



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ELIZABETH FRY SOCIETY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OLC

### Introduction

This hearing dealt with applications filed by five different tenants against the same landlord, pursuant to the *Residential Tenancy Act* (“Act”) for:

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* (“Regulation”) or tenancy agreement, pursuant to section 62.

This hearing began at 9:30 a.m. and ended at 11:48 a.m., for a total of 138 minutes.

Three of the applicant tenants, “tenant AJ,” “tenant SP,” and “tenant JK” did not attend this hearing (collectively “three tenants”).

Two of the applicant tenants, “tenant NM” and “tenant DS” (collectively “two tenants”), and their two lawyers, “lawyer RP” and “lawyer ZM,” attended this hearing.

The respondent landlord’s two agents, “landlord VL” and “landlord NT,” and the landlord’s lawyer attended this hearing.

“Lawyer AC” attended this hearing on behalf of “company BCH.” She did not testify at this hearing. She attended this hearing from 9:30 a.m. to 9:39 a.m., for a total of 9 minutes. She confirmed that she only attended this hearing to ensure that company BCH was removed as a landlord-respondent party to this proceeding, which lawyer RP agreed to do. This issue is addressed below in this decision.

All hearing participants were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All hearing participants confirmed their names and spelling. Lawyer RP and the landlord's lawyer provided their email addresses for me to send this decision to both parties after the hearing.

I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notices of Hearing. I also confirmed from the teleconference system that the above listed participants and I were the only people who called into this teleconference.

Neither the three tenants, nor any of their agents, appeared at this hearing at any time, even though I checked the hearing line multiple times during this hearing. Lawyer RP also called out the names of the three tenants during this hearing and no response was received from them or anyone appearing on their behalf.

Five applications made by five different tenants, were joined by the RTB to be heard together at this one hearing. Tenant NM is the one lead tenant and the primary file in this joiner application. Tenant DS' application is a secondary file in this joiner application. The remaining three tenants' applications are secondary files.

### Representation

Landlord VL confirmed that she was the chief operating officer for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She stated that the landlord's lawyer had permission to represent the landlord at this hearing. Landlord NT confirmed that she was the program director for the landlord and that she had permission to speak on its behalf.

The two tenants confirmed that lawyer RP and lawyer ZM had permission to represent them at this hearing. Lawyer RP confirmed the rental unit addresses and the application details for the two applications filed by the two tenants.

Both lawyer RP and lawyer ZM confirmed that they only had permission to represent the two tenants, tenant NM and tenant DS, who appeared at this hearing. Both lawyer RP and lawyer ZM confirmed that they did not have permission to represent the remaining three tenants, tenant AJ, tenant SP, and tenant JK, who did not attend this hearing because these three tenants were required to be present at this hearing to provide affirmed testimony. Both lawyer RP and lawyer ZM stated that they were told by the three tenants prior to this hearing, that the three tenants would appear at this hearing, but they did not attend.

Lawyer RP and the landlord's lawyer identified themselves as the primary speakers at this hearing.

### Hearing Process

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. All hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle, and they wanted me to make a decision.

Both parties were informed prior to this hearing, and I reminded them again during this hearing, that it was scheduled for 2.5 hours (150 minutes) from 9:30 a.m. to 12:00 p.m. I notified both parties that if additional time was required, both parties would be sent a notice of reconvened hearing to return at a later date, for another hearing.

Lawyer RP stated that he wanted to present the testimony of the two tenants first and the landlord's two agents second. He said that lawyer ZM wanted to provide closing submissions after hearing the landlord's evidence first. Therefore, the hearing proceeded as per the request of lawyer RP.

The two tenants testified first, the landlord's two agents testified second, lawyer ZM provided closing submissions third, and the landlord's lawyer provided closing submissions last.

Direct and cross-examination of the two tenants and the landlord's two agents occurred from approximately 9:50 a.m. to 11:24 a.m. Closing submissions from lawyer ZM and the landlord's lawyer occurred from approximately 11:25 a.m. to 11:48 a.m.

### Service of Documents and Amendment

The landlord's lawyer confirmed receipt of the five tenants' applications for dispute resolution hearing packages and lawyer RP confirmed receipt of the landlord's evidence on behalf of the two tenants. In accordance with sections 88, 89 and 90 of the *Act*, I

find that the landlord was duly served with the five tenants' applications and the two tenants were duly served with the landlord's evidence. Neither party raised any objections to me considering the evidence submitted by both parties at this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the two tenants' applications to remove landlord BCH as a landlord-respondent party. Lawyer RP and lawyer AC consented to these amendments during this hearing. The landlord's lawyer did not raise any objections or prejudice regarding same.

