



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on December 21, 2019 for an order that the Landlord comply with the Act, regulation and/or tenancy agreement (the “Application”).

A hearing on this matter occurred February 27, 2020 and a decision was issued March 02, 2020. The Tenants sought and were granted a review hearing and the original decision was suspended until after the review hearing is completed. The review decision was issued March 26, 2020.

The matter came before me for a review hearing June 01, 2020. The matter was adjourned at the request of the Landlord and by agreement of both parties.

The matter came before me again June 12, 2020. The matter was adjourned at the request of the Tenants and by agreement of both parties.

The matter came before me again June 22, 2020. J.S., D.M. and R.H. appeared for the Landlord. Tenant S., Tenant S.B., R.P. and Z.M. appeared for Tenant S. and Tenant S.B. (the “Tenants”). Nobody appeared for Tenant B.F. I explained the hearing process to the parties who did not have questions when asked. J.S., D.M., and the Tenants provided affirmed testimony.

The parties had previously confirmed there were no issues with service of documents, submissions or evidence for the review hearing.

The parties chose and agreed to address the issue of jurisdiction alone at this hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties, the submissions and the documentary evidence provided. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Does the *Residential Tenancy Act* (the “*Act*”) apply to the parties?

Background and Evidence

The Tenants live in different rental units within the same rental building noted on the front page of this decision as the rental unit address. In my view, the Tenants should have filed separate Applications for Dispute Resolution and these should have been dealt with separately or joined through the correct process. However, this was not addressed in the original decision and therefore I have continued to hear the Application as one Application involving three separate tenancies.

The Tenants submit that the *Act* applies and the RTB has jurisdiction to decide this matter.

The Landlord submits that the *Act* does not apply and the RTB does not have jurisdiction to decide this matter. The Landlord submits that they fall under section 4(f) and 4(g)(v) and (vi) of the *Act* and therefore the *Act* does not apply.

In the original decision, the Arbitrator found the *Act* did not apply pursuant to section 4(f) of the *Act* as the housing is transitional housing.

Tenants’ Evidence and Submissions

I have reviewed the Tenants’ written submissions and evidence and find the following points relevant.

The Tenants’ tenancies started in March and December of 2015. The tenancies began as fixed term tenancies and were renewed as month-to-month tenancies. The tenancy agreements do not mention a transition plan or an end date for the tenancy. The Tenants paid security deposits, a factor found to indicate the housing fell under the *Act* in a previous RTB decision.

The Tenants were never told the housing was temporary. Representatives for the Landlord have never discussed a transition plan with the Tenants.

The Landlord issues notices to the Tenants pursuant to the *Act*.

Although the Landlord provides services, tenants are not required to access these services. Tenants can be banned from access to the services. Many of the services are provided at a different location and not at the rental building. The services are not aimed at helping tenants learn to live more independently or transition to different housing.

The Landlord is listed on BC Housing's Supportive Housing Registry. The housing is supportive housing.

The Landlord has an Operating Agreement with BC Housing ("BC Housing OA"). The BC Housing OA indicates that the Landlord and residents will have a landlord/tenant relationship under the *Act*. The BC Housing OA does not indicate the housing is transitional or temporary and in fact bases success on the stability and length of tenancies.

The purpose of section 4(g) of the *Act* is to exempt facilities where their primary purpose is to provide healthcare and housing is provided as a secondary service. The housing here is not a health facility. The primary purpose of the facility is to provide housing.

The Landlord provides housing to individuals without healthcare needs as shown in the Operations Management Plan ("OMP"). If the facility was a health facility, it would not do so. The program goals in the OMP do not list goals associated with health services.

The Tenants submitted documentary evidence of which I note the following. Written tenancy agreements between the Landlord and Tenants. Notices issued to the Tenants pursuant to the *Act*. Condition Inspection Reports on the RTB form done by the Tenants and someone for the Landlord. Documentation showing the building is listed on the Supportive Housing Registration Service through BC Housing.

Tenant S. testified as follows.

The Landlord did not tell him the housing would be temporary, did not discuss an end date with him and did not tell him the housing is transitional. The Landlord did not discuss a plan with him to transition to other housing.

The Landlord provides the following services:

- Needles
- Recovery class on Fridays
- Sometimes therapy but not everyone can attend
- Cooking class on Sunday
- Singing group
- Laundry room
- Acupuncture
- Astrology

He does not take part in programs to help him live independently. He accesses massage therapy and used to attend Saturday dinners.

