



Dispute Resolution Services

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

Decision

Dispute Codes: OLC, OPT

Introduction

This hearing dealt with applications by two tenants, each in separate rental units, for an order that the landlord comply with the Act and an order of possession. Both parties were represented at the hearing.

Preliminary Issue

At the outset of the hearing, the tenants' advocate asked for an adjournment, advising that the tenant C.J. had encountered a family crisis and was unable to attend the hearing. The landlord objected to an adjournment. The tenants' advocate was asked if she objected to proceeding just on the issue of jurisdiction. The advocate did not wish to proceed on the issue of jurisdiction as she felt the tenant's testimony with respect to the consequences of my declining jurisdiction and with respect to the drug-testing procedure would be directly relevant to my decision on the issue. I advised the advocate that in my opinion C.J.'s testimony was not relevant to the issue of jurisdiction. I permitted the hearing to proceed to address only that issue.

Issue(s) to be Decided

Does this tribunal have jurisdiction over these tenancies?

Background

The rental units are located in the Salvation Army Grace Mansion ("Grace Mansion"), which self-identifies as a residential facility providing transitional housing. The tenancy agreement which was signed by both tenants in this action contains a provision regarding Drugs and Alcohol which reads in part as follows:

The Tenant acknowledges and agrees that the Property has been designated as "Drug and Alcohol Free" to assist Residents with addiction recovery programs and for the health, welfare and benefit of the Residents

of the Property generally and that the use of alcoholic beverages and illicit drugs in any manner is strictly prohibited. **The Tenant expressly agrees that the use of alcoholic beverages or illicit drugs by a Resident shall in and of itself be sufficient grounds for immediate termination of this Tenancy Agreement.**

The Tenant agrees to submit to drug and alcohol testing within 24 hours of receiving notice in writing from the Landlord where the Landlord has reasonable grounds upon which to suspect a violation of the drug and alcohol free policy. Service under this paragraph may be affected by hand delivery to the Tenant or by taping a sealed envelope to the entrance door of the Premises. Failure or refusal to submit to drug and alcohol testing under this paragraph shall in and of itself be sufficient grounds for immediate termination of this Tenancy Agreement. (*reproduced as written*)

On or about July 2, 2009, the tenant C.J. received a notice to submit to drug and alcohol testing. C.J. provided a urine sample for the testing on the same day. Approximately one hour after having provided the sample, C.J. was advised by a staff member that she did not pass the screening. On or about July 7, a staff member advised C.J. that she had to sign a Mutual Agreement to End Tenancy because she had not passed the drug test. C.J. signed the agreement. It is this agreement that C.J. seeks to have set aside on the basis that it was signed because of the requirement that the tenant submit to drug and alcohol testing, a term which the tenant seeks to have declared unconscionable.

On or about July 3, 2009, the tenant K.F. received a notice to submit to drug and alcohol testing. K.F. provided a urine sample for the testing and he too was advised by a staff member that he did not pass the screening. On or about July 4, a staff member advised K.F. that he had to sign a Mutual Agreement to End Tenancy because he had not passed the drug test. K.F. signed the agreement and now seeks to have the agreement set aside and the corresponding term in the tenancy agreement struck as unconscionable.

Argument and Analysis

The landlord argued that Grace Mansion is a facility which provides accommodation for transitional housing and is therefore exempt from the operation of the Act pursuant to section 4(f). Section 4(f) of the Act provides as follows:

4 This Act does not apply to

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

The tenants argued that the Act does not define “transitional housing” and is therefore ambiguous. The tenants urged me to interpret “transitional housing” as housing which was transitory in that there were no indicia of permanence. The landlord argued that transitional housing should be recognized as a step between homelessness or emergency shelter housing in which individuals are assisted in developing skills which enable them to live successfully in permanent housing.

The tenants argued that in determining whether to take jurisdiction, I must consider the consequences of declining jurisdiction, which in this case would be the very real possibility that the tenants would be unable to find alternative accommodation and would be homeless. The tenants cited *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 as their authority, arguing that the case stood for the proposition that to resolve an ambiguity when reading a statutory provision, the consequences of the proposed interpretations must be considered. At paragraph 27 of *Rizzo Shoes*, Iacobucci J. wrote

“It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to *Côté*, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80).”

