



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 31061347

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

Stephane Blais, Steeve Bolduc, and Brendan Flynn-Forsyth,

Applicants

And

The Kettle Friendship Society,

Respondent

Regarding the following rental units: 1305-1134 Burrard Street, Vancouver, BC
1203-1134 Burrard Street, Vancouver, BC
1208-1134 Burrard Street, Vancouver, BC

Date of Hearing: February 27, 2020, by conference call.

Date of Decision: March 2, 2020

Attending:

For the Respondent: Ripan Hans- Counsel
Janet Smith- Director of Housing
Damian Murphy- Housing Program Manager

For the Applicants: Stephane Blais
Steeve Bolduc
Brendan Flynn-Forsyth



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the applicants' application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order directing the respondent to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The applicants, counsel for the respondent, the respondent's housing program manager and the respondent's director of housing attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the applicants personally served an agent of the respondent with their application for dispute resolution in December of 2019. I find that the respondent was served with the applicants' application for dispute resolution in accordance with section 89 of the *Act*

Preliminary Issue- Amendment

The applicants listed the respondent's housing program manager as the respondent in their application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the applicants' application to state the correct respondent as set out in their tenancy agreements.

The applicants listed the address of the subject rental building in their application for dispute resolution (all applicants reside in the same building) but did not state their unit numbers. Pursuant to section 64 of the *Act*, I amend the applicants' application to state their unit numbers which were confirmed during the hearing.

Preliminary Issue- Jurisdiction

Respondent's Evidence

Counsel for the respondent submitted that the subject rental building is transitional housing and therefore not governed by the Act, pursuant to section 4(f) of the *Act*. In addition, or in the alternative, counsel for the respondent submitted that the subject rental property is a housing based health facility, focusing on the rehabilitation of the applicants, which provides hospitality support services and personal health care and the Residential Tenancy Branch therefore, pursuant to section 4(g)(v) of the *Act*, does not have jurisdiction to hear this matter.

Counsel for the respondent submitted that the subject rental property is not meant to be long term housing but rather temporary housing to be utilized by the applicants until they can move into housing with less supports. The respondent entered into evidence the respondent's Operation Management Plan which states at pages five and six the following program goals:

- Each applicant is given the opportunity to thrive in a stable and safe home environment.
- Each applicant achieves their personal goals and receives relevant/desired support services.
- Each applicant maintains independence and a successful tenancy by acquiring personal confidence, self esteem, social support and the necessary skills for daily living.
- Each applicant starts to build trust and hope in their community.
- Through the acquisition of life skills, community supports and skill building, applicant will build the capacity to transition into less supported housing in the future. [Emphasis added]
- 24/7 monitoring one point entry security will allow applicants to come and go as desired; visitors will be screened by staff.

Counsel for the respondent submitted that the respondent receives funding from BC Housing to run the subject rental properties. Page one of the respondent's Operation Management Plan states:

“[The respondent] will operate the Building and BC Housing will provide an Operating Subsidy. The building was acquired under the Provincial Homelessness Initiative (phi), a housing program funded by the Government of British Columbia acting through its agent, BC Housing.

The [respondent] has entered into a sixty (60)- year Lease Agreement with [the City] for the use of Land on which the building was constructed.

Counsel for the respondent submitted that the respondent provides an array of services to the applicants aimed at assisting applicants to become better able to live independently. The respondent's Operation Management Plan states at pages three to four the services available at the subject rental property. Those services include:

- Drop-In Centre- The [drop in centre] is open 365 days a year. The meal program serves over 26,000** meals to 3,600** individuals annually including holidays. The Drop-In offers a women's lounge, hot showers and laundry facilities, clothing store, computer room, recreational activities, cooking classes and special events. The [Drop-in] life skills training and leisure social-recreational activities had over 45,000 visits in 2013.
- On-Site Health Clinic- The [health clinic] is a safe and accepting place to get medical help. Everyone is welcome, no care card is required.
- Advocacy Services- The [advocacy services] provides much needed information, support and representation to resolve income, housing and family law issues. We have advocates who specialize in family law disputes and respondent/tenancy issues. Our advocates also help to resolve debt, welfare, tenancy, and child and family disputes. The staff work with our members, government agencies and other service providers to ensure that persons with a mental illness have access to housing, financial supports, legal and mental health resources and are treated fairly in their interactions with government, community and the mental health system.
- Outreach Program- The program provides outreach services to [applicants] in treatment facilities – hospital, mental health teams, detox and treatment centres- through weekly visits. The outreach staff work with hospital staff and social workers on the community care plan to bridge members back into the community successfully.
- SEED Employment Program- Our SEED Employment program assists individuals with chronic mental health issues to build the vocational skills, confidence and stamina necessary to make the transition from unemployment to satisfying work opportunities. SEED works with the larger community - creating innovative partnerships, providing skilled workers to local businesses, and breaking down stigma about mental illness.
- Community Medical Monitoring Program- This program supports clients to stay in the community by providing medication support in their home.

