



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC LTD. 0879993  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPT

### Introduction

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

- an order of possession of the rental unit pursuant to section 54.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on July 3, 2020. The tenant stated that the landlord was served with the submitted documentary evidence via Canada Post Regular Mail on July 21, 2020. The landlord's agent, S.S. (the landlord) stated that no such documentary evidence was received. The landlord stated that the tenant was served with their submitted documentary evidence by placing it on the tenant's vehicle windshield when he refused to accept personal service on July 20, 2020. The tenant disputed that no such service was made nor is the tenant in possession of the documentary evidence. The landlord argued that he had another agent, R.A. present during the service of the package.

I accept the affirmed evidence of both parties and find that the landlord was properly served with the notice of hearing package as per sections 88 and 89 of the Act. The service for the tenant's documentary evidence was disputed and the tenant was unable to provide any supporting evidence of service. On this basis, I find on a balance of probabilities that the tenant failed to serve the landlord with the submitted documentary evidence and that it shall be excluded from consideration in this decision. Although the tenant has argued that he did not receive the landlord's documentary evidence package, I find on a balance of probabilities relying on the landlord's agent, R.A. who confirmed as a witness to service as described by the landlord, S.S. that the tenant

refused to accept personal service on July 20, 2020 when the tenant was in his vehicle. I accept that the landlord placed the documentary evidence on the vehicle windshield while the tenant was present in the vehicle. The tenant is deemed to have been served as per section 90 of the Act. The tenant was advised that if the landlord made reference to any documentary evidence during the hearing that the Arbitrator would describe in as much detail to the tenant the document being presented.

### Preliminary Issue(s)

The landlord has argued that this tenancy is not under the jurisdiction of the Residential Tenancy Branch as it is Transitional Housing. In support of this claim the landlord has repeatedly stated in his direct testimony that it is Transitional Housing and relies solely on the submitted copy of the "Program Accommodation Agreements" a 3 page document. The landlord despite multiple requests to refer to a specific clause of this agreement did not. The landlord stated that the entire 3 page document will provide evidence that this is Transitional Housing situation. The landlord has also referenced a typed letter dated July 21, 2020 from a local outreach support worker.

The "Program Accommodation Agreement" states in part,

*This agreement is between (landlord company name) and the program participant (tenant's name).*

*The program accommodation at Suite (Rental Address), Abbotsford, will be available only while the program participant complies with the terms of this agreement. If the outreach team terminates this agreement, the program participant will be required to move out of the accommodation.*

*This agreement commences on: Nov 01 2019*

*Monthly rent is: 500,00*

### ***This agreement will end at the earlier of:***

1. *The date that the program participant moves into appropriate long term housing*
2. *The date which:*
  - a. *The management terminates the agreement; or*
  - b. *The program participant terminates the agreement*

### ***Transitional Program***

1. *The program participant agrees to comply with the terms of this agreement.*
2. *The program participant understand the accommodation is not a permanent housing solution.*

***Right to Occupy:***

1. *The management grant the program participant the right to occupy the program accommodation subject to the terms of this agreement.*
2. *If the program participant breaches any term of this agreement, the outreach team may terminate the agreement. When this agreement terminates or otherwise ends, the program participant must vacate the program accommodation.*
3. *The Residential Tenancy Act (or successor legislation) does not apply to this agreement. If any provision in the agreement is found by a court to be invalid or unenforceable, that provision will be severed from this agreement and the remainder remains in full force and effect.*

***Responsibilities of the Program Participant:***

*The program participant will:*

1. *Comply with the terms as set out in this agreement  
Accept and participate in support services provided by (landlord's company name)*
2. *Be responsible for the conduct of all guests and will ensure all guests adhere to program guidelines, notices, and standards of conduct.*
3. *No smoking, pets, or violence on or in the program accommodations.*

***Ending this program agreement – outreach team:***

1. *The management may end this agreement at any time by giving the program participant immediate verbal or written notice if:*
  - a. *The program participant has demonstrated violent or aggressive behaviour towards staff, guests, invitees, other residents and/or members of the community; and /or*
  - b. *In the opinion of the management, the health and/or safety of the program participant is significantly compromised and the program participant requires support that cannot be provided on the program property.*

***Ending this program agreement – program participant:***

*The program participant may end this agreement at any time by giving the outreach team not less than 30 days written notice.*

*The program participant must maintain ordinary health, cleanliness and sanitary standards throughout the program accommodation and property, including:*

- 1. Cleaning the program accommodation and reporting maintenance problems to staff.*
- 2. Allow outreach program staff, home support workers, repair and maintenance workers and pest control services timely access to the program accommodations.*
- 3. Acknowledgement that a severe pest infestation may require some of the program participants belongings may need to be disposed of to ensure the infestation is eliminated.*
- 4. Guest are subject to all guidelines, notices, and standards of conduct in the building.*
- 5. Damage deposit will be kept for all/any repairs to the program accommodations, disposal of items left behind, and anything needing updating prior to re-rental of space. Any damages above and beyond the damage deposit will need to be paid for by the tenant. 0879993 BC LTD may choose to develop a re-payment plan with the program participant.*

The document was signed and dated by both parties on November 1, 2019.

