



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding COMMUNITY BUILDERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, MNDCT, AAT, PSF, LRE, LAT, RPP, OLC

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenants December 16, 2022 (the "Application"). The Tenants applied:

- To obtain an order of possession of the rental unit
- For compensation for monetary loss or other money owed
- For an order that the Landlord allow access to the unit
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For authorization to change the locks to the rental unit
- For an order that the Landlord return personal property
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Tenants appeared at the hearing. D.E. and J.R. (the "Agents") appeared at the hearing for the Landlord.

The Tenants withdrew all their claims except the request for compensation for monetary loss or other money owed.

There were service issues with the hearing package and evidence submitted. However, it was clear from the Landlord's materials they were arguing the *Residential Tenancy Act* (the "Act") does not apply to the parties. Both parties confirmed they were prepared to address the jurisdiction issue on the hearing date. Given this, I heard the parties on

the jurisdiction issue. At the end of the hearing, I told the parties we would reconvene the hearing if necessary.

In relation to the evidence, the Tenants submitted a Program Housing Agreement between the parties signed by both Tenants March 31, 2022. The Tenants also submitted a Program Agreement dated March 2023 with K.P.'s name on it. The copy provided is signed by staff for the Landlord but not K.P. There is a Good Neighbour Agreement that is signed by K.P. March 23, 2023. I admit the Program Housing Agreement and Program Agreement because they were discussed at the hearing, created by the Landlord and received by the Tenants. There is no unfairness in considering these documents.

The Landlord provided the Program Housing Agreement from March 31, 2022, signed by both Tenants, which is admitted because it is the same document provided by the Tenants.

The remainder of the evidence is excluded because service was an issue and neither party provided convincing evidence that they served their evidence as required by the Rules of Procedure (the "Rules").

I note that I have referred to the parties as Tenants and Landlord throughout this Decision for ease of reference and this is not an indication of my decision about jurisdiction.

Preliminary Issue – Jurisdiction

The Landlord says the *Residential Tenancy Act* (the "Act") does not apply to the parties or housing at issue because the housing is transitional and provided while providing rehabilitative or therapeutic treatment or services.

The Agents for the Landlord provided the following testimony and submissions.

The Tenants moved into the housing May 01, 2020. The housing was originally a COVID isolation site operated as a shelter. The first year of the Tenants living at the site, it was a shelter. On May 01, 2021, the site changed from a shelter to transitional housing. The Landlord worked with residents to enter Program Agreements. B.G. was not included on the Program Agreement dated March 15, 2023, because they no longer lived at the site due to a court order.

The housing is transitional housing for people experiencing homelessness until they can find permanent or supportive housing. The Landlord provides therapeutic and other services and supports to residents. Prior RTB decisions have found that the *Act* does not apply to the site.

The housing is funded by BC Housing to be transitional housing for people to stay in while working with staff to find permanent housing. Residents are given a Program Agreement to sign. When residents move in, staff have a one-on-one conversation with them explaining the nature of the transitional housing and that the goal is to help them secure permanent housing. The Program Agreement is resigned every six months.

Staff meet with residents, usually monthly, to discuss barriers to permanent housing and how residents can find permanent housing. The Agents do not know how often staff met with the Tenants. Both Tenants received support for domestic partner violence issues and other issues. There were many check-ins done to support the Tenants while they lived in the housing.

The Program Guideline sets the average stay at the site as six months; however, the Landlord will not evict people to the street and therefore people stay longer than six months if they have not found permanent or supportive housing.

In relation to the supports provided by the Landlord, the housing is funded in part by the applicable health authority. The Landlord is tasked with delivering complex care and housing support for people experiencing homelessness to help them become more independent. The housing at issue is one of the highest support level sites. Staff come up with a wellness plan for residents based on specific needs. There are registered nurses, clinical counsellors, health care aids, home support workers, Indigenous wellness workers and mental health workers on site. There is a meal program. Staff help residents with life skills, returning to education and returning to the workforce. Staff help residents with barriers to reaching permanent housing.

The Agents said the support program is voluntary but also said participation of residents is required. The Agents said that when residents sign the Program Agreement, they agree to participate in the services provided; however, not every resident requires every service. The Agents said residents accept different services depending on their needs. The Agents said that if a person did not need any of the services provided by the Landlord, the Landlord would find them housing at a different site.

