



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 Code: OPT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant filed under the Residential Tenancy Act (the “Act”) for an order of possession.

This matter commenced on July 8, 2022 and was unable to complete due to insufficient time. The interim decision issued on July 11, 2022, should be read in conjunction with this Decision.

The matter reconvened on August 2, 2022; however, was adjourned at the request of the applicant’s advocate as they wanted to wait for the outcome of a Supreme Court matter to be heard on August 10, 2022. The interim decision issued on August 2, 2022, should be read in conjunction with this Decision.

The matter reconvened on September 2, 2022; however, was adjourned at the request of the respondent’s legal counsel as their witness NT was not available. The interim decision issued on September 7, 2022, should be read in conjunction with this Decision. This matter was adjourned to October 12, 2022.

On October 4, 2022, the respondent’s legal counsel attended with their remaining witness NT. The applicant and the applicant’s advocate appeared. The hearing proceeded past the allotted time and was able to complete.

I have reviewed the testimony of the parties and their submissions.

Testimony and submissions provided during the hearing on the reasons why the Applicant was removed from the program have not been recorded as they are not relevant to the issue of jurisdiction.

Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction?
Should the Applicant be granted an order of possession?

Background and Evidence

The Applicant was homeless when they obtained living accommodations. The Applicant entered into a program agreement on September 5, 2020, with the Respondent and the Applicant agreed to participate in the program and pay \$375.00 towards the cost of the program. A copy of the program agreement was filed in evidence.

Counsel for the Respondent submits that this matter does not fall with the jurisdiction of the Residential Tenancy Branch as this is a women's only transitional housing under section 4 (f) of the Residential Tenancy Act ("the Act") and the Act does not apply to this program agreement. Counsel submits that the Respondent meet the criteria under the Residential Tenancy Regulations ("the Regulation").

Counsel for the Respondent refers to the affidavit of VL, the chief operating officer of the society, their written response and their book of authorities.

VL witness for the Respondent confirmed under affirmation that the affidavit filed is evidence is accurate and true, which I have reproduced in part as follows. I have removed identifying names and the name of the building for privacy reasons.

2. EFry is a charitable organization that supports some of society's most vulnerable populations — women, girls and children at risk, involved in or affected by the justice system. EFry's more than two dozen programs help women affected by poverty, homelessness, addictions, mental illness, or justice involvement, to restore their lives. EFry's programs include housing programs, homeless shelters, counselling programs and addiction treatment programs.

6. Each bachelor suite-style unit at [Building name removed] features a bed, table and chair, kitchenette with a microwave and small fridge, and a bathroom. Bedding, dishes and cleaning supplies are also provided. In addition, there is a shared amenity space and laundry facilities.

7. [building name removed] provides residents with breakfast and dinner daily. In addition, there are at least two EFry support staff on-site 24/7.

8. EFry's purpose in operating [Building name removed] is to assist residents in stabilizing their lives and in their transition to independent housing. EFry achieves this purpose by, among other things, providing case management services to help residents address challenges including mental health needs and substance abuse.

9. EFry operates [Building name removed] pursuant to an operator agreement with BC Housing (the "Operator Agreement"). As part of the Operator Agreement, EFry receives funding from BC Housing. Attached as Exhibit "B" to this Affidavit is a true copy of the Operator Agreement, dated January 10, 2019.

10. In order to reside at [Building name removed], women enter into a program agreement with EFry, pursuant to which they agree to pay a monthly program fee of \$375. Attached as Exhibit "C" to this Affidavit is a true copy of the program agreement and community living This is the correct spelling of [name remove]. 3 standards that all women currently sign prior to beginning their participation in the [Building name removed] (the Program Agreement").

11. The Program Agreement provides that participation in the [Building name removed] program, among other things: (a) is temporary in nature; (b) provides access to a range of services intended to assist each resident to become better able to live independently and to facilitate eventual transition to suitable alternative housing; (c) is expressly not governed by the B.C. Residential Tenancy Act (the "RTA") as the program constitutes "transitional housing" under the Residential Tenancy Regulation; and (d) is based on the resident's understanding and agreement that they will conduct themselves according to certain community living standards, including behavioural requirements, which stipulate that, among other things, violent and abusive behaviour such as punching and swearing will not be tolerated.