Pursuant to section 64(3)(c) of the *Act*, I amend the remaining three tenants' applications to remove landlord BCH as a landlord-respondent party. I do not find any prejudice to either party in making these amendments, despite the fact that these three tenants or any of their agents did not attend this hearing.

#### Preliminary Issue – Dismissal of Three Tenants' Applications

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the three tenants (tenant AJ, tenant SP, tenant JK) or any of their agents, I order all three of their applications dismissed in their entirety, without leave to reapply.

I made a decision about jurisdiction, as noted below, regarding the two tenants' applications only. I was unable to make a decision about jurisdiction regarding the three tenants' applications, as they did not attend this hearing to provide affirmed testimony.

#### Jurisdiction to hear Two Tenants' Applications

The issue of jurisdiction was raised by both parties in their documentary evidence submitted for this hearing. Both parties raised this issue again, verbally, at this hearing. Therefore, at the outset of this hearing, I asked both parties to provide submissions regarding jurisdiction only, at this hearing. Neither party provided submissions regarding the two tenants' substantive applications at this hearing.

I notified both parties that if I found jurisdiction over the two tenants' applications, both parties would be sent a notice of reconvened hearing to return at a later date, for another hearing to determine the substantive issues.

### Issue to be Decided

Does the RTB have jurisdiction, pursuant to the *Act*, over the two tenants' applications?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. Both parties submitted hundreds of pages of documentary evidence prior to this hearing. The relevant and important aspects of the two tenants' claims and my findings are set out below.

Tenant NM testified regarding the following facts, in response to lawyer RP's questions on direct-examination. Before moving into the rental unit, tenant NM was staying in a temporary place at someone's house. Her program worker told her about the rental property, stating that it was permanent, supportive housing. She applied for the rental unit through this housing worker. She had an interview with BCH and the landlord, and at the meeting, she was told by the landlord that the housing was for women only. She cannot recall if she was told at the meeting, that the rental property was supportive housing. The landlord did not indicate anything regarding the length of tenancy. She moved in around September 4, 2020, and she was not told it was transitional housing. The landlord told her that there was a two-year time limit, but she could stay "permanently" and "indefinitely." The landlord did not tell her a plan or the steps to take to transition to other housing but said they could help with it. There was nothing to transition to, specifically. She was not told by the landlord that she has to transition and there was no end date discussed. The landlord's staff at the rental property told her that it was covered by the *Act* and it was supportive housing. She is not seeing a caseworker offered by the landlord right now. She has seen a caseworker in the past. Before she was required to see a caseworker in order to remain there, but it is not required anymore. When she was meeting with her caseworker before, there was no discussion about transitioning to other housing. The landlord offers programs, but she does not participate in them. The landlord offers two meals a day, free laundry, referral for phone numbers from staff, and there are job postings on the board from different employers. There is a photography course. There is no counseling, life skills courses, or social or recreational programs, aside from a walking club and a sewing course, but

she has not participated in them. There is no trauma care, nurses, outreach, or health team programs. None of the landlord services have helped her to become a better renter. Her barrier is affordability, and she needs a rent subsidy to transition to other housing. She received a notice from the landlord in August 2021 about visitors at the rental property, a copy of which was provided for this hearing. The subject line of that notice states "RTA visitor policy."

Tenant NM testified regarding the following facts, in response to the landlord's lawyer's questions on cross-examination. She was in contact with an outreach worker from a different organization, that is not the landlord, prior to moving into the rental unit. There was an initial screening of applicants, where she was told that she could remain at the rental property, which could be "her forever home." This was "reiterated" to her later by the landlord. She cannot remember the names of the people who said that to her. She was told by the landlord that there was a two-year time limit, but she could stay "indefinitely." "Everyone" from the landlord's staff said that she could stay "indefinitely." She was told that there was a "two-year maximum expectation to leave" but if something happens, or if something does not work out, or if the person cannot find anything, or if the person is not ready, they can stay "permanently." Some of the other tenants left "unwillingly" and some have come back. The rental property has not been open for two years, yet. Tenant NM was required to meet with case managers once per month, in the past. She only met with her caseworker twice or three times. In meetings with the caseworker, she could talk about whatever she wanted, and she mainly talked about how she ended up at the rental property in the first place. Her last case management session was in December 2021. She wants to try to apply to BCH for regular subsidized housing. Her only barrier is a rent subsidy, but she is ready to move on to independent housing, if it is affordable. There are no programs offered at the rental unit, aside from the ones that have already been mentioned. The landlord had a therapy dog come in and a self-esteem course, but she did not participate in those programs.