Counsel for the respondent submitted that the applicants are also provided with additional voluntary support services, set out at page 6 of the Operation Management Plan, which include:

- Life skills and recreation programs that promote basic skills and the development or greater psycho-social and interpersonal skills. These groups are designed to help people learn to function and work toward living independently in our communities.

The housing program manager testified that one such program is a baking program in which the applicants learn to cook and take the food they have baked home with them.

Counsel for the respondent submitted that the applicants of the subject rental properties are chosen based on the following criteria, which is set out at page five of the respondent's Operation Management Plan:

Applicants will be referred and selected based upon the following three criteria:

- 50% homeless (street or sheltered)
- 30% SRO
- 20% at risk of homelessness

Counsel for the respondent submitted that the subject rental property provides 24-hour support to the applicants. Staffing consists of approximately 11 full-time staff persons including a program manager, assistant manager, life skills/health support workers, home support staff and mental health workers. The staffing commitment is set out at page 6 of the Operations Management Plan.

Counsel for the respondent submitted that the respondent provides breakfast to the applicants seven days per week as well as a community dinner one day per week. The applicants agreed with this submission.

Counsel for the respondent submitted that the respondent provides mental health support, access to community nurses, hearing screening, massage therapy and acupuncture.

Counsel for the respondent submitted that WorkSafe BC has defined the respondent at high risk health care facility as outlined in a letter entered into evidence dated February 8, 2018. The letter states in part:

As part of our 2018-2020 Health Care High Risk Strategy, WorkSafeBC officers may visit your workplace in 2019 to conduct an inspection. The strategy is focused on health care and community social service employers and is designed to address risk and reduce serious injuries by applying resources and effort where they will be most effective.

Counsel for the respondent submitted that the above letter and the provision of meals further supports the respondent's argument that the subject rental property is a housing based health facility, focusing on the rehabilitation of the applicants, which provides hospitality support services and personal health care and the Residential Tenancy Branch therefore, pursuant to section 4(g)(v) of the *Act*, does not have jurisdiction to hear this matter.

Applicants' Evidence

The applicants testified that the tenancy agreements they signed, all of which are identical except for the names of the applicants and the unit numbers, all reference the Residential Tenancy Act and make no mention of the subject rental properties being transitional housing or a health care facility.

The three tenancy agreements were entered into evidence by the respondent and state in part:

APPLICATION OF THE RESIDENTIAL TENANCY ACT

The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the *Residential Tenancy Act* or a regulation made under that *Act*, or any standard terms.

If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.

The applicants testified that all of the services provided by the respondent, are provided on the third floor and that one of the applicants was banned from that floor. The applicants argued that if the services were critical to an applicant's health, then they should not be able to be banned. The applicants testified that since they can be banned from the services floor, this is not a housing-based health facility.

The applicants testified that because all of the services provided by the respondent are voluntary and not mandatory the respondent does not necessarily have programs intended to assist applicants to become better able to live independently.

The applicants testified that since the respondent does not receive funding from the health authority, the subject rental properties are not a health facility. The applicants testified that they did not believe the staff have training from accredited institutions. No evidence to support this testimony was provided.

The applicants testified that they have not received support to find other housing and they all moved in between 2014 and 2016. The applicants testified that this housing does not have an end date and so is long term, not temporary.

The applicants testified that the WorkSafe BC letter is of no relevance because it is from 2018 and all their tenancies pre-date it.

The applicants' testified that the line for massage therapy is long and that not everyone can get a treatment when the massage therapists are there. The applicants testified that acupuncture is not a real treatment.

Analysis

Section 4(g)(v) of the Act states that this Act does not apply to living accommodation in a housing based health facility that provides hospitality support services and personal health care.

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

Section (1)(2) of the Residential Tenancy Regulation (the "Regulation") states that 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 applicants to become better able to live independently.