The services are provided on the third floor of the building. He has been banned from the third floor previously.

There is not a health clinic on the property. There are nurses available at another location. He has seen nurses going to specific units in the building. There is no nurse at the building.

The Landlord has not discussed health treatment plans with him. The Landlord has never indicated that the tenancy will end after health care has concluded. At one point, the Landlord offered medication monitoring but he never had access to this.

He was on BC Housing's Supportive Housing Registry and was chosen from this. He had an interview with the Landlord prior to moving in. He does not recall providing medical evidence to the Landlord, but it is possible he did because the Landlord's other location required this.

He has oatmeal in the morning as part of the meal program and did attend Saturday dinners a few times but otherwise gets his own food.

Tenant S.B. testified as follows.

To become a tenant at the building, he attended the Landlord's other location, provided medical evidence and had an interview with D.M.

He was never told the housing was transitional. He understood he could live at the building for his entire life. The Landlord never discussed a plan with him to transition to different housing. His name was removed from the BC Housing list because he had a residence. The Landlord has never discussed an end to the tenancy with him.

He agrees with Tenant S. about the services provided by the Landlord. He went to acupuncture and choir a few times. Services are provided on the third floor of the building. He has been banned from the third floor. The services provided do not help him to live in less supportive housing.

The Landlord has never discussed a health treatment plan with him. The Landlord has never said the tenancy would end once health services have been provided. He attended treatment for addiction at another location for three months. He retained his rental unit during this time and continued to pay rent.

He accesses safe injection items. He has accessed meal services in the past.

R.P. made submissions at the hearing. Much of the submissions were covered in the written submissions or covered by the testimony of the Tenants. A summary of additional points is as follows.

The housing is not temporary. Both Tenants have lived in the building for more than four years. The Landlord's year end report shows 74 of 130 units are occupied by individuals who have been there since the building opened.

The Landlord is not funded by government to provide transitional housing. The BC Housing OA shows the Landlord is funded to provide supportive housing.

There is no connection between the programs offered by the Landlord and a plan to transition to other housing. The services are more in line with supportive housing.

The health clinic, outreach programs and SEED employment program are not offered at the building but at another location. Tenants of the building do not have priority access to these.

Section 4(g)(v) of the *Act* requires that the building be a health facility. The building must function primarily as a health facility. There is no evidence the building is primarily a health facility. The Landlord only provides massage and acupuncture once a week.

The BC Housing OA does not support that the building is a health facility and makes it clear it is a housing facility. The tenancy agreements do not mention health services.

In relation to the WorkSafe BC letter provided by the Landlord, this is addressed to the main office. The letter does not make it clear whether WorkSafe BC considers the Landlord to be a health care employer or social services provider. The letter does not state which location it applies to and the Landlord operates more than one location.

In relation to section 4(g)(vi) of the *Act*, housing must be secondary to therapeutic services. This section does not apply where services are available alongside housing. Housing where a tenant pays rent is not housing made available in the course of providing services. The Tenants did not sign up for services and receive housing as a result. The tenancy agreements only cover housing. Nothing in the tenancy agreements entitles the Tenants to services beyond those ordinarily provided in tenancies and nothing requires the Landlord to provide such services. The services provided by the Landlord are characteristic of supportive housing. Providing medical records is also indicative of supportive housing.

Landlord's Evidence and Submissions

In the written submissions, the Landlord raises issues about whether the Tenants were served with the Landlord's evidence for the first hearing, whether there is new and relevant evidence before me as well as evidence and statements submitted by the Tenants on the review application. None of these are issues before me. The review decision has been made by another Arbitrator and that decision stands. The Tenants were granted a review hearing and that is what is before me. The review hearing is a rehearing of the Application. Therefore, the issues before me are whether the RTB has jurisdiction to decide this matter and, if so, whether the Tenants are entitled to an order that the Landlord comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreements.

The Landlord also submits that the issue of jurisdiction is *res judicata*. The review decision found that the Tenants were entitled to a review hearing meaning a rehearing of the Application. The original decision has been suspended until a decision on the review hearing is made. The principle of *res judicata* does not apply in these circumstances.

I told R.H. the above at the hearing and R.H. did not take further issue with this. Therefore, I do not find it necessary to address the above issues further.

I have reviewed the Landlord's written submissions and evidence and find the following points relevant.