12. On September 5, 2020, [Applicant's name removed] entered into an agreement similar to the Program Agreement prior to commencing participation in the [Building name removed] program. Although the Program Agreement reflects revisions made in March 2021 to an earlier version, the revisions were made to more accurately reflect the [building name removed] program. The program itself, or its objectives, have not changed since the opening of [building name removed] Lodge.

13. Attached as Exhibit "D" to this Affidavit is a true copy of the program agreement entered into between the Applicant, [Applicant's name removed], and EFry, dated September 5, 2020.

14. Under the terms of the Program Agreement, including the version signed by the Applicant, the living accommodation provided by EFry at [Building name removed] may be terminated if the resident fails to uphold certain safety standards, including rules relating to appropriate communal living behaviour (the "Behavioural Rules"). Among other things, the Behavioural Rules state that violent or abusive behaviour such as swearing, striking, pushing or punching is not tolerated.

15. As all residents are required to acknowledge in the Program Agreement, [Building name removed] provides accommodation on a temporary basis. The temporary nature of the [building name removed] program is accordingly discussed with each resident at the outset of participation. Each resident's transition towards independent housing is thereafter regularly assessed, and at least every three months.

16. EFry aims to assist women to transition to independent housing when they no longer require the programs offered at [Building name removed]. For that reason, the length of stay for each resident is determined on a case-by-case basis, since it is highly variable and dependent on each woman's individual circumstances and progress.

17. Although the length of stay varies for each resident, the average length of stay is approximately 10.5 months, with most women moving to live independently within one year. In some cases, women stay at [Building name removed] for as little as a few months, for example when they are not prepared to live indoors. In other cases, women remain at [Building name removed] for closer to two years. In the approximately 22 months that EFry has been operating

[Building name removed], 25 participants have moved on, the majority of whom have done so within one year. Programs for Independent Living

18. As explained above, EFry does not provide standalone accommodation at [Building name removed]. Instead, each resident participates in the [Building name removed] program, the primary goal of which is to assist residents to become better able to live independently.

19. The case management program is designed to assist women with developing a case plan around goals she wishes to reach and begins at the intake stage. A case plan may cover a wide variety of issues, including in relation to health care, mental health, substance use, finances, and housing.

20. Other programs provided at [Building name removed] include life skills programs, counselling programs, education and employment support programs, and social and recreational programs. EFry's programming at [Building name removed] is meant to facilitate housing readiness by enhancing life-skills, financial literacy, interpersonal effectiveness, wellness and prosocial networks.

21 EFry also provides trauma-informed support and care at [Building name removed], in order to help stabilize and support the needs of women who have experienced violence and/or other trauma. Without such specialized care, women are less likely to become better able to live independently.

22. Most of the programs available to residents at [Building name removed] are offered on-site, with various service providers attending at [Building name removed] to provide programming to residents. For example, residents have access to mental health teams, outreach workers, and nurses who regularly visit [Building name removed].

23. In addition, EFry offers a resource and referral program, in order to connect residents with service providers in the community.

24. Although the type of program and the format in which it is offered is variable, all of the programs offered by EFry at [Building name removed] are intended to assist residents to become better able to live independently. EFry Must Ensure a Safe Communal Living Environment Free of Violent Behaviour

25. [Building name removed] is designed to provide a supportive living environment for women who are homeless or at risk of homelessness in order to support their transition to independent living as soon as possible. To serve this purpose, it is necessary that those who reside at [Building name removed] engage in appropriate communal living behaviour.

30. On June 3, 2022, under the aforementioned terms of the Program Agreement which allow for termination of living accommodation at [Building name removed] if the Behavioural Rules are not respected, EFry requested that the Applicant leave [Building name removed] within the next 48 hours and by 1 pm on June 5, 2022. Attached as Exhibit "F" to this Affidavit is a true copy of the letter advising the Applicant of her discharge from the [Building name removed] program as a result of her breach of the Program Agreement, dated June 3, 2022.

[Reproduced as written]

VL witness for the Respondent testified that the program is designed for those women hardest to house and is temporary facility where the goal is to work with their issues and resolve issues that stop these women from being housed in the community.

VL witness for the Respondent testified that BC Housing and Efry do an interview with the client and assessments and do a suitability assessment for the accommodations and the client is told this is a temporary facility. This would also be told to the client when they were accepted into the program and again on intake. VL stated the Applicant was informed on three occasions that this was temporary housing. VL stated at that time the Applicant's housing plan was to work towards obtaining permanent senior housing.