Tenant DS testified regarding the following facts, in response to lawyer RP's questions on direct-examination. Before moving into the rental unit, tenant DS was living on the downtown east side at a hotel with her partner, who later died. She met a program worker there, who told her about the landlord's program. She was given information by a lady, "landlord IA," but she does not know her employment position, as she might be a supervisor. Tenant DS was referred to lawyer AC at BCH. She applied through lawyer AC, to get the rental unit. She was told it was supportive housing for up to two years, but she could stay for a longer period. She moved into the rental unit in November 2020. She was not told it was transitional housing or that a plan was made for her to



transition to other housing. No end date for the tenancy was discussed. The landlord said that the tenancy was under the *Act*. No caseworker discussed next steps or plans with her to transition to other housing. She had meetings with her caseworker. The landlord only offers 24-hour laundry and breakfast and supper meals, so she uses these programs only. She also asked the landlord if there was a clinic nearby. The landlord does not offer counseling, life skills programs, trauma care, health care, outreach, or nurses at the rental property. The landlord posts jobs on the board at the rental property. There are sewing and walking clubs offered by the landlord. The landlord has not helped her to be able to live in a better, less supportive housing environment. She feels that she can live in less supportive housing at this time and intends to do so.

Tenant DS testified regarding the following facts, in response to the landlord's lawyer's questions on cross-examination. She was told by lawyer AC that the rental property was supportive housing. She had a phone call with landlord IA, which was short. She thinks lawyer AC told her that the tenancy was under the *Act*. She signed a program agreement and lawyer AC read some of it to her, but not all of it. She does not recall being told it was transitional housing. The goal is for residents to stay at the rental unit for two years, but it was not mentioned as the "number one issue" by the landlord. The caseworker never discussed housing with her, as tenant DS only talks about how she feels with the caseworker. She was told by the landlord that "you can move on or stay as long as you want." The landlord's support staff at the rental property did not recommend anything for her. Tenant DS feels that she can live in independent housing and would "rather move on."

Landlord VL testified regarding the following facts, in response to the landlord's lawyer's questions on direct-examination. She is the chief operating officer for the landlord. The aims of the rental property are to break the cycle of homelessness, chronic episodic homelessness, substance use, mortality, and health factors. It is offered to vulnerable women. It is part of the application process that if a woman scores high on the assessment tool, then she will be allowed into the housing at the rental property. The landlord helps women achieve stabilization and "move along the continuum," so it is up to these women regarding their housing. It is referred to as transitional housing, as per the program agreement, which is discussed with clients during intake. It is also framed the same way by BCH on the intake. The rental property is under a 10-year lease agreement from the City, that owns the land. The program helps clients move on to safe, supportive housing. There are no long-term options from BCH. The landlord has used RTB forms for some other clients regarding evictions at the rental property. This occurred in February, in relation to the "RBS," which is an advocacy group "targeting the landlord," and claiming that the *Act* applied, and it was not transitional housing. The

landlord was concerned that this would “raise problems in the community and wanted to move forward in the best way.” The landlord only issued some RTB forms to some other clients under the *Act*, due to pressure from advocacy groups, but would not have done so, otherwise. Usually, the landlord issues program discharge forms to end a tenancy at the rental property. In one situation, where a woman had a machete, the RTB was not involved, and an agreement was reached between her and the landlord on certain conditions.

Landlord VL testified regarding the following facts, in response to lawyer RP’s questions on cross-examination. There are 44 units at the rental building, which opened in September 2020. Not all units were immediately filled when the building opened. The building has been completely full at certain times. There is a process through BCH, where the party has to apply and if they meet the criteria, then housing is provided. There are a few units that are empty at this time. If there are clients at the rental property after the two-year period, they are not “kicked out.” Many of the clients have multiple issues involving substance use, health, and mental health, so the landlord works to “mitigate” these concerns. There is “no hard stop” and clients can stay for longer than two years, if there are certain issues. BCH only has the land for 10 years, so it is limited by that time period, in any event. It depends on each woman’s needs, and the landlord always ensures that the clients have a place to go before “discharging” them from the rental building. RTB notices have been served under the *Act* to some clients, the landlord appeared at previous RTB hearings, and no jurisdiction issue was discussed at those hearings.

