



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNC, FF

### Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and recover the filing fee. Both parties, including an advocate for the tenant, appeared at the hearing and had an opportunity to be heard. A considerable amount of evidence was submitted prior to the hearing. It was confirmed that the evidence had been served upon the other party.

The hearing commenced on August 19, 2008 and on that date the advocate submitted that the *Residential Tenancy Act* (the Act) did not apply to the tenancy as the living accommodation was transitional housing. The landlord was in disagreement with the advocate's position. The parties were requested to submit their positions to me, in writing, with respect to the living accommodation being transitional housing and include relevant evidence within two weeks. The hearing was reconvened for September 16, 2008. On September 16, 2008, the hearing proceeded on the basis that the Act applies to this tenancy.

### Issue(s) to be Decided

1. Whether the Act applies to this tenancy and I have jurisdiction to hear this matter.
2. Whether there is a basis to set aside or cancel the Notice to End Tenancy.
3. Award of the filing fee.

### Background and Evidence

Upon consideration of the evidence before me I find the following relevant facts concerning the tenancy. The tenancy commenced October 12, 2004. Rent is currently \$892.00 per month, part of which is subsidized by BC Housing. The tenant agreed to abide by certain covenants with the landlord as the living accommodation was restricted for use as a "Second Stage Transition House Program" according to an Addendum to the tenancy agreement signed by both parties.

After hearing a considerable amount of opposed testimony concerning excessive noise complaints concerning guests or occupants of the rental unit, it was evident to me that the tenant was not content with her living situation and I attempted to bring the parties together in order to find a mutually satisfactory resolution to the matter. During the hearing, **the parties mutually agreed to the following terms:**

- 1. The tenancy will continue until October 31, 2008;**
- 2. The tenant will vacate the rental unit on or before October 31, 2008;**
- 3. The tenant will ensure rent is paid in full and on time for the month of October 2008;**
- 4. The tenant and any person permitted on the property by the tenant will abide by noise bylaws applicable in the jurisdiction of the rental unit so that other occupants in the complex may benefit quiet enjoyment of their units; and,**
- 5. The landlord will respect the tenant's right to quiet enjoyment of her rental unit, free from unreasonable disturbance or significant interference by the landlord.**

## Analysis

Section 4 of the Act provides that the Act does not apply to certain living accommodation, including “living accommodation provided for emergency shelter or transitional housing.” The Act does not define “transitional housing”. The ordinary meaning of the word “transition” includes:

“a passing from one condition, form, state, activity, place, etc.”

[Webster’s New World Dictionary: Third College Edition]

The definition of “passing” includes:

“going by, beyond, past over, or through” and “lasting only a short time; short-lived; fleeting; momentary.”

[Webster’s New World Dictionary: Third College Edition]

Applying the inclusive principal of statutory interpretation I refer to the use of the term “emergency shelter” in determining the intended meaning of transitional housing. I find that the exclusion of emergency shelters and transition houses from the application of the Act refers to accommodation that is of a temporary nature designed to house individuals or families moving from one place to another, often in emergency situations. I find this determination consistent with the definition of transition and passing, as provided above. Since the tenancy has been in place nearly four years and could potentially go on indefinitely provided the tenancy agreement, regulation and Act are adhered to, I do not find that the living accommodation is transitional housing. I do not find that the fact the tenant agreed to special covenants in the Addendum to the tenancy agreement is enough to conclude the living accommodation is transitional housing under the Act when I consider the length of time this tenancy has lasted. Therefore, I

find that the Act applies to this tenancy and I have jurisdiction to make any finding or Order necessary to fulfill the provisions contained in the Act.

I accept the mutual agreement reached between the parties during the hearing and I Order that it be binding upon each of the parties, as described in the Background above. I provide with this decision for the landlord an Order of Possession effective October 31, 2008. To enforce the Order of Possession the landlord must serve it upon the tenant and may file it in The Supreme Court of British Columbia to enforce as an Order of that court.

The parties are responsible for their own costs concerning this dispute meaning I make no award to the tenant for recovery of the filing fee from the landlord.

#### Conclusion

The tenancy will end by mutual agreement on October 31, 2008. The landlord is provided with an Order of Possession effective October 31, 2008. No award is made for costs associated with this proceeding.

September 16, 2008

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Date of Decision

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