



# 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 a Tenant's Application for Dispute Resolution whereby the tenant seeks orders for the landlord to comply with the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matter(s)

The respondent submitted that the *Residential Tenancy Act* ("the Act") does not apply to the subject living accommodation. The respondent's position was provided by way of written submission and oral testimony. The applicant was of the position that the living accommodation is not exempt from the Act. The tenant's position was made by way of oral submissions and testimony. Since my authority to resolve disputes is provided under the *Residential Tenancy Act*, I must first determine whether the Act applies to the subject living accommodation and whether I have jurisdiction to resolve this dispute.

Both parties indicated they were prepared to proceed to make submissions and arguments with respect to jurisdiction. During the hearing time allotted I only heard matters related to jurisdiction and I reserved my decision. Before ending the teleconference call, the parties were in agreement that should I find there is a tenancy agreement between the parties that is subject to the Act the letter issued to the applicant/ tenant on May 5, 2017, requiring her to vacate the living accommodation, is not sufficient to end a tenancy and the landlord/respondent would be required to serve the applicant/tenant with an appropriate Notice to End Tenancy in the approved form; and, that if I were to decline jurisdiction the respondent/landlord is not subject to the provisions of the Act in regaining possession of the living accommodation.

As to the issue of jurisdiction, I was provided a considerable amount of written and oral submissions to consider; however, with a view to brevity I have only summarized the most pertinent facts and arguments of each of party below.

### **Respondent/Landlord's position**

The respondent is of the position that the living accommodation is exempt from the Act under section 4(f) and/or 4(g)(vi) of the Act which exempts the following living accommodation from the Act:

- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
  - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

It was undisputed that on September 28, 2016 the applicant/tenant applied to enter into a program run by the respondent/landlord, a not-for-profit organization dedicated to delivering support to women and children affected by violence and ending inequalities. The scope of the program is for “older women” to provide mentorship, interaction and guidance to younger women residing in an adjacent building who have struggles with: mental health, life skills, violence and substance abuse, among other things. For a woman to be accepted into the program as an “older woman”, the applicant is to be 55 years old, or older, and have experienced violence and abuse.

The applicant/tenant was interviewed on October 6, 2016; and the applicant/tenant was accepted into the program as an “older woman” and signed a document entitled *Program Agreement and Terms of Residency* (“the Program Agreement”) on October 12, 2016. A copy of the Program Agreement signed by the parties on October 12, 2016 was provided as evidence.

As part of the program the applicant/tenant is to provide 20 hours of her time every month on a volunteer basis to the program, including participation in such things as group activities or counselling, and preparation of meals that are offered to the community every day. The applicant/tenant must also meet with the respondent/landlord’s staff at least bi-weekly to discuss goals and supports needed and attend scheduled activities. As a program participant, the applicant/tenant is provided use of a living unit, access to support staff on a 24/7 basis, group activities and community meals. As a program participant, the applicant/tenant is also restricted from doing certain things, such as consuming illegal substances or alcohol with other participants or engaging in any violent or threatening behaviour. A program participant’s guests must approved first and considered “safe” family members or friends and no other occupant is permitted to reside in the living unit. The applicant is required to pay the respondent/landlord \$375.00 every month as a “program charge”.

The respondent/landlord submitted that the living unit is provided as part of the program which in turn means an individual may not continue to occupy the living unit if their program agreement ends or is terminated, making occupation of the living accommodation conditional upon being a

program participant. Since the housing is conditional upon the Program the landlord considers the living accommodation to be transitional housing.

I heard that there is not expiry date or maximum amount of time an individual may participate in the program. The respondent/landlord submitted that the respondent has the right to end the participant's Program Agreement and require the program participant to vacate the living unit. A program participant may also chose to end their Program Agreement and many women do when they reach a point in their lives where they chose to move on and leave the program.

The respondent/landlord pointed out that the program requirements were presented to the applicant/tenant when she applied for and was interviewed for the program and that she accepted the terms of the Program, including the condition that housing is provided only as part of being a program participant, in signing the Program Agreement.

### **Applicant/Tenant's position**

The applicant/tenant's Advocate pointed to Residential Tenancy Policy Guideline 46, which provides information with respect to the exemption of the emergency shelters and transitional housing and the application of supportive house, in making her submissions. As pointed out by the Advocate, transitional housing is defined in the Residential Tenancy Regulations and requires all three of the following criteria to be met in order for living accommodation to be considered transitional housing:

- (a) living accommodation provided on a temporary basis;
- (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and;
- (c) together with programs intended to assist tenants to become better able to live independently.

The Advocate pointed out the subject living accommodation is not provided on a temporary as the respondent acknowledged participation in the program and use of the living accommodation by a tenant could go on indefinitely. The tenant testified that she understood the housing was being provided to her for indefinite period of time or forever.

The Advocate questioned whether the living accommodation would be considered part of a rehabilitative or therapeutic program since the tenant testified that she has offered her time to mentor younger women or otherwise participate in program activities and she was told there was nothing for her to do on 3 or 4 occasions. The applicant/tenant stated that there have been no rehabilitative programs or group activities scheduled for her to participate in despite living in the unit for approximately 9 months.

The Advocate suggested the landlord is just trying to avoid the Act by using the "Program Agreement" instead of a tenancy agreement but that a party may not avoid the Act in any event, as provided under section 5. However, even the Program Agreement uses the terms landlord and tenant in a number of places.

The Advocate was of the view that the support services of the respondent/landlord's staff that are provided to the tenant are consistent with supportive housing and supportive housing is not exempt from the Act.