Landlord NT testified regarding the following facts, in response to the landlord’s lawyer’s questions on direct-examination. She is the landlord’s director of social justice and equity and oversees operations at the rental property. She provides support and supervision of the landlord’s staff team to ensure that the program meets legal, contractual, and client obligations. She also develops partnerships and “inroads” with other agencies, develops the programs, and makes sure that they are offered and delivered to clients. Due to covid, there was a limited use of facilitators in the community, so the landlord had to offer “digital facilitation” between clients and their families during that time. Clients were also offered refurbished laptops, in order to continue access with their alcohol and drug groups, and their peer, cultural, and faith-based support groups. The clients had peer and family contact during this time. The landlord helps clients obtain their identification and access their statutory right entitlements. The landlord provides a poverty law advocate regarding eligibility, provides counseling support as required, substance use services, removes barriers, and provides dental clinics. The landlord also provides income barrier removal programs,



including job clubs, carpentry, and woodwork cabinetry. There are lots of programs, not just meals and laundry, at the rental property. She trains the landlord's workers to go through the program agreements with clients, "line-by-line." There are case management and intake sessions. The landlord was waiting for this hearing at the RTB to determine jurisdiction, so that is why the issue was not brought up at previous RTB hearings with other clients. When RTB notices were issued to other clients at the rental property under the *Act*, the landlord tried to resolve these incidents in favor of the clients. This housing is temporary in nature and clients cannot stay there for "15 years." Lots of clients have been supported and have moved out to independent housing. This is transitional housing. The majority of clients engage in case management programs. However, the five applicant tenants in these five applications at this hearing, do not engage in case management and have encouraged other residents to do the same.

Landlord NT testified regarding the following facts, in response to lawyer RP's questions on cross-examination. The rental property has not yet been open for two years. If people need longer-term housing, then the landlord works on it with the client before the two-year mark. Anything that can be planned will be before the two-year deadline. Tenant NM has been living at the rental property since the beginning when the building opened approximately 1.5 years ago. Tenant NM has chosen to "opt out," as per the *Act*. She participated in case management, which is client-directed, and her decision to opt out is "honored" until this decision is made regarding jurisdiction. If a decision is made that this is transitional housing, then tenant NM cannot "opt out" of the program and a housing plan will be made for her. Right now, there is no plan for transition for tenant NM, but the landlord has talked to her regarding next steps and housing affordability. There is no notice, newsletter, agreement, or case management letter from another organization, contained in the landlord's evidence, about tenant TN "moving on."

Lawyer ZM made the following closing submissions on behalf of the two tenants. Transitional housing is required to be temporary, provided by an organization that receives government funding, and is transitional to help parties live independently. Policy Guideline 46 requires a "general plan" to transition to more independent living. The two tenants were told this was supportive, not transitional housing. There is a "two-year goal," but it is not required. Tenant NM moved into her rental unit in September 2020 and tenant DS moved into her rental unit in November 2020. There are no general plans for them to move out and this is a requirement of transitional housing. The two tenants only use certain programs offered by the landlord. The landlord claims that the two tenants met with caseworkers to transition, but they both testified that they speak to their caseworkers regarding other matters. The landlord is not funded by the

government. The operation agreement says it is supportive, not transitional housing. There are few services offered by the landlord. The two tenants are capable of living in other housing, but the landlord does not support them regarding their barriers. Her organization did not know about the RBS incidents until January and did not pressure the landlord. RTB notices to end tenancy for other tenants at the rental building were provided in the two tenants' evidence package. The landlord should have asked the RTB at the previous RTB hearings to decide jurisdiction. However, the landlord went to Court, hired bailiffs, and enforced RTB orders against other tenants at the rental property. The rental property is described as supportive housing in press releases from the landlord.