Definitions of transitional housing used by other agencies is not determinative of whether the housing falls under the *Act* as noted in a prior RTB decision. Prior RTB decisions have found housing transitional despite BC Housing not labelling it as such.

Prior RTB decisions have found tenancies with no set time limit to be transitional housing and exempt from the *Act*.

Prior RTB decisions have found that services such as mentorship, counselling, group activities and preparation of community meals qualified as rehabilitative and therapeutic treatment services where these were offered to tenants suffering or recovering from mental health issues, violence or substance abuse.

The *Act* only requires that the Landlord provide hospitality, support services, personal health care or rehabilitative or therapeutic treatment services. The *Act* does not require that tenants use these services.

The Landlord does provide hospitality support services, personal health care, rehabilitative and treatment services and therefore is exempt from the *Act*.

The mandate of the Landlord "is to provide housing for individuals who have been or are presently in psychiatric treatment, and or individuals who are either homeless or at risk of homelessness." The Landlord selects tenants based on a vulnerability assessment tool. The Landlord is required to allocate units based on the following breakdown: 50% homeless, 30% SRO and 20% at risk of homelessness. The goal of this requirement is to reduce street homelessness.

The housing is rehabilitative housing accommodation. The services for rehabilitation and recovery are voluntary "to support residents' empowerment so that they may transition and re-enter society as empowered, highly functioning individuals." The goal of the Landlord's program is as follows:

"Through the acquisition of life skills, community supports and skill building, tenants will build the capacity to transition into less supported housing in the future."

The Landlord provides the following services on site and free of charge:

- Meals (breakfast and dinner)
- 24-hour support staff
- Social programs
- Counselling
- Acupuncture
- Massage therapy

A prior RTB decision found that these services went well beyond what was usually provided at a residential property and the housing fell under section 4(g) of the *Act*.

The above services contribute to therapy and rehabilitation from mental health, physical health and substance abuse issues.

The Landlord also has the following:

- On site mental health workers
- On site social workers
- On site drop in health clinic for residents and other community members
- Mental health legal advocacy program
- Skills employment and esteem development workshops
- Staff assistance with suite maintenance and housekeeping
- Laundry and staff assistance with laundry if needed

WorkSafe BC has designated the Landlord as a health care high risk workplace which only applies where direct patient care or health or social services are provided.

The *Act* does not apply despite the tenancy agreement stating it does. As found in a prior RTB decision, “how parties label a transaction is not determinative of the true legal nature of the contract.”

There are a number of criteria to be met to be eligible to live in the building “chief among them that the individuals be homeless or at risk of homelessness”. Other criteria include having a mental health condition, having a physical health condition, problematic substance use and being of low income.

R.H. made submissions at the hearing. Much of the submissions were covered in the written submissions. A summary of additional points is as follows.

Using RTB forms does not necessarily show the *Act* applies.

The Landlord does not strictly enforce their rights under the *Act*. The residents benefit from more leniency than what they would be entitled to under the *Act*. The Landlord tries to teach residents how to live in circumstances where the *Act* does apply.

R.H. acknowledged that the BC Housing OA requires the Landlord to enter into tenancy agreements under the *Act* with residents. R.H. submitted that it was “short sighted” for the Landlord to contract into the *Act* when really, they fell outside of the *Act*.

J.S. testified as follows. When the Landlord was doing the BC Housing OA with BC Housing, the Landlord wanted to use the *Act* as a tool and were told their specific policies, such as the guest policy, would stand up. The Landlord was using the *Act* as a tool to run the building and manage it.

The representatives for the Landlord suggested that they had tenants enter into tenancy agreements under the *Act* so residents could practice learning about the *Act*.

The representatives for the Landlord acknowledged the Landlord has applied to the RTB for orders in the past where tenants have failed to pay rent or caused extraordinary damage. The representatives said they have not done so in the past two years.

When asked why the Landlord applies to the RTB for orders when their position is that the *Act* does not apply, R.H. submitted as follows. The jurisdictional argument was not contemplated by the Landlord until they realised the blanket application of the *Act* meant their security policies would not apply.

R.H. made the following further submissions.

The Landlord provides services and support to help residents transition to less supportive housing in the future.

The documentation shows the average tenancy is a year and a half and a 50% turnover in units.

There is no requirement that there be a maximum time tenants can stay in housing for it to be transitional.

