



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITAT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) for monetary compensation and for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”) or tenancy agreement.

The Tenant and an advocate (the “Tenant”) were present for the teleconference hearing, as was an agent for the Landlord (the “Landlord”). The parties were affirmed to be truthful in their testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package but stated that they did not receive a copy of the Tenant’s evidence. The Tenant stated that his evidence package was provided to an agent for the Landlord in person, but the Landlord stated that they only received the Notice of Dispute Resolution Proceeding package. The Tenant confirmed receipt of the Landlord’s evidence package.

As stated in rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*, the applicant must serve the respondent with a copy of their evidence at least 14 days prior to the hearing. Rule 3.5 states that the applicant must be prepared to provide proof of service of the required documents at the hearing.

As the Landlord stated that they did not receive the Tenant’s evidence package and in the absence of evidence that would establish that the documents were served, I am not satisfied that the Tenant’s evidence was served to the Landlord as required.

As such, I find that the Tenant's evidence does not meet the *Rules of Procedure* and therefore will not be accepted or considered as part of this decision. The parties were informed of this at the hearing.

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 – Jurisdiction

At the outset of the tenancy, the Landlord brought up jurisdictional issues and stated their belief that the *Residential Tenancy Act* does not apply to this matter. The Landlord stated that there is no tenancy and instead that the applicant signed a program agreement when he began residing in the rental building.

The Landlord stated that this is independent living in apartment-style rental units. She further stated that the building provides housing to both program participants and tenants. The Landlord testified that the program is designed to assess whether the participants are suitable to become tenants, but that no therapeutic or support services are provided.

The Landlord submitted the signed program agreement into evidence dated September 30, 2015. The program agreement was initially set to end on September 30, 2017, with a note stating that this had been extended. A clause in the program agreement states the following:

The Residential Tenancy Act (or successor legislation) does not apply to this Agreement. The Program Accommodation is exempt from the Residential Tenancy Act (or successor legislation) as the Program Accommodation is only made available in the course of providing rehabilitative or therapeutic treatment or services.

(Reproduced as written)

Section 1 of the *Residential Tenancy Regulation* (the "*Regulation*") states the following:

- 1 (1) In this regulation, "**Act**" means the *Residential Tenancy Act*, S.B.C. 2002, c. 78.
- (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.

The Landlord provided testimony that this is a transitional housing program, and I accept that this may have been the initial intent of the parties when entering into the program agreement in 2015.

However, as the housing arrangement continued for over three years, and beyond the original end date of the initial agreement, I find that this no longer meets the definition of temporary housing. The program agreement states that the *Act* does not apply, and that therapeutic or rehabilitative support services are provided through the program. However, the Landlord stated that while the goal of the program is to assess whether the tenants are ready for longer term housing, that no programs, support or other assistance is provided through the program.

The Tenant rented a unit in which he paid monthly rent to the Landlord and no additional programs or support services were provided as part of the housing as stated in the definition of transitional housing noted above. Thus, I find that the Landlord did not submit sufficient verbal or documentary evidence for me to establish that this is a transitional housing program which is exempt from the *Act*. A decision will be made on this matter under the *Residential Tenancy Act*.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Landlord be ordered to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement?

Background and Evidence

The Tenant provided testimony that the tenancy began approximately 4 years ago. He did not pay a security deposit and currently pays \$328.00 in monthly rent. The Landlord stated that the Tenant signed a program agreement in 2015, which was submitted into evidence. The Landlord stated that a tenancy agreement was never signed while the Tenant stated his understanding that he did sign a tenancy agreement at the outset of the tenancy.

The Landlord submitted into evidence the original program agreement signed with the Tenant on September 30, 2015 and set to end on September 30, 2017. A second signed program agreement was submitted dated September 4, 2018 for a different rental unit. The second agreement included a handwritten note on the first page stating that the Tenant refused to move into this rental unit.