The Tenants provided the following testimony and submissions.

Most of the staff at the site did not even know who B.G. was. B.G. never met with staff. Nobody ever asked B.G. if they needed assistance and B.G. was never offered anything. The Tenants lived in the housing for three years which is long-term. The BC Housing Registry says the housing is long term. B.G. was told the housing was supportive housing. B.G. was never offered housing anywhere else. B.G. would have liked to move on to independent living; however, this was never offered to B.G. B.G. asked about moving on to independent living because everyone else was going about this, but this was never offered to B.G. or K.P. The applicable health authority is not involved in the housing. Wellness checks were simply used to come into the Tenants' unit and take things from them. Staff did not provide help when needed. B.G. was living independently at the site. B.G. was never offered a meal and never had a meal at the site. B.G. did not meet with staff in relation to any plan. The longest conversation B.G. had with staff was about mail. There were no supports provided to the Tenants when they lived at the site.

B.G. only signed one tenancy agreement with the Landlord. B.G. never signed another agreement. B.G. did not sign the Program Housing Agreement dated March 31, 2022. B.C. did not have a court order in place March 15, 2023, when the Program Agreement was signed. K.P. was given the March 15, 2023 Program Agreement and told they had to sign it by the end of the week or their tenancy was at risk.

In reply, the Agents for the Landlord said there are further Program Agreements signed by the Tenants that are not in evidence. The Agents also said that most of the support provided to the Tenants related to domestic violence issues.

Analysis – Jurisdiction

Section 4 of the *Act* sets out when the *Act* does not apply. Section 1 of the *Residential Tenancy Regulation* (the "*Regulation*") defines "transitional housing". RTB Policy Guideline 46 explains the differences between transitional housing, supportive housing, health facilities and rehabilitative and therapeutic housing.

The parties provided very different accounts of the nature of the housing at issue. The Tenants must prove the *Act* applies because they are the applicants (see rule 6.6 of the Rules). When one party provides a version of events in one way, and the other party

provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. Here, the parties provided equally probable accounts of the nature of the housing. I do have some concerns about the reliability or credibility of B.G.'s testimony because they said they did not sign a Program Agreement with the Landlord but the Tenants submitted a copy of a Program Housing Agreement with B.G.'s signature on it from March 31, 2022. However, given the difference in testimony about the nature of the housing, I have focused on the documentary evidence provided to support each position.

The independent, objective and convincing evidence about the nature of the housing is the Program Housing Agreement and Program Agreement (the "Agreements"). I have read the Agreements and they support the Agents' testimony about the nature of the housing. The most relevant terms are on the first two pages of the Agreements. The Agreements talk about the Landlord providing a program for participants to allow them to transition to long term independent housing. The Agreements talk about the housing being short term accommodation provided while participants are taking part in the program offered. The Agreements set out that the participants have a right to occupy the accommodation incidental to the main purpose of the agreement which is to participate in the program offered. The Agreements state that the *Act* does not apply because the housing is provided while the Landlord is providing rehabilitative or therapeutic treatment or services. The first of the Agreements addresses participants accepting support services. The first of the Agreements says the agreement will be revisited every six months. The Agreements include medical information which supports that the housing is provided while providing rehabilitative or therapeutic treatment or services. The Agreements clearly indicate that the housing is transitional and provided while providing rehabilitative or therapeutic treatment or services.

Based on the Agreements, and on the testimony of the Agents because it is supported by the Agreements, I find the following on a balance of probabilities. The housing meets the definition of "transitional housing" in section 1 of the *Regulation* because it is temporary, provided by the Landlord who receives funding from the provincial government and provided with programs meant to help residents become better able to live independently. Sections 4(f) and (g)(vi) of the *Act* apply because the housing is transitional and provided while residents are participating in the Landlord's program which includes rehabilitative or therapeutic treatment or services. The *Act* does not apply. The RTB does not have jurisdiction to decide matters between the parties.

Given the above, the Application is dismissed without leave to re-apply. Another hearing is not required because the RTB cannot decide matters between the parties and cannot decide the Tenants' compensation request. No further hearings will be held on this matter.

Conclusion

The Application is dismissed without leave to re-apply because the *Act* does not apply and the RTB does not have jurisdiction to decide the matter.

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: May 24, 2023

Residential Tenancy Branch