D.M. testified as follows. Putting an arbitrary time limit on tenancies is not an effective way to assist residents to develop and engage with staff because residents are then focused on finding another place to live versus engaging in programs. The Landlord offers numerous opportunities for residents to move on to more independent housing. The Landlord allows residents to drive the timeline for this based on their own needs and choices.

D.M. testified that 50% of individuals who resided at the building in 2014 remain.

In relation to transition plans, D.M. testified that, if tenants do not connect with staff about this then opportunities to transition do not happen; however, there have been cases where staff have worked with tenants to transition.

J.S. testified that some people will need to live at the building for the rest of their lives.

The representatives for the Landlord stated as follows. There are no set rules around transition plans. Sometimes tenants come to them about wanting to move on. Sometimes they pick tenants that seem to be a good fit to move on.

The representatives could not say that anyone for the Landlord has ever talked to the Tenants about transitioning to different housing.

R.H. made the following further submissions.

Foundational documents can be helpful in determining the relationship between the parties. The Landlord's mandate goes far beyond just providing housing as shown in the OMP.

The Landlord only provides housing to a specific population, it is not open to everyone.

The BC Housing OA emphasizes rehabilitation, therapy and services beyond housing. Regular health and wellness checks are mandated. The BC Housing OA outlines services that the Landlord is required to provide.

The WorkSafe letter in evidence applies to all buildings in the Landlord's portfolio.

Health and medical supplies are offered to residents. Massage therapy and acupuncture are provided weekly free of charge.

Section 4(g) requires that services be provided, not that medical treatments be provided. The section includes supportive services and programs.

The Landlord submitted documentary evidence including documentation relating to their harm reduction program, massage therapy program, acupuncture program, Fiscal Year End Report, job descriptions, financial documentation and a WorkSafe BC letter.

Analysis

Pursuant to section 64(2) of the *Act*, I am not bound by other RTB decisions. I do acknowledge that other RTB decisions can assist in deciding the issues before me. I have considered both parties' references to prior RTB decisions in coming to this decision.

Section 4 of the *Act* sets out circumstances where the *Act* does not apply and includes the following:

4 This Act does not apply to...

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

(g) living accommodation

(v) in a housing based health facility that provides hospitality support services and personal health care, or

(vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services...

I acknowledge that the fact that the parties entered into tenancy agreements under the *Act* does not necessarily mean the relationship between the parties is governed by the *Act*. I acknowledge that this, by itself, is not determinative of the issue.

However, I find the fact that the parties entered into written tenancy agreements under the *Act*, which are legally binding contracts, to be a good place to start when considering the nature of the relationship between the parties.

Based on the evidence before me, I find it more likely than not that the parties intended to enter into tenancy agreements under the *Act* at the start of the tenancies. I find this based on the following.

The BC Housing OA states as follows at Schedule D, section C:

1. Residency Agreements. All Residency Agreements entered into by prospective Residents will be in compliance with the *Residential Tenancy Act*, and will contain additional clauses as set out in *Schedule E*...
2. Landlord and Tenant Relationship. The full normal relationship between landlord and tenants will exist between the Society and the Resident...
 - a. minor claims by Residents and third parties are to be managed by the Society, e.g., claims through the Residential Tenancy Branch...

I find the Landlord is required to enter tenancy agreements under the *Act* as part of the BC Housing OA.

The OMP also indicates as follows (page 9):

Residents will be required to sign a Residential Tenancy Agreement in accordance with the Residential Tenancy Act that will include “good neighbour expectations” and that will clearly outline resident expectations and grounds for eviction from the...supported housing building.

This statement in the OMP supports that the parties intended to enter tenancy agreements governed by the *Act* and contemplated tenancies being governed in accordance with the *Act*.

As required in the BC Housing OA and OMP, the parties did enter into written tenancy agreements. The written tenancy agreements clearly state that the *Act* applies.

The Tenants paid security deposits. The parties did move-in inspections and completed Condition Inspection Reports on the RTB form. I find these factors support the position that the parties entered into tenancy agreements under the *Act*.

The Landlord has issued the Tenants notices referencing the *Act* and setting out the Tenants’ obligations under the *Act*. The Landlord has issued notices referencing and

relying on the *Act* as recently as January of 2020. I find the Landlord relies on the *Act* when asserting the parties' rights and obligations.

