



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEASIDE VILLA MOTEL & RV
PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNR-DR, OPR-DR, FFL**

Introduction

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

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Applicant and Legal Counsel, and the Respondent's Community Development Manager, and the Finance and Administration Manager, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

The Applicant personally served the 10 Day Notice on the two guests in the room, and the service team for the Respondent on March 10, 2022. The Applicant uploaded a Proof of Service form #RTB-34 attesting to service of the 10 Day Notice. The Respondent's service team confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was served on the guests and the Respondent's service team on March 10, 2022 pursuant to Section 88(a) of the Act.

The Applicant testified that they served the Respondent with the Notice of Dispute Resolution Proceeding package-OP/MN on April 21, 2022 by personal service and by Canada Post registered mail (the “NoDRP package-OP/MN”). The Respondent confirmed receipt of the registered mail package. I find that the Respondent was deemed served with the NoDRP package-OP/MN five days after mailing them on April 26, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Applicant served the Respondent with the Applicant’s evidence and Amendment by Canada Post registered mail on July 11, 2022. The Applicant referred me to the Canada Post registered mail receipt and tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Applicant’s evidence and Amendment was deemed served on the Respondent on July 16, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Applicant entitled to an Order of Possession for a 10 Day Notice?
2. Is the Applicant entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Applicant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on September 17, 2021. The two guests who reside in the rental unit are clients of the named Respondent in this matter and the Respondent stated the two guests were placed temporarily in the Applicant’s rental unit. Monthly rent is \$1,575.00 inclusive of GST. A security deposit was not collected from the Respondent but rather the rental unit was secured by an agreement struck with the Respondent. That agreement states:

Where [the Respondent] is the renter of [the Applicant’s] units:

1. *These are [the Respondent’s] responsibility to clean after client vacates the unit. [The Respondent] will be responsible for repairing damage above expected wear and tear.*

2. *[The Respondent] will evict/move out clients when needed, in agreement with [the Applicant] and community partners (name).*
3. *Contract term will be the same as the current 3 rooms rented to [Government of BC], if [Government of BC] housing ends the contract, we will end the additional room rentals at the same time, if not before, unless another agreement is in place.*
4. *If the guests in [room #] significantly interferes with or unreasonably disturbs the landlord or other occupants, [the Respondent] will be responsible for their removal.*

(name)- this agreement is in regards to the sisters you met week before last- they are paying \$1200, we are subsidizing them \$300 and they are our clients and responsibility as there are no more available [Government of BC] units. When [Government of BC] units become available, we will move folks on to those.

The Applicant's Legal Counsel submits that tenancy agreements can be written or oral. Further, Legal Counsel argues that the Respondent "*is responsible*" for the guests that were put up in the Applicant's residential property. Full rent payments of \$1,575.00 came directly from the Respondent, as the Respondent stated in their email, the "*Respondent is the renter of the Applicant's unit.*" In the guests' situation, they were to pay the Respondent \$1,200.00 per month, and the Respondent was to provide a \$300.00 subsidy on top of that amount. The \$1,200.00 portion of the rent is not subsidized and is within the jurisdiction of the Act.

The Respondent testified that they are a non-profit housing operator whose housing is funded by the Government of BC. The housing provided for the guests was of a temporary arrangement, and the guests were in receipt of support resources through the Respondent's homeless outreach program. The guests were to pay \$1,200.00 for the temporary housing and the Respondent would provide \$300.00 in funding through the Government of BC. The Respondent stated that the guests temporary housing was fully funded by the Respondent, as the Respondent did not receive any monies from the two guests.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 75 of the Act, outlines what admissible evidence can be. It states:

Rules of evidence do not apply

75 *The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be*

- (a) necessary and appropriate, and*
- (b) relevant to the dispute resolution proceeding.*

RTB Policy Guideline 46-Emergency Shelters, Transitional Housing, Supportive Housing is intended to help parties understand issues that are likely to be relevant in their matter. Section 4(f) of the Act states that the Act does not apply to living accommodation provided for ... transitional housing. Section 1 of the *Residential Tenancy Regulation* (the "Regulation") states:

Definitions

1 ...

- (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.*

RTB Policy Guideline #46 further explains 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.

The Respondent stated that their program fits all the criteria defined in the Regulation of what transitional housing is. The Respondent testified that they are a non-profit housing operator whose temporary housing is funded by the Government of BC, and the guests were in receipt of support resources through the Respondent's homeless outreach program.

The Applicant's Counsel submitted that the guests were paying \$1,200.00 for the rental unit, while the Respondent subsidized \$300.00 of the rental amount. However, the Respondent further testified that the Respondent was fully paying for the guests' accommodations of which this funding came from the Government of BC.

I find that the Act does not apply to the Respondent in this matter as the Respondent's situation is covered by all three of the criteria set out in the Regulation. I dismiss the Applicant's application without leave to re-apply.

Conclusion

The Applicant's application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 23, 2022

Residential Tenancy Branch