



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled to hear a tenant's application to cancel a Notice to End Tenancy. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the landlord indicated the Act does not apply to this tenancy as the living accommodation is provided for transitional housing. There was no dispute that the Notice to End Tenancy issued to the tenant is not a form approved by the Director and is non-complaint with the Act. Therefore, I determined that the only issue for me to decide was whether the Act applied to this living accommodation.

Issue(s) to be Decided

Is the living accommodation provided for transitional housing?

Background and Evidence

The landlord is a society that promotes recovery of persons with mental illness. The tenant began residing in the living accommodation October 1, 2011 for a five month fixed term tenancy under a "Non-profit Housing Tenancy Agreement" with the landlord (herein referred to as the tenancy agreement). A signed "Behavioural Agreement" accompanied the tenancy agreement. The tenancy agreement indicated that the Act applied to the tenancy.

On March 2, 2012 the parties signed a "Transitional Housing Program Agreement" (herein referred to as the "Program Agreement"). The Program Agreement indicates the living accommodation is intended to provide the Program Participant (the tenant) with transitional housing and the accommodation is available only while the Program Participant complies with the terms of the Program Agreement. The Program Agreement indicates that it is understood that the accommodation is not permanent or

long term housing. In addition to various “House Rules” and other terms the Program Participant is required to “Accept support services provided by the health service team”. The duration of the Program Agreement is the earlier of:

1. The date at which the Program Participant (the tenant) moves into appropriate long term housing.
2. The date which:
 - a. The Service Team terminates the Agreement; or
 - b. The Program Participant terminates the Agreement.

The landlord submitted that BC Housing is the funding provider. Previously BC Housing required the landlord to enter into tenancy agreements with the tenants; however, the “Behaviour Agreements” that accompanied the tenancy agreement conflicted with the Act. The conflict with the Act was the driving force behind BC Housing changing the landlord’s classification to that of an operator of a “Transitional Housing Program” at the residential property. Accordingly, the landlord met with tenants and offered them the choice to find alternative accommodation or become Program Participants under the Transitional Housing Program. The tenant in this dispute chose to become a Program Participant.

As evidence the landlord provided a letter from BC Housing confirming that the landlord operates a Transitional Housing Program at the residential property and that units within this program have Transitional Housing status.

The landlord explained that in addition to providing furnished rooms, the landlord provides a meal program, security, and services of counsellors and social workers. The landlord submitted that there is no set time frame for participants to reside in the living accommodation. It is dependent upon the participant’s requirement for treatment however, the transitional housing ends when the participant demonstrates a level of independence, as assessed by a team of mental health professionals.

The tenant submitted that the services he is provided has remained unchanged and he was provided the same services when he had a tenancy agreement. The tenant felt that he had no choice but to sign the Program Agreement as his only other option was to lose his housing. The tenant denied that he is provided any special services such as counselling and submitted that he does not know who his worker is.

The tenant pointed to the BC Housing letter as not sufficiently clear that his particular unit is designated as transitional housing.

The landlord responded by stating that all units in the building fall under a transitional housing program although there is more than one type of program. For instance, some units in the building fall under a mental health program specifically designed for Inner City Youth and other programs are designed for other individuals.

The landlord also indicated that the tenant had been notified of meetings prior to the change to use of the transitional housing Program Agreements although it was his choice whether to attend those meetings and enter the Program Agreement. Further, the tenant has an assigned worker but due to his behaviour two workers must meet with the tenant together.

The landlord provided documentary evidence that included copies of: the Program Agreement; the former tenancy agreement and attached Behaviour Agreement; the letter from BC Housing; a letter from an Inner City Youth Mental Health Program provider; and, the Notice to End Tenancy issued to the tenant.

Analysis

The Act applies to all residential tenancy agreements between a landlord and tenant unless specifically excluded by the Act. Section 4 of the Act exempts specific living accommodation from application of the Act, including:

(f) living accommodation provided for emergency shelter or transitional housing;

As explained to the parties during the hearing, the Act does not define the term “transitional housing”. Nor does Residential Tenancy Policy Guideline 27: *Jurisdiction* address transitional housing. Without a formal test for finding transitional housing I proceed to consider the interpretation of the above exemption under the reasonable person standard.

I note that the exemption applies to living accommodation provided for transitional housing. As it is the landlord that provides the living accommodation I find the use of words “provided for” goes to the intent of the landlord in providing the accommodation and less to how the tenant views the use of the living accommodation.

I find that the average person would consider the following to be examples of transitional housing:

- Second stage or transitional housing between an emergency shelter or the street (homeless) and independent living;

- Housing provided as a transition between jail or prison and independent living; and,
- Housing a transition between a detoxification centre and independent living.

Ideally, the written agreement between the parties would state that the unit is provided as transitional housing, and would state how the end of the transition period is determined. Other indications of transitional housing may include requirements for the tenant to participate in a program, therapy or counseling as a condition of the tenancy.

I find that where the occupation in the living accommodation is time-limited, or for a defined purpose, and it is clear that the purpose is to enable the tenant to transition to independent living, it is reasonable to conclude the living accommodation is transitional housing.

Upon review of the written agreement entered into in March 2012 I find the agreement indicates the intended purpose is to provide transitional housing, that as a condition of occupancy the tenant is to accept the support services provided by the landlord, and that the transition period is ended when the tenant moves into an independent living accommodation, or sooner as determined by the landlord's team of professionals.

Based upon the above findings, the landlord's verbal testimony, and the corroborating letter from BC Housing, I accept that the purpose of providing the unit to the tenant was for the purpose of providing him transitional housing.

As I have found this living accommodation was provided for transitional housing, I must find that the Act does not apply to the agreement between the landlord and tenant. Accordingly, I decline jurisdiction to resolve this dispute.

Conclusion

The living accommodation is transitional housing and I have declined to accepted jurisdiction to resolve this dispute.

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: November 09, 2012.

Residential Tenancy Branch