



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ELIZABETH FRY SOCIETY OF
GREATER and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPT**

Introduction

This hearing dealt with the Applicant's dispute resolution application pursuant to the *Residential Tenancy Act* (the "Act") for an Order of Possession for the tenant pursuant to Sections 54 and 62 of the Act.

The hearing was conducted via teleconference. The Respondent, EFS, the Respondent's Program Manager, IC, the Respondent's Director, NT, their Legal Counsel, and the Applicant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Applicant testified that she served the Respondent with the Notice of Dispute Resolution Proceeding package and her evidence for this hearing by email (the "NoDRP package"). The Respondent confirmed receipt of the email from the Applicant on April 6, 2023. I find that the Respondent was sufficiently served with the NoDRP package on April 6, 2023 in accordance with Section 71(2)(b) of the Act.

The Respondent's Agent served the Applicant with their evidence on April 14, 2023. The Applicant confirmed receipt of the Respondent's evidence. I find the Respondent's evidence was deemed served on the Applicant on April 17, 2023 according to Sections 88(g) and 90(c) of the Act.

Issue to be Decided

Is the Applicant entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that the Applicant's housing program began in the Respondent's 24-month transitional housing program on January 12, 2021. The monthly program fee is \$375.00 payable on the first day of each month. A security deposit of \$260.00 was collected at the start of the program and is still held by the Respondent.

Jurisdiction

The Respondent's Legal Counsel submitted that a similar file has been decided by the RTB, and it found the RTB does not have jurisdiction to decide the matter for that transitional living accommodation. A judicial review of that decision, *McNeil v. Elizabeth Fry Society of Greater Vancouver*, 2022 BCSC 2174, was dismissed in the Supreme Court of British Columbia (the "BCSC").

The Applicant testified that the BCSC decision is being appealed by the BC Court of Appeal and pointed to a reference noted on the Court Services Online platform. She said she did not have the money to pay for a copy of the file to submit into evidence. The issues in that matter are unknown.

The Respondent submits the RTB does not have jurisdiction because the residential property satisfies the criteria listed in Section 1(2) of the *Residential Tenancy Regulation* (the "Regulation") which states:

Definitions

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.*

The term of the Respondent's transitional housing program is 24 months. Respondent's Legal Counsel submitted that the program agreement expired on January 12, 2023.

The Respondent's Legal Counsel relies on the residential property's program agreement which was executed by both parties on January 12, 2021 (the "Program Agreement"). It states the occupancy is for single occupancy housing units for women who require a supportive living environment. The cost of the program is covered by the government of BC, and the organization receives capital and staff operational funding from BC Housing. The Applicant's program goals are reviewed quarterly and include assessment of personal development and independent housing goals.

The Program Agreement states, "My participation in the program is voluntary and is expressly not governed by the B.C. Residential tenancy Act and is based upon the rules set out in this Agreement. My participation, including the housing component, may be terminated and I may be asked to leave if I fail to uphold this Agreement."

The program services include:

- breakfast and dinner served daily;
- no cost for resident laundry facilities;
- utilities, including gas, electric, water, and sewer service;
- personal development coaching with a caseworker monthly;
- independent housing related goal setting;
- shared common areas;
- further available services showing that the housing is transitional are:
 - registered clinical counsellors are available;
 - mental health liaison referral services for women who require it;
 - service navigation, inclusive of housing first workers, to transition people to independence;

- formalized employment programs that follow participants out into the community;
- if women require family reunification, e.g., if children are in care, two programs are available – 1) growing great kids; and 2) growing great families.

The financial considerations for the program include income eligibility requirements, participants must fall under the BC Housing guidelines, participants pay a security deposit and the program fees. The use and occupancy of the housing is for the sole use of the Applicant. To be eligible for this housing program, participants must be facing homelessness, which was the Applicant's circumstance.

The Program Agreement details care and maintenance responsibilities of the participant's unit. Community participation guidelines are noted in the Program Agreement including abiding by the community living standards, expected behaviour conduct, and mandatory wellness checks if the participant has not been seen in 48 hours. The Program Agreement also includes termination of agreement provisions.

The Respondent's documentary evidence outlines multiple occasions where the Applicant has been alerted to program violations, program staff offered assistance to support or remediate the issues, but the problems with the Applicant's housing and conduct have continued.

The Applicant stated she has another dispute resolution set for July 10, 2023, and she is seeking an Order of Possession up to that date.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove that the RTB has jurisdiction to hear the dispute rests with the party making the application.

Section 4(f) of the Act states that the Act does not apply to living accommodation provided for ... transitional housing.

Residential Tenancy Policy Guideline #46-Emergency Shelters, Transitional Housing, Supportive Housing assists parties know what information or evidence is likely to assist them in supporting their position. Transitional housing is defined as:

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.

Section 1(2) of the Regulation defines transitional housing as meaning living accommodation that is provided based on all of the following factors:

1) On a temporary basis:

The transitional housing program is a 24-month program, and it was entered into on January 12, 2021 by both parties. The end date for the program was January 12, 2023.

I accept the Respondent's evidence that services provided in the program are aimed at assisting the Applicant to find supportive or independent housing; however, the Applicant did not fully engage with those services.

The Program Agreement may be terminated, and the Applicant may be asked to leave if she fails to uphold the conditions in the Program Agreement.

Other services provided are employment programs to assist the Applicant to find gainful employment and those programs are intended to follow the Applicant out into the community.

I find the housing program was geared to assisting the Applicant to be independently housed, and the program was only of a temporary nature.

2) 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:

Program funding is covered through a fee based on the Applicant's independent income and a BC government ministry. The organization receives capital and staff operational funding from BC Housing.

The program offers single occupancy housing units. The Applicant does not pay rent to the program; rather, the Applicant's program fee and security deposit are for the purpose of providing housing and services to the Applicant. The services offered through the program are intended to support and strengthen the Applicant's living conditions in the community.

I find the Respondent receives funding from the government of British Columbia for not only the primary purpose to provide a single occupancy housing unit to the Applicant, but also to provide services that will assist the Applicant to become independent.

3) Together with programs intended to assist tenants to become better able to live independently.

The program provides many services of which the Applicant could engage that would help her transition to supportive or independent housing. The Respondent outlined a non-exhaustive list of services provided in the program intended to assist participants to become independent.

Services offered by the program include daily living activities, such as meals and laundry, and utilities to complement those daily living activities. In addition, services are offered for personal development of the participants in the program such as monthly personal development coaching, independent housing related goal setting, counselling, mental health liaisons, service navigation assistance for housing, employment and family reunification.

I find the services offered through the transitional housing program are intended to assist participants to become better able to live independently.

The Program Agreement expressly states that it is not governed by the Act. I find the Applicant does not have a tenancy agreement with the transitional housing program in the sense that it is governed under the Act. So, I decline jurisdiction to hear her application.

Conclusion

I decline jurisdiction over the Applicant's claim. I make no determinations on the merits of her application. The Applicant is at liberty to advance her claim in a court of competent jurisdiction to decide this 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 11, 2023

Residential Tenancy Branch