The landlord's lawyer made the following closing submissions on behalf of the landlord. Landlord VL and landlord NT provided testimony that the rental property is transitional in nature, it is temporary, and it receives government funding. They also stated that it offers programs, which were undisputed by the two tenants at this hearing, in order to transition to better independent housing. The two tenants believe that those services do not help them, but that is their own subjective assessment. The two tenants do not need anything except finances and subsidies to move. Skills are offered to transition them to better live independently. The funding is pursuant to an operation agreement between BCH and the landlord's program. There is no statutory requirement in the *Regulation* that the landlord be specifically funded for "transitional housing." This was noted in a previous decision from the RTB. The two tenants are reading in additional information to the statute. There is a two-year goal, as testified by the two tenants at this hearing. The two tenants filed these applications last summer 2021. The landlord always wanted a decision regarding jurisdiction and was waiting for this hearing to determine same. The previous RTB decision 6514, from the tenants' own evidence package, dealt with the same jurisdiction issue. Even though that case is not "precedent-setting," there are some similarities. In that case, it was stated that some people were living in the building for their whole lives. In this case, it is transitional to independent living and there is a "presumptive shelf life of 10 years because of the lease." In that case, many of the tenants lived there for four years, and the majority for more than five years. In that case, the housing agreement stated that there was a landlord-tenant relationship under the *Act* and there was a written agreement under the *Act*. In that case, there was no end date for the tenancy. Here, the end date is two years, but if a tenant needs to stay longer, she can, but it depends on the case. In that case, the tenants were never told that it was temporary or transitional housing, and the landlord did not dispute this fact. Here, the landlord disputes this fact, as raised by the two tenants. In this case, the two tenants prefer to live independently. That previous case is helpful to distinguish what is or is not transitional housing. In this case, the

average stay is 10.5 months for most tenants, and then they leave, since it is not open for them, and the limit is two years.

### Analysis

Section 4(f) of the Act, outlines a tenancy in which the Act does not apply:

- 4 This Act does not apply to*  
*(f) living accommodation provided for emergency shelter or transitional housing,*

Section 1(2) of the Regulation defines “transitional housing” as the following:

- (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.*

Residential Tenancy Policy Guideline 46 states the following regarding transitional housing (my emphasis added):

#### **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.*

### Temporary Housing

I find that the landlord provided sufficient evidence that this is living accommodation provided to the two tenants on a temporary basis, as per section 1(2)(a) of the *Regulation*.

The two tenants testified at this hearing, that they were both told by the landlord at the beginning of their tenancies, that their housing was for a period of two years. It is undisputed that the rental property has not been open for two years, as of the date of this hearing. I accept the landlord's evidence that the average stay for most tenants at the rental property is 10.5 months, which was not disputed by the two tenants at this hearing.

It is undisputed that tenant NM has been living at her rental unit since September 2020. It is undisputed that tenant DS has been living at her rental unit since November 2020. Therefore, the two tenants have not yet approached the two-year time period of living at the rental property. I accept the affirmed testimony and evidence of landlord VL and landlord NT that the length of a tenant's stay is determined on a case-by-case basis.

Further, the two tenants provided affirmed testimony at this hearing, that they both intend to move out of the rental property and obtain independent accommodation. Accordingly, they are not intending to live at the rental property indefinitely. Tenant DS testified that she was ready to move out and live independently, at this time. Tenant NM testified that she was ready to move to independent housing if it is financially affordable, and that she intended to apply to BCH.

Both parties provided copies of the documents that the two tenants signed with the landlord, at the time that they moved into their rental units. The program agreements have detailed information about the landlord, the housing, the rental property, and the residency program. The addendums to the program agreements are detailed and state that the *Act* does not apply in the first paragraph of that document. The program rules, "Client Bill of Rights," and "Client Rights and Responsibilities," are all detailed and signed by the two tenants.

It is undisputed that the two tenants did not sign written tenancy agreements using approved RTB forms or similar forms. It is undisputed that the two tenants signed "program agreements" with the landlord, that are titled as such. The program

agreements and the addendums to the program agreements specifically state that the *Act* does not apply. Further, the word “residency,” rather than “tenancy” is used in the program agreements. I find that a written tenancy agreement, which references or includes some provisions of the *Act*, is an indicator of a regular leased accommodation that would fall under the jurisdiction of the *Act*, as noted on the approved RTB tenancy agreement forms.

The program agreements indicate that the two tenants are paying a “monthly contribution” of \$375.00 per month, which is noted on page 1, and “monthly program fees,” as noted on page 2. These amounts are not described as “rent” in the program agreements. I find that rent is an indicator of a regular leased accommodation that would fall under the jurisdiction of the *Act*, as noted on the approved RTB tenancy agreement forms.

The program agreements for the two tenants both state the following, in part, on page 1 (emphasis in original):

*I agree that the purpose of my participation in the program is to provide me with supportive housing and services, so that I am able to move onto independent living as soon as possible. To support my movement toward independence, I agree to meet with program staff at least monthly, to discuss my residency at Mazarine Lodge, to identify goals and develop plans to remedy any concerns.*

*...To be eligible for continued residency, I must continue actively participate in progress towards my goals. Lack of engagement in development plan may result in a “discharge plan” being developed for my departure from the program prior to my achievement of housing independence.*

***My participation in the program is voluntary and is expressly NOT governed by the B.C. Residential tenancy Act.*** Furthermore, my participation in the program is based upon the following rules and I understand that my participation, including the housing component may be terminated and I might be asked to leave, if I fail to uphold this agreement.

