



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, FFL

### Introduction

This hearing originated as a Direct Request proceeding. In an Interim Decision dated June 28, 2022 a participatory hearing was ordered due to concerns regarding jurisdiction. This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55; and
- authorization to recover the filing fee from the Respondent, pursuant to section 72.

The Applicant's agent (the "agent") and the Respondent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Respondent was represented by an articulated student ("Counsel") who was provided with a full opportunity to make submissions and to call witnesses. Counsel's supervising lawyer also attended the hearing but did not make submissions.

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 their email addresses for service of this Decision.

### Preliminary Issue- Service

Both parties agree that the Applicant's Application for Dispute Resolution, Notice of Reconvened Hearing, evidence and the Interim Decision were served on the Respondent in accordance with sections 88 and 89 of the *Act*. No service issues were raised in the hearing. I find that the Respondent was served with the above documents in accordance with sections 88 and 89 of the *Act*.

Both parties agree that the Applicant was personally served with the Respondent's evidence on October 25, 2022. The agent testified that he had an opportunity to review the Respondent's evidence. No issues with the service timeline were raised in the hearing. I find that while the Applicant's evidence was served on the Respondent six clear days before the hearing, rather than the seven clear days required under Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, I will admit the Respondent's evidence for consideration because the Applicant was not prejudiced by the late service. I find that the Applicant was not prejudiced by the late service because the agent testified that he had time to review the Respondent's evidence and did not contest its admission in the hearing.

### Issue

1. Does the Residential Tenancy Branch have jurisdiction to hear the Applicant's Application for Dispute Resolution?

### Background/ Evidence

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

Both parties entered into evidence a Supportive Program Participant Agreement (the "Agreement"), signed by both parties. The Respondent is named as the "Program Participant" in this Agreement and the Applicant is named as the "Provider". The Agreement states, in part:

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.....

#### **A. DURATION OF AGREEMENT**

This Agreement commences on Sept 17, 2020.

This Agreement ends on the date on which:

1. The Provider terminates the Agreement; or
2. The Program Participant terminates this Agreement.
3. The owner or agent of the owner issues a written notice to end t.204enancy [sic] to either the program Provider or Participant

#### **B. RIGHT TO OCCUPY**

1. The Provider grants the Program Participant the right to occupy the Program Accommodation subject always to the terms of this Agreement and the Program Participant's compliance with this Agreement and the terms of the Support Services.
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.
3. The Program Participant will use the Program Accommodation only for residential occupancy while receiving Support Services and will not conduct any trade or business from the Program Accommodation or act in any way that is inconsistent with or that interfered with the provision of Support Services to the Program Participant or any other occupant at the Building.
4. If this Agreement is terminated for any reason, the Program Participant must vacate the Program Accommodation.

### **C. RESPONSIBILITIES OF THE PROGRAM PARTICIPANT**

1. The Program Participant acknowledges that the Program Accommodation is provided for the purpose of receiving Support Services and will be available only while the Program Participant complies with the terms of this Agreement. The Program Participant will:
  - a. comply with the terms set out in this Agreement;
  - b. accept and cooperate with the provision of Support Services provided by the Provider which may include:
    - i. support for Program Participants to maintain their occupancy, including but not limited to:
      - a. directly assisting with room de-cluttering and/or normal cleaning and maintenance;
      - b. repayment plans for outstanding Program Accommodation Payments or other debts;
    - ii. individual or group support services such as life skills, community information, social and recreational programs;
    - iii. connecting the Program Participant to community supports and services such as education, employment, health and life skills and independent residential tenancy opportunities when appropriate;
    - iv. case planning and Program Participant needs assessment;
    - v. assistance with Income Assistance, Pension Benefits, Disability Benefits, obtaining a BC Identification Card, or establishing a bank account as appropriate;
    - vi. wellness checks, front desk security services and measures, and other services
    - vii. such other support services as may be determined by the Provider in enhancing the Program Participant's ability to maintain a healthy independent life and eventually maintain an independent tenancy  
(together, the "Support Services")
  - c. be responsible for the conduct of all guests and will ensure guests adhere to the Provider's rules, directions, notices and standards of conduct;