The Tenant applied for monetary compensation in the amount of \$5,000.00. He stated that on or around July 26, 2018, there was a flood in the rental building and the residents were moved to hotels for 2.5 months while repairs were being completed. The Tenant further stated that there was concern over mould in the building due to the water damage.

The Tenant stated that he resided in a hotel until September 2018, but that he has been unable to return to the building due to health concerns. The Tenant stated that the presence of mould and asbestos in the building is unsafe for his lung condition, and that his doctor provided a note confirming he was unable to live in the building.

The doctor's note was submitted in the Landlord's evidence package. The note, dated August 17, 2018, states that the Tenant's health issues are becoming worse from the mould issues at the rental building and the doctor states their request that the Tenant be moved to an entirely different rental building.

The Tenant testified that after the flood damage to his unit, the Landlord offered him a temporary rental unit to stay in as of October 15, 2018. He stated that the Landlord has since evicted him from the temporary unit and he has not had access to his belongings, which he is now unsure where they are. He stated that the Landlord changed the locks and called the police. The Tenant also stated concern over insect spray in the rental building which caused the units to be unsafe to reside in.

The Tenant testified that when he was no longer able to reside in the temporary rental unit, the Landlord offered him the option of moving to another rental unit. The Tenant stated that he turned this offer down as the new rental unit was smaller than his

previous rental unit. The Tenant stated that he has continued to pay monthly rent, although he has not been residing in the building and instead has been staying with friends.

The Tenant stated that the \$5,000.00 claimed is compensation for paying money to friends to stay with them, the costs of eating out and other costs related to not having a permanent place to live. The Tenant also stated that he has continued to pay internet, hydro and cable, despite not living in the building.

The Landlord stated that a flood occurred on the 12th floor of the rental building in June 2018, and although the Tenant's unit was above the location of the flood, as the elevator was not working they provided many of the tenants with hotel rooms. The Landlord stated that they paid for the Tenant's stay at the hotel, as well as provided him with taxi and food vouchers. The Landlord submitted the hotel invoices into evidence.

When the elevator was fixed, and the Tenant was able to move back into his rental unit, the Tenant advised the Landlord that he did not want to move back into his unit so they provided him with a temporary unit. The Landlord submitted into evidence a letter to the Tenant dated August 23, 2018.

In this letter, the Landlord offers the Tenant a new rental unit and states that due to repairs needed it will be ready to move into in one week. The Landlord offers to pay for the hotel until the unit is ready.

A second letter to the Tenant, dated September 24, 2018, was also submitted into evidence. In this letter, the Landlord outlined the events that occurred in the rental building and the efforts they have put in to try to find suitable accommodation for the Tenant.

The Landlord stated that when the Tenant brought up concerns about mould in the rental units they had testing completed and no mould was found. The Landlord stated that as the unit provided to the Tenant was only temporary, they provided him with the option to move back into his original rental unit or into a different rental unit.

However, the Landlord stated that the Tenant declined to move into either of the rental units offered to him. She further stated that they have the Tenant's belongings in storage which he can contact them to access.

The Tenant also applied for an Order for the Landlord to comply and testified that this was regarding the Landlord ending the tenancy without a proper eviction notice. The Tenant's initial Application for Dispute Resolution requested that he be moved to another rental building urgently due to the health concerns experienced at the current rental property. However, the Tenant did not testify as to this claim on the application and instead stated his request that the Landlord follow the *Act* with regard to ending the tenancy.

The Landlord stated that the Tenant's program agreement was terminated on December 7, 2018 and a termination notice was posted on the Tenant's door. The termination letter, dated December 6, 2018 was submitted into evidence and states the Tenant's address as the initial rental unit.

The Landlord stated that they also notified the Tenant's advocate in person on December 10, 2018. The Landlord stated that the Tenant was offered another rental unit in a different rental building and that they also had a bed in a shelter available for the Tenant if he was able to confirm by the end of the week whether he would be able to take the room.

The Tenant stated that his kidneys are inflamed due to the toxic insect spray, asbestos and black mould present in the two rental units he resided in and that living in the rental building has caused him to be in and out of the hospital regularly over the past 3 years. He also stated that the issues in the rental building have aggravated his lung issues, which was why he has not been able to live in the rental building.

