



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC**

Introduction

This hearing was convened by conference call as a result of the Applicant's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Applicant applied for:

- cancellation of a One Month Notice to End Tenancy

The Applicant and two agents (DP and CM) for the Respondent attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Applicant stated he served the Notice of Dispute Resolution Proceeding (NDRP) on the Landlord in-person by leaving it at the office of the Landlord, but he could not recall the date of service. DP acknowledged the Landlord received the NDRP. As such, find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

The Landlord did not submit any evidence to the Residential Tenancy Branch prior to this proceeding.

Preliminary Matter – Jurisdiction to Hear the Application

At the outset of the hearing, I told the parties that I must determine whether I have jurisdiction to hear the Application.

DP stated the Respondent did not serve the Applicant with a One Month Notice to End Tenancy under the Act. DP submitted into evidence a letter (Termination Letter) from the Respondent to the Applicant dated January 6, 2023. In that letter, the Respondent advised the Applicant that it was terminating the Program Agreement (Agreement) effective January 31, 2023. DP stated the Applicant is residing in a transitional facility (Facility) operated by the Respondent pursuant to the Agreement. DP stated there are approximately 36 residents living in the Facility.

At my request, the Respondent uploaded to the Residential Tenancy Branch service portal a copy of a copy of the Agreement between the Applicant and Respondent, dated May 1, 2022, together with appenda. In the Agreement, the Applicant is referred to as the Program Participant. The Agreement, less any identifying information, states, in part:

1. This Agreement provides for the Program Participant's participation in Support Services provided by [Respondent] (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 health independent lives and eventually maintain a productive independent tenancy.
3. [Respondent] will provide the Program Participant with Program Accommodation in recognition of the need for stable accommodation while the Program Participant receives the Support Services.
4. This accommodation at the address stated above will be provided only while the Program Participant complies with the terms of this Agreement.

Duration of the Agreement

Length of the Program Start Date: February 17, 2022 End Date: February 28, 2023

Unless the Provider or the Program Participant terminate the agreement sooner

A. Right to Occupy

1. [Respondent] grants the Program Participant the right to occupy the Program Accommodation subject always to the terms of the 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 purposes 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 interferes with the provision of Support Services to the Program Participant or any other occupant of the building.
4. The Program Participant will promptly vacate the Program Accommodation at the end of the Program Agreement or, if the Agreement is terminated for any reason before the end date.

B. Responsibilities of Program Participant:

5. 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 Support Services provided by [Respondent] which may include
 - i. support for the Program Participant to maintain their occupancy, including but not limited to
 - a. directly assisting with room decluttering and/or normal cleaning and maintenance
 - b. repayment plans for outstanding Program Accommodation fees or other debts

- c. provide and adhere to the declaration of Income and Assets (DIA) and additional terms or modifications as may be required by the provider
 - d. be responsible for the conduct of all guests and will ensure guests adhere to the Provider's rules, directions, notices and standards of conduct.
 - ii. individual or group support services such as medication management, 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 ID card, or establishing a bank account as appropriate
 - vi. wellness checks, front desk security services and measures, meals and other services
 - vii. such other support services as may be determined by [Respondent] in enhancing the Program Participant's ability to maintain a health independent life and eventually maintain a productive independent tenancy (together with support services)
6. The Program Participant agrees to cooperate with the provision of such Support Services and not to interfere with or hinder the provision of such Support Services by [Respondent] to the Program Participant or any other occupant of the buildings
7. The specific Support Services provided will be determined in consultation with the Program Participant. [Respondent] may develop an individual service plan for the Program Participant, which will be adhered to by the Program Participant. The Program Participant will meet with [Respondent] Staff at intervals

[...]

P. Ending This Agreement- Program Participant

1. The Program Participant may end this Agreement by providing a written 30 day notice to [Respondent]. The notice must be in writing and must include:
 - a. The address of the Program Accommodation
 - b. Include the date this Agreement will end
 - c. Be signed by the Program Participant

Q. Ending this Agreement – [Respondent]

1. [Respondent] may choose to terminate this Agreement at any time by giving the Program Participant less than twenty-four (24) hours notice if the Program Participant has committed a serious act of violence towards or has seriously jeopardized the health or safety of any staff, guests or other occupants of the building or members of the community
2. [Respondent] may end this Agreement at any time by giving the Program Participant not less than forty- eight (48) hours written notice if:
 - a. The Program Participant or their guests engage or behave in a manner that is abusive and/or a threat to the mental or physical health or safety of any staff, guest or other occupants of the building or members of the community
 - b. The Program participant or their guests engage in vandalism or wilfully cause damage to the Program Accommodation or any aspect of the building
3. [Respondent] may end this Agreement by giving the Program Participant a thirty (30) day written notice if:
 - a. the Program Participant breaches any other requirement of provision of the Agreement and fails to correct that breach to the satisfaction of [Respondent]
 - b. the Program Participant is absent for the Program Accommodation for one (1) month or longer without the prior written consent of [Respondent] even if the Program Accommodation Payment has been made to for that period.

