



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOHN HOWARD SOCIETY OF NORTH
ISLAND and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing was scheduled upon receipt of a Tenant's Application for Dispute Resolution whereby the applicant seeks an order that the *Residential Tenancy Act* ("the Act") applies to the living accommodation and an order that the respondent comply with the Act.

The applicant LC appeared for the hearing but the vast majority of oral submissions were presented by an Advocate. The respondent was represented by two agents. All parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing documents and materials. I admitted and I have considered the parties' respective materials.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions.

Issue(s) to be Decided

Does the Act apply to the subject living accommodation? If so, is it necessary and appropriate to issue orders for the respondent to comply with the Act?

Background and Evidence

It was undisputed that LC was homeless for several months before obtaining possession of the subject living accommodation on or about April 17, 2019.

The living accommodation was described as a self-contained living unit, complete with its own kitchen and bathroom, in a building newly constructed by BC Housing under an initiative to reduce homelessness. The respondent was contracted by BC Housing to operate the property.

The respondent receives \$375.00 per month from Income Assistance on behalf of LC, which represents the “shelter allowance” amount paid by Income Assistance. The applicant receives occupancy of the living accommodation, two meals per day, and access to various support services provided by or coordinated by the respondent, including access to an overdose prevention site, nurses, homecare, counselling, supports for finding employment and/or financial assistance, proper nutrition, life skills and decluttering.

Applicant's position

LC's Advocate is of the position the parties have a tenancy to which the Act applies pursuant to section 2 of the Act, despite the term in the agreement that stipulates the Act does not apply, since section 5 of the Act provides that parties cannot avoid or contract out of the Act. Also, LC signed the Program Agreement under duress as she would have remained homeless had she not.

LC's Advocate submitted the living accommodation does not meet one of the exempt living accommodations listed under section 4 of the Act.

The Advocate recognizes that transitional accommodation is exempt from the Act; however, the Advocate argues the living accommodation is supportive housing, which is not exempt from the Act, but it is not transitional housing. The Advocate refers to Residential Tenancy Policy Guideline 46: *Emergency Shelters, Transitional Housing, Supportive Housing* (“Policy Guideline 46”) and submits that the agreement entered into by the parties does not indicate a fixed end date and LC views the housing to be permanent. Further, there is reference to a general plan for transitioning in the respondent's literature but there is no transitional plan in place in this case. Also, the funding provider BC Housing has characterized the property as being supportive housing.

The Advocate submitted the respondent has not provided therapeutic or rehabilitation treatment to LC and the living accommodation would not be exempt as living accommodation provided in the course of providing therapeutic or rehabilitative treatment. The Advocate argues that therapeutic services would require the respondent

to provide treatment of a disease or disorder and that implies the treatment would be curative. The Advocate argues that rehabilitative treatment would require restoring one to one's former capacity such as in a health or medical impairment. The Advocate acknowledges that the respondent has recommended counselling to LC but that is not a therapeutic or rehabilitative service provided by the respondent.

The Advocate pointed to two Supreme Court of British Columbia cases in support of her position: *Atira Property Management v. Richardson*, 2015 BCSC 751 and *PHS Community Services Society v. Swait* 2018 BCSC 824.

LC stated that her desire to occupy the subject living accommodation is driven only by lack of other affordable housing in the area and that she does not need supports.

Respondent's position

The respondent submits that the housing provided to LC is part of a program designed to end the cycle of homelessness. The respondent submits that the housing provided to LC under the program is a step between emergency shelter and independent living. Program participants were required to complete an application and selection of the program participants was based on various criteria and offered to participants who had been homeless for several months and whom the respondent determined were in need of individualized programming so as to have the best chance in succeeding in being housed permanently at the end of their participation of the program. The applicant was selected to be a program participant and the parties signed a Program Agreement so that she may participate in the program.

In addition to the \$375.00 received from Income Assistance on behalf of LC, the respondent receives funding for the program from BC Housing and BC Housing received a portion of its funding from the federal government under their initiatives to combat homelessness.

The respondent is of the position the Act does not apply to the living accommodation or the agreement between the parties on the basis it is exempt from the Act pursuant to section 4(f) and 4(g)(vi), which I have reproduced below:

4 This Act does not apply to

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

(g) living accommodation

(vi) that is made available in the course of providing
rehabilitative or therapeutic treatment or services

The respondent acknowledged that BC Housing has used the terminology “supportive housing” in describing the program and the property but the program operated by the respondent and the living accommodation provided to LC as part of the program is transitional housing in nature with available supports.

