Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding South Mid Vancouver Island Zone Veterans Housing and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFT, OLC, LRE, AS, OT

Introduction

In this dispute, the applicant sought various relief under sections 62, 65, 70, and 72 of the *Residential Tenancy Act* (the "Act"). Initially, the applicant had also sought to dispute an "eviction" given to him by the respondent, and, while this particular aspect of the dispute is now moot (the respondent agreed not to evict the applicant), the preliminary issue of jurisdiction may affect future evictions by the respondent. The two named respondents are a not-for-profit society, and, a director of that society.

The applicant applied for dispute resolution May 23, 2020 and a dispute resolution hearing was held June 25, 2020. The applicant, his advocate, a respondent, and the respondents' legal counsel attended the hearing. Issues of service were raised by the parties, which I shall address below.

Preliminary Issue 1: Service of the Notice of Dispute Resolution Proceeding

The applicant and their advocate submitted that the Notice of Dispute Resolution Proceeding package, along with all evidence, was served on the respondents by way of email on March 30, 2020. This method of service was permitted as per the Director's order of March 30, 2020 (since rescinded on June 24, 2020).

A copy of an email from the applicant to the respondent (A.S.) dated May 30, 2020 was submitted into evidence. The email reads, "This is your copy of our dispute and the complaint I have filed with the RTB." There was also submitted into evidence a copy of the Canada Post registered mail receipt and tracking number. Canada Post's online tracking website indicates that the package was delivered on June 3, 2020.

The respondents and their counsel do not dispute that they received the package, but rather, that they did not receive the entire package including the evidence. The respondent testified that he had to call the Residential Tenancy Branch on June 22, 2020 to find out the hearing and dial-in information.

Rule 3.1 of the *Rules of Procedure* states that

> The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
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> a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
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> b) the Respondent Instructions for Dispute Resolution;
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> c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
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> d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [. . .]

Rule 3.5 of the *Rules of Procedure* states that

> At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Residential Tenancy Branch Rules of Procedure These Rules of Procedure take effect at 4:30 pm PST on March 5, 2020 page 14 Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

While the applicant and applicant's advocate argued that the entire package was served on the respondents, the onus for proving that this falls on the applicant. I have no doubt that the respondents received something, and I have no doubt that the respondents were aware of the hearing (they attended, along with counsel). However, without something more, I cannot find that each and every page of the

applicant's documentary evidence – including the advocate's written submissions – was served on the respondents.

That said, Rule 9.1 of the *Rules of Procedure* states that "Failure to comply with these Rules or Procedure will not in itself stop or nullify a proceeding, a step taken, or any decision or order made in the proceeding." For this reason, while I conclude that the applicant has not fully served all of their evidence on the respondents, I will nonetheless turn to the second preliminary issue of jurisdiction. There is, I believe, sufficient evidence in front of me to make a determination on that issue.

Preliminary Issue 2: Jurisdiction

Issue of Jurisdiction

Jurisdiction refers to the power or authority that a decision-maker (such as a court or a tribunal) has to decide a case or issue an order. Under the *Residential Tenancy Act,* the Director, who delegates decision-making authority to arbitrators, may only exercise decision-making authority as permitted by the Act. The Act outlines its authority in section 2 and it outlines exclusions in section 4.

In this dispute, the applicant and his advocate argued that the living accommodation does not meet all three of the criteria of section 1(2) of the Regulation and as such cannot be considered transitional housing for the purposes of the Act. They argue that the respondent falls within the jurisdiction of the Act. Conversely, the respondents argue that they meet the definition of transitional housing and are thus excluded from the jurisdiction of the Act.

The Law

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 and 4(f) of the Act states that "This Act does not apply to [. . .] living accommodation provided for emergency shelter or transitional housing".

Transitional housing is further defined in section 1(2) of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 (the "Regulation"), states the following (emphasis in original):

> 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.

Finally, *Residential Tenancy Policy Guideline 46* on page 2 states the following regarding transitional housing:

> 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.

Argument of the Applicant

The primary thrust of the advocate's argument is that "The requirement of receiving money from the government to provide housing is not met by the Landlord as orally confirmed by the Landlord and as stated in the submitted

evidence [. . .].” The “orally confirmed” statement refers to testimony that the respondent made to a House of Commons committee, in which he spoke about not receiving Federal government funding. The other documentary evidence includes a statement on the respondent society’s website that “We never quit trying for government funding but as of yet have been unsuccessful.”

Applicant’s advocate argued that there is no documentary evidence of the funding to which the respondents refer in their argument (see below). If, the advocate argued, I accept that the respondents received this money (grant money received a few years ago), the funding should be current and up to date, in order to meet the section 1(2)(b) criteria. She argued that it does not. Moreover, in her written submissions, the advocate referred to the respondent’s website, and argue that the website is further evidence that the respondents do not receive government funding:

> The website states at the bottom of the page that “We never quit trying for government funding but as of yet have been unsuccessful.”