The Landlord has previously sought orders against tenants from the RTB when tenants have failed to pay rent or caused extraordinary damage. This is the process for dealing with such issues contemplated in the written tenancy agreements, BC Housing OA and OMP. The Landlord would have had no right to seek or obtain orders against tenants from the RTB if the *Act* did not apply as the RTB would not have had jurisdiction to issue such orders.

The Landlord was before the RTB in September of 2019 where D.M. appeared and did not argue that the RTB did not have jurisdiction to decide the matter. In fact, the decision on File Number 1 notes that D.M. testified that the property is supportive housing. During this hearing, R.H. mentioned that the Landlord is seeking judicial review of the decision. I do not find that this changes my point which is to note the position D.M. took at that hearing.

J.S. testified that the Landlord wanted to use the *Act* as a tool to run and manage the building. I find this supports that the intention of the parties was to enter into tenancy agreements under the *Act*.

I acknowledge that none of the above factors alone necessarily means the tenancies are governed by the *Act*. However, I find the above factors, taken together, support that the parties intended to enter into tenancies under the *Act*, did enter tenancies governed by the *Act* and that the relationship between the parties is a landlord/tenant relationship governed by the *Act*.

The representatives for the Landlord suggested that the written tenancy agreements were entered into as a learning tool so residents could learn what it was like to live in accommodation that fell under the *Act*. Neither the BC Housing OA nor the OMP support this position as neither state that the Landlord is to, or will, enter into tenancy agreements under the *Act* as a learning tool. The written tenancy agreements do not support this as they do not state that they are being used as a learning tool. Further, the BC Housing OA requires the Landlord to enter into tenancy agreements under the *Act* with residents. BC Housing is a Crown agency focused on housing. It does not accord with common sense that BC Housing would require the Landlord to enter into legally binding contracts with residents for the sole purpose of using it as a learning tool. Nor does it accord with common sense that the Landlord would do so.

I also note the following. The BC Housing OA is dated April 01, 2013. The *Act* at the time had the same exemptions under section 4 that we are now dealing with. I find it unlikely that BC Housing, and the Landlord, were unaware that the Landlord was providing transitional housing or housing related to health, rehabilitative or therapeutic treatment and therefore exempt from the *Act*. We are not dealing here with unsophisticated parties who may be unaware of the *Act* or application of the *Act*. We are dealing with two organizations – BC Housing and the Landlord – who are in the business of providing housing. I find it unlikely that BC Housing mandated that the Landlord enter into tenancy agreements under the *Act*, and that the Landlord did so, not knowing about the *Act* or whether it applied.

I find it more likely than not that the parties intended to enter into residential tenancy agreements governed by the *Act* at the outset of these tenancies.

I find it more likely than not that the reason the Landlord is now taking the position that the housing is transitional or health, rehabilitative or therapeutic related, is because the Landlord has received decisions from the RTB indicating that their security policies are contrary to the *Act* and unenforceable. In my view, the representatives said as much at the hearing. J.S. testified that the Landlord wanted to use the *Act* at the beginning because they were told their policies would “stand up”. R.H. submitted that the jurisdictional argument was not contemplated by the Landlord until they realised the *Act* precluded the Landlord from enforcing their security policies. In my view, the Landlord is attempting to change their position and attempting to find some way under the *Act* to be excluded from it.

I do not accept that parties can enter into tenancy agreements under the *Act* and then one party can later change the nature of that agreement in a manner that exempts it from the *Act* without doing so in accordance with the *Act*, for example, by ending the tenancy.

Having said the above, I acknowledge and agree that I must consider sections 4(f) and 4(g)(v) and (vi) and whether they apply to the parties as I acknowledge that, if they do, the *Act* does not apply regardless of what the parties intended and regardless of how the parties conducted themselves during the tenancies.

I note the following at the outset. I accept that the Landlord offers many services and programs to tenants as I find all the evidence supports this. However, the question before me is not whether the Landlord offers services and programs beyond those a “typical landlord” would offer. The question is whether the housing is transitional, in a

housing based health facility that provides hospitality support services and personal health care or is made available in the course of providing rehabilitative or therapeutic treatment or services. If these sections do not apply, the Landlord is not exempt from the Act pursuant to sections 4(f), 4(g)(v) or 4(g)(vi) whether they provide services and programs beyond those of a “typical landlord” or not.

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

The *Residential Tenancy Regulation* (the “Regulations”) states in section 1:

(2) For the purposes of section 4 (f) of the Act... "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.

Housing must meet all three of these criteria to be considered transitional housing.