- d. Provide and adhere to the Declaration of Income and Assets ("DIA") and additional terms or modifications as may be required by the Provider.
2. The Program Participant agrees to cooperate with the provision of such Support Services and no to interfere with or hinder the provision of such Support services by the Provider to the Program Participant or any other occupant of the Building.
3. The specific Support Services provided will be determined in consultation with the Program Participant. The Provider may develop an individual support plan which will be adhered to by the Program Participant. The Program Participant will meet with the Provider at intervals determined by the Provider to review and evaluate the individual support plan and consider which Support Services will best provide ongoing assistance to the Program Participant.
4. If this Agreement is terminated for any reason, the Program Participant must vacate the Program Accommodation....

Counsel submitted that the *Act* does not apply because the housing in question is transitional housing which section 4(f) of the *Act* states the *Act* does not apply to. The agent submitted that the *Act* may apply but the Applicant is not sure and will defer to my judgement.

Counsel quoted section 1(2) of the Residential Tenancy Regulation (the "Regulation") which states:

- 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.

Counsel divided her submissions into the three subsections of section 1(2) of the Regulation.

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

Counsel submitted that the living accommodation in question is provided by the Applicant who receives funding from the subject rental city, the Province of British Columbia, the government of Canada and BC Housing for the purpose of providing that accommodation. Counsel referred to a printout from the Applicant's website which lists the applicant's partners and funders.

The agent agreed with the above submissions

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

Counsel submitted that the living accommodation in question is provided together with programs which are intended to assist the Respondent to become better able to live independently, as set out in section 2 and section C(1)(b)(vii) of the Agreement.

Counsel submitted that the Respondent did not need to utilize all the programs offered by the Applicant, the programs only needed to be provided by the Applicant.

The agent agreed with the above submissions.

Living accommodation that is provided on a temporary basis

The agent submitted that the Applicant intends to help people to learn skills to maintain independent tenancies but that the program participants cannot always do so. The agent submitted that the program participants can stay in the units as long as they need to, unless there are issues with the payment of rent or their conduct.

I asked the agent if the Applicant has some sort of plan as to how program participants will transition to more permanent accommodation. The agent submitted that that determination is based on the availability of other permanent housing and the needs of the program participants as decided by the manager of supportive housing. The agent submitted that there is no one policy regarding transitioning to more permanent

accommodation, but each program participant is dealt with on an individual basis. The agent submitted that if a program participant is not ready to be more independent, it is not pushed upon them and they are not forced out.

Counsel submitted that section A of the Agreement supports the Respondent's position that the living accommodation is provided on a temporary basis. Counsel submitted that the Agreement does not have an end date or a specific transition plan because the needs of each program participant are different, and an individual plan better reflects the needs of each program participant. Counsel submitted that the Applicant wouldn't want to end individual Agreements before the program participant was ready to commence a less supported tenancy.

Counsel referenced section C(1) of the Agreement, reproduced earlier in this decision, submitting that the Agreement acknowledges that the accommodation is provided for the purposes of receiving services. Counsel submitted that section C(3) of the Agreement indicates that the housing is not permanent because the Applicant and the Respondent agree to meet at intervals to review and evaluate the individual support plan and that the purpose of the support services, as set out in sections 2 and C(1)(b)(vii) of the Agreement, is to enhance the program participant's ability to maintain a healthy, independent life and eventually maintain an independent tenancy.

Counsel submitted that the Agreement grants the Respondent a right to occupy the subject property and is not a tenancy agreement. Counsel submitted that the ultimate goal of the Agreement is to obtain and maintain independent tenancies and that this is in alignment with the Agreement being temporary in nature.

