



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAINCITY HOUSING AND SUPPORT
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC**

Introduction

This hearing dealt with an application filed pursuant to the *Residential Tenancy Act* (the “Act”) for an order for a landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

The applicant attended the hearing, represented by his advocate, SM. (“applicant”) The respondent attended the hearing represented by GS (“respondent”). As both parties were in attendance, service of documents was confirmed. The respondent confirmed receipt of the applicant’s application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Does the Residential Tenancy Act apply to the agreement between the parties?

Background and Evidence

While I have turned my mind to all the documentary evidence, including case law, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties’ respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. Since January 14, 2019, the applicant has been occupying a room in a single room occupancy (“SRO”) unit in the city, managed by the respondent. The parties did not enter into a tenancy agreement, but together signed a document called a ‘**Program Agreement**’ on January 14, 2019. Prior to moving into the room, the applicant was ‘homeless and destitute’ as paragraph 34 of his

written submission states. The applicant pays \$375.00 per month, representing the shelter portion of his social assistance to be in the program and live in the SRO. No security deposit was taken when the applicant moved in and no condition inspection report was completed at the commencement of the agreement.

On or about July 15, 2019, the respondent sent a notice to the program participants living in the SRO, advising them that there will be a temporary blanket restriction on all guests until October 15th. **The respondent acknowledges that such a restriction would violate section 30 of the *Residential Tenancy Act*, however submits that the living accommodation supplied by the respondent is transitional housing and does not fall within the jurisdiction of the *Act*.**

The parties argue whether or not the living arrangement is transitional housing and whether the *Residential Tenancy Act* would apply to this dispute resolution.

A copy of the Program Agreement was filed by both the applicant and the respondent. One page was missing from the applicant's copy between the pages 7 and 8, however the respondent filed a complete copy.

As part of the Program Agreement, the respondent provides the following:

Case Management and Lifeskills Supports

The on-site support team will provide case management and lifeskills supports for Program Participants to assist with their goals, including referring to community resources as needed.

Employment

Program Participants who are ready for employment will be provided with case management supports and referrals to community resources. The program will also provide a number of entry-level employment opportunities through our peer program.

Connection to Additional Services

The onsite support team will work with the Program Participant to refer the participant or advocate for additional supports and resources that are appropriate for the participant's needs that can be fulfilled by the greater community.

Home Support

A Community Health Worker will provide lifeskills and cleaning supports for participants who may need additional support in maintaining the health and safety standards of their room.

The parties agree that the length of time a participant in the program stays is indeterminate. The respondent submits that the reason for this is because the purpose

of the housing is transitional; the goal is to move program participants out of the SRO and into independent, long-term permanent housing. In his submissions, the respondent writes, *'it is not indefinite housing; the focus of the program is to get people ready to move into appropriate longer term housing elsewhere'*. The respondent testified that his society provides housing as a landing stage for people coming out of shelters, hospitals and homeless situations. There is an intentional lack of an end date because the clientele has a wide range of situations, each one unique. Some residents have mental issues and others are dealing with addictions. Imposed deadlines on housing creates anxiety for these vulnerable members of society. Kicking people out of the facility with no formal support is against his society's goal of providing stable accommodation.

This is argued by the applicant who submits that the lack of an end date makes the 'program agreement' more closely align with 'Supportive Housing', a category of housing which falls under the jurisdiction of the *Residential Tenancy Act*. The applicant also states that participation in the various programs offered by the respondent is voluntary, meaning it is not a material term of the agreement. The applicant submits that the lack of mandatory participation in transition planning amounts to a failure to meet the definition of transitional housing as defined by section 1 of the Regulations.

The respondent has provided a letter from BC Housing who confirms they own the SRO where the applicant resides, and that BC Housing fully funds the operations of the respondent as a supportive housing facility. The respondent testified that his society runs multiple buildings throughout the city, some of which are supported housing and fall under the jurisdiction of the *Act*, some which are transitional housing which do not. The building where the applicant lives is one of their transitional housing buildings, meant to be lived in temporarily until the occupants can be assisted to find permanent long term housing.

The applicant submits that the agreement between the parties constitutes a tenancy agreement, pointing to terms of the agreement which state it relates to possession of a rental unit, use of common areas and services and facilities. The applicant further points out publicity materials from the respondent society, provided as evidence in this proceeding, which calls the residents of the SRO 'tenants' and makes no mention of 'transitional housing' in the material.

Analysis

Pursuant to section 4(f) of the *Residential Tenancy Act*, the *Act* does not apply to living accommodations provided for emergency shelter or transitional housing.

Pursuant to section 2 of the *Residential Tenancy Regulation*,

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.

Residential Tenancy Branch Policy Guideline PG-46 provides guidance specifically related to Emergency Shelters, Transitional Housing, and Supportive Housing. In part C of PG-46, transitional housing is further described as follows:

Transitional housing is often a next step toward independent living. An individual in transitional housing may be moving from homelessness, an emergency shelter, a health or correctional facility or from an unsafe housing situation. Transitional housing is intended to include at least a general plan as to how the person residing in this type of housing will transition to more permanent accommodation. Individuals in transitional housing may have a more moderate need for support services and may transition to supportive housing or to independent living. Residents may be required to sign a transitional housing agreement.