The tenants asserted that there is no alternative legislative scheme to address tenancies in transitional housing as there is for patients housed under the *Continuing Care Act*, *Hospital Act* or *Mental Health Act* and therefore transitional housing must be defined very narrowly to avoid exempting a wide range of tenancies.

The tenants pointed out that Canada ratified an international covenant in which it recognized the right to adequate housing and suggested that if tenancies such as this were excluded from the purview of the Act and tenants were left homeless as a result, the effect would be to undermine Canada’s commitment to provision of housing for all of its residents.

When looking at the broader context of section 4 of the Act, it is clear that legislators determined that some tenancies should not be brought under the jurisdiction of the Act. The consequences of keeping those tenancies outside the Act are the same in each case; tenants lose the protection afforded by the Act and may be left without a remedy against the actions of their landlords, which would include being summarily evicted without recourse to due process to determine the validity of an eviction. It stands to reason that in drafting an Act which is designed to govern relations between landlords and tenants, legislators would not exclude from its jurisdiction certain tenancies unless there was good reason to do so. Keeping this in mind, I am unable to find that interpreting “transitional housing” as meaning something more than “transitory in nature” will lead to an absurd result. I must assume that the consequences of excluding any type of housing arrangement from the jurisdiction of the Act were considered by the legislature with the result that they determined that in excluding such tenancies there existed a benefit to society as a whole which outweighed the detriment to those tenants who would be affected by that decision.

While it is true that the words “transitional” and “transitory” are derived from the same root, I do not accept that the words are interchangeable. Whereas “transitory” refers to lasting a very short time, “transitional” carries an idea of moving from one place to another or transforming from one state to another. The landlord provided evidence showing the ways in which various arms of the BC government use the phrase “transitional housing.” The BC Housing Glossary of Terms defines “transitional housing” as follows:

Housing from 30 days to two or three years that includes the provision of support services, on- or off-site, to help people move towards independence and self-sufficiency. Transitional housing is often called second-stage housing, and includes housing for women fleeing abuse.

I find that the transitional housing referred to in section 4(f) of the Act is designed to encompass housing which assists residents in transitioning between a state in which they are dependent upon others to a position in which they achieve independence and become productive members of society. The next question to be answered is whether Grace Mansion is indeed transitional housing.

The landlord entered into evidence the application package given to those applying for consideration as residents at Grace Mansion. Included under the heading “Eligibility Criteria” are the following requirements:

- Able to transition within 18 – 24 months to long-term (supported or independent) stable housing
- Abstinent from substance use for a minimum of 90 days prior to entering Grace Mansion
- Having successfully completed some form of a residential treatment program and receiving ongoing treatment/aftercare for mental illness and/or substance abuse

Questionnaires provided to applicants include questions regarding their commitment to recovery.

The landlord provided evidence showing that all residents at Grace Mansion are required to complete a Personal Development Plan to assist them in developing personal goals and that they must each meet with a Residential Worker on a regular basis during the course of their residency. T.A., the Director of Residential Services at Grace Mansion, testified that 3-6 of the Residential Workers at Grace Mansion have professional certification in fields including social work, additions counseling and pastoral care.

Having reviewed the submissions of the parties, I am satisfied on the balance of probabilities that Grace Mansion is transitional housing as contemplated by the Act. Grace Mansion only accepts applications from persons who have undergone a residential treatment program and it makes support services available to the parties and assists them in developing skills with a view to acquiring permanent housing at the end of their stay. This type of housing is specifically excluded under the Act and accordingly I decline to take jurisdiction.

I note that while the parties also made arguments regarding whether accommodation at Grace Mansion could be characterized as accommodation made available in the course of providing rehabilitative or therapeutic treatment or services which would also exempt Grace Mansion from my jurisdiction pursuant section 4(g)(vi) of the Act, I have not considered those arguments as I have found that Grace Mansion falls under section

4(f).

Conclusion

Jurisdiction is declined.

Dated September 21, 2009.
