



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPT MNDC AAT FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order of possession of the rental unit pursuant to section 54;
- 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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s)

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the tenant entitled to an order of possession of the rental unit and other relief sought in this application?

Background and Evidence

The landlord submits that the residency which began on June 1, 2016 falls under the Ministry of Health Assisted Living Program and as such the Act does not apply to this living accommodation. In support of its position, the landlord submitted a copy of its registration certificate with the Ministry of Health, Assisted Living Registrar. The landlord also submitted a copy of the tenancy agreement entered into by the parties on May 25, 2016. The landlord submits that clause 6 of this agreement lists "VIHA" (Vancouver Island Health Authority) as an addendum. The landlord submitted a copy of this signed addendum stating the unit is designated as an Assisted Living Unit. The landlord also submits a signed Occupancy

Addendum in regards to the care needs required. The landlord submits the tenant was placed through VIHA. The landlord submits the tenant also signed an Assisted Living Welcome Package at the start of the residency. The tenant's rent is subsidized by the VIHA.

The tenant submits the his tenancy falls under the jurisdiction of the Act as the tenancy agreement he signed in titled Residential Tenancy Agreement between the landlord and the tenant and also makes reference to applicable sections of the Act. The tenant also submits that the Welcome Package signed should not be valid as it contained errors in the date signed and the address of the unit was incorrect.

Analysis

Section 4(g)(i) of the *Act* stipulates that the *Act* does not apply to living accommodation in a community care facility under the Community Care and Assisted Living Act.

The registration certificate with the Ministry of Health, Assisted Living Registrar and the signed documents submitted by the landlord, support the landlord's position that the Act does not apply to this living arrangement. I dismiss the tenant's argument that it falls under the jurisdiction of the Act simply because the agreement makes reference to the Act. The evidence including the addendum signed by the parties clearly states that the unit is designated as an Assisted Living Unit. The tenant did not dispute that he qualified for the Assisted Living program or that his rent was subsidized by the VIHA.

Conclusion

I find that this tenancy agreement was for living accommodations in a community care facility under the Community Care and Assisted Living Act; therefore, pursuant to paragraph 4(g)(i) 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 24, 2016

Residential Tenancy Branch