



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, MNDC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed June 22, 2016 wherein she requested a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, Regulation or tenancy agreement, and an Order of Possession pursuant to section 54 of the *Act*.

Both parties appeared at the hearing. The Applicant was in attendance, as was P.E., an advocate as well as a witness, P.T. P.E. gave evidence and made submissions on behalf of the Applicant. The property owner, J.B., her father (and former owner of the rental property) W.S., were in attendance as well as J.D. the manager of the facility. J.D. gave evidence and made submissions on behalf of the Respondent.

The hearing process was explained and the participants were asked if they had any questions. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the outset of the hearing the Manager confirmed the address of the rental unit and noted that it was incorrectly noted on the Application for Dispute Resolution. The Advocate also confirmed the address was erroneously noted. Pursuant to section

64(3)(c) of the *Residential Tenancy Act* I amend the Application for Dispute Resolution to correctly note the address.

Introduced in evidence were the Respondent's written submissions wherein the jurisdiction of the *Residential Tenancy Branch* was raised as an issue. Accordingly, the parties made submissions on this issue as well as the matters raised on the Application for Dispute Resolution.

Residential Tenancy Branch Rule of Procedure 2.3 provides 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.

Issues to be Decided

1. Does the *Residential Tenancy Act* apply, or is the living accommodation "transitional" or "emergency" as provided for in section 4(f) of the *Act*?
2. Is the Applicant entitled to an Order of Possession?
3. Is the Applicant entitled to monetary compensation?

Background and Evidence

As noted, the Respondent alleged the *Residential Tenancy Act* did not apply the dispute between the parties as the subject building, in which the unit is located, is emergency or transitional housing and as such is outside the jurisdiction of the *Act* pursuant to section 4, which reads in part as follows:

What this Act does not apply to

4 This Act does not apply to

...

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

The Respondent made the following written submissions:

- "The purpose of the rooming facility is to provide temporary and transitional housing to low income, hard to house individuals, as well as an emergency shelter."

- The Applicant “Ms. D.W. was originally displaced as a result of a fire at her previous lodging; due to the operational model of the Rooming House [they] were able to accommodate her needs at that time.
- The rooming facility operates under the *Hotel Act* and has done so since 2014.
- The facility “allows for daily arrivals, daily departures, and allows for effectively responding to the very disruptive behaviours that can sometimes occur amongst occupants in a low barrier climate.”
- “The property is managed by the [society name withheld], a non-profit society which provides emergency shelter, low income housing, housing and health supports to the marginalized sector of the community. This facility is unique to other rental properties as it is specifically designed to facilitate individuals with a multitude of needs including addiction and mental illness issues.”
- “rooms are available on the premise of daily occupation and that occupants may be asked to leave at anytime should they breach facility guidelines.”
- “[T]here are several distinct factors relevant to the operations of this facility being under the *Hotel Act*. Some of these factors are:
 - Occupants are advised their rooms are only available under the principle of daily occupancy and that they may be asked to leave to to leave immediately should they not be respectful of shared boundaries or not be following the facility guidelines;
 - All rooms are furnished with a bed, a chest of drawers a side table and bedding;
 - The occupants share a common eating and cooking area, along with a common bathroom which is shared among other occupants;
 - Toiletries are provided to each individual occupant;
 - Cleaning supplies including disinfectant cleaning solutions and tools are provided to each occupant upon request
 - Dish cleaning soap is provided
 - No damage deposit is collected

- No cooking is allowed in the individual rooms, and only one occupant is allowed per room
- Coin laundry is provided
- Money for laundry is provided upon request
- Wifi is provided at no cost
- A television, cable service, and a remote control is included in each room.
- “The facility manager has access to all areas, including individual rooms, to monitor safety concerns, prevent the spread of disease and to monitor health concerns and addiction issues.”
- “Management liaises with outreach medical programs for individual addiction and mental health concerns as needed.”

[Reproduces as Written]

The Respondent also made written submissions about the applicant's behaviour, alleging she has been oppositional and unwilling to follow the guidelines of the facility, as well as setting out the reasons she was asked to leave.

