



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALOUETTE ADDICTIONS SERVICES
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDCT

Introduction

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

- cancellation of a One Month Notice to End Tenancy for Landlord's Use of Property (the "One Month Notice") pursuant to section 47; and
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Jurisdiction

The respondent argued that Act does not apply to matter. Section 4(g) of the *Act* states that the *Act* does not apply to living accommodations:

- (i) in a community care facility under the Community Care and Assisted Living Act,
- (ii) in a continuing care facility under the Continuing Care Act,

(iii) in a public or private hospital under the Hospital Act,

(iv) if designated under the Mental Health Act, in a Provincial mental health facility, an observation unit or a psychiatric unit,

(v) in a housing based health facility that provides hospitality support services and personal health care, or

(vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services, **[emphasis added]**

The respondent argued that they are a non-profit society providing clinical care for substance dependant adults. As such, the respondent argued that the applicant's living arrangements were precluded from the *Act* pursuant to section 4.

The applicant argued that she was not a patient at the respondent's facility. Rather, the applicant argued that she was employed by the facility as a live-in counsellor. The applicant argued that she was provided free accomodations and a salary of \$375.00 per month in exchange for providing counselling services.

The respondent denied this arrangement. The respondent testified that the applicant was not employed by the society in any capacity and the resided there solely as patient.

The applicant provided government benefit records which stated that society was paid \$375.00 a month for the applicant's accommodation at the facility. The applicant testified that the \$375.00 benefits were paid to the respondent and the respondent then paid the \$375.00 benefits back to applicant as salary. The applicant provided a cheque stub dated March 13, 2019 wherein the respondent paid the tenant \$375.00.

The respondent testified that the \$375.00 was reimbursed to the applicant because she was being asked to leave. However, I did not find this explanation to be credible since the \$375.00 was submitted by the government, not the applicant.

Based upon the testimony of the parties, and the corroborating documents provided by the applicant, I find on the balance of probabilities that parties did have an arrangement wherein the applicant provided professional services in exchange for use of accommodations at the respondent's facilities. Further, I find that such an arrangement

is not precluded by section 4 of the *Act*. Accordingly, I find that I have jurisdiction to hear this matter.

Preliminary Matter: Non-Served Evidence from Respondent

During the hearing the landlord sought to introduce documentary evidence which not served on the applicant before the hearing. The respondent admitted that the evidence was not served on the applicant. *Residential Tenancy Branch Rules of Procedure*, section 3.14 states that:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing

The respondent did not serve its evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. I find that the admission of this nondisclosed evidence would prejudice the applicant and result in a breach of the principles of natural justice. Accordingly, respondent's undisclosed evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Issue(s) to be Decided

Is the applicant entitled to cancellation of a One Month Notice pursuant to section 47?

Is the applicant entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67

Background and Evidence

The applicant testified that she resided at the respondent's facility as counsellor. The tenant testified that the respondent sent her a noticed dated April 1, 2019 stating that she had to vacate the property by May 1, 2019.

The respondent testified that the applicant was not a counsellor. Rather, the respondent testified that she was a program resident and that the applicant lived there pursuant to a program agreement.

The applicant requested the following compensation from the respondent:

- Laundry expenses: \$129.18
- Grocery expenses: \$241.18
- Storage expenses: \$448.85
- Painting expenses: \$401.82
- Rat removal expenses: \$60.15

Analysis

This matter deals with the tenant's application for cancel the respondent's notice to end tenancy and the applicant's request for compensation. I will address each of these claims separately.

Notice to End Tenancy

Section 47(4) states that a tenant may dispute a one month notice to end tenancy by filing an application for dispute resolution.

Section 52 of the *Act* states that:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The respondent's letter dated April 1, 2019 does not constitute a valid notice to end tenancy because the notice was not in the approved form. Accordingly, I grant the

application to cancel the notice to end tenancy. The notice to end tenancy is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Request for Compensation

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I find that the applicant has not provided sufficient evidence to establish that her claimed damages are the direct result of a violation by the respondent of the *Act*, regulations, or tenancy agreement. The tenant did not provide adequate evidence to establish that the respondent had a contractual obligation to pay for the applicant's groceries, laundry expenses or moving expenses. Accordingly, the applicant's request for monetary compensation is denied.

Conclusion

The applicant's request to cancel the notice to end tenancy is granted. The notice to end tenancy is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

The applicant's request for monetary compensation is dismissed.

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: May 29, 2019

Residential Tenancy Branch