The respondent points to the Program Agreement entered into by the parties where it states, in part: “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”. Further, the Program Agreement provides that the accommodation is provided only so long as the participant complies with the terms of the Program Agreement, including accepting and cooperating with the support services offered.

The respondent explained that it does not set a fixed “end date” for the program as the time needed in the program by its participants varies widely and some participants find an “end date” to be anxiety provoking, especially those battling addiction.

The respondent described the program as offering participants housing while they stabilize first and then obtain various services coordinated by the respondent, including some services that are located in the building. While the services are often provided by third party contractors, the coordination and bringing the services to the participants by the respondent enables participants much greater access to services than if the participant were to attempt to obtain the services on their own and one service at a time.

Once a participant is stabilized, the focus becomes ensuring the participant is most likely to succeed in a future tenancy. The respondent recognizes that without stabilizing and improvement on certain individual issues, such as undesirable behaviour or hoarding, the participant is not likely to maintain a successful tenancy afterward and will end up homeless again so the goal is to avoid that cycle.

The respondent does not consider the relationship between the parties to be that of a landlord/tenant and described the arrangement to be that of a program and the applicant is a program participant and that part of the program is to provide housing while the applicant while in the program. In support of its position that this is not a tenancy between a landlord and tenant to which the Act applies, the respondent stated

that it does not evict a participant for non-payment whereas a landlord would. Rather, the participants are required to abide by certain rules and behaviour that is abusive towards staff or other occupants is a basis for the respondent to end the program for the participant.

The respondent points to its Program Manual and reference to phrases consistent with transitioning from the program to permanent housing.

Analysis

Upon consideration of everything before me, I provide the following finding and reasons.

Section 2 of the Act sets out what the Act applies to. Section 2(1) provides:

- 2 (1) 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

[My emphasis underlined]

The parties were in dispute as to whether the living accommodation provided to LC is exempt under section 4 of the Act. The respondent pointed to two exemption provisions, first of which is an exemption under section 4(f).

Pursuant to section 4(f) of the Act, the Act does not apply to living accommodations provided for emergency shelter or transitional housing. Section 1 of the *Residential Tenancy Regulation* ("the Regulations") provides certain definitions, including transitional housing:

(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.

Policy Guideline 46 provides guidance specifically related to Emergency Shelters, Transitional Housing, and Supportive Housing. In part C of Policy Guideline 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 as to whether the living accommodation is transitional housing, I turn to the criteria set out in the definition of “transitional housing” as provided under subsection 1(2) of the Regulations, as set out below.

a. living accommodation that is provided on a temporary basis

The applicant argues that the lack of an end date and lack of a specific plan for residents to transitioning in the Program Agreement means the accommodation cannot be considered to be provided on a temporary basis; however, I find the respondent's reason for not specifying an end date or a particular transition to be reasonable since it reflects the individual situations and circumstances faced by each program participant. I find it would be ineffective and contrary to the program purpose to require the program participant to leave the program based on an arbitrary end date that does not take into consideration the participant's readiness to live in alternative housing accommodation. Similarly, one transition plan may be very different than another one based on the program participants' individual strengths and weaknesses.

The Program Agreement states the accommodation is provided while the participant is accepting and cooperating with the support services offered by the respondent. Further, the Program Agreement explicitly states that the accommodation is provided

while the participant is accessing the support services provided by the respondent with a goal of transitioning to permanent housing. In the Program Agreement it states on the first page, as part of describing the purpose of the Agreement in item 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.”

It was submitted to me by LC's Advocate that LC entered into the Program Agreement under duress; however, I reject that position. LC applied for the program, was accepted for participation in the program and LC accepted the offer and proceeded to enrol in the program offered. I did not hear evidence that she was forced into the program against her will. While the alternative was likely to remain homeless, I am of the view LC made a decision to accept the terms and conditions of the program upon her own free will since it was more appealing than remaining homeless but that does not reach the threshold of duress. As such, I have accepted and relied upon the Program Agreement in determining what it is the parties had agreed upon when they entered into this arrangement.