Policy Guideline 46 addresses transitional versus supportive housing and states in part:

C. TRANSITIONAL HOUSING

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. (emphasis added)

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.

D. SUPPORTIVE HOUSING

Supportive housing is long-term or permanent living accommodation for individuals who need support services to live independently...

I am satisfied the housing here is supportive housing and not transitional housing for two main reasons. First, I do not accept that the housing is temporary. Second, I find there is no plan as to how the Tenants will transition to more permanent housing. I make these findings based on the following.

The Tenants signed tenancy agreements under the *Act* and not transitional housing agreements.

The tenancy agreements do not indicate that the housing is temporary or transitional. The most current tenancy agreements are month-to-month tenancy agreements with no end date. The tenancy agreements only contemplate the tenancies ending in accordance with the *Act*.

The Tenants have been tenants of the building since January of 2016 and April of 2015 as shown in the written tenancy agreements. The tenancies have been ongoing for more than four years.

I am satisfied the Tenants are not outliers in relation to the length of their tenancies as I accept D.M.'s testimony that 50% of individuals residing at the building resided there in 2014. This means half of the tenants have been tenants for more than five years. Further, J.S. testified that some residents will live at the building their entire lives.

The OMP in the “Standards And Outcomes” section sets out what will be used to measure the effectiveness of the support services provided. The expected outcome is increased stability of residency and the indicators include the number of residents who remain housed after six months, the length of residency and the reason for leaving. This seems to indicate that the goal is to have residents maintain tenancies versus have them transition to other housing.

I acknowledge that transitional housing does not require a set number of years for a tenancy; however, it must be temporary. The dictionary meaning of “temporary” is “lasting for a limited time”. Four and five year tenancies are not tenancies lasting for a limited time. Further, the fact that residents may live at the building for their entire lives is completely inconsistent with the plain meaning of “temporary”.

Further, I accept that the Tenants were never told the housing would be temporary or transitional and have never discussed an end date of the tenancy with the Landlord. I also accept that the Landlord has never discussed a transition plan with the Tenants. The representatives for the Landlord did not dispute these points.

As stated in Policy Guideline 46, transitional housing is intended to include at least a general plan as to how residents will transition to more permanent accommodation. I find no such plan exists with the Tenants.

I acknowledge that the representatives stated that transitioning to other housing is voluntary and they leave it to the residents to decide when this is appropriate. I do not take issue with the Landlord’s reasoning for doing so. However, the absence of any plan or discussions about transitioning to other housing supports the position that the housing for the Tenants is not transitional. This is the issue before me.

I acknowledge that the Landlord provides many services to tenants. I agree some of these could be interpreted as helping tenants transition to less supportive housing in the future. However, I find there can be a spectrum of supportive housing and therefore do not accept that housing that provides such services is necessarily transitional housing as that term is used in the *Act* and defined in the *Regulations*. Where housing provides programs intended to assist tenants to become better able to live independently but is not temporary and does not include at least a general transition plan, it is not transitional housing. That is the case here.

In the circumstances, I find the housing is not transitional housing and therefore does not fall under section 4(f) of the *Act*.

I note that the BC Housing Supportive Housing list supports this finding. I also note that the BC Housing OA and OMP support this finding as these indicate the housing is supportive housing not transitional housing.

Section 4(g)(v) - in a housing based health facility that provides hospitality support services and personal health care

I find based on a plain reading of section 4(g)(v) of the *Act* that a landlord must be running a health facility to be exempt under this section. The section specifically states this.

Neither the *Act* nor the *Regulations* define what a health facility is. However, I find a common sense understanding of this term is a facility with some focus on providing some type of health care, services or programs.

I do not accept that the building is a health facility for the following reasons.

The Tenants entered into residential tenancy agreements for housing, not for anything health related. The tenancy agreements are not dependent on, or related to, the Tenants requiring health care, services or programs. The tenancy agreements do not outline health care, services or programs that will be provided. The tenancy agreements do outline services that are included in the tenancies. These are the usual services included in residential tenancy agreements.

I find that the documentary evidence provided indicates that the purpose of the building is to provide housing, not to provide health care, services or programs.

The BC Housing Amending Agreement states:

Background:

- A. BC Housing and the Provider have entered into a Provincial Homelessness Initiative Agreement...for the purpose of providing Stable Housing and Support Services for people who are Absolute Homeless or At Risk of Homelessness.

