



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT HOUSING AND HEALTH
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OLC OPT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

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 landlord argued that this tenancy is not subject to the Act. The landlord provided the contract between the parties which was called a "Program Participation Agreement" which was dated June 19, 2018. The Program Participation Agreement includes the following terms:

1. This Agreement provides for the Program Participant's participation in Support Services provided by the Provider (as defined in this Agreement).
2. The Support Services are intended to assist the Program Participant in addressing and enhancing life skills, restoring the ability to maintain healthy, independent lives and eventually maintain a productive independent tenancy.
3. The Provider will provide the Program Participant with Program Accommodation in recognition of the need for stable accommodation while the Program Participant receives the Support Services,

The "Program Participation Agreement" also states:

A. DURATION OF AGREEMENT

This Agreement commences on June 19, 2018.

This Agreement ends on the date on which:

1. The Provider terminates the Agreement; or
2. The Program Participant terminates this Agreement.

In addition, the "Program Participation Agreement" also states:

B. RIGHT TO OCCUPY

1. The Provider grants the Program Participant the right to occupy the Program Accommodation subject always to the terms of this Agreement and the Program Participant's compliance with this Agreement and the terms of the Support Services.
2. 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 the Program Participant with the Support Services.

Section 2(1) of the *Act* states that "Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property."

Section 4 of the *Act* specifically excludes living accommodation provided for emergency shelter or transitional housing from the *Act*. Section 1 of the *Residential Tenancy Regulation*, defines "transitional housing" as:

- (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 *Residential Tenancy Policy Guidelines*, Guideline No. 46 addresses supportive housing and states that:

Supportive housing is long-term or permanent living accommodation for individuals who need support services to live independently. The Residential Tenancy Act applies to supportive housing, unlike emergency shelters and transitional housing which are excluded from the Act. 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.

Section 5 of the *Act* states that parties may not avoid or contract out of this Act or the regulations and any attempt to do so is of no effect.

In this matter, the landlord claims that the *Act* does not apply because the parties have entered a “Program Participation Agreement” rather than a tenancy agreement. However, the determination of whether or not the Act applies is based on the form and substance of the legal relationship between the parties, not on the title of contract.

The parties both testified that the landlord provided supportive services to the tenant. These services including meals, counselling and assistance with the management of daily tasks. The “Program Participation Agreement” also states that the landlord will provide supportive services. Furthermore, the parties both testified that the accommodations provided to the tenant were anticipated to be provided in an ongoing basis. Furthermore, the “Program Participation Agreement” did not state an explicit end date. As such, this accommodation is not transitional within the meaning of transitional housing.

The landlord argued that the program itself was transitional because the funding for the program may end. However, the permanence of the landlord’s fund raising issue with government agencies is not related to whether or not the landlord is providing transitional housing to the tenant.

I find that the landlord was providing supportive housing to the tenant and, pursuant to *Residential Tenancy Policy Guidelines*, Guideline No. 46, I find that this tenancy is within the jurisdiction of the *Act*.

Furthermore, I find the contractual provision in the contract claiming that the Act does not apply to be void because the parties cannot contract out of the Act pursuant to section 5.

Preliminary Matter: Tenant’s Relief Claimed

The tenant has filed an application for dispute resolution challenging the landlord’s request to end the tenancy. Specifically, the tenant stated the following application:

My landlord has given me a written eviction without reason that is clear, demanding I leave within 48 hours. If I do not comply with this then police action has been threatened. Also my suite has been accessed without 24 hours notice, or need for emergency.

I interpret this application to be a request for an order of possession for the tenant pursuant to section 54 and a request to suspend or set conditions on a landlord's right to enter the rental unit pursuant to section 70.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the tenant's claim for an order of possession is not sufficiently related to any of the tenant's request to suspend or set conditions on a landlord's right to enter the rental unit. The tenant's other claims are unrelated in that they do not pertain to facts relevant to the tenant's application for an order of possession. Accordingly, I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the tenant's application for an order of possession.

Issue(s) to be Decided

Is the tenant entitled to an order of possession pursuant to section 54?

Background and Evidence

The landlord testified that the tenant threatened a staff member with a hammer on August 21, 2019. The tenant denied this. The tenant testified that she had an argument with a staff member and she just happened to be holding a hammer.

The landlord issued a letter to the tenant on August 21, 2019 advising her that she needed to vacate the property by August 23, 2019. The landlord testified that the tenant left the property and she returned on August 23, 2019. The landlord testified that the police responded and they removed the tenant from the property.

The tenant testified that she has been homeless since she been removed from the property and she wants to return. The landlord testified that the rental unit has been left vacant pending the outcome of this hearing.

Analysis

Section 44 of the Act states the ways that a tenancy may end:

- 44 (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 *[tenant's notice]*;
 - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
 - (ii) section 46 *[landlord's notice: non-payment of rent]*;
 - (iii) section 47 *[landlord's notice: cause]*;
 - (iv) section 48 *[landlord's notice: end of employment]*;
 - (v) section 49 *[landlord's notice: landlord's use of property]*;
 - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
 - (vii) section 50 *[tenant may end tenancy early]*;
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended;
 - (g) the tenancy agreement is a sublease agreement.

However, I find that the landlord has not ended this tenancy under any of the permissible methods pursuant to section 44. The landlord has not issued a valid notice to end tenancy. Section 52 of the Act specifies the requires for a valid notice to end tenancy:

- 52 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.

In this matter, the letter issued by the landlord purporting to end the tenancy was issued on the approved form as required by section 52.

In addition, the landlord has not obtained an order to end the tenancy. Removing a tenant by police ejectment is not a permissible way to end a tenancy.

Since the landlord has not ended this tenancy in a permissible manner, I find that the tenant is entitled to an order of possession pursuant to section 54 of the *Act* effective immediately after service on the landlord.

Conclusion

The tenant's request to suspend or set conditions on a landlord's right to enter the rental unit is dismissed with leave to reapply.

I find the tenant is entitled to an order of possession effective **immediately after service on the landlord**. This order must be served on the landlord. If the landlord fails to comply with this order, the tenant may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 09, 2019

Residential Tenancy Branch