J.D. testified on behalf of the Respondent. He stated that the facility where D.W. previously resided consists of 7 rooms; three rooms are downstairs and four rooms upstairs and that each of the bedrooms have locks.

J.D. stated that he became the manager in April of 2016. J.D. confirmed that there are residents who have lived in the rental building for four to five years. He also stated that the majority of residents were previously homeless and that some people did live on the street prior to moving into the rooming house.

J.D. confirmed that D.W.'s room is still available as they have deliberately left it as it was to give her the opportunity to remove her items. J.D. stated that he was advised that at one point in time D.W. lost her keys, so it is possible someone else might have come into possession of those keys but they have done their best to make the rooms as safe/secure as possible.

J.D. confirmed that some residents of the facility have been welcome to stay for longer stays, but the majority are transitioning to other accommodation with the support and guidance of the workers at the facility. He testified that the purpose of the facility is to assist people who are on the street and to provide them a place to stay and to provide them with assistance to find more suitable housing.

J.D. confirmed that Tenants do not have to give Notice in accordance with the *Act*, and that when they find alternate accommodation they can leave as soon as that accommodation is available. He testified that as people are able to move in and move out without giving one month's notice, this helps to accommodate emergency requests.

He further testified that the facility staff are actively involved in helping the occupants find other accommodation and work closely with housing agencies. He also confirmed that they also assist with mental health issues and drug and alcohol.

J.D. stated that the Applicant moved in as a result of a fire at her previous location. J.D. testified that in addition to providing the Applicant with accommodation, and assistance finding more permanent housing, the facility staff are actively involved with mental health professionals in her care.

J.D. also stated that there are no written tenancy agreements in place; rather, they are all verbal agreements with the occupants agreeing to the facility Guidelines. Those Guidelines were provided in evidence and read as follows:

- [Facility Name] is for the shared use of registered tenants only
- No food preparation or cooking (toasters, hot plates) in bedrooms
- All pets have to be approved (dogs, cats, tarantulas, lions, reptiles etc)
- One bed per room
- No overnight guests
- No smoking in building
- No "Hard" Drugs (meth, heroin, crack etc) in Building
- No alcohol or "Soft" drug use in shared common areas
- Respect shared boundaries, respect the comfort levels of all tenants
- Disregarding these guidelines will lead to eviction
- Embracing these guidelines will make a better home for all

J.D. confirmed that of the seven people who live in the facility with the Applicant:

- two have been in the facility for approximately one month;

- one resident moved in in June but is moving out because she is pregnant;
- one has been in for two months;
- one for approximately four months; and
- one has been there for over a year although he is on the waiting list for housing through Canadian mental health;

In terms of D.W., J.D. testified that she has been waiting for the residence in which she was previously living to be rebuilt. He stated that the building is about a year away from being finished.

J.D. also confirmed that the facility staff work closely with the Applicant's mental health workers in support of her needs.

D.W. confirmed that the Applicant was evicted after numerous warnings about her behaviour which were in direct contravention of the agreed upon Guidelines. He confirmed that as of June 2, 2016 she has not been able to live in the facility.

The Advocate testified as follows. She confirmed there was no residential tenancy agreement in place. Introduced in evidence was a copy of the Shelter Information from the Ministry of Social Development and Social Innovation. This document confirmed that rent was payable in the amount of \$425.00 and that utilities were included in the rent.

The Advocate confirmed that the rental unit is located within one of two buildings in what is commonly referred to as "P.H.". She stated that each building has six separate bedrooms with a shared kitchen and bathroom.

The Advocate also provided a copy of the Mission Statement which is also available online and which reads as follows:

"...We follow the principles of "Housing First" which recognizes that housing is a basic right for all people and that the most effective way to begin to deal with the multiple problems faced by the homeless is after they are in safe, stable , and ultimately permanent housing. It is well documented that the chronically homeless place a disproportionate burden on the social service system (e.g. hospital emergency, police) a burden that decreases dramatically when they obtain stable

housing. Housing provides the safety and security that makes it possible for people to change their lives; a base to form positive relationships and become connected to the community...”

