



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FFT

Introduction

This hearing dealt with the applicant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The applicant has applied to dispute a rent increase and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the applicant's agent, DG (applicant agent), counsel for the respondent, KG (counsel) and an agent for the respondent, LB (respondent agent). At the outset of the hearing, the hearing process was explained, and all parties were affirmed except for counsel, who has already sworn an oath when called to the BC Bar. Both parties were provided an opportunity to ask questions.

As neither party raised any concerns regarding having been served with documentary evidence and having had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

At the outset of the hearing, the respondent's counsel submitted that they believe the Act does not apply to this living arrangement and requested that jurisdiction be considered.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issue(s) to be Decided

1. *Jurisdiction*: Does the Act apply to this living arrangement?

Background and Evidence

There is no dispute that the applicant occupies a unit at a residence designed for seniors. There is no dispute that the residence has many units and offers both independent living services and assisted living services. In the matter before me, the applicant is receiving independent living services.

Counsel submits that the Act does not apply to this living arrangement due to section 4(g)(v) of the Act, which states:

What this Act does not apply to

4 This Act does not apply to

(g) living accommodation

(v) in a housing based health facility that provides hospitality support services and personal health care...

Counsel referred to the *Community Care and Assisted Living Act* (CCALA) under section 1 which defines “hospitality services” as follows:

“hospitality services” means meal services, housekeeping services, laundry services, social and recreational opportunities and a 24-hour emergency response system

Counsel also submitted two internet searches as follows:

1. (Source = <https://www.toppr.com/ask/question/what-is-personal-health-and-community-health/>)
Question
What is personal health and community health?

Personal health refers to mental, physical and social well-being of an individual, while community health is about enhancing and maintaining the health of the entire community (population).

2. (Source = Encyclopedia.com)

Personal Health Services – are the services that an individual receives from others to address health problems or for health promotion and disease prevention.

In addition, counsel also referred to the following document in support of their position as follows:

EVIDENCE OF HOSPITALITY SUPPORT SERVICES PROVIDED AT THE [REDACTED]

“Hospitality Services” as defined in the *Community Care and Assisted Living Act* [SBC 2002] Chapter 75 means “meal services, housekeeping services, laundry services, social and recreational opportunities and a 24-hour emergency response system”

- One meal per day and afternoon tea service on (M-W-F) included in monthly fee, with ability to have additional meals for and additional fee
- Resident meal cards
- Weekly housekeeping (included in monthly fee)
- Use of laundry facilities (no charge), or may arrange for personal laundry services at an additional charge
- Arranging for dry cleaning services (resident pays for cost of dry cleaning without markup)
- Scheduled outings with transportation and on site activity programs (generally no charge; some exceptions for particular outings)
- Emergency call buttons in suite (bedroom and bathroom) (no charge)
- Emergency Pendant Services
- 24-Hour onsite First Responder

See Page 3 of Standard Resident Agreement submitted by Applicant

See Pages 4, 8, 10, 13, 14 and 17 of Resident Handbook submitted by Applicant

See selection of Recreational Calendars for 2019 through 2022 submitted by Respondent

See Emergency Pendant Service agreement submitted by Respondent

See BC Seniors Living Association’s Seal of Approval designation documents, specifically Standard 1.01, 1.02, 3.16, 3.17, 3.18 and 3.19

EVIDENCE OF PERSONAL HEALTH CARE PROVIDED AT THE [REDACTED]

“Personal Health Care” is generally understood to be the care of an individual’s mental, physical and social well-being. Services provided for personal health care are generally those that an individual receives to address health problems or for health promotion and disease prevention.

- Annual onsite Influenza immunization clinics
- Therapeutic recreation 7 days a week (developed with Recreation Therapist)
- Emergency Pendant Services
- Twice daily health & safety check (knock on suite door; enter to check on residents well being if no answer)
- Weekly onsite medical clinic
- Monthly Podiatrist visits
- Onsite COVID-19 immunization clinics (4 - 2 shots and 2 boosters)
- Arranging for community health care professionals to come in and provide wellness talks
- Regular communication with Island Health case managers regarding needs of IL residents
- Scheduled outings with transportation and on site activity programs (generally no charge; some exceptions for particular outings)

See Pages 8, 9, and 14 of Resident Handbook submitted by Applicant
See October 29, 2021 Email submitted by Respondent
See Emergency Pendant Service agreement submitted by Respondent
See Advertisement flyer for [REDACTED] and team submitted by Respondent
See Advertisement flyers for Health Talks with [REDACTED] submitted by Respondent
See selection of Recreational Calendars for 2019 through 2022 submitted by Respondent
See BC Seniors Living Association's Seal of Approval designation documents, specifically Standard 2.08, 3.10, 3.11 and 3.18

The applicant agent believes that the definition provided for "personal services" is too broad. Counsel reiterated that the definition is not for "personal services", it is for "personal health care services", which are not the same.

The applicant agent did not submit documentary evidence to refer to during the hearing but did speak about the BC Housing Independent Living Program (BCHILP). According to the BC Housing website, the following is a description of the BCHILP:

Independent Living BC Program

A subsidized, assisted-living program that provides housing with support services to seniors and people with disabilities.