NT witness for the Respondent testified that they are the Director of Social Justice and Equity at the society. NT testified that the society provides programs and services that are intended to assist the participants in the program to work towards independent living. NT stated that the participant of the program are required to meet with their case manager regularly and to develop a general plan to move on to independent living as soon as possible.

NT testified that they have many programs and services either through the society, links within the community or federally funded programs. These are offered and intended to assist the participants of the program to obtain independent living.

NT testified that the program helps participants to obtain identification, find resources, such as CPP disability to support their income and to be able to move on to independent living. They also assist participants with other supports, such as onsite counselling, and other life skills to enhance the participants position and to gain life skills, such as budgeting, problem solving , anger management, wellness, and mental health; and they work through barriers that may impact independent living, such as hoarding.

NT testified that they also have programs through the community for job training, such as carpentry, joinery, painting and horticulture programs. The participants can also participate in programs to obtain certificates, such as operating a bobcat, or forklift, but most prefer the horticulture program.

NT testified that although the Applicant applied for the federal funded horticulture program they were not approved; however, they did participate in the community garden program in conjunction with the city.

NT testified that the participants can also initiate their own interest, and the Applicant did so by spearheading a group and working on a recipe book that was to provide cost effective, nutritious meals, with ingredients that are readily available as this would be a tool for independent living as meals would no longer be provided when they left the program.

NT testified that the primary goal for all the women of the program is to obtain and be able to maintain safe independent living and to ensure they are well linked with community resources and most women have moved on in less than one year. NT stated while it may be possible that a client could stay longer in the program than the two-year guideline; however, that would have to be assessed and considered.

NT testified that even prior to the entering into the program agreement there is a process that each applicant must go through. There are meetings, referrals, assessment, as this is a gated program. BC Housing determines eligibility and if the participant meets the requirement they jointly offer the applicant a spot in the program, and the nature of housing, the agreement, rules, and the length of program is discussed.

NT testified that the Applicant met with their case manager regularly, and participated in some programs; however, the Applicant was more independent and wanted to do most things on their own and had their own mental health team.

The Applicant testified that they meet with their case manager on many occasions and no programs were offered to them. The Applicant stated they asked for many things and never got any help, such as mental health. The tenant asked the witness NT what programs were offered to them.

NT the witness responded that you were very articulate, and self directed, you had given us the message that you were independent, even for your searching for independent housing. NT stated that the program is self directed and it was up to the applicant to choose the programs you wanted to participate in. NT stated that the Applicant had their own mental health team and there was no break in that support or services, and the Applicant could have accessed the onsite counselling if needed; however, it is up to the participant to do so. NT stated that it is not up to the society to force participants into specific programs as all the programs offered are intended to help with independent living.

Legal counsel for the landlord submits the landlord has met the requirements of the Act that this is transitional housing as defined in Section 4(f) of the Act, and Regulations

Legal counsel submits that this housing is offered on a temporary basis and the goal is for the participant to move onto independent living as soon as possible, which the applicant was informed three times before the agreement was signed and is clearly in the agreement.

Legal counsel submits that the Respondent operates the program through funding from BC Housing.

Legal counsel submits that there is more than sufficient evidence, that the organization offers significant programs which are Intended to assist the participants to be able to live independently.

Legal counsel submits although not binding they have provided prior decisions made by the Residential Tenancy Branch, with their main focus was on a Decision made on February 23, 2022, which copies are provided in their book of authority. Counsel submits the same fact were present, same program agreement, housing provided on a temporary basis, and the same operating agreement and no jurisdiction was found.

The Applicant testified that before they moved into the living accommodation they lived in their car and then in a shelter.

The Applicant testified that nowhere in any of the documents that it indicates that this is transitional housing, only supportive housing. The Applicant stated that the Respondent has indicated that 25 residents have moved on; however, 20 of those residence are homeless. The Applicant stated that every time there was an incident they received a letter. The Applicant stated that they do not remember all the details within those letters; however, they believe the letter referring to an incident in August 2021 referred to the Residential Tenancy Act. The Applicant stated they have a copy; however, they have not been able to access their personal property.

The advocate for the Applicant submits the following. The advocate referred to section 2 of the Act. The advocate referred to section 5 of the Act, which states the Act does not allow any party to avoid or contract outside of the Act, which they believe the Respondent has not met the three-part test under the Regulations and Policy Guideline 46 and this should be considered supportive long-term housing and the Act would apply.

