



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, OLC

Introduction

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

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65.

The applicant, the applicant's support person, the respondent's executive director (the "executive director") and operation managers BN ("manager BN") and KBA ("manager KBA") 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 tenant called witnesses TH and HD.

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.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Jurisdiction

The executive director testified that the Residential Tenancy Branch does not have jurisdiction to hear the tenant's claim because the subject rental property is transitional housing. The tenant testified that the subject rental property is not transitional housing.

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

- 4 This Act does not apply to
(f) living accommodation provided for emergency shelter or
transitional housing,

Residential Tenancy Policy Guideline #46 states:

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 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 in the future. Individuals in transitional housing may transition to independent living or, if they have a moderate need for ongoing support services, they may transition to supportive housing.

Living accommodation must meet all of the criteria in the definition of “transitional housing” under section 1 of the Regulation to be excluded from the RTA.

Requiring residents to sign a “transitional housing agreement” does not determine whether housing is exempt from the RTA.

[Emphasis added]

Section 1 of the Regulation states:

1 (1) In this regulation, “**Act**” means the *Residential Tenancy Act*, S.B.C. 2002, c. 78.

(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.

Temporary basis

The executive director testified that the applicant signed a program agreement (the "program agreement") before moving into the transitional housing and this agreement was for a six-month period of time. The program agreement was entered into evidence. The executive director testified that the landlord works with residents of the transitional housing, including the applicant, to find permanent housing; however, if residents haven't found permanent housing in the six months set out in the agreement, the respondent does not immediately evict them but does require them to sign a new six-month term program agreement.

It was undisputed between the parties that the applicant has signed two program agreements with the respondent. The respondent entered into evidence two program agreements signed by the applicant and an agent for the respondent. The 1st is a dated July 22, 2022 and the second is dated March 15, 2023 (the "program agreements").

The program agreements both state:

1. The Provider provides the Program Participant with Supportive Housing Services and Programs and an individual service plan to enable the Program Participant to make the transition to long term independent housing whereby participation is mandatory.
2. [The Respondent] will provide short term accommodation during participation in Supportive Housing Services and Programs, with the goal of the Program Participant continuing to long-term housing.
3. This short term accommodation at [the subject property] (the "Program Accommodation") will be provided for an undetermined amount of time and only while the Program Participant complies with the terms of this Agreement. (For the purposes of this Agreement, "Building" includes any land or other premises associated with the Program Accommodation and the building(s) in which it is located.) If this Agreement is terminated for any reason, the Program Participant will be required to move out of the Program Accommodation. The Participant agrees to review the Program Agreement every 6 months.

...

A. ...

This Agreement will end on the date on which:

1. The Provider terminates the Agreement;
2. The Program Participant terminates the Agreement

B. RIGHT TO OCCUPY

1. Community Builders grants the Program Participant the Right to Occupy the Program Accommodation subject to the terms of this Agreement. The Right to Occupy is incidental to the main objective of this Agreement, which is to enable the Program Participant to participate in Supportive Housing Services and Programs and to follow their individual service plan. The Program Accommodation is only part of the support provided by Community Builders.
2. If the Program Participant breaches any terms of this Agreement, Community Builders agrees to terminate this Agreement. When this Agreement is terminated or otherwise ends, the Program Participant must vacate the Program Accommodation.
3. 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 rehabilitative or therapeutic treatment or services.
4. The Program Participant will use the Program Accommodation only for residential occupancy while receiving Supportive Housing Services and Programs and will not conduct any trade or business from the Program Accommodation or act in any way that is inconsistent with or that interferes with the provision of Supportive Housing Services and Programs to the Program Participant or any other occupant at the Building.

....

E.

1. The amount of Program Accommodation Payment payable will be determined basis of accommodation portion from Income Assistance from the Ministry of Development & Poverty Reduction of \$375.00 per month and may be amended.

The landlord testified that:

- participants who move into the subject property are usually experiencing homelessness or living in a shelter,
- staff set up individualized programs based on each participants needs, and
- program participants are required to meet regularly with staff who work towards finding permanent housing.

The applicant testified that she has lived at the subject property for nine months and the landlord has not done anything to help her find permanent housing. Witness TH testified that she resides in the same building as the applicant. Witness TH testified that she has lived there since September of 2022. Witness HD testified that he resides in the same building as the applicant. Witness HD testified that he has lived there since September of 2022.

Witness TH and HD testified that the landlord has not provided them with support to find permanent housing. The executive director disputed the above testimony and listed several dates the landlord met with witness H.D. about obtaining long term housing. Witness H.D. agreed that meetings with the respondent on those dates occurred but that meetings were about “giving him the boot” about breach of the guest policy and not about finding permanent housing. The executive director testified that while the guest policy was discussed with witness H.D., part of the meetings also regarded how to support witness H.D. in finding permanent housing.

