



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was scheduled in response to a tenant's Application for Dispute Resolution, filed under the *Residential Tenancy Act*, for cancellation of a One Month Notice to End Tenancy for Cause; and, for orders for the landlord to comply with the *Residential Tenancy Act*, *Residential Tenancy Regulations*, or tenancy agreement.

Both parties appeared or were represented at the hearing and 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 respondent received the applications proceeding package. I also confirmed that the respondent had not submitted any documentation or evidence prior to this hearing.

The respondent raised an issue with respect to jurisdiction. My jurisdiction to resolve disputes is provided under the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*. If a living arrangement falls outside of these Acts, or is exempt from these Acts, I do not have jurisdiction to resolve the dispute.

The respondent stated the applicant is in a "medical program" in a facility that provides assisted living. As such, the respondent submitted that the applicant's living accommodation is exempt from the *Residential Tenancy Act* pursuant to section 4(g)(i) of the *Residential Tenancy Act*. Section 4(g)(i) provides as follows:

- 4 This Act does not apply to
 - (g) living accommodation
 - (i) in a community care facility under the *Community Care and Assisted Living Act*,

The respondent had not provided any documentation in support of its position that the living accommodation is exempt.

The applicant stated he lives in an “independent living” unit; however, the applicant acknowledged that he was unprepared to make arguments concerning jurisdiction.

The parties were in agreement that the applicant has not been served with any written eviction notice. The parties provided consistent statements that they have had oral conversations, which the applicant took to be a threat of eviction; whereas, the respondent characterized the nature of the conversation to be a “heads up” that eviction process may commence if certain behaviours continue.

I informed the applicant that in order to end a tenancy under the *Residential Tenancy Act*, the landlord would have to give the tenant a written notice in the approved form. I also noted that the “occupancy agreement” submitted by the applicant provides that “termination” of the agreement by “the Operator” would require service of a written notice with at least one month of advance notice. As such, the applicant’s living accommodation cannot be terminated by the landlord or “Operator” orally.

Given the lack of documentation and unpreparedness to make arguments with respect to jurisdiction, I find it appropriate to dismiss this Application for Dispute Resolution with leave to reapply as doing so is not prejudicial to the applicant considering there has not been any eviction notice served upon the applicant.

As I stated during the hearing, I strongly suggest the parties meet and the respondent show the applicant documentation, such as certification or licence it may have from the appropriate government body that supports the respondent’s position concerning the Act that governs the subject living accommodation.

For further reference, I provide the following excerpt from the Residential Tenancy Branch website concerning different types of seniors’ housing:

Seniors housing falls along a continuum, depending on the level of assistance and care required.

Independent Housing, which is not defined in any legislation, typically refers to seniors who may live in retirement communities or other housing geared towards seniors. These may be stand alone seniors’ housing facilities, or there may be independent living units co-located within assisted living and long-term care facilities. As part of a tenancy agreement with the landlord/facility operator,

services such as leisure activities, dining or housekeeping may be offered. These types of tenancies generally fall under the [Residential Tenancy Act](#) (External link).

Supportive Housing is long-term or permanent living accommodation for individuals who need support services to live independently. This type of housing falls under the *Residential Tenancy Act*.

Assisted Living provides housing and assistance services for adults who can live independently but require regular assistance with daily activities. Facilities must be registered under the [Assisted Living Registrar](#) (External Link) and the *Residential Tenancy Act* does not apply.

Residential Care is for people who require 24-hour professional care and are unable to live independently. These licensed care facilities are governed by the [Community Care and Assisted Living Act](#) (External Link) and do not fall under the *Residential Tenancy Act*.

- More information on the differences between assisted living and residential care facilities is available by clicking on [this link](#). (External Link).

The parties are also at liberty to seek further information concerning jurisdiction of senior's housing from the Residential Tenancy Branch by visiting its website or by speaking with one of its Information Officers (see last page of this decision for contact information). The parties may also obtain their own independent legal advice.

If the respondent is of the position the *Residential Tenancy Act* does apply to his living accommodation and there is a dispute to resolve, the applicant may make another Application for Dispute Resolution. If a hearing is scheduled, both parties ought to be prepared to make submissions and arguments and provide corroborating evidence concerning jurisdiction if the parties take differing positions with respect to 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: January 14, 2021

Residential Tenancy Branch