The Advocate submitted that this accommodation is not *transitional*. She stated that some individuals have resided in the home since it opened in 2009. She further stated that this rooming house was for hard to house individuals, not people transitioning elsewhere.

She stated that many of the occupants have “burnt the bridges elsewhere”, with mental health issues, drug and alcohol issues, and are there because they have no other options and therefore no place to transition to. She confirmed that the purpose of this is for “low barrier housing”, a rooming house, and not transitional housing.

The Advocate further confirmed that the Applicant has been out of the rental unit since being wrongfully evicted on June 2, 2016 and this was the first date available for a hearing. (As noted, the Applicant applied at the Residential Tenancy Branch on June 22, 2016.)

The Advocate stated that on July 7, 2016 the Applicant was able to attend the rental unit and pick up her clothing.

The Advocate further confirmed that the Applicant has not been able to secure alternate accommodation and that her June rent was accepted by the Respondent, but the July rent was returned with the notation “Tenant has been evicted”. To the Advocate’s knowledge the August rent has not yet been returned.

Analysis

After careful consideration of the evidence before me, the testimony and submissions of the parties, and on a balance of probabilities, I find the issues between these parties do not fall within the jurisdiction of the *Residential Tenancy Act*, as the subject facility is more properly characterized as *transitional housing*. Section 4(f) provides that *Act* does not apply to transitional or emergency housing and as such I decline jurisdiction in this matter.

Transitional Housing has been defined as follows:

“ ...

Transitional housing refers to a supportive – yet temporary – type of accommodation that is meant to bridge the gap from homelessness to permanent housing by offering structure, supervision, support (for addictions and mental health, for instance), life skills, and in some cases, education and training.

“Transitional housing is conceptualized as an intermediate step between emergency crisis shelter and permanent housing. It is more long-term, service-intensive and private than emergency shelters, yet remains time-limited to stays of three months to three years. It is meant to provide a safe, supportive environment where residents can overcome trauma, begin to address the issues that led to homelessness or kept them homeless, and begin to rebuild their support network.

...”

(<http://homelesshub.ca/solutions/housing-accommodation-and-supports/transitional-housing>)

Based on the evidence before me, I find the facility falls within the above definition.

Additionally, I make the following findings and confirm they have influenced my decision that the facility is transitional housing as contemplated by section 4(f):

- The facility is staffed by individuals who work with the residents to find more suitable permanent housing. Whether the residents were previously homeless or hard to house, the facility’s purpose is to provide emergency and temporary accommodation until more suitable housing can be found. In the case before me, the parties agreed that the Applicant’s intention is to move from the facility to her former accommodation as soon as it is rebuilt. While the rebuild has taken longer than originally anticipated, this appears not to have affected the mutual intention of the parties.
- The facility staff also work with the residents and mental health and addiction specialists to assist the residents with these issues. In the case before me, the parties agreed that the facility staff work with the Applicant’s mental health workers on her behalf.
- The residents are provided with “Tenant Guidelines’ which specify acceptable and unacceptable behaviour and which clearly indicate failure to abide by

these guidelines will lead to eviction. These Guidelines are more restrictive than those which would be present in a residential tenancy agreement and I accept the Manager's testimony that the Guidelines are responsive to challenges presented by residents of the facility. The residents are aware of, and accept these Guidelines, when moving into the facility.

- The rooms are fully furnished and the residents are provided with toiletries and cleaning products similar to that which is provided in hotel or vacation accommodation.
- The facility Manager has access to all areas of the facility, including the individual rooms for the purposes of monitoring health and safety concerns as well as addiction issues.
- The residents are not expected to provide formal notice to move from the facility and are permitted to move as soon as alternate accommodation is available.

Based on the foregoing, I find the facility falls within the exclusion set forth in section 4(f) of the *Act* and I therefore decline jurisdiction.

Conclusion

I decline jurisdiction pursuant to section 4(f) of the *Residential Tenancy 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: August 5, 2016

Residential Tenancy Branch