This statement supports that the purpose of the building is to provide housing to address homelessness and not to address health related issues.

The BC Housing OA states that the goal of the Provincial Homelessness Initiative is to help provide stable housing and support services for people who are homeless or at risk of homelessness. Again, the focus is on homelessness and providing housing. The focus is not on health related services.

The BC Housing OA states that BC Housing and the Landlord are working together to help residents acquire and maintain housing and that both recognize it is essential to connect residents with supports to meet their immediate needs in order to accomplish this. Again, the focus is on housing. The support services are aimed at helping residents who are homeless or at risk of homelessness acquire and maintain housing. The purpose is not to assist residents with health related matters.

In the “Service Description” the BC Housing OA states:

The Support Services...are intended to help Residents...to achieve and maintain stability in housing, and enhance access to other community based supports and services which help individuals build self reliance and foster resilience against homelessness. (emphasis added)

This statement again reflects that the purpose and focus of the building and Landlord is to address homelessness, not to address health related issues.

The BC Housing OA sets out “Resident Eligibility” at Schedule D. It states that all residents must be Absolute Homeless or At Risk of Homelessness, with an Income at or less than HILs. This again shows the focus is on housing and not on health as there is no indication that residents must have health issues or needs.

I have reviewed the OMP. It is my understanding from it that it outlines information specific to the building but also information about the Landlord in general (Part 1). I note the following points from the OMP.

The first paragraph of the OMP states:

The Operations Management Plan...provides an overview of the [Landlord’s] commitment to operating a supported housing program for individuals who are homeless or who are at risk for homelessness and have mental health issues and/or require other support services to increase their wellness and overall quality of life. (emphasis added)

The OMP notes that the building was acquired under the Provincial Homelessness Initiative, a housing program funded by the Government of British Columbia acting through BC Housing.

Page three of the OMP outlines the mandate of the Landlord. Again, I understand this section to be about the Landlord in general and not the specific building. However, I do note that the purposes of the Society are:

- To work with individuals who have been or are presently in psychiatric treatment in the community by providing a center for socialization and assistance in coping with life skills;
- To promote an independent low-key, softly directed program on a consistent and regular basis, not as a treatment facility but as a complimentary services to all other existing facilities;
- To provide housing services for individuals who have been or are presently in psychiatric treatment in the community...

(emphasis added)

The OMP outlines the outreach program of the Landlord which provides outreach services to members that are in treatment facilities. I find this is another indication that the Landlord is not running a treatment facility.

At Part 2, in relation to the building, the OMP states that it “will contain housing for low-income tenants who are either homeless or at risk of homelessness with and without mental health service/support needs and service options for youth” (emphasis added). This shows that the building will house individuals whether they have mental health needs or not. Again, the focus is on homelessness. Further, I do not accept that a health facility would house individuals that do not require health related services.

In relation to tenant selection, the OMP states that tenants will be referred and selected based on the following criteria:

- 50% homeless
- 30% SRO
- 20% at risk of homelessness

Again, the focus is on homelessness, not on individuals with health needs.

I have read the Program Goals for the building on page five and six of the OMP. The goals do not relate to health.

The “Standards And Outcomes” on page seven of the OMP outline what will be used to measure the overall effectiveness of the support services provided by the Landlord. The outcome, indicators and measure all relate to housing. There is no mention of health related outcomes.

The Landlord’s website in relation to the building states that it contains 139 suites for people who are living with homelessness or at risk of homelessness, who may also have mental health and/or substance use challenges. I find this statement supports that the purpose of the building is to provide housing as it indicates that residents “may” have mental health or substance use challenges, not that they must.

I also note that the programs and services provided by the Landlord are optional, tenants do not have to participate in them. Therefore, tenants could live at the building without accessing or using any health related programs or services. This supports that the building is not a health facility as it would be illogical for a health facility to provide housing for individuals who do not need or access health related services and may never access health related services.

Although there is evidence before me suggesting that the Landlord may consider residents’ health needs in determining who is best suited for the building, I do not accept that it is a requirement that residents have health care needs because the documentary evidence does not support this.

I acknowledge that the Landlord has an on-site health clinic. The parties disagreed about whether it is at the building or not. I do not find it necessary to decide whether it is or not. Even accepting that it is at the building, I find from all of the evidence that it is a separate part of the building and open to anyone. I find the Tenants are living in housing in a building that has a health clinic in it. It is my understanding from the evidence that the Tenants do not have to use the health clinic and the clinic does not provide care to all residents on some regular basis. The health clinic does not change the nature of the building from housing to a health facility.