The advocate for the Applicant submits that the tenant has provided several documents, which includes a press release from the government on the subject property and it refers to supportive housing and what it does not say is that it is transitional housing.

The advocate for the Applicant submits that the Applicant has referred to a previous letter, which made reference to the Act and the Respondent has issued notice to end tenancy under the Act for other residents and the issue of jurisdiction was not raised at prior hearings.

The advocate for the Applicant submits the operational agreement is for 10 years and it does not indicate if the funding is meant to be for transitional or supportive housing and the word supportive housing is used loosely. The advocate stated that is hard to believe if the property is leased for 10 years that this could not simply be supportive long-term housing.

The advocate submits while it may be an intended guideline that the housing would be only provided for two years; however, some occupants leave and come back, and it is

possible for others to stay longer. The advocate stated the Respondent has not met the first test.

The advocate for the Applicant submits that the operation agreement does provide funding, however, it does not state that it is for transitional housing and there is no restriction on the funding. The Advocate stated that the Respondent has not met the second test.

The advocate for the Applicant submits that the programs provided can also apply to supportive housing and this would be just as effective and the Responded has not met the third test.

The advocate for the Applicant further submits that a petition has been filed in Supreme Court on a prior decision made on jurisdiction relating to this property.

Legal counsel for the Respondent argued that you cannot put a label on the word supportive, whether it is called transitional housing or supportive housing as it is the requirement of the Act, Regulation and Policy Guideline 46 that makes that determination, and this was also said in the decision which they have referred to in their book of authorities.

Legal counsel for the Respondent submits while the Applicant referred to a reference being made regarding the Residential Tenancy Act in a letter given to the Applicant after the August 2021 incident; however, they do not have a letter on file and the Applicant had many opportunities to go through their belongings and present such evidence. Legal counsel submits that the tenant's advocate cannot refer to past decisions when they have not provided any decision as evidence.

Legal counsel for the Respondent submits that the petition filed in Supreme Court on another file is irrelevant as the merits of that petition have not been heard.

Analysis

Upon consideration of the testimony and evidence before me, I provide the following findings and reasons.

In this matter the Respondent submits that this is transitional housing, and the Act does not apply in accordance with section 4(f) of the Act. The Applicant submission is that

this is supportive long-term housing, and the Act does apply in accordance with section 2 of the Act and the Act cannot be avoided.

I must determine if the facts in this case, meet all the criteria in the Act, Regulation and Policy Guideline 46.

Section 4(f) of the Act states, the Act does not apply to living accommodations provided for emergency shelter or transitional housing

Section 1(2) of the Regulation definition, 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.

Policy Guideline 46 provides guidance specifically related to Emergency Shelters, Transitional Housing, and Supportive Housing.

Transition Housing is defined in Part C of Policy Guideline 46 as:

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 (2) of the Regulation in order to be excluded from the Act, even if a transitional housing agreement has been signed.

[My emphasis added]

Supportive Housing is defined in part D of Policy Guideline 46 as:

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.

[My emphasis added]

In deciding as to whether the living accommodation is transitional housing or supportive housing, I turn to the criteria set out in the definition of “transitional housing” as provided under section 1(2) of the Regulations, as set out below.

a. living accommodation that is provided on a temporary basis

I accept the program agreement, and other documents such as the press release used the word “supportive housing”; however, I find I cannot simply rely upon the word “supportive” because transitional housing is intended to be supportive. It is the intent of the agreement whether this was to be temporary housing working towards independent living or supportive housing which is long-term or permanent living accommodation for individuals who need support services to live independently.

The advocate for the tenant argued that although the guideline for the living accommodation is for two years; however, that is not specifically addressed in the program agreement. The advocate argued that some residents can leave and then go back, and it is possible that some residents may be allowed to stay longer than the two years. The advocate argued that the operator agreement is for 10 years which means a

resident could be there for 10 years and this cannot be considered transitional housing; rather, it is long-term supportive housing.

In this case, I do not agree with the position of the advocate for the Applicant for the following reasons:

The Applicant was homeless and living in a shelter at the time they entered the program agreement.

The program agreement in part reads as follows:

“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 once monthly, to discuss my residency at [building name removed], and to identify goals and develop plans to remedy any concerns”.

[My Emphasis added]

Understand and agree, that my program participation and progress will be reviewed in order to set out my personal development and housing goals which will be assessed at least every three months by my primary worker. To be eligible for continued residency, I must 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 Emphasis added]

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 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.