The program agreements for the two tenants, specifically state above, that the *Act* does not apply, as noted in bold font on the original copies of the agreements. The addendums to the program agreements for the two tenants both state, at the top of the first page, that the rental property is “expressly not governed by the Residential

Tenancy Act." The approved RTB tenancy agreement forms include the applicability of the *Act* and references to its provisions.

The landlord is not required to explain the program agreements or other signed documents to the two tenants. The two tenants signed the program agreements voluntarily, of their own accord, as noted above, in bold font. I find that the two tenants did not provide any evidence that they faced coercion or duress in signing the program agreements or other documents provided by the landlord.

The two tenants could have retained lawyers and obtained legal advice, prior to moving into the rental unit and signing the program agreements. The two tenants were able to retain two lawyers to represent them for this hearing, so they are aware of how to do so. The two tenants could have sought assistance from other agents or representatives, prior to moving into their rental units or signing the program agreements. It is up to the two tenants to seek help, ask questions of the landlord, and inform themselves of their legal rights, since ignorance of the law is no excuse. Tenant NM signed the above documents on August 31, 2020, and tenant DS signed them on November 13, 2020. The two tenants signed the above documents over one year prior to this hearing, when they first moved into their rental units, and did not raise any issues with them, until they filed their two applications and attended this hearing.

I find that the above information is clear; the two tenants agreed to "supportive housing and services...to move onto independent living as soon as possible." I find that this indicates that the two tenants will receive housing and services from the landlord at the rental property so that they can transition to independent living as soon as possible. I find that this refers to a temporary and transitional period. If this was long-term, indefinite, or permanent accommodation, as claimed by the two tenants, there would be no requirement to "move onto independent living" "as soon as possible." I find that if this was permanent accommodation, there would be an indication in their signed documents with the landlord, that the two tenants can remain at the rental property indefinitely, long-term, or permanently, that they would not be required to leave at any time, and that they do not need to obtain independent living at any time.

Further, I find that a "discharge plan," as noted in the program agreement above, is not an indicator of a regular leased accommodation that would fall under the jurisdiction of the *Act*. As noted above, a discharge plan can be used as a "departure from the program" to evict the two tenants. Therefore, no RTB notices to end tenancy or other RTB forms are required to be issued by the landlord, to evict the two tenants from the rental property. In order to evict a tenant under the *Act*, a landlord is required to issue a



notice to end tenancy to the tenant. The approved RTB tenancy agreement forms refer to notices to end tenancy, which can be issued by the landlord, to end a tenancy.

Part 3 at paragraph 1 of the landlord's operating agreement refers to a limited lease of five years for the rental property, from April 1, 2020 to March 31, 2025, which can only be renewed for an additional term of five years. I find that the landlord provided undisputed evidence that the maximum term of the lease for the rental property is 10 years. Therefore, the landlord does not have an "indefinite" or "permanent" lease for this rental property, in order to offer any tenants permanent or indefinite housing.

The two tenants raised issues of past RTB notices, past RTB hearings, and enforcement of RTB Orders in the Courts, regarding other tenants at the rental property. I am not bound by decisions made by different RTB Arbitrators at previous RTB hearings regarding different parties and their tenancies. Further, the above events do not involve the two tenants in any way, as they were not issued RTB documents by the landlord, and they did not attend previous RTB hearings regarding their tenancies.

I accept the affirmed testimony of landlord VL and landlord NT, the landlord's documentary evidence, and the submissions of the landlord's lawyer, that the above events occurred in response to an advocacy protest. I find that the landlord only issued RTB notices and attended previous RTB hearings for a limited number of tenants, where the landlord was seeking a peaceful, compromised resolution in those specific matters. I do not find that the landlord is attempting to use the RTB process selectively to their advantage, as alleged by the two tenants at this hearing.

Although Residential Tenancy Policy Guideline 46 states additional factors to consider in determining whether living accommodation is transitional housing, these are simply guidelines to consider. As noted above, the only mandatory provision that is required is that the living accommodation must meet all the criteria in section 1(2) of the *Regulation*, which I find that it does, in the case of the two tenants.

