



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OPT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for the tenant, pursuant to section 54 of the *Act*.

The manager of supportive housing, the manager of residential services, the team lead of residential services, the resident services co-ordinator (collectively the "landlord's representatives") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed email addresses for service of this decision and order.

### Preliminary Issue- Service

The tenant testified that he personally served the manager of resident services with this application for dispute resolution but could not recall on what date. The manager of

resident services testified that she received the tenant's application for dispute resolution on May 31, 2022. I find that the landlord was served in accordance with section 89 of the *Act*.

The manager of supportive housing testified that the tenant was personally served with the landlord's evidence on June 6, 2022. The tenant testified that he received the landlord's evidence on or around June 6, 2022 in person. I find that the tenant was served in accordance with section 88 of the *Act*.

#### Preliminary issue- Jurisdiction

The manager of resident services testified that the *Act* does not apply and that I do not have jurisdiction to hear the tenant's application for dispute resolution.

I asked the landlord's representatives what section of the *Act* their argument for lack of jurisdiction was based on, none of the landlord's representatives were able to provide a section of the *Act* to support their position.

The manager of residential services submitted that the *Act* does not apply because the tenant signed a Supportive Program Participant Agreement (the "Agreement"), not a tenancy agreement.

The Agreement was entered into evidence and sections 1-4 state:

1. This Agreement provides for the Program Participant's participation in Support Services provided by the Provider (as defined in this Agreement).
2. The Support Services are intended to assist the Program Participant in addressing and enhancing life skills, restoring the ability to maintain healthy, independent lives and eventually maintain an independent tenancy.
3. The Program Participant will receive Housing First accommodation from the Provider in recognition of the need for stable accommodation while the Program Resident receives the Support Services.
4. The housing at [the subject property] will be provided only while the Program Participant complies with the terms of this Agreement. (For the purposes of this Agreement, "Building" includes any land or other premises associated with the Program Accommodation and the building(s) in which it is located.)

The Agreement states at section B(2):

The *Residential Tenancy Act* (or successor legislation) does not apply to this Agreement. The Program Accommodation is exempt from the *Residential Tenancy Act* (or successor legislation) as the Program Accommodation is only made available in the course of providing the Program Participant with the Support Services.

Section 4 of the *Act* states:

This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
  - (i) are primarily occupied for business purposes, and
  - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
  - (i) in a community care facility under the *Community Care and Assisted Living Act*,
  - (ii) in a continuing care facility under the *Continuing Care Act*,
  - (iii) in a public or private hospital under the *Hospital Act*,
  - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
  - (v) in a housing based health facility that provides hospitality support services and personal health care, or
  - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,

- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the [\*Manufactured Home Park Tenancy Act\*](#) applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

The manager of residential services testified that the living accommodation is not a housing-based health facility and does not provide tenants with hospitality support services or personal health care. The manager of supportive housing testified that the on-site support staff act as a bridge between the residents and the community and that the staff help the residents access supports in the community. The manager of residential services testified that the accommodation is not made available in the course of providing rehabilitative or therapeutic treatment or services.

Based on the above testimony I find that the section 4(g)(v) and section 4(g)(vi) exemptions do not apply.

Residential Tenancy Branch Policy Guideline #46 (PG #46) states:

Section 4 of the Act states the Act does not apply to living accommodation provided for emergency shelter or transitional housing. Under section 1 of the Residential Tenancy Regulation, “transitional housing” means:

- (a) living accommodation provided 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.

....

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.

The manager of residential services testified that the living accommodation can be for an indefinite term and that the length of a program participants stay depends on the needs of the program participant. I find that the living accommodation provided by the landlord does not meet the definition of transitional housing because tenants do not need to transition to more permanent accommodation. I therefore find that the section 4(f) exemption does not apply.

I note that while the Agreement states at section B(2) that the *Act* does not apply, as per section 5 of the *Act*, the landlord is not entitled to contract out of the *Act*. The landlord cannot elect for the *Act* not to apply simply because the Agreement says so. Section 4 of the *Act* sets out the types of living accommodations for which the *Act* does not apply. I find that the landlord has failed to prove that any of the section 4 exemptions apply and clearly testified that the exemptions in section 4(g)(v), and 4(g)(vi) of the *Act* don't apply.

PG #46 states:

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.

Based on the testimony provided by the landlords' representative regarding the long term and possibly indefinite duration of the tenancies and the support to community services provided by the landlord, I find that the landlord provides supportive housing, and the *Act* applies.

#### Issue to be Decided

Is the tenant entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant and the landlords' representatives, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's representatives' claims and my findings are set out below.

Both parties agreed that the landlord and the tenant entered into the Agreement which was entered into evidence and states that this tenancy began on April 16, 2019.

The manager of supportive housing testified that a 24 hour notice of eviction was posted on the tenant's door on May 18, 2022 following an incident where the tenant spat on a staff member. Both parties agree that the tenant moved out of the subject rental property on May 19, 2022. The tenant testified that the police were in attendance, and he did not feel like he had a choice. The tenant testified that the landlord took his key, and he has been homeless ever since.

The manager of supportive housing testified that page 9 of the Agreement provides the landlord with authorization to issue the above 24 hour notice of eviction. Section R(1) of the Agreement states:

The Provider may choose to terminate this Agreement at any time by giving the Program Participant less than twenty-four (24) hours written notice if the Program Participant has committed a serious act of violence towards or has seriously jeopardized the health or safety of any staff, guests, or other occupants of the Building or members of the community.

The manager of supportive housing testified that the subject apartment is currently vacant.

The tenant testified that he did not spit on the staff member. The tenant testified that he has tenant rights, and the landlord was not permitted to evict they way they did. The tenant testified that he is homeless and wants to move back in.

## Analysis

The *Act* does not provide the landlord with the right to end a tenancy with 24 hours notice. Section 47 of the *Act* sets out the grounds for which a landlord can end a tenancy for cause and section 56 of the *Act* sets out the grounds for which the landlord can apply for an early end to a tenancy, earlier than that provided for under section 47 of the *Act*.

The landlord did not serve the tenant with a One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*, and the landlord did not file an application with the Residential Tenancy Branch for an early end to tenancy under section 56 of the *Act*.

I find that the landlord had no authority to evict the tenant with 24 hours' notice.

Pursuant to section 5 of the *Act*, I find that section R(1) of the Agreement is void and of no force or effect because it seeks to contract out of the end of tenancy for cause provisions, and timelines for eviction found in sections 47 and 56 of the *Act*.

Section 54 of the *Act* states:

- 54** (1)A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.
- (2)The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.
- (3)The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

I find that the Agreement is supportive housing tenancy agreement. I note that all provisions of the Agreement that seek to contract out of the *Act* are null and void. Pursuant to section 54 of the *Act*, I grant an Order for Possession to the tenant because the landlord had no authority to evict him with only 24 hours' notice, rendering him homeless.

Conclusion

Pursuant to section 54 of the *Act*, I grant an Order of Possession to the tenant, effective at the time the landlord or an agent of the landlord is served with the Order of Possession. Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 13, 2022

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Residential Tenancy Branch