Residential Tenancy Branch Policy Guideline PG-46 provides guidance specifically related to Emergency Shelters, Transitional Housing, and Supportive Housing. In part C of PG-46, transitional housing is further described as follows:

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.

In making a determination about whether the living arrangement is transitional housing, I must turn to the definition provided under section 1(2) of the Regulation:

- living accommodation that is provided on a temporary basis

The applicants argue that the lack of an end date for residents to move out and lack of direct encouragement to find a new residence means accommodations are not provided on a temporary basis and therefore, does not meet the definition of transitional housing. I am not persuaded by this argument. There are a great many factors which determine the level of support an applicant may need and when or if an applicant is ready to move to less supported housing. It would be contrary to the purpose of providing transitional housing to have participants leave the program before they were capable of living independently.

Page of the Respondent's Operations Management Plan states: "through the acquisition of life skills, community supports and skill building, applicant will build the capacity to transition into less supported housing in the future." I am satisfied the nature of the housing is temporary.

- 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

Counsel for the respondent submitted that the respondent is funded by BC Housing. The respondent entered into evidence the Operations Management Plan which states in part:

"[The respondent] will operate the Building and BC Housing will provide an Operating Subsidy. The building was acquired under the Provincial Homelessness Initiative (phi), a housing program funded by the Government of British Columbia acting through its agent, BC Housing.

The [respondent] has entered into a sixty (60)- year Lease Agreement with [the City] for the use of Land on which the building was constructed.

Based on counsel's undisputed above submissions and the Operations Management Plan, I find that the living accommodations in question are provided by an organization that receives funding from a local government or the government of British Columbia for the purpose of providing that accommodation.

- living accommodation that is provided together with programs intended to assist applicants to become better able to live independently

I find the respondent provides living accommodations together with programs described above. I turn to the Operation Management Plan for this finding. The Drop-in centre, on site health clinic, advocacy services, outreach program, SEED employment program, and community medication monitoring program are clearly intended to assist the residents to become better able to live independently. As the Operation Management Plan states: The services provided by the respondent are designed to help people learn to function and work toward living independently in our communities.

PG-46 specifies transitional housing is intended to include at least a general plan as to how the person residing in this type of housing [transitional housing] will transition to more permanent accommodation. The applicant argues that because the programs are not mandatory, they do not meet this requirement of *required*

participation in programs to assist applicants become better able to live independently.

There is no requirement in the legislation that a person living in transitional housing is expected or obligated to participate in programs. I would find it irrational to force a person who was homeless, living in a SRO, or was at risk of being homeless, to participate in programs designed to assist him to become better able to live independently. Following the applicants' reasoning, what would the result be if a participant failed to participate in the programming? I find the accommodation was designed to assist the residents in becoming independent rather than penalize them for failure to participate in programs that would benefit them.

Based on my above findings, I find that the subject rental properties are transitional housing and that I therefore do not have jurisdiction to hear the applicants' claims, pursuant to section 4(f) of the *Act*.

The applicants argued that they each signed a tenancy agreement which states that the Residential Tenancy Act applies and therefore the Residential Tenancy branch has jurisdiction to hear the applicants' application.

How parties label a transaction is not determinative of the true legal nature of the contract. Simply stating that the *Act* applies does not make it so.

Section 5 of the *Act* states that respondents and applicants may not avoid or contract out of this *Act* or the regulations and that any attempt to avoid or contract out of this *Act* or the regulations is of no effect.

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

I find that the portion of the applicants' tenancy agreements which states that the *Act* applies is seeking to contract out of section 4(f) of the *Act*. Therefore, pursuant to section 5 of the *Act*, I find that the portion of the tenancy agreements which states that the Residential Tenancy Act applies, is void and of no effect.

As I have determined that I do not have jurisdiction to hear the applicants' application pursuant to section 4(f) of the *Act*, I decline to consider if I have jurisdiction under section 4(g)(v) of the *Act*.

Conclusion

The applicant's application is dismissed without leave to reapply for want of jurisdiction.

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: March 2, 2020



L. Mooney, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both respondent and applicant are required to comply.

The RTB website (www.gov.bc.ca/respondentapplicant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/respondentapplicant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/respondentapplicant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/respondentapplicant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/respondentapplicant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/respondentapplicant/review to learn about the review process

Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/respondentapplicant

Residential Tenancy Branch

#RTB-136 (2014/12)