The respondent refuted the tenant's position that she was denied the opportunity to participate in the Program activities. The respondent submitted that the tenant was presented with opportunities to participate and she did not. Rather, the tenant has isolated herself.

In rebuttal, the respondent/landlord also took the position that while support services may be offered in supportive housing, supportive housing does not require a tenant to participate in program requirements. The Advocate disagreed, stating there are often programs a tenant in supportive housing must participate in.

The respondent/landlord also responded by stating the services of the program is very important and beneficial to the community and that is why the applicant/tenant was required to sign the Program Agreement and not a tenancy agreement

### **Analysis and Findings with respect to jurisdiction**

Upon consideration of everything before me, I provide the following findings and reasons.

The respondent put forth two exemptions under section 4 of the Act and I proceed to consider each exemption.

#### **1. Transitional housing**

As pointed out by the applicant/tenant's Advocate, transitional housing is defined in the section 1 of the Residential Tenancy Regulations and living accommodation must meet three criteria to be considered transitional, as evidence by use of the word "and" in the definition which is as follows:

- (2) For the purposes of section 4 (f) of the Act [*what the Act does not apply to*], **"transitional housing"** means living accommodation that is provided

- (a) on a temporary basis,

- (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and
- (c) together with programs intended to assist tenants to become better able to live independently

[Reproduced as written with my emphasis underlined]

Upon review of the Program Agreement and as confirmed by the respondent/landlord, the program does not have a fixed term or there is no expiry date specified for program participation and both parties acknowledged that the participant may be in the program indefinitely. While the landlord was of the position that the living accommodation is provided on a conditional basis, the meaning of conditional is not the same as temporary and it is entirely possible to have a conditional arrangement that goes on for an extended period of time, or indefinitely, which is not consistent with the meaning of “temporary”. The Act or Regulations do not define the word “temporary”; however, the ordinary meaning of the word is: “lasting for a limited time.”

In light of the above, I do not view the Program Agreement or the living accommodation that is provided as part of the Program to be temporary. Since it is not temporary, the living accommodation does not meet the definition of transitional housing. Therefore, I reject the respondent’s position that the living accommodation is exempt from the Act on the basis this is transitional housing.

## **2. Living accommodation that is made available in the course of providing rehabilitative or therapeutic treatment or services**

The words “rehabilitative” and “therapeutic” are not defined in the Act or in the Regulations and I turn to the ordinary meaning of the words as described below.

The definition of “rehabilitative” or “rehabilitation” includes:

- to restore or bring to a condition of health or useful and constructive activity
- to restore to a condition of good health, ability to work, or the like.

The definition of therapeutic includes:

- of or relating to the treating or curing of disease; curative.
- of or relating to the treatment of disease or disorders by remedial agents or methods
- having a beneficial effect on the body or mind

Upon review of the Program Agreement and upon hearing testimony of both parties, it is clear to me that the scope and purpose of the Program is to provide rehabilitative and therapeutic

services, mainly for the benefit of the “younger women” who are vulnerable or at risk for suffering from the effects of substance abuse, violence, mental health issues, and/or a lack of life skills. The rehabilitative and therapeutic services provided to the at-risk younger women appear to be delivered in a multi-faceted way including access to the respondent/landlord’s staff persons; activities organized by the respondent/landlord; and, mentorship, guidance or interaction with the “older women” who have experienced similar challenges in their life.

The terms of the Program Agreement the applicant/tenant agreed to require her to participate in the program in several ways as an “older women”. While I was provided disputed testimony as to whether the applicant/tenant was willing or was provided the opportunities to participate in the program, I see no reason the respondent/landlord would be motivated to deny her the opportunity to do so given the potential benefit to others in the program or the community, unless of course the “older woman” is no longer a positive influence on the other program participants. The respondent/landlord cannot force an unwilling or unavailable program participant to comply with the program requirements so the respondent/landlord’s remedy would be to terminate the program participant from the program. That being said, I find that it is clearly laid out in the Program Agreement that living accommodation is provided to program participants because they are in the program and that occupancy of the living accommodation may only continue so long as the occupant is in the program. It follows, that the living accommodation would be needed for an incoming program participant, necessitating the outgoing program participant to vacate the living accommodation.

I heard disputed testimony that applicant/tenant has not been provided rehabilitative or therapeutic services by the respondent/landlord; however, I find those submissions largely irrelevant considering the wording of the exemption. The exemption provided under section 4(g)(vi) is that the living accommodation is “made available **in the course of providing** rehabilitative or therapeutic treatment or services” (my emphasis in bold). I find this wording of the exemption does not specifically require the occupant of the living accommodation to be in receipt of rehabilitative or therapeutic treatment or services. If the exemption only applied where the occupant of the living accommodation receives rehabilitative or therapeutic treatment or services, I find the exemption would be worded to reflect that. Given the wording of the exemption as it is written, I find that it may apply also where the occupant of the living accommodation is part of providing rehabilitative or therapeutic services to others, as in this case.

In light of all of the above, I find I am satisfied that the living accommodation that is provided to the applicant/tenant in this case is exempt from application of the Act pursuant to section 4(g)(vi) of the Act.

Having found the living accommodation is exempt from the Act, the respondent/landlord is not bound by the provisions of the Act with respect to the living accommodation provided to the applicant/tenant. Accordingly, I decline to take jurisdiction and I provide no orders to either party under the Act.

Conclusion

The living accommodation is exempt from application of the Act and I have declined to take jurisdiction to resolve this dispute.

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: June 23, 2017

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Residential Tenancy Branch