



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST MENTAL HEALTH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The Applicant filed for dispute resolution on May 10, 2022 for a cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Respondent. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* on September 23, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the start of the hearing, the Applicant stated they provided notice of this hearing to the Respondent which the Respondent acknowledged they received. The Applicant stated they received evidence prepared by the Respondent in advance. On these assurances, I proceeded with the hearing as scheduled.

Preliminary Matter -- jurisdiction

On their Application the Applicant specified certain details of the agreement they have in place in their living arrangement: rent at \$375, payable the first day of each month with the agreement started on September 1, 2021. They did not provide a copy of a tenancy agreement.

The Respondent issued the One-Month Notice to the Applicant on April 29, 2022 for a move-out date of May 31, 2022. The Landlord on that document is named as a society formed in 1974. This is not the entity named as the respondent by the Applicant here. As well, the ‘Proof of Service’ provided by the Respondent names the same society as the Landlord who effected service of the One-Month Notice on April 30, 2022.

In their evidence, the Respondent provided a Service Agreement and Behavioural Agreement. This provides that the Service Agreement is between the “Tenant” (*i.e.*, the Applicant here) and “CMH”, a different entity as what appears named as the Landlord on the One-Month Notice. Additionally, the Service Agreement states, “As a tenant at “PCA” you will have housing and services provided by CMH staff while you are residing with us.” PCA is another separate entity.

The Service Agreement does not specify that the *Residential Tenancy Act* applies. The agreement does not provide for the terms of rent payable, nor the schedule thereof.

The Behavioural Agreement is between the entity named by the Respondent on the One-Month Notice, *i.e.*, the society formed in 1974, “CFS (1974)”. On page 2 of the Behavioural Agreement, there is reference to “Rent Payment to CMH in advance on or before the first day of each calendar month.” Also: “I understand and agree that the terms of this agreement are incorporated into and are material terms of my Residential Tenancy Agreement with CMH, dated August 08, 2021.”

The Respondent did not provide a copy of the Residential Tenancy Agreement in their evidence.

The *Residential Tenancy Act* s. 4(g) provides that it does not apply to living accommodation in a community care facility under the *Community Care and Assisted Living Act*. This is legislation that is separate and distinct from the *Residential Tenancy Act*.

In this scenario, I find the *Residential Tenancy Act* does not apply to this scenario. The Respondent did not provide a copy of the “Residential Tenancy Agreement” referred to in the Behavioural Agreement; therefore, I cannot establish that a landlord-tenant relationship between the parties exists, minus other evidence in which the relationship is explicitly established. In the hearing, the representative for the Respondent stated “[The Respondent] is not a typical landlord . . . there is not always a tenancy agreement.” Additionally, they described the situation as “an all-encompassing facility/program” which is more akin to what is set out in the *Community Care and Assisted Living Act*, particularly in s. 1 of that legislation that defines “assisted living residence” as having “assisted living services” that includes “assistance with behaviour management” and “psychosocial supports.”

Additionally, I am not satisfied a landlord-tenant relationship exists between the party that the Respondent named as the Landlord (*i.e.*, CFS (1974)) and the Applicant here.

This does not match to the party named on the Service Agreement. While the Behavioural Agreement mentions the provision of rent, it names CMH as the Landlord, which is not what matches to CFS (1974) on the One-Month Notice. There is no evidence of a Residential Tenancy Agreement in place to either rectify this inconsistency or state clearly that the *Residential Tenancy Act* applies. If there are a range of options available to a person living in this type of housing, the Respondent has not established that this is a situation with a landlord and a tenant.

For these reasons, I find the *Residential Tenancy Act* does not apply to this living arrangement, minus evidence to show that it does. I find it more likely than not that this living arrangement is not that of a landlord and tenant agreement. I am not satisfied the *Residential Tenancy Act* applies here; therefore, I decline to resolve this dispute between the parties.

Conclusion

The provisions of the *Residential Tenancy Act* do not apply to this situation. Based on these facts and an application of the legislation, I do not have jurisdiction to hear this Application.

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

Dated: October 5, 2022

Residential Tenancy Branch