It is worth reproducing the entire content of the website, which the advocate refers to, and which was submitted into evidence:

> Cockrell House is operated by the non-profit SMVIZ Veterans Housing Society which was formed in early 2009.
>
> Our mission is to provide shelter, food and support services to ex-members of the Canadian Armed Forces, Regular and Reserve who are homeless or under-housed.
>
> Cockrell House has assisted over 50 veterans since we started and we currently have 9 staying with us now. The main house in Colwood will facilitate 8 vets and we have two units at Prince Edward Lodge (low income Legion Housing) at our disposal. We are also assisting three others at various locations.
>
> Our funding comes from various veteran organizations and groups like the City of Colwood, the Esquimalt Lions and [name redacted], the original owner of the House. The largest supporter has been the BC/Yukon Legion Foundation which encompasses all the branches in BC. They have recently purchased the building, which secures a future for this incredibly important

> project. We never quit trying for government funding but as of yet have been unsuccessful.
>
> We are fortunate to have professional support from people like Dr. [name redacted] at UVIC, the local VAC office and their front line workers, peer support from OSISS, lawyer [name redacted] and nurses from Verity Home Care who visit our Vets bi-monthly - all pro-bono.
>
> When Veterans are successful and can move out on their own, they are fully outfitted with everything they need to live independently - furniture, linen utensils etc. Most of this is donated.
>
> Our hard operating costs which include housing, food cards and bus passes are approximately $10,000.00 per month.

As for the other two criteria, the applicant and his advocate testified that there was “no attempt” by the respondent to help the applicant find housing beyond the current accommodation, that there were no housing lists provided, no housing coordinator, no counselling, and no cleanliness inspections. These are services that, it was argued, would be expected in a transitional housing, and which would otherwise meet the criteria of section 1(2)(c) of the Regulation.

The applicant testified that the resident manager (R.N.) told the applicant that, while the average duration of an occupant’s stay is anywhere between a few months to three years, that the applicant would “not necessarily” need to leave after three years. The applicant argues that this support an argument that the living accommodation is not provided on a temporary basis, which is the criteria under section 1(2)(a) of the Regulation.

Argument of the Respondents

Respondent’s counsel argued that the respondents operate as a not-for-profit society, and that the living accommodation is intended for veterans who need help getting back on their feet and onto more permanent accommodations. He referred me to a Transitional Shelter Agreement (the “Agreement”), a copy of which was submitted into evidence, and which both parties appeared to have access to, or at least knowledge of. The applicant signed the Agreement on August 7, 2019.

The first clause of the Agreement states that “The Residential Tenancy Act does not apply: As this is a Transitional Shelter, the Residential Tenancy Act does not apply.”

The second clause (“Length of the Term:”) states that “The term shall be assessed on a daily basis.”

Clause seven (“Occupants and Invited Guests”) states that “This is a transitional shelter intended for use only by the TSG and guests.”

The parties both provided submissions in respect of the issue of rent, and whether the “expected contribution” constituted rent. However, as the issue of rent is only partly determinative of whether the living accommodation is transitional housing (for the purposes of section 1(2)), I shall not delve further into this matter.

As for the physical layout of the living accommodations, the respondent explained that there is a total of 11 bedrooms in 5 units. None of the units are self-contained in the sense that all of the residents share a kitchen. He further explained that the unit are “not rental units per se,” that the terms of most residents are 2 to 3 years (and thus the accommodations are “temporary”), that the shared kitchen is stocked with food, and that the residents are given a food bank card and a bus pass. The living accommodation is only available to veterans, and the residents are connected with Veterans Affairs and case workers should this be needed.

He added that there is no rent paid, but that residents are expected to make some financial contribution to offset the cost of operating the accommodations. Nor, he added, are residents required to pay a security deposit, which almost always is required for ordinary tenancies.

In the past eleven years, the society has had upwards of 120 veterans go through the housing. The average stay is a year, with some staying 3 to 4 months, but some longer; the duration is determined “on a case-by-case basis,” the respondent explained.

As for the matter of funding, respondent’s counsel submitted that the primary source of funding is from “donations and other funding.” Approximately 5 to 6 years ago, the society received a $50,000 grant from the municipality. Counsel argued that this is a form of funding.

Analysis

At the outset, I make mention of respondents' counsel reference to section 8 of the *Interpretation Act,* RSBC 1996, c. 238, which states that

> Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Moreover, it should be mentioned that, where appropriate and necessary, I must also apply the rules of statutory interpretation, including but not limited to the ordinary meaning rule.