The typed letter dated July 21, 2020 from “an Outreach support worker” states in part,

*Often clients come to me seeking sober housing after completing their program at a treatment facility, or as a result of making a decision to stop using drugs and alcohol. I have been blessed to have access to...(company name) run by S.S. with whom I am able to contact as he often houses my clients.*

*My observation of this transitional housing in particular is that the houses are kept clean and maintained. The tenants are encouraged to attend drug and alcohol recovery meetings and to seek volunteer or employment opportunities that will help to get them back into becoming contributing members of society.*

*By contacting our Outreach team, we have been able to supply emergency food hampers to tenants on request. I have also witnessed S. and his employees delivering pizza and nutrition bars to these houses...*

The tenant has stated that the landlord is not a registered transitional housing facility and does not offer any programs.

The landlord has argued that the Residential Tenancy Branch does not have jurisdiction to hear this matter as the unit is part of Transitional Housing and is exempt from the Act. During the hearing the landlord provided affirmed testimony that there is no funding from any government sources. The landlord also stated during the hearing that

Section 4 (f) of the Act states in part that,

*This Act does not apply to living accommodation provided for emergency shelter or transitional housing,...*

Residential Tenancy Branch Policy Guideline #46, Emergency Shelters, Transitional Housing Supportive Housing states, in part,

*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.*

Residential Tenancy Regulation, Section 1 states in part, for the purposes of section 4(f) [what the Act does not apply to], “transitional housing” means living accommodation that is provided on

(a) 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.

In this case, the landlord has referenced a submitted document titled, "Program Accommodation Agreements". A review of the document shows that it does state under:

*Transitional Program*

- 2. *The program participant understand the accommodation **is not a permanent housing** solution.*

I find that this does show that the housing is temporary as stated in Section 1 (a) of the Residential Tenancy Regulation however, the "Program Accommodation Agreements" does not specify any terms or details of how this is on a temporary basis.

The landlord provided affirmed testimony during the hearing that no funding is received from any government sources. I find that this does show that the housing is not funded from any government sources as per Section 1 (b) of the Residential Tenancy Regulation. On this basis, the landlord does not meet the second of the three requirements to be considered "Transitional Housing".

In the "Program Accommodation Agreements" under:

***Responsibilities of the Program Participant:***

*The program participant will:*

- 1. *Comply with the terms as set out in this agreement*  
*Accept and participate in support services provided by (landlord's company name)*

This section does reference that the tenant must accept and participate in support services however, the tenant has argued that no such services are provided by the landlord. When asked during the hearing about services, the landlord repeatedly referenced the "Program Accommodation Agreements".

I find based upon the evidence before me that the landlord has failed to establish that this housing is “Transitional Housing” as defined under the Residential Tenancy Regulation. Pursuant to Residential Tenancy Branch Policy Guideline #46, Emergency Shelters, Transitional Housing Supportive Housing which states in part,

*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.*

I find despite the parties entering into this “Program Accommodation Agreements”, the landlord has failed to provide sufficient evidence that this is in fact Transitional Housing. On this basis, the landlord’s claim for exclusion due to jurisdiction is dismissed. The hearing shall proceed.

#### Issue(s) to be Decided

Is the tenant entitled to an order of possession?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

The tenant seeks an order of possession for the rental unit.

The tenant has provided written details which states,

*Landlord has changed the locks. Has not provided a notice to end tenancy. Is evicting illegally without a reason. Called the ministry 2-3 weeks ago and told them I no longer live here even though I do so they would shut of the automatic monthly rent payments he receives from them from my income assistance and use that as a reason to evict me.*

[reproduced as written]

The tenant has argued that no notice to end tenancy was issued by the landlord and that the landlord had change the locks in an effort to evict the tenant.

The landlord confirmed that no notice to end tenancy was issued to the tenant and that the tenant was evicted.

### Analysis

Section 54 of the Act states in part that a tenant may be granted an order of possession under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement.

In this case, I accept the undisputed evidence of both parties that a tenancy agreement was made that began on November 1, 2019 in which the tenant would pay \$500.00 per month for a room and shared common areas.

I find based upon the undisputed affirmed evidence of both parties that the landlord changed the locks and evicted the tenant without issuing a notice to end tenancy.

As such, I find in this case that the tenant is entitled to an order of possession. The landlord is to provide access to the rental unit forthwith.

### Conclusion

The tenant is granted an order of possession.

The landlord must be served with the order of possession.

Should the landlord fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and 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: July 31, 2020

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Residential Tenancy Branch