Counsel responded that the focus should be on the intention of the program, and that in this case, the intention is to give the program participants the skills to maintain independent tenancies. Counsel submitted that despite the agent's submissions that program participants can stay as long as needed, the intent is still to have temporary accommodation, and that the specific duration is assessed on the individual needs of the program participants.

In support of Counsel's submissions, Counsel referred to several Residential Tenancy Branch Decisions (the "Decisions"). The Decisions presented in the hearing were reviewed.

The respondent testified that he moved into the subject property when the hotel he had been residing in shut down. The respondent testified that he did not hear good things about the subject property but did not have anywhere else to go.

### Analysis

Section 4(f) of the *Act* states:

This Act does not apply to living accommodation provided for emergency shelter or transitional housing.

Section 1(2) of the Regulation states:

- (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.

Residential Tenancy Branch Policy Guideline PG-46 provides guidance specifically related to Emergency Shelters, Transitional Housing, and Supportive Housing. In part C and D of PG-46, transitional and supportive housing are further described as follows:

### **C. 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.

#### **D. SUPPORTIVE HOUSING**

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.

In making a determination about whether the living arrangement is transitional housing, I must turn to the definition provided under section 1(2) of the Regulation.

Living accommodation 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

Both parties agreed that the living accommodation in question is provided by the applicant who receives funding from the subject rental city, the Province of British Columbia, the Government of Canada and BC Housing for the purpose of providing that accommodation.

Pursuant to the above, I find that section 1(2)(b) of the Regulation has been made out.

Living accommodation provided together with programs intended to assist tenants to become better able to live independently

Based on the submissions of both parties and section C of the Agreement, I find that the Applicant provides living accommodation together with programs intended to assist program participants to become better able to live independently.

Pursuant to the above, I find that section 1(2)(c) of the Regulation has been made out.

Living accommodation that is provided on a temporary basis

Based on the Respondent's testimony, I find that at the time the Respondent signed the Agreement, the Respondent was facing homelessness and was in need of temporary housing that would fall between homelessness and permanent housing. I find that the Applicant provided that temporary housing.

I find that the section A of the Agreement intended for the living accommodation to be temporary as the duration of the agreement was left open ended due to the unique personal situations faced by each program participant. I find that it would be contrary to the purpose of providing transitional housing to have participants leave the program before they were capable of living independently.

Based on the testimony of the agent, in regard to a plan to transition a program participant to more permanent accommodation, I find that the Applicant implemented an individualized approach based on a number of factors including the availability of more independent housing, and the individual needs of each program participant. I find that while the transition plan varied from person to person, the Applicant nonetheless had "a general plan" as to how to transition residents, as required in part C of PG-46.

I find that section B of the Agreement supports a finding that the purpose of the Agreement was not to provide indefinite housing, but to provide the program participants with the right to occupy safe accommodation while they participated in the program services which were aimed at helping the program participants eventually move on to independent living.

I note that section C(1)(b)(vii) states that the support services provided are aimed at enhancing the program participant's ability to maintain a healthy independent life and eventually maintain an independent tenancy. Again, I find that this section supports a finding that the housing provided by the applicant is transitional housing as the goal is to move to independent housing. As the goal for the applicant is to eventually move the residents who are able from living in the subject property to independent tenancies, I am satisfied the nature of the housing is temporary.

I find that while some program participants may never be able to maintain independent or less supported tenancies and may never be able to move to independent housing, this does not change the overall nature and goal of the housing being provided, which is transitional. I find that the living accommodation provided to the Respondent to be more

closely aligned to transitional housing than supportive housing given the intention of the program under which the Respondent was provided accommodation.

Pursuant to the above, I find that section 1(2)(a) of the Regulation has been made out.

### Conclusion

Pursuant to section 1(2) of the Regulation, I find that the living accommodation in question is transitional housing.

Pursuant to section 4(f) of the *Act*, I find that the *Act* does not apply and that I do not have jurisdiction to hear this dispute.

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: November 02, 2022

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Residential Tenancy Branch