent testified that she served the tenant by registered mail with the landlord's evidence to the address for service provided by the tenant. The registered mailing was returned unclaimed. The agent testified that she delivered the unclaimed package to the front desk of the residential property.

The tenant was staying in a friend's unit within the same residential property. The tenant testified that he asked the front desk staff for his mail and he was told that there was no mail for him. The tenant stated that both he and his advocate received the landlord's evidence the afternoon before the reconvened hearing.

The landlord's evidence consists largely of documents also submitted by the tenant. The only documents not included in the tenant's evidence were two printouts from the City of Vancouver website that describe the services provided by the landlord at the residential property and a one-page letter in the nature of submissions.

The tenant did not provide an updated address for service; however, the reason the tenant was not residing at the address for service was because of the landlord's failure to comply with the order of the British Columbia Supreme Court and restore the tenant's access to the rental unit.

Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) sets out that an applicant must receive evidence from the respondent not less than seven days before the hearing.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets

out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

The purpose of disclosing evidence is to avoid “trial by ambush” and provide the recipient with knowledge of the issues before the decision maker. The City of Vancouver evidence was always publically available. At all material times the tenant knew or ought to have known that the issue of transitional housing was before me. The tenant’s submissions indicate that he and his advocate understood this. This type of evidence was raised in the prior decision of the Residential Tenancy Branch provided by the tenant.

The tenant’s advocate provided comprehensive submissions in support of the tenant’s position that the living arrangement is not transitional housing. The tenant’s advocate provided further submissions on the matter of transitional housing in response to the additional evidence. The tenant’s advocate indicated that he had time to review the evidence and submitted that there were no further responses he intended to make other than those provided over the two hearing days.

The tenant stated that he would be prejudiced by admission of the late evidence. I asked the tenant what additional evidence he wished to submit. The tenant could not identify any evidence.

On the basis that the information is public information, the tenant knew or ought to have known that the issue of “transitional housing” was material, the tenant’s advocate had time to review the two pages of additional evidence, the tenant’s advocate made submissions in respect of the documents, and that the tenant could not identify any further submissions or evidence that he would provide in response to the evidence, I am exercising my discretion to admit the two pages of evidence on the basis that there is no undue prejudice to the tenant and the tenant was able to fully respond to the two pages.

Issue

Does the Residential Tenancy Branch have jurisdiction to adjudicate this matter? The parties agree that if I find I have jurisdiction under the Act, the remedies sought by the tenant would flow from that finding.

Paragraph 58(2)(c) Suspension of Jurisdiction

Pursuant to subsection 58(3) of the Act, the Residential Tenancy Branch has exclusive jurisdiction over disputes arising under the Act; however, pursuant to paragraph 58(2)(c), if there is an application with the British Columbia Supreme Court, this Branch's ability to determine a dispute may be suspended pending the outcome of that claim:

- (2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless...
 - (c) the dispute is linked substantially to a matter that is before the Supreme Court.

This provision provides primacy to the Supreme Court's jurisdiction where jurisdiction overlaps so long as that matter is substantially linked to a matter that is before the Supreme Court.

The parties report that the Madam Justice Sharma conferred the Residential Tenancy Branch with jurisdiction in this matter. I understand from the parties' report of what occurred in chambers that Madam Justice Sharma is stating that my jurisdiction is not suspended pursuant to paragraph 58(2)(c) of the Act by virtue of British Columbia Supreme Court claim.

Paragraph 4(k) Transitional Housing

Pursuant to paragraph 4(f) of the Act, the Act does not apply to living accommodation provided for emergency shelter or transitional housing.

At the commencement of the reconvened hearing, I summarised my understanding of the parties' submissions and asked each party if they had clarifying remarks or further submissions.

The landlord submits that housing provided to the tenant is transitional housing. In particular, the landlord points to the existence of an agreement signed by the tenant that acknowledges that the housing provided is provided on a transitional basis. Further, the

landlord submits that it has entered into an agreement with the City of Vancouver to provide housing on a temporary basis as “transitional housing”. In particular, use of the residential property was provided under a short-term agreement ending November 2016. The residential property was provided for transitional housing while the owner of the property waited for permits to be issued in respect of a redevelopment to occur on that site. The landlord submits that the purpose of the housing provided is to allow for stabilization of individuals transitioning from homelessness by identifying supports required and allowing the individuals to gain skills from the supportive programs provided by the landlord. The landlord submits that its goal is to transition the participants into long-term housing.