- c. Number of occupants or physical makeup of the Program Accommodation changes without [Respondent]'s prior written approval or;
 - d. The Program Participant has failed to pay the program fee to [Respondent] or is chronically late paying their fee
4. [Respondent's] notice will:
- a. include the address of the Program Accommodation
 - b. include the date of this Agreement and therefore the right to occupy the Program Accommodation will end
 - c. Be signed by [Respondent]

DP stated the Respondent receives referrals from Island Health and BC Housing for persons who require ongoing supports so that participants can transition to more independent living. DP stated the Respondent offers therapeutic and rehabilitative supports that are provided at all of the Respondent's sites including the Facility. DP stated site staff at the Facility provide assistance with matters such as assisting with finances, securing identification and assisting with any referrals the Applicant may require. CM stated the Respondent liaises with other public program participants to provide the supports required by participants. CM stated there is 24/7 staff at the Facility for incidental support and assistance when a resident is in crisis. DP stated the Applicant is provided with meals and recreational activities and any supports required to move the Applicant toward the goal of independent living. DP stated a mental health support worker from Island Health comes to the Facility to support the Applicant's daily needs.

The Applicant stated he was not receiving any support services and such services are lacking for all the residents in the Facility. The Applicant stated the Respondent does not provide any housekeeping services and that he must arrange for that himself. The Applicant stated he gets treated quite differently from most of the residents at the Facility. The Applicant stated that the Manager of the Facility told him on the first day he arrived that she thought he had chosen the wrong site to go to and suggested that he go somewhere else. The Applicant stated he receives personal health care from the ICMT Team. The Applicant stated he does not receive any assistance with paying bills. The Applicant stated he must eat the food at the facility as he is not permitted to opt out of this service. The Applicant stated his wallet was stolen and no one offered to assist him to obtain identification.

DP stated Island Health requires outreach services to persons who would otherwise be homeless. DP stated the Respondent is primarily involved in providing housing to program participants and liaises with the external public support agencies to provide the services on an as needed basis for each participant. CM stated it is a shared responsibility such that, when a resident indicates they require some type of support, then the Respondent will arrange for the appropriate support team to address that resident's requirements.

DP stated the Applicant was transferred from a different supportive facility operated by the Respondent. DP stated the Applicant was transferred to the Facility because of the Tenant's request to be in a quieter site where he could receive more health support and do more to rehabilitate his health.

DP stated the Applicant's ill health has been an impediment to the transitioning plans for the Applicant. DP stated that the Applicant required a surgery and recovery and this has slowed the transition process. DP stated it was hoped that once the Applicant had recovered adequately, he could be referred to the positive flow workers who would assist the Applicant to move onto more independent living facility. DP stated that, for some residents, it can take a significant period for transitioning. DM stated that the health support team provides assistance to residents to ensure sanitary conditions are maintained.

DP stated a unit had been located with another provider for the Applicant to transfer to. DP stated the Applicant has seen the facility. DP stated there was a meet and greet and the Applicant was agreeable to transfer to that location. DP stated the Respondent was agreeable to allowing the Applicant to stay safely housed at the Facility until the unit became available. DP stated that the unit has not become available as soon as was contemplated.

DP stated there have been issues with the Applicant's guests that has worsened since the Landlord gave the Termination Letter to the Applicant. DP stated that the Applicant has had many guests to his room that is in violation of the terms of the Agreement. DP stated that the guests have compromised the security of the building and that it has adversely affected the safety and wellbeing of other residents in the Facility.

The Applicant stated there are residents who have been living in the Facility for 11 years. The Applicant stated 75% of the residents have been long term and they have no intention of moving. The Applicant stated he thought he was being moved to permanent housing when he was transferred to the Facility. The Applicant stated he was on mind altering drugs and that he did not know what he was signing at the time the Agreement was entered into by the parties. The Applicant stated he should be able to remain in the Facility and to move him at this time would be disruptive to him and would gravely affect his ability to heal.

DP argued the Act does not apply to the residential accommodations occupied by the Applicant because it is transitional housing that is excluded from the provisions of the Act.

Section 4(f) of the Act states the Act does not apply to emergency shelter and transitional housing. Section 1(2) of the *Residential Tenancy Regulation* ("Regulation") 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.

Residential Tenancy Policy Guideline ("PG 46") provides guidance specifically related to Emergency Shelters, Transitional Housing, and Supportive Housing. Transitional Housing is defined in Part C of PG 46 as:

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 (2) of the Regulation in order to be excluded from the Act, even if a transitional housing agreement has been signed.

[emphasis in italics added]

Supportive Housing is defined in part D of Policy Guideline 46 as:

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.

[emphasis in italics added]

In deciding whether the living accommodation is transitional housing or supportive housing, I turn to the individual criteria set out in the definition of “transitional housing” as provided under section 1(2) of the Regulations, as set out below.