It is undeniable that the BC Housing website and the Program Manual characterize the housing as “supportive housing” in describing the housing. However, the respondent took the position the housing is transitional supportive housing. From the Program Manual are statements that reference the ultimate goal of transitioning the participant to permanent housing, including:

“The program is client-centered, and grounded in the program participants’ strengths with the goal of supporting them to maintain stable housing that provides the opportunity to move forward in a positive way, ultimately with a goal to move into market or affordable housing. Housing provides a fundamental element that enable people to achieve other goals including gainful employment and maintaining good health.

“Clients develop case plans and personal goals for housing, including eventual transition to suitable alternative housing; employment/income; health; and well-being.

“Developing ‘good tenant’ skills that move the individual towards alternative housing.”

[My emphasis underlined]

The Act does not reference supportive housing; however, “supportive housing” is described in Policy Guideline 46 which I will address below.

Supportive Housing is defined in part D of Policy Guideline 46 as:

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.

(My emphasis underlined)

While supportive housing and transitional housing may both provide support services, I find the key difference between these two types of housing is that one is temporary in nature (transitional housing) and the other is long-term or permanent (supportive housing).

Supportive Housing, as described in Policy Guideline 46, is meant for individuals who need support services to live independently for the long term or permanently in that location; however, that is contrary to the objective of the program the applicant enrolled in.

Considering the respondent offers supportive services but with a view to helping the participant transition to permanent or alternative housing I accept the respondent’s position that housing may be supportive, but it remains transitional in nature. While the focus of the program is to receive support services, it appears clear to me that the ultimate goal is that these support services bring stability, health and behavior modifications so that the participant has the best change to obtain and maintain a successful tenancy in the future.

Considering all of the above, I find the living accommodation provided to LC to be more closely aligned to transitional housing than supportive housing given the intention of the

program under which LC was provided. Therefore, I find the living accommodation provided to the applicant is temporary in nature.

Although LC told me that she does not need support services other than affordable rental rates and I recognize that support services cannot be forced upon her; I find her decision to not avail herself of the support services does change the nature of the agreement the parties entered into in April 2019.

- b. 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 also receives \$375.00 per month from Income Assistance on behalf of the applicant; however, that is most certainly not sufficient to fund the program considering all of the services it provides and without the government funding the program most likely would fail financially. The majority of the funding for the program is provided by the government. As such, I find the ability to run the program is dependent upon receiving government funding. It follows that if the respondent is not operating the program for which it is receiving funding then the funding would be lost. Accordingly, if I were to find the applicant is being provided housing that does not comply with the Program Agreement or Program Manual then the respondent would not be operating the program that it is paid to operate by the funding provider. Therefore, I find respondent is receiving funding from the government of British Columbia for the purpose of providing the accommodation to the applicant as part of the program.

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

Upon review of the materials before me, I find the respondent does provide living accommodation together with programs, as described in general earlier in this analysis, that are intended to assist program participants improve their ability to live independently. Further, the supports such as the Life Skills, Case management, employment and educational resources, among others described in the Program Manual, are all clearly intended to assist the participants to become better able to live independently and maintain long-term or permanent housing.

While the support programs cannot be forced upon the participants, if LC chooses to reject or not cooperate with the support services suggested and available to her, her

choice does not change the nature of the program or the status of the living accommodation from transitional to permanent.

Case law to consider

LC's Advocate referred to case law for me to consider in making my decision. I find the case of *Atira Property Management v Richardson, 2015 BCSC 751* is not on point with respect to making a determination concerning jurisdiction. While Justice McEwan's decision considered whether a tenant and his guests can be reasonably restricted under the *Act*, that issue would be relevant if the *Act* does apply to the living accommodation.

In the case of *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 refused an adjournment and not granting the petitioner an extension to provide response material or accept additional responses. While one of the issues decided by the Arbitrator in the original decision pertained to an exemption from the *Act* for being a health facility, the court's decision does not assist me in determining whether the housing in this case is transitional and thereby excluded from the *Act*.

In light of all of the above, I find I am satisfied that the living accommodation meets the definition of transitional housing and is exempt from the *Act*. As such, I find it unnecessary to further consider the respondent's position that the living accommodation is also exempt because it is provided in the course of providing rehabilitation or therapeutic treatment or services.

Having found the living accommodation is exempt from the *Act*, I decline jurisdiction to resolve the dispute(s) between the parties.

Conclusion

The living accommodation is exempt from the *Act* and I decline jurisdiction to resolve the dispute(s) between the parties.

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: March 20, 2020

Residential Tenancy Branch