1. Is the Living Accommodation provided on a temporary basis?

Everything provided into evidence by both parties points to one conclusion: that the living accommodation is provided on a temporary basis. That over 120 veterans have transitioned through the accommodation in 11 years is evidence that the accommodation is transitional in nature. That the average stay of the residents is a few years is evidence that the accommodations are intended to be temporary. Indeed, many stay only a few months. Indeed, that the duration of the stay is determined on a case-by-case basis suggest that nothing but a temporary stay is contemplated.

Further, that there is not rent, but a monetary contribution is characteristic of the transitional nature of the accommodations; landlords who provide a rental unit under the Act require monthly rent, and if a tenant does not pay rent then they are evicted. This does not appear to be the case here. Nor are residents required to pay a security deposit; security deposits are intended to help cover damage costs by tenants who stay in a rental unit over a long period of time.

Finally, the very name of the Transitional Shelter Agreement – which the applicant signed – can leave no doubt that the living accommodation is intended to be temporary in nature. The references to "transitional," daily assessment of duration of stay, "transitional shelter" further solidify the nature of the contract between the parties: that the respondent provides temporary housing.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of

probabilities that the respondent has proven that the living accommodation is provided on a temporary basis. Thus, section 1(2)(a) of the Regulation is satisfied.

2. Is the Living Accommodation 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 on a temporary basis?

Much was made of the respondent not receiving Federal funding. And, this is not surprising, given that it is the Federal government which is responsible for the military and for Veterans Affairs. Documentary evidence of submissions at a House of Commons committee was provided. Finally, the advocate pointed to the respondent's website which states that despite frequent efforts to obtain government funding they have been unsuccessful.

However, the respondent testified that the society received $50,000 from the municipality "between five [and] six years ago." While the applicant's advocate argued that "we don't have proof of that [grant]," the applicant's own documentary evidence – the respondent's website – clearly references the funding received from the municipality: "Our funding comes from various veteran organizations and groups like the City of Colwood [. . .]"

Taking into account the oral evidence of the respondent regarding the municipal grant, and taking into consideration the reference to that municipal funding in the respondent's website (which the applicant himself provided into evidence), and weighing this evidence together, I must give full weight to the oral and documentary evidence and find, as fact, that the respondent society received funding from the municipal government. Given that the sole purpose of the respondent is to provide temporary accommodation, the funding was received for the purpose contemplated by this section of the Regulation.

That the society received the funding five or six years ago does not, I conclude, cut it off from the definition of "receives funding." There is no temporal limitation embedded within this definition. And, considering that the Regulation and the Act are rife with references to time, and time limits, that section 4(f)(b) is absent any temporal reference is telling. In short, I do not interpret "receives funding" to be tied to any specific short-term, recent, or ongoing funding requirement.

In summary, I conclude that the respondent has proven that the living accommodation provided by the respondent receives funding from a local government for the purpose of providing that accommodation on a temporary basis, for the purpose of section 1(2)(b) of the Regulation.

3. Is the Living Accommodation provided together with programs intended to assist tenants to become better able to live independently?

A shared kitchen, a stocked (to varying degrees) refrigerator, a fully furnished room, a bus pass, and access to Veterans Affairs counselling and other services, all supports a finding that the living accommodation has programs intended to assist tenants to become better able to live independently. These are not services and programs that landlords under the Act ordinarily (if ever) provide to tenants under an ordinary tenancy.

Certainly, I recognize that the applicant referred to there not being a housing coordinator, and I do find that odd. I am also mindful of the fact that the refrigerator may not always be fully stocked, and that he has to sometimes buy his own groceries.

Nevertheless, that the respondent issues bus passes, does partly stock the refrigerator, issues food bank cards, all point to the incontrovertible conclusion that the respondent provides a program – if even a loosely-based program at best – intended to assist tenants to become better able to live independently. These services are not things that a landlord would ordinarily provide to a tenant under a standard tenancy.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the respondents have met the onus of proving that the living accommodation is one that provides a program intended to assist tenants to become better able to live independently, for the purposes of section 1(2)(c) of the Regulation.

Given the above, I find that the respondents provide living accommodation provided for transitional housing, pursuant to section 4(f) of the Act.

Conclusion

For the reasons outlined above, I find that the respondent society is transitional housing for the purposes of the Act. As such, the Act does not apply, and I am without jurisdiction to resolve this dispute.

It is, however, likely the case that the dispute between the parties would fall within the jurisdiction of the Civil Resolution Tribunal and the *Civil Resolution Tribunal Act,* SBC 2002, c. 25.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 28, 2020

Residential Tenancy Branch