



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OPTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, PSF, LRE, OLC

Introduction

On November 30, 2020, the Applicant made an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Applicant also applied seeking an order for the Landlord to comply with the Act, regulation, or tenancy agreement and for the Landlord to provide services and facilities required by her tenancy agreement.

The matter was set for a conference call hearing. The Applicant/ Tenant and Landlord’s agent (“the Landlord”) attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

Preliminary and Procedural Matters

At the start of the hearing the Applicant/ Tenant (“the Tenant”) clarified that she is not seeking to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. She explained that the Landlord is seeking to terminate her program agreement and tenancy. The Applicant/ Tenant is seeking a determination of whether or not her

tenancy agreement / program agreement is considered to be a residential tenancy under the Act.

The Landlord provided documentary evidence that the Tenant was served a copy of the Landlord's documentary evidence using registered mail sent on February 3, 2021.

The Tenant testified that she received a registered mail notification to pick up registered mail; however, when she arrived at the postal outlet, it had already been returned to sender. She testified that she is not diligent with checking her mail.

Section 90 of the Act provides that a document served to another party is deemed to be received if given or served by mail, on the 5th day after it is mailed. I find that the Tenant was responsible for failing to check the mail and pick up the registered mail in a timely manner. I find that it would not be reasonable to exclude the Landlord's documentary evidence due to the Tenants inaction on retrieving the mail. The Landlord's documentary evidence was accepted and will be considered in this decision.

Issues to be Decided

- Is the living arrangement a tenancy under the *Residential Tenancy Act*?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on February 28, 2020 as a two-year fixed term tenancy. Subsidized rent in the amount of \$375.00 is due to be paid to the Landlord each month. A government ministry paid a security deposit of \$300.00 on behalf of the Tenant. The Landlord and Tenant provided a copy of the program agreement.

The Tenant testified that she believes the living arrangement is a tenancy under the Act because the arrangement fails to meet all the requirements under the Regulations that the arrangement be temporary, provided by an organization funded by government, and provides programs and services. The Tenant acknowledged that she signed the agreement for a temporary stay; however, she stated that she has not been provided with programs and services and therefore, it is not transitional housing.

In reply, the Landlord testified that the program is a transitional housing program that is funded by the BC Provincial Government and BC Housing.

The Landlord provided a copy of a program participation agreement dated February 28, 2020. The program agreement provides that the program is designed to provide the participant with support and life skills training to enable the participant to make the transition to permanent housing. The agreement provides for mandatory participation in the program and that the program will provide short term accommodation during participation in the program. The program agreement contains a right to occupy clause stating that the right to occupy is incidental, to the main objective of the agreement which is to enable to participant to participate in the program and follow their case management plan. The program agreement provides that the *Residential Tenancy Act* does not apply to the agreement and the accommodation is exempt from the Act.

The Landlord submitted that the living arrangement is transitional housing because the fixed term living arrangement is temporary, it is funded by government, and it assists the client to live independently.

The Landlord refer to his documentary evidence showing the Landlord and Tenant entered into a goal setting plan and follow up case management in October 2020. The Landlord referred to progress notes made by the clients case manager.

Analysis

Section 4 of the Act provides that the Act does not apply to living accommodation: provided for emergency shelter or transitional housing, and that is made available in the course of providing rehabilitative or therapeutic treatment or services.

Residential Tenancy Branch Policy Guideline # 46 Emergency Shelters, Transitional Housing, Supportive Housing is intended help the parties to an application understand issues that are likely to be relevant. The Guideline provides the following:

C. 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.

D. SUPPORTIVE HOUSING

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.

Under section 5 of the Act, landlords and tenants cannot avoid or contract out of the Act or regulations, so any policies put in place by supportive housing providers must be consistent with the Act and regulations.

Residential Tenancy Regulation provides the definition of transitional housing as follows: "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.*

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I have reviewed the program agreement and I find that the language is clear that the program is designed to provide the participant with support and life skills training to enable the participant to make the transition to permanent housing. The agreement is clear that the housing is for short term accommodation. I accept that the rent is subsidized, and the program is funded by government. I note that the program agreement provides that the *Residential Tenancy Act* does not apply to the agreement and the accommodation is exempt from the Act.

I have considered whether or not the program is providing the Tenant with programs or services. I have reviewed the Landlord's documentary evidence and I note that the goal setting document dated September 10, 2020 indicates the Tenant met with a case manager and discussed supports for going back to school and upgrading training as well as dealing with debt, housing, and finding a family doctor.

After considering all the evidence before me, I find that the program is providing the Tenant with programs or services.

I find that the living arrangement meets the requirements under the regulations for transitional housing. I find that Section 4 of the Act provides that the Act does not apply to living accommodation provided transitional housing.

I find that the Act does not apply to this living arrangement and I decline jurisdiction to resolve the dispute.

Conclusion

I find that the living arrangement meets the requirements under the regulations for transitional housing. I find that the Act does not apply to transitional housing and I decline jurisdiction to resolve the dispute.

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: February 24, 2021

Residential Tenancy Branch