The applicant testified that the respondent has a three-year contract with BC housing with an option to renew. The tenant testified that the above time frame is long term, not temporary.

The executive director testified of that:

- there is a housing crisis and the respondent does not automatically require the program participants to move out if they have nowhere to go and the end of the six month program agreement,
- the respondent fills a gap for people who aren't able to obtain permanent housing, but this gap is a temporary measure,
- the respondent has a three-year contract for the building, but this contract is separate and distinct from the program agreements with the applicant.

The executive director testified that she disagrees that the respondent hasn't provided the applicant with support in finding permanent housing. Manager BN testified that the

tenant was recently offered permanent housing which she declined. This was not disputed by the applicant. The applicant confirmed that she was offered private housing and suggested two other sites that don't have the same rules as the subject property.

The applicant and both witnesses have not resided at the subject property for more than nine months time. I find that the length of stay at the subject rental building suggests that the housing is temporary in nature. I find that the fact that the respondent has offered permanent housing to the applicant supports the respondent's position that the respondent offers temporary housing until permanent housing can be obtained.

I did not find the applicant's witnesses to be credible as they flatly denied receiving any supports from the respondent and then witness HD later agreed that meetings with the landlord did occur. I found the executive director's testimony in which specific dates of meetings to support the witnesses with moving towards independent permanent housing were more credible than the witness's blanket denial of supports being provided. I find it unlikely that the meetings with HD only concerned the guest policy and did not involve supports to transition to independent living and permanent housing.

I find that the length of contract the respondent has for the building in question has no bearing on the intent of the agreement between the applicant and the respondent. I find that the two are separate and distinct.

I note that the program agreement requires a program fee and not rent and that the program agreement clearly sets out that the housing is meant to be transitional in nature and not permanent.

I find that while the program agreement is not determinative on whether or not housing is temporary in nature, it is an important part of the factual matrix and represented the parties' mutual intentions at the start of this tenancy.

I find that the overarching evidence including the program agreement, the respondent's offer of permanent housing, the length of time the applicant and the witnesses have resided at the property, and my findings on credibility confirms that the intent of the housing is temporary in nature. I find on a balance of probabilities that the subject housing is temporary in nature.

Funding

The executive director testified that the respondent receives 100% of its funding from BC housing. The tenant did not dispute the above testimony. I accept the landlords undisputed testimony that they receive 100% of their funding from BC housing, which I find satisfies the section 1(2)(b) requirement of the Regulation.

Programs

The executive director testified that the respondent provides housing together with programs intended to assist the program participants to be better able to live independently. The executive director testified that the following programs and services are available to the program participants:

- resident support workers,
- wellness workers, and
- home support workers.

The executive director testified that the services provided include advocacy, case planning, enhanced pest control and maintenance support, medication management, and access to resources.

The executive director testified that:

- the respondent's staff are trained to create service plans and crisis intervention plans alongside program participants to provide them with the skills and resources they need to succeed in the community. This may look like referrals to home health programs, primary care providers, meal programs, and support to apply for identification and/or disability depending on the individual's needs.
- the respondent provides residents with two nutritious meals a day through an on-site meal program,
- the respondent has a nurse and a clinical counsellor on staff,
- the respondent provides support with appointment reminders and help getting residents back to school or work.

The executive director testified that certain residents will need every aspect of the support provided while others will not. The executive director testified that not every resident will use all the supports offered and that the supports provided differ based on the resident's individual needs.

The applicant testified that:

- she hasn't done anything with staff regarding nutrition or permanent housing,
- the landlord sparingly gives out harm reduction supplies,
- the support worker only brought up funding options in the past week, and
- she requested home support when she first moved into the unit but they didn't come.

I accept the executive director's testimony regarding the supports that are in existence at the rental property and that not every resident uses every support. The applicant testified that the home support worker only recently brought up funding options.

Pursuant to the above testimony, I find that the tenant has access to a support worker who has offered support, even if tenant does not find that support to be useful or timely.

I find that the respondent offers living accommodation that is provided together with programs, such as support workers, that intend to assist residents to become better able to live independently in accordance with section 1(c) of the Regulation.

I find that the living accommodation is provided to the applicant on a temporary basis 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 together with programs intended to assist tenants to become better able to live independently. I therefore find that pursuant to section 4(f) of the *Act*, the living accommodation is transitional housing and this *Act* does not apply to this dispute. I find that I do not have jurisdiction to hear the applicant's application.

Conclusion

The *Act* does not apply to this dispute. I do not have jurisdiction to hear the merits of the applicant's application.

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: May 10, 2023

Residential Tenancy Branch