



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 CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47.

The applicant tenant did not attend this hearing, which lasted approximately 14 minutes. The respondent landlord's two agents, landlord GS ("landlord") and "landlord NH," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the director of facilities and that landlord NH was the building manager, and that both had permission to represent the landlord company named in this application at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that he personally served the tenant with the landlord's evidence package on December 5, 2019. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's evidence package on December 5, 2019. However, I cannot consider the landlord's written evidence at the hearing or in my decision because it was served late, less than 7 days before this hearing, not including the service or hearing date, contrary to Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the landlord company's legal name. The landlord consented to this amendment during the hearing. I find no prejudice to the tenant in making this amendment.

Preliminary Issue – Jurisdiction to hear Matter

The landlord confirmed that this rental unit is transitional housing and excluded by section 4(f) of the *Act*, so the RTB does not have jurisdiction to hear this matter. He maintained that he was not seeking an order of possession at this hearing. He confirmed that the tenant did not sign a tenancy agreement or pay a security deposit. He said that the tenant signed a program agreement for transitional housing, that this was living accommodation provided on a temporary basis, and the program was to help assist the tenant to live independently. He claimed that the tenant has been living there since 2014 because the landlord does not set a finite date for the end of tenancy for any tenants and the tenant requires a supportive program. The landlord said that he offered the tenant to transition into alternative housing with the provincial housing program, but she refused to leave.

The landlord explained that the landlord company was funded by the government, assisting tenants who are at risk of homelessness. He said that various programs such as daily meals, laundry, cable and internet, home support services, social supports, individual case planning, and a medical clinic, are offered by the landlord at the rental building. He maintained that the tenant uses the above services, including meals, laundry and cable. He testified that he did not issue the tenant with a 1 Month Notice on the approved RTB form, only a letter to give her 30 days to end her tenancy.

Section 4(f) of the *Act*, outlines a tenancy in which the *Act* does not apply:

4 This Act does not apply to

(f) living accommodation provided for emergency shelter or transitional housing,

Section 1(2) of the *Regulation* defines "transitional housing" as the following:

(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.

I find that the landlord provided undisputed evidence that this rental unit is provided on a temporary basis to the tenant. Although the tenant has lived at the rental unit for approximately 5 years, the landlord confirmed that the tenant requires supportive assistance from the programs offered by the landlord and the landlord has attempted to offer the tenant alternative housing options to transition to another unit.

I find that the landlord provided undisputed evidence that the landlord receives funding from the government, as per section 1(2)(b) of the *Regulation*.

I find that the landlord provided undisputed testimony that the landlord offers programs to this tenant for her to become better able to live independently, as required by section 1(2)(c) of the *Regulation*. The landlord offers meal programs, cable, laundry, among other programs, to help the tenant to better live independently.

The tenant did not sign a tenancy agreement and a security deposit was not taken for this tenancy. These are indicators of a regular leased accommodation that would otherwise fall under the jurisdiction of the *Act*. Further, the landlord did not issue a notice to end tenancy on the approved RTB form; the landlord issued a 30-day letter for the tenant to vacate the rental unit.

On a balance of probabilities and for the reasons stated above, the landlord provided undisputed evidence that this rental unit is living accommodation provided for transitional housing. The *Act* specifically excludes living accommodation provided for transitional housing. Accordingly, I find that I am without jurisdiction to consider the tenant's application because it is excluded by section 4(f) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenant's application.

Conclusion

I decline jurisdiction over the tenant's application.

I make no determination on the merits of the tenant's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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: December 12, 2019

Residential Tenancy Branch