



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OLC

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

GS, DH, and KO appeared for the landlords in this hearing. The tenant attended with their advocate, ID. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution ('applications'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Does the tenant's application fall within the provisions of the *Act*?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Preliminary Issue: Does this Application Fall Within the Jurisdiction of the Act?

At the commencement of this hearing, the landlord maintained that the relationship between the parties was one of transitional housing, which does not fall within the jurisdiction of the *Act*. The landlord testified that the housing is provided on a temporary basis to the previously homeless, or those who are at risk of being homeless. The

landlord testified that they do not put timelines on the length of participation in the program, but that “the aim is to minimize the amount of time necessary to transition to independent, long-term, or more permanent housing”. The landlord testified that the tenants are provided with a slate of services as listed in their evidence, and that they receive funding from government sources for the purpose of providing accommodation and related services.

The tenant testified that they have not been provided with active programming, and that they have been living there since 2016. Both parties confirmed that the landlord collects a monthly payment of \$375.00 plus a \$7.00 fee for laundry and internet costs for the housing. No security deposit has been collected. Although the tenant has acknowledged that there have been discussions of transitioning to other housing, the tenant testified that this last occurred in 2017.

Preliminary Issue- Analysis of Jurisdiction Pursuant to the Act

Section 4(f) of the *Act* establishes that "living accommodation provided for emergency shelter or transitional housing" does not fall within the jurisdiction of the *Act*.

Section 1 of the *Residential Tenancy Regulation* reads in part as follows:

(2) *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....*

In addition, Residential Tenancy Branch Policy Guideline 46 provides guidance to arbitrators that the 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 jurisdictional consideration pursuant to section 4 of the *Act*, even if a transitional housing agreement has been signed.

Although the parties signed an agreement, section 5 of the *Act* establishes that their agreeing to these terms is not determinative as to whether this tenancy falls outside the jurisdiction of the *Act*. Section 5 reads as follows:

This Act cannot be avoided

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

(2) *Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

In this case, despite the signing of a housing agreement that refers to the type of housing as transitional, I find that the tenant has been residing at this accommodation for at approximately 5 years.

The landlord testified that they do not impose timelines, but that the program is intended to provide tenants with government funded housing, programs, and support to assist participants in transitioning to more permanent housing.

I have considered the evidence and testimony before me, and it is clear that there is no end date for this accommodation. It is also undisputed that the tenant has been residing at this accommodation for almost 5 years. Regardless of the language used by the landlord in the housing agreement, the accommodation must meet the criteria as set out in the *Act* and Regulation for the definition to apply.

Based on the undisputed evidence before me, I find that there are grounds to consider that the agreement between the tenant and the landlord is not transitional housing, mainly due to the length of time that the tenant has been living there. I find that the tenant's near 5 year residency combined with the absence of an end date does not reasonably meet the definition of 'temporary'. As such, I conclude that this is a residential tenancy and one which is not excluded from my jurisdiction by section 4(f) of the *Act*. As I do have jurisdiction to consider this application, I set out the details of the tenant's application and my findings below.

Background and Evidence

The tenant filed this application as the tenant believes that the landlord has denied the tenant the right to have guests as allowed under the *Act*. In the application, the tenant states that on January 18, 2021 at 3:00 p.m., the tenant invited advocates TC and ID into their suite. Within minutes, the building manager asked the guests to leave. The tenant also states that the landlord has denied their request to see a copy of the lease.

The landlord testified in the hearing that as the accommodation falls under the definition of transitional housing, the landlord has right to impose restrictions and rules, especially in light of provincial health orders. The landlord further testified that there is no "no guest

policy” in place, and that the tenant may have guests approved of in advance. The landlord testified that they are bound by health orders to manage covid-19 outbreaks, and they were required to limit guest access.

Analysis

Section 9 of the **Residential Tenancy Regulation Schedule** states the following about guests:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Section 30 of the Act states the following about unreasonably restricting access to the residential property to a person permitted on the property by the tenant.

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

As noted above, I find that the *Residential Tenancy Act* applies to this tenancy. Accordingly, I find that the landlord is bound by the *Act* and *Regulation* in relation to restricting access to the tenant's rental unit to a person or persons permitted on the residential property by the tenant.

In this case, I accept the sworn testimony of the tenant and tenant's advocate that the access of the tenant's guests was restricted by the landlord, or agent of the landlord,

and I do not find that the landlord provided sufficient evidence to support that this restriction was done in order to comply with an order of a federal, provincial, regional, or municipal government authority, including any orders made by the Provincial Health Officer, or under the Emergency Program Act. I find that access was restricted to the tenant's own rental unit, and not simply common or shared areas. I am satisfied that the landlord had unreasonably restricted access to the tenant's guests, and I order that the landlord comply with the *Regulation* and *Act* as set out above in relation to the tenant's right to have guests under reasonable circumstances in the rental unit, unless the landlord is in possession of an Order allowing them to restrict such access.

I also order that the landlord provide a copy of the housing agreement or lease upon request of the tenant to do so.

Conclusion

I find that the tenant's application falls under the jurisdiction of the Residential Tenancy Act.

I further find that the landlord had unreasonably restricted access to the tenant's guests from attending the tenant's rental unit. I order that the landlord comply with the *Regulation* and *Act* in relation to the tenant's right to have guests under reasonable circumstances in the rental unit, unless the landlord is in possession of an Order allowing them to restrict such access.

I also order that the landlord provide a copy of the housing agreement or lease upon request of the tenant to do so.

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: May 7, 2021

Residential Tenancy Branch