I do not agree with the two tenants, that a general plan to transition to more permanent accommodation, is "required" for the two tenants. It clearly states in Residential Tenancy Policy Guideline 46 above, that a general plan is "intended," not "required." Therefore, while the two tenants may not have general plans in place to move at this time, they both indicated their intention and willingness to move to independent accommodation. Further, the two tenants are not yet at the two-year limitation date, since the rental property has not been open for two years at the time of this hearing.

The other provisions in Residential Tenancy Policy Guideline 46 above are permissive, in that they contemplate or intend but do not require certain elements, as noted by my emphasis above. Tenant NM testified that she came from a temporary living situation at someone's house and tenant DS testified that she came from a hotel. It is not "required," as noted above, that the two tenants were homeless, coming from an emergency shelter, a health or correctional facility, or from an unsafe housing situation. Further, although the two tenants do not use many of the landlord's programs at the rental property, as noted above "individuals in transitional housing may have a more moderate need for support services" but I find it is not "required" that they do so. Also, the two tenants signed program agreements, since signing transitional housing agreements is not "required," as noted above.

### Supportive Housing

Residential Tenancy Policy Guideline 46 states the following regarding supportive housing (my emphasis added):

#### *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.*

I do not agree with the two tenants that their rental units are supportive housing under the Act. I find that the two tenants failed to indicate in their testimony, in response to the landlord's lawyer's questions on cross-examination, which specific employees of the landlord, told them that the rental property was "permanent" housing, where they could stay "forever." As noted above, the two tenants both testified that they were informed by the landlord that there was a time limit of two years to reside at the property, which I find is temporary, not long-term or permanent living accommodation. If the rental units were permanent or indefinite accommodation, I find that the tenants would not have been informed by the landlord of any two-year limited time period. Further, the option to stay longer than two years is determined on a case-by-case basis, which I find does not apply to the two tenants.

I also note that while the rental property and programs offered by the landlord may be described as “supportive” in the program agreement, press releases, or other forums, I find that description or label does not define it as “supportive housing,” in accordance with Residential Tenancy Policy Guideline 46. As noted above, supportive housing is defined as “long-term” or “permanent.” In this case, as noted above, I find that the rental units for these two tenants is transitional in nature, as it is “temporary” for a limited period of time, before the two tenants transition to independent accommodation. Even if the two tenants receive “supportive” programs and assistance from the landlord at the rental property, I find that does not meet the definition of supportive housing, as per Residential Tenancy Policy Guideline 46.

### Funding

I find that the landlord provided sufficient evidence that the landlord receives funding from the government for the purpose of providing living accommodation to the two tenants, as per section 1(2)(b) of the *Regulation*.

I find that the landlord receives funding from the government of B.C., through its agent BCH, for the purpose of providing the rental property living accommodation to the two tenants. I find that this qualifies as the landlord receiving funding from the government of B.C., as required above.

The landlord’s operating agreement, which was provided for this hearing, states the following, at part 1, paragraph 4, in part (my redaction added for confidentiality):

*The Provider will operate the Development, and [BCH] will provide funding, in accordance with the terms of this Agreement.*

As per the submissions of the landlord’s lawyer at this hearing, the “provider” noted above is the landlord, the “development” is the rental property, and BCH is the agent of the government of B.C. Therefore, I find that the landlord operates the rental property under the terms of the operating agreement and BCH provides funding, as an agent for the government of B.C., to the landlord.

I find that the above funding is not required to be specifically for “transitional” or “temporary” housing, as alleged by the two tenants. I find that this would be an additional reading into the statute, which is a narrow interpretation.

At part 1, paragraph 1 of the operating agreement, it states:

*The goal of the Rapid Response to Homelessness (RRH) is to provide rapid, safe and affordable housing, together with necessary support services, to individuals who are experiencing Homelessness or At Risk of Homelessness.*

At part 2 entitled “service description,” the operating agreement states at paragraph 1 (my emphasis added):

*The Provider will deliver services, including Support Services, which are beneficial to Residents at the Development. The Support Services are intended to **help Residents achieve and maintain stability in housing, enhance access to other community-based supports and services, and strengthen and foster their ability to live more independently...***

I find that the operating agreement clearly defines the purpose of the landlord’s program is to assist “individuals who are experiencing homelessness or at risk of homelessness” to “achieve and maintain stability in housing” to “strengthen and foster their ability to live more independently.” I find that this meets the definition of transitional housing in Residential Tenancy policy Guideline 46, which states that individuals may be moving from homelessness to independent living.

