



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Progressive Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP OLC MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on June 16, 2020. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the *Act*).

Both the Tenant and the Landlord attended the hearing and provided testimony. Both parties confirmed receipt of each other's evidence. Although the Landlord was not pleased with having to obtain the Notice of Hearing and evidence through his colleague (the Tenant sent it to a different employee of the company), he did confirm he received it within the acceptable timeframe, and was able to read and respond to it. I find both parties sufficiently served each other with their documentation for the purposes of this hearing.

During the hearing, both parties had to be repeatedly cautioned to not raise their voices at each other and to stop talking while someone else is already talking. The parties were warned numerous times, and had to be de-escalated more than once. After a final warning, no further issues occurred, and the parties were able to come to an agreement on the issue regarding the mice in the unit.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters - Jurisdiction

At the outset of the hearing, the Landlord stated that this living arrangement does not fall under the Act. When asked to elaborate, the Landlord stated that this housing society leases this building from the owner, and operates supportive housing programs to people with mental health, addictions, and with low income. The Landlord stated that they offer support services called a housing first program, and offer services to residents to support mental health, or any substance use issues they may have. The Landlord stated that there are different types and levels of support for different residents. The Landlord explained that this Tenant has a support worker who provides support, as needed, to help the Tenant remain employed and sufficiently housed with his family.

The Tenant stated that he does not really receive much support or care, other than a monthly meeting with his support worker. The Tenant stated that he receives a small rent subsidy based on his income. The Tenant lives and functions independently, and without medical or therapeutic assistance.

The Landlord was asked if this facility operated under the *Community Care and Assisted Living Act*, but he said he wasn't sure. The Landlord pointed out that the Tenant signed a program participant agreement, whereby the Tenant agreed the Act does not apply, and that this unit is only available while he is receiving support services.

I note the following portion of the Act:

What this Act does not apply to

4 This Act does not apply to

(g) living accommodation

(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,

It is up to the party asserting that there is no jurisdiction, to prove their case. In this case, the Landlord was unclear about whether or not their facility operates under the *Community Care and Assisted Living Act*. As such, I find the Landlord has not sufficiently demonstrated that they are a care facility operating under that Act or that they are exempt under section 4(g)(i). Although it appears some support services are available to the Tenant as part of his accommodation and rental subsidy program, I find the actual services provided are minimal, and do not appear to be the primary purpose in terms of this accommodation. There is insufficient evidence this is a continuing care facility, a hospital, a mental health facility, a housing based health facility that provides support *and* health care, or that this is a housing unit provided to the resident in order for them to undergo treatment or rehabilitation.

Although the agreement signed by the Tenant specifies that this accommodation is exempt from the Act, I find the Landlord has not provided sufficient evidence to demonstrate which part of the Act they are exempt under.

I note the following portion of the Act:

This Act cannot be avoided

5 (1)Landlords and tenants may not avoid or contract out of this Act or the regulations.

Regardless of what is included in the written contract, this Act cannot be avoided. Any determinations regarding jurisdiction and applicability of the Act are determined by an Arbitrator, based on the fact patterns presented, not by a term in the written agreement specifying that the Act does not apply.

The Landlord only provided vague statements regarding what support services are offered. In contrast, the Tenant stated he only meets once a month with a support worker to ensure he has the necessary life support he needs for employment and housing. Ultimately, I do not find the Landlord has sufficiently demonstrated that I do not have jurisdiction to hear this matter. I accept jurisdiction based on the rental agreement provided into evidence and the testimony (including the lack of evidence showing this is not a tenancy agreement, under the Act.)

Preliminary and Procedural Matters – Severing Issues

The Tenant applied for multiple remedies under the *Act* some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not repairs are required for the health and safety of the Tenant (mice issue). As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- Make repairs to the unit, site or property (RP)

Settlement Agreement

During the 65 minute hearing, the Tenant explained that the most pressing issue was related to the mice that have been inside his rental unit. The Tenant is seeking repairs to prevent mice from entering his rental unit. The parties came to an agreement regarding the issue with mice, as outlined below.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:

- The Landlord and the Tenant agree that the Landlord will have a professional pest control company come, within 10 days after the date of this hearing, to inspect the unit for rodent ingress.
- The Landlord must obtain an ingress report, identifying where mice are entering the unit, along with appropriate remedies for each different area of ingress.
- Following the inspection from the pest control company, the Landlord agrees to take steps, forthwith, to remedy the deficiencies/areas of ingress identified.

- These terms comprise the full and final settlement of the Tenant's request for repairs to the unit to address the issue with mice. Any other issue is dismissed, with leave to reapply.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

Conclusion

The Landlord and the Tenant came to an agreement regarding the steps that must be taken to address the issue with mice, as outlined above.

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: June 16, 2020

Residential Tenancy Branch