The tenant has provided a decision of another arbitrator of the Residential Tenancy Branch in respect of another rental unit within the same residential property. In that decision, the prior arbitrator found that the housing was not transitional housing. The tenant submits that he had no knowledge of the agreement between the landlord and the City of Vancouver and was not aware that his tenancy was time limited. The tenant submits that the City of Vancouver agreement cannot be determinative of the tenant’s rights under the Act. The tenant submits that any ambiguity in the definition of transitional housing should be resolved in favour of the tenant as the Act is a benefit conferring statute. The tenant’s advocate submits that the use of “temporary housing” in the City documents should not be conflated with “transitional housing” as understood under the Act.

I was provided with print outs of two pages from the City of Vancouver website. The following relevant information is contained therein:

On September 24, 2014, the City of Vancouver added another important piece to its strategy to end street homelessness with the addition of 157 units of temporary housing at [residential property]. ... These units are available to street and sheltered homeless people who require support services in safe and affordable accommodation.

...

Tenants are low-income adults that require support services to maintain successful tenancies, and:

- are street- and sheltered homeless, or at risk of homelessness*
- may have mental health and physical disabilities*
- need safe affordable housing*

...

The building has been leased by the City of Vancouver for two years to provide much needed temporary housing. ...

[emphasis added]

The Act applies to tenant and landlord relationships; however, the Act excludes certain living arrangements. Paragraph 4(f) provides that living accommodation provided for emergency shelter or transitional housing are not subject to the Act.

The purpose of exempting transitional housing from the Act is an acknowledgement that those relationships cannot be regulated in the same way that the type of tenancy contemplated by the Act is regulated. Generally, this type of housing is provided by social services groups to assist persons who are otherwise hard to house.

Neither the Act nor regulations define “transitional housing”. I interpret these words in accordance with their plain and ordinary meanings, that is, “transitional housing” means:
a living arrangement provided to an occupant on a temporary basis with an end goal of finding the occupant permanent housing suitable to that occupant’s specific needs.

I agree with the tenant’s advocate that not all temporary housing is transitional housing; however, temporariness is necessary component of transitional housing.

I was provided with a decision of the Residential Tenancy Branch. Pursuant to subsection 64(2) of the Act, I am not bound by other arbitrators’ decisions:

- (2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

The landlord provided similar evidence regarding the temporary lease arrangement with the City. The prior decision set out the following finding by that arbitrator:

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.

I disagree with the prior arbitrator’s finding. The landlord has provided clear and unequivocal evidence that the entire residential property was only operating on an interim basis as temporary housing for a two year period under the lease agreement. The property was put to its best use while the developer/owner waited for the rezoning process to unfold. It is clear that the arrangement among the developer/owner, City of Vancouver and landlord was for the purpose of providing emergency temporary housing by making use of what would otherwise be a vacant building awaiting rezoning for the purposes of redevelopment. The housing is temporary. The residential property as it now is will cease to exist when it is demolished. Further, the agreement signed by the

tenant indicates that the housing provided is “transitional”. As well that agreement provides for terms that are specifically designed to cater to the needs of the population that housing services. Those terms would not be permissible within a standard tenancy agreement. While perhaps the landlord could have been clearer in drafting its agreement, I find that the temporary nature of the housing was implicit in the landlord’s use of “transitional” to describe the housing arrangement.

I find that the housing provided by the respondent is provided on a temporary basis with the goal of moving residents to long-term, suitable housing. Thus, I find that the housing provided by the respondent is transitional housing within the meaning of paragraph 4(f) of the Act and I do not have jurisdiction over this matter.

Conclusion

I find that this housing arrangement is transitional housing and pursuant to paragraph 4(f) of the Act I do not have jurisdiction over this matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 04, 2016

Residential Tenancy Branch