1. *Living accommodation that is provided on a temporary basis*

I accept the Agreement uses the word “Support Services”. However, I cannot simply rely upon the word “support” because transitional housing is intended to be supportive. It is the intent of the Agreement whether this was to be temporary housing working towards independent living or supportive housing which is long-term or permanent living accommodation for individuals who need support services to live independently.

DP stated some residents may stay longer than others, depending upon their unique requirements for transitioning. I note that the Agreement states in part:

1. [Respondent] will provide the Program Participant with Program Accommodation in recognition of the need for stable accommodation *while the Program Participant receives the Support Services.*
2. This accommodation at the address stated above will be provided only *while the Program Participant complies with the terms of this Agreement.*

[...]

1. [Respondent] grants the Program Participant the right to occupy the Program Accommodation subject always to the terms of the 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.*

[...]

5. 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:

[...]

6. The Program Participant *agrees to cooperate with the provision of such Support Services and not to interfere with or hinder the provision of such Support Services by VCAS to the Program Participant or any other occupant of the buildings.*

7. *The specific Support Services provided will be determined in consultation with the Program Participant. VCAS may develop an individual service plan for the Program Participant, which will be adhered to by the Program Participant. The Program Participant will meet with VCAS Staff at intervals determined by VCAS to review and evaluate the individual service plan and consider which Support Services will best provide rehabilitative and other assistance to the Program Participant.*

[emphasis in italics added]

The Agreement clearly sets out the Applicant the support services provided by the Respondent are intended to assist the Applicant in addressing and enhancing life skills, restoring the ability to maintain healthy independent lives and eventually maintain a productive independent tenancy. The Agreement states that the accommodation provided to the Applicant in recognition of the need for stable accommodation while the Applicant receives the support services provided by the Respondent. The Agreement also states the accommodations are only made available I the course of providing the Applicant with the support services.

In addition, the Agreement states the accommodations are exempt from the Act as the accommodations are only made available in the course of providing the Applicant with the support services. This provision of the Agreement is not consistent with long-term or permanent housing under a tenancy agreement in which a party to the tenancy can only end the tenancy in accordance with the Act.

The Tenant stated he did not have the mental faculties to enter into the Agreement. However, the Tenant knew, or ought to have known, shortly after he arrived at the Facility, that he was required to participate in a manner that would transition him to independent living as soon as possible, which the Act would not apply to while transitioning to independent living. Furthermore, there was nothing that prevented the Applicant from terminating the Agreement at any time if he was dissatisfied with either the support services or accommodations provided by the Respondent.

I accept some residents have resided in the Facility on a longer-term basis. Based on the testimony of DP and CM, it is apparent that the continuing residency of some program participants at the Facility is the result of those participants not being ready, for whatever reasons, to move onto living independently. This is not what would be expected if the accommodations were provided pursuant to long-term or permanent housing. I find it would be unreasonable and contrary to the individual

needs of participants if they were removed from the program by a fixed date, rather focusing on accommodating the special needs of each resident in furtherance of working towards independent living.

Considering the above, I find that the accommodation is provided as transitional housing while the Applicant worked towards independent living.

2. *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*

In this matter, DP testified that the living accommodation is provided by the Respondent through operator agreements with Island Health and BC Housing and receives funding through agreements with those agencies. I find, based on the undisputed testimony of DP, that the Respondent receives funding from the public Island Health and BC Housing for the purpose of providing the support services and accommodations provided to participants by the Respondent.

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

I find the Respondent does provide living accommodation together with programs as described in the testimony and evidence provided by DP and CM. The intent of the programs is assisting participants to work towards independent living. While I accept that not all services or supports are provided by the Respondent itself, DM and CM testified the Respondent liaises with other publicly funded service and health providers to provide the services and supports based on the individual needs of participants in the Facility.

I accept the Applicant may not have participated in all of the programs available to participants, it is the Applicant's responsibility to set goals to transition to independent living as contemplated by the Agreement. I find it is a personal choice of the Applicant to request and participate in programs and services that are available at the Facility and through the other publicly funded service providers with which the Respondent liaises. The Applicant asserted that moving from the Facility to more independent living facility will cause him inconvenience and affect his recovery. This may be true, but this in itself does convert the Applicant's current transitional accommodations at the Facility to permanent housing that is subject to the requirements of the Act respecting when and how a landlord may end a residential tenancy. I also note that the Applicant's refusal to observe the rules of the Facility regarding guests is placing other vulnerable residents of the Facility at risk.

Based on the foregoing, I find the living accommodations provided to the Applicant at the Facility meet all the criteria in the definition of "transitional housing" under section 1(2) of the Regulation and, therefore, is exempt from the Act. As such, I find the RTB does not have jurisdiction in this dispute and I dismiss the Application.

Conclusion

The Application is dismissed. I find the living accommodation in which the Application resides is transitional housing and is exempt from the Act.

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 21, 2023

Residential Tenancy Branch