I find that the above provision at part 2, paragraph 1 of the operating agreement also meets the definition in section 1(2)(c) of the *Regulation*, which states: “together with programs intended to assist tenants to become better able to live independently. The above provision in the operating agreement states that a goal is to “enhance access to other community-based supports and services...and strengthen and foster their ability to live more independently.”

### Programs

I find that the landlord provided sufficient evidence that the landlord offers programs intended to assist the two tenants to become better able to live independently, as per section 1(2)(c) of the *Regulation*.

It is undisputed that the landlord offers meal programs, laundry services, staff assistance with obtaining contact numbers and clinic information, and case worker meetings, among other programs. The two tenants provided affirmed testimony that they have used the above programs at the rental property. The two tenants also testified that there are other programs offered by the landlord, which they do not use,

including a walking club, sewing club, job postings on a board, a photography course, a therapy dog, and a self-esteem course.

I find that the above programs are “intended” to “assist” the two tenants to better live independently, regardless of whether the two tenants subjectively believe that the programs have actually assisted them. The *Regulation* does not indicate that the programs are “required” to assist but simply that they are “intended to assist.”

While the two tenants may have “opted out” of the case worker program, they have both previously used this service, as recently as December 2021 for tenant NM. Landlord NT testified that the “opt-out” was permitted only pending a jurisdiction decision at this hearing. Moreover, the two tenants testified about their intentions to move out of their rental units to other, independent accommodations.

I find that the landlord provided sufficient evidence, through the documentary evidence and the testimony of landlord VL and landlord NT, that many other programs are offered by the landlord at the rental property, that are intended to help tenants become better able to live independently. I find that even if the two tenants do not use these other programs, they are available to them. I find that there is no requirement for the two tenants to participate in these programs, as per the *Regulation* or Residential Tenancy Policy Guideline 46. I find that these programs show the landlord’s intention and purpose to help tenants transition to independent living. I accept that this is a tenant-driven process, as per the evidence of the landlord, so the two tenants cannot be forced to use these other available programs. Further, the two tenants provided testimony that they both face financial challenges regarding housing, so the other programs offered by the landlord may not be relevant or helpful for them to use in their particular circumstances.

#### Other RTB decisions and Case Law

Pursuant to section 64(2) of the *Act*, and as noted above, I am not bound by previous RTB decisions made by different Arbitrators at previous RTB hearings. However, I have considered both parties’ submissions and copies of previous RTB decisions provided for this hearing. I note that the previous RTB decisions involve different tenants, landlords, rental units, tenancies, and facts.

I note that previous RTB decision 6514, dated March 2, 2020, was set aside on review. I find that previous RTB decision, dated July 22, 2020, which is the “review decision” of RTB decision 6514 above, and referenced by both parties in their written submissions,

is distinguishable from these two tenants' applications. In the review decision above, those tenancies involved tenants who signed written tenancy agreements specifically stating that the *Act* applies, RTB forms were issued by the landlord to those specific tenants, and over half of the tenants lived at that rental property for four to five years.

In the instant case, the two tenants did not sign written tenancy agreements, their program agreements and addendums specifically state that the *Act* does not apply, RTB forms were not issued to these two tenants, and these two tenants have lived at the rental property for less than two years.

The two tenants and their two lawyers did not refer to the two Supreme Court of British Columbia cases that they provided as documentary evidence for this hearing. They did not state how these cases were comparable or relevant to the applications made by the two tenants, at this hearing. Both parties were given ample time during this hearing to present their submissions. I note that the written submissions provided by lawyer ZM, refer to these two cases for their guest visitor policies, which are issues in the two tenants' substantive applications, which were not heard or determined at this hearing.

### Findings

On a balance of probabilities and for the reasons stated above, I find that the living accommodation provided by the landlord to the two tenants is for transitional housing. The *Act* specifically excludes living accommodation provided for transitional housing. Accordingly, I find that I am without jurisdiction to consider the two tenants' applications because they are excluded by section 4(f) of the *Act*.

For the above reasons, I find that the two tenants' applications are not matters within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the two tenants' applications.

### Conclusion

I decline jurisdiction over the two tenants' applications (tenant NM and tenant DS). I make no determination on the merits of the two tenants' applications. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction, regarding the two tenants' applications.

The three tenants' applications (tenant AJ, tenant SP, tenant JK) are dismissed in their entirety, without leave to reapply.



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 23, 2022

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Residential Tenancy Branch