About the program

Independent Living BC (ILBC) is a subsidized, assisted-living program that provides housing with support services to seniors and people with disabilities.

If you qualify, you could live in your own unit in an [assisted living residence](#). The residences are located in communities across B.C. Each residence has private units, shared dining and social areas, housekeeping services, personal care services and emergency response.

Independent Living BC is a partnership between BC Housing, provincial health authorities, the Canada Mortgage and Housing Corporation (CMHC), and non-profit and private-market housing providers. The program's assisted living units provide a middle option between home care and residential care, so individuals can continue to live independently.

According to the applicant agent, the twice daily checks are when staff flip over a sign in the morning and the evening. The applicant agent did confirm that the applicant wears the 24-hour emergency pendant, which is part of the services provided to those receiving independent living services.

The applicant agent states that the applicant, his mother, receives their prescriptions from a local pharmacy and not at the residence.

Counsel stated that whether or not the applicant uses services does not detract from the fact that the services are offered such as what was described on page 3 above.

The applicant agent referred to 2 prior decisions posted to the RTB website under Previous Decisions as follows:

- A. Decision dated April 25, 2016 regarding St. John The Devine Abbeyfield House Society. (Decision A)
- B. Decision dated October 28, 2014 regarding West Shore Lodge (Decision B)

The applicant agent wanted both decisions to be reviewed prior to a decision being rendered. In response, counsel submits that Decision B is distinguishable from the matter before me, as the parties concurred that no personal health care services were being provided.

Counsel also stated that staff of the residence have either a nursing or care aide background and remain in a position to determine if residents continue to conduct themselves in a safe manner while in the independent living program, which means they are being constantly assessed on a daily basis by staff. The respondent agent testified that first responders do twice daily check-ins with all residents that consist of more than just flipping over a placard in the hallway and actually have a face-to-face conversation with residents daily.

Counsel also submits that health care is more than just physical well-being, that it is also includes social wellbeing and mental wellbeing, and includes the promotion of health and disease prevention, not just about immediate health care concerns.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I have reviewed both Decision A and Decision B as requested by the applicant agent. I also note that section 64(2) of the Act applies and states:

64(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Given the above, I find that I am not bound by Decision A or Decision B; however, will make a finding on whether Decision A or Decision B are distinguishable from the specific matter before me.

Regarding Decision A, it is distinguishable as the subject retirement home was also a registered charity, which is not the same as the matter before me. In addition, Decision A makes no mention of a 24-hour emergency pendant/alarm system. Therefore, I find that I am not persuaded by Decision A.

Regarding Decision B, it is also distinguishable as the parties agreed that the tenant in that matter was not provided personal care and term 9 of their tenancy agreement stipulated that the property is not a health care residence. Therefore, I find that I am not persuaded by Decision B.

I will now address whether section 4(g)(v) of the Act applies to the living accommodation before me. Section 4(g)(v) of the Act states:

What this Act does not apply to

4 This Act does not apply to

(g) living accommodation

(v) in a housing based health facility that provides hospitality support services and personal health care...

The first test is to determine if the living accommodation is a housing based health facility. I have considered the submissions of counsel and the applicant agent, the latter of which referred to the Independent Living BC Program details from BC Housing. I find that the residence in this matter is a housing based health facility based on the fact Independent Living BC (ILBC) refers to housing including support services to seniors and I agree with counsel that health includes social health, physical health and mental health in addition to the promotion of health and disease prevention.

The second test is to determine if hospitality support services are provided. I find the CCALA defines hospitality services which includes meal services, housekeeping services, social and recreational opportunities and a 24-hour emergency response system, of which I find the residence in this matter provides. Therefore, I am satisfied that hospitality support services are included.

The third and final test is to determine if personal health care services are provided. Counsel referred to the definitions from two websites described above and states the following also in their documentary evidence:

"Personal Health Care" is generally understood to be the care of an individual's mental, physical and social well-being. Services provided for personal health care are generally those that an individual receives to address health problems or for health promotion and disease prevention.

I find that counsel's description of personal health care is a reasonable description and agree that personal health care is the care of an individual's mental, physical and social well-being and does not apply to physical care only. I also agree that services provided for personal health care are generally those that an individual receives to address health problems or the promotion of health and disease prevention. Furthermore, I agree with counsel that whether or not the applicant uses the services provided does not detract from the fact the services are offered to all residents.

I afford significant weight to the fact that the applicant in this matter is provided a 24-hour pendant alarm system and has access to 24-hour on site first responder, in addition to twice daily checks on the applicant that according to the respondent agent includes face-to-face contact and does not just involve turning over a placard on the outside of their door.

Given all of the evidence before me, I find that section 4(g)(v) does apply to the living accommodation before me and that the Act does not apply as a result.

Consequently, I decline to hear this matter due to a lack of jurisdiction.

I do not grant the filing fee due to a lack of jurisdiction.

Conclusion

Based on the above, I find the Act does not apply to the living accommodation as noted above.

I do not grant the filing fee.

This decision will be emailed to applicant agent and the respondent agent.

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 27, 2022

Residential Tenancy Branch