Living accommodation must meet all of the criteria in the definition of "transitional housing" under section 1 of the Regulation in order to be excluded from the *Act*, even if a transitional housing agreement has been signed.

In making a determination about whether the living arrangement is transitional housing, I must turn to the definition provided under Rule 2 of the Regs.

- living accommodation that is provided on a temporary basis

The applicant argues that the lack of an end date for residents to move out and lack of a plan for residents to transition out means accommodations are not provided on a

temporary basis and therefore, does not meet the definition of transitional housing. I am not persuaded by this argument. The applicant, self described as 'destitute and homeless' at the time he moved in, required the assistance of the respondent society for housing. Based on this description, I find it reasonable that the applicant would find it difficult to find a landlord willing to take him on as a tenant without a security deposit or a recent reference from a previous landlord. The applicant was in need of temporary housing that would fall between homelessness and permanent housing. I find that the respondent provided that temporary housing. I also find the respondent society's reason for leaving the length of stay open ended due to the unique personal situations faced by each resident to be compelling. It would be contrary to the purpose of providing transitional housing to have participants leave the program before they were capable of living independently.

Section A the Program Agreement states the [respondent] Program will... provide the opportunity to make connections with a comprehensive range of support services to facilitate the transition from previous housing situations into stable, supported, permanent housing. As the goal for the society is to eventually move the residents from living in the SRO and into 'stable, supported permanent housing', I am satisfied the nature of the housing is temporary.

- living accommodation that is provided 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

The respondent has provided a letter from BC Housing stating BC Housing owns the property and fully funds the operations as a supportive housing facility. The applicant submits that the SRO more closely fits the definition of supportive housing and points to the letter as further evidence of this.

Supportive Housing is defined in part D of PG-46 as:

long-term or permanent living accommodation for individuals ***who need support services to live independently***. Under section 5 of the *Act*, landlords and tenants cannot avoid or contract out of the *Act* or regulations, so any policies put in place by supportive housing providers must be consistent with the *Act* and regulations.
(emphasis added)

I find the living accommodation is more closely aligned to transitional housing than supportive housing. As stated in PG-46, "Individuals in transitional housing may have a more moderate need for support services and may transition to supportive housing or to

independent living.” The goal of the program is to assist residents to eventually become better able to live independently, not to remain in the SRO permanently. The respondent testified that the residents in the SRO building are people who were previously homeless or at risk of being homeless. This does not mean they are incapable of living independently later in the future. Supportive Housing, defined by Residential Tenancy Branch Policy Guideline PG-46, is meant for individuals who need support services to live independently for the long term.

- living accommodation that is provided together with programs intended to assist tenants to become better able to live independently

I find the society provides living accommodations together with programs described above. I turn to the Program Agreement for this finding. The Case Management and Lifeskills Supports, Employment Resources, Connections to Additional Services and Home Support referred to in the Program Agreement are clearly intended to assist the residents to become better able to live independently. As the Program Agreement states: The Program is designed to help Program Participants address issues that have caused precarious housing situations and to increase their ability to live independently.

PG-46 specifies transitional housing is intended to include at least a general plan as to how the person residing in this type of housing [transitional housing] will transition to more permanent accommodation. The applicant argues that because the programs are not mandatory, they do not meet this requirement of *required* participation in programs to assist tenants become better able to live independently. In paragraph 27 of his submissions, the applicant states *[the applicant] submits that the supports programs offered at the SRO are optional, with no expectation that residents participate in programming in order to live in this low-barrier housing.*

There is no requirement in the legislation that a person living in transitional housing is expected or obligated to participate in programs. I would find it irrational to force a person who was formerly ‘homeless and destitute’ to participate in programs designed to assist him to become better able to live independently. Following the applicant’s reasoning, what would the result be if a participant failed to participate in the programming? I find the Program Agreement was designed to assist the residents in becoming independent rather than penalize them for failure to participate in programs that would benefit them.

Case law to consider

The applicant has provided case law for me to consider in making my decision. The first BC Supreme Court case, ***Atira Property Management v Richardson, 2015 BCSC***

751 is not on point to what I was asked to determine. While Justice McEwan's decision considered whether a tenant and his guests can be reasonably restricted under the *Act*, the respondent has already conceded in this hearing that he does not have that ability if the RTA should apply to this accommodation. In the case before me, my decision is whether the applicant's accommodation is or is not transitional housing.

In the second case, ***PHS Community Services Society v Swait 2018 BCSC 824***, Justice Sharma made a determination regarding whether an arbitrator's decision was patently unreasonable because the arbitrator breached procedural fairness in refusing an adjournment, not granting the petitioner an extension to provide response material and failure to accept sur-reply. While one of the issues decided by the arbitrator in the original decision was similar to the issue before me (was the housing exempt from the *Act*, being a health facility), this decision does not assist me in determining whether the housing in this case is transitional and thereby excluded from the *Residential Tenancy Act*.

Conclusion

I find that the living accommodation provided by the respondent meets the definition of "transitional housing" as defined by section 1(2) of the *Residential Tenancy Regulations*.

Pursuant to section 4(1)(f), the *Residential Tenancy Act* does not apply to this living accommodation and I decline 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: October 7, 2019

Residential Tenancy Branch