Analysis

Based on the testimony of both parties, as well as the documentary evidence of the Landlord, I find as follows:

The Tenant applied for compensation in the amount of \$5,000.00. When a party applies for compensation, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test to determine if compensation is due:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

During the hearing, the Tenant stated that an amount of \$5,000.00 was claimed due to the costs incurred to him when not able to reside in the rental unit. However, the Tenant did not clarify how he calculated his loss at \$5,000.00 and what the breakdown of this amount was. As such, I find that I do not have evidence before me that establishes that the Tenant experienced a loss in the amount of \$5,000.00.

The parties were in agreement that the Tenant was unable to reside in the rental unit for a period of time. However, they also agreed that the Landlord paid for the Tenant to stay in a hotel and also provided some funds for food and other expenses that the Tenant may have incurred. As such, I do not find that the Tenant proved a monetary loss during the period of time he was residing in a hotel.

After the Tenant was able to move from the hotel back into the rental building, he chose not to move into the same rental unit. Instead he resided in a temporary unit and was eventually offered another rental unit in which to continue his tenancy. However, the Tenant declined this new rental unit and stated that he as he was not able to reside in the rental building, he incurred expenses from staying with friends and eating out during this time period.

However, I do not have evidence before me to establish that the Tenant experienced a loss of \$5,000.00 during the period beginning on October 25, 2018 when he moved into the temporary unit. I also note that Section 7 of the *Act* states that a party claiming a loss has a duty to take reasonable steps to minimize their losses.

The Landlord submitted a new program agreement for a new rental unit as well as two letters outlining housing options to the Tenant when he chose not to move back into the original rental unit. However, it seems that the Tenant did not take steps to work with the Landlord to find a solution to his concerns about the rental unit and turned down their suggested offers.

As stated in rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Based on the testimony and evidence before me, I am not satisfied that the Landlord breached the *Act* and that the Tenant experienced a loss valued at \$5,000.00 as a result.

Had the Tenant established the value of his loss, I am also not satisfied that reasonable steps were taken to minimize the loss experienced. As such, I find that the Tenant did not meet the four-part test outlined above and I decline to award any monetary compensation to the Tenant.

As for the Tenant's claim for the Landlord to comply, his Application for Dispute Resolution stated this as a request for the Landlord to provide housing in another rental building. However, during the hearing, the Tenant testified as to his request for the Landlord to end the tenancy in accordance with the *Act* through providing proper notice to end the tenancy.

The Landlord stated that the Tenant's program agreement was ended on December 7, 2018, which was after the Tenant applied for Dispute Resolution on November 13, 2018. However, the Tenant did not submit an amendment to his Application for the Landlord to be aware of his amended claims prior to the hearing.

Regardless of the Tenant's reason for a request that the Landlord be ordered to comply, I find that no Orders are necessary for the Landlord to comply with the *Act*, *Regulation* or tenancy agreement in regard to finding the Tenant other housing. I find that the Landlord has taken reasonable steps to find alternative housing options to the Tenant as evidenced through their testimony and documentary evidence.

I also find that there was insufficient evidence provided regarding the ending of the tenancy as it was not clear as to the status of the tenancy in the initial rental unit, as the Tenant has not resided there since July 2018 and it is unclear whether he is still paying rent for that unit. However, as a finding was made that this matter does not meet the definition of transitional housing provided under the *Act* and *Regulation*, I order the Landlord to follow the *Act*. I also remind both parties that a tenancy must be ended in a manner stated under Section 44 of the *Act*.

Based on the above analysis, the Tenant's monetary claim is dismissed without leave to reapply and the parties are ordered to follow the *Residential Tenancy Act* regarding this tenancy.

Conclusion

This tenancy falls under the jurisdiction of the *Residential Tenancy Act*.

The remainder of the Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

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: January 3, 2019

Residential Tenancy Branch