[My Emphasis added]

I understand and agree, that my program participation and progress will be reviewed in order to set out my personal development and housing goals which will be assessed at least every three months by my primary worker. To be eligible for continued residency, **I must 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 Emphasis added]

The program agreement clearly sets out the Applicant is provided supportive housing and services and the Applicant is to work towards independence and to move on to independent living as soon as possible. The program agreement also requires the Applicant to set out personal development and a housing goal, which for the Applicant was to obtain senior housing. I find this cannot be interpreted as long-term or permanent housing if they are working towards independence and are to move on to independent living as soon as possible.

I find it would also be unreasonable that if this was to be long-term or permanent supportive housing that there would be a discharge plan if not actively progressing towards goals. This does not support long-term or permanent housing

In addition, the program agreement further states that the participation in the program is voluntary and is expressly not governed by the B.C. Residential Tenancy Act. This means the Applicant can leave at anytime, without any obligations. This would not support that this was for long-term or permanent housing as under a tenancy agreement a party can only end the tenancy in accordance with the Act.

Clearly the Applicant had to have known that they were to participate in programs and services and move on to independent living as soon as possible, which the Act would not apply while transitioning between homelessness, which the Applicant was at the time, and independent living.

While I accept some residence may go into the program and later come back and some may have left the program and are homeless again; however, that would support their housing is transitional and they were not ready, for whatever reasons, to work towards living independently. This is not what would be expected if under a supportive housing agreement for long-term or permanent housing.

While I accept the operator agreement between the Respondent and BC Housing is for a period of 10 years. However, this is a contract between the two parties for services and funding. That alone does not prove that the program is designed to be supportive long-term permanent housing, and this would be contradictory to the program agreement which state “to move to independent living as soon as possible” and contrary

to the operator agreement which is to connect residents to community supports and services such as: education; employment; health; life skills; **independent housing**.

Further, I accept some residents may be permitted to stay longer than the two-year guideline in the program; this is only speculating as I have no evidence that this has in fact occurred. However, that would be based on their individual needs, such as trauma, and assessments during the program. I find it would be reasonable and contrary to the needs of an individual if they were removed from the program by a random date, especially if their needs are different and have been making reasonable steps by participating in programs and services to work towards independent living.

While I accept the one incident report makes a reference to “letter of expectation re RTA”. Even, if I accept the letter contains such reference, which was not provided although the Applicant was given opportunities to retrieve their belongings, this does not necessarily mean the Act would apply. Transitional housing is determined by the Act, Regulation and Policy Guideline 46, regardless of what words were used or not used. Section 5 of the Act states the Act cannot be avoided, this would include section 4(f) of the Act.

In light of the above, I find that the accommodation is provided as temporary housing while the Applicant worked towards independent living.

b. living accommodation that is provided 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

In this matter, the living accommodation is provided by the society and has an operator agreement with BC Housing and receives funding through that agreement, while the operator agreement does not use the word “transitional”; however, the goal within the operation agreement is to reduce homelessness and provide the necessary support services, to individuals who are experiencing homelessness or are at a high risk of homelessness **and connecting residents to community supports and services** such as: education; employment; health; life skills; **independent Housing**. I find that the

society receives funding from the government of British Columbia for the purpose of providing that accommodation.

c. living accommodation that is provided together with programs intended to assist tenants to become better able to live independently

I find the Respondent does provide living accommodation together with programs as described in the background and evidence by VL and NT. The intent of the programs is assisting the residents to work towards independent living. This includes job training, financial management, life skills and many other programs offered for personal wellbeing.

While I accept that not all services or supports are onsite; however, the Respondent is connecting residents to community supports and services. As an example, you would not expect the Respondent to provide job training or education to a resident. These programs are clearly intended to assist residents in the program to become independent and to be able to maintain long-term or permanent housing.

While I accept the Applicant may not have participated in a lot of the support programs available to them; however, it was the Applicants responsibility to set their own goals and it was a personal choice whether they chose to participate and work toward independent living.

Based on the above finding, I find the living accommodations meets all of the criteria in the definition of “transitional housing” under section 1(2) of the Regulation and is exempt from the Act. The Act cannot be avoided. Therefore, I dismiss the Application for an order of possession due to lack of jurisdiction.

Conclusion

The Applicant’s application is dismissed. I find the living accommodations is transitional housing and is exempt from the Act.

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: October 17, 2022

Residential Tenancy Branch