When I consider the documentary evidence before me, I find that the purpose of the building is to provide housing to people who are homeless or at risk of homelessness. The purpose is not to provide health related care, services or programs. I do not accept that the purpose of starting, and running, a health facility would be to address homelessness. I acknowledge that the two issues – health and homelessness – may be connected. However, they are two distinct issues. Further, I do not accept that this building was started and is run to address both issues together as the Landlord accepts

tenants who do not have health needs. It does not accord with common sense that a health facility would do so.

I also accept the Tenants' testimony that the Landlord has not discussed health treatment plans with them. I further accept that Tenant S.B. left the building to attend a treatment facility. I did not understand the representatives for the Landlord to dispute these points. Again, these points support that the building is not a health facility.

I am satisfied the building is not a health facility. Section 4(g)(v) of the *Act* does not apply.

Section 4(g)(vi) - that is made available in the course of providing rehabilitative or therapeutic treatment or services

I find the wording of section 4(g)(vi) to require that the rehabilitative or therapeutic treatment or services be the primary purpose of the housing and that the housing be secondary to the rehabilitative or therapeutic treatment or services. In my view, this is the meaning of "in the course of" as used in section 4(g)(vi) of the *Act*.

As stated, I accept that the Landlord provides many services to tenants. However, I do not accept that tenants sign up for, or agree to participate in, these services and therefore receive housing while being provided the services. I do not accept this for the following reasons.

The tenancy agreements are for housing and not for any services unrelated to housing. The tenancy agreements are not dependent on the Tenants accessing services unrelated to housing. I find the Tenants sought and were provided housing. Not that the Tenants sought services and were provided housing while accessing the services.

The Landlord has an Operating Agreement with BC Housing, a Crown agency that addresses housing needs, not rehabilitative or therapeutic treatment or services.

The BC Housing OA indicates that the primary purpose of the Landlord and building is to provide housing to individuals who are homeless or at risk of homelessness. The OMP shows the Landlord operates a supported housing program. The Landlord is on the Supportive Housing list with BC Housing. These documents support that the purpose of the Landlord and building is to provide housing and not that the housing is incidental to the services provided. I have outlined my reasons for finding that the purpose of the Landlord and building is to provide housing above.

There is no issue that tenants are not required to participate in programs or take advantage of services. The parties agreed on this. The Landlord submitted that this does not detract from their position. However, if tenants can live at the building and not participate in any programs or services, the housing is not provided in the course of providing rehabilitative or therapeutic treatment or services. The housing is the primary purpose of the Landlord and the programs and services are secondary to that housing.

Given the above, I find the primary purpose of the Landlord is to provide housing and that the programs and services provided by the Landlord are in addition to, or secondary to, that housing. Therefore, section 4(g)(vi) of the *Act* does not apply.

Summary

I find the Landlord is required to enter into tenancy agreements under the *Act* with tenants pursuant to the BC Housing OA.

I find the Landlord did enter into written tenancy agreements under the *Act* with the Tenants.

I find the parties intended to enter into tenancy agreements governed by the *Act*.

I find the parties relied on and governed themselves in accordance with the *Act* previously. I find it unlikely that the Landlord did so believing or knowing they were transitional housing or housing related to health, rehabilitative or therapeutic treatment but not knowing they were exempt from the *Act*.

I find it more likely that the Landlord is now attempting to change its position and is attempting to find some basis under the *Act* to do so, despite the evidence as a whole failing to support this position.

I do not accept that the housing here is transitional housing as it is not temporary, and the Tenants have no plan to transition to other housing.

I do not accept that the building is a health facility because I find the building was started, and is run, to address homelessness and not to address health issues. I find tenants can reside at the building without having health needs and without accessing health related services or programs. I find this indicates the building is not a health facility.

I do not accept that the housing is provided in the course of providing rehabilitative or therapeutic treatment or services as I find the main purpose of the Landlord in relation to this building is to provide housing and that the programs and services are provided secondary to the housing.

Therefore, I do not find that sections 4(f), 4(g)(v) or 4(g)(vi) of the *Act* apply. I find the Landlord is not exempt from the *Act* pursuant to any of these sections. I am satisfied the Landlord provides supportive housing which is covered by the *Act*. I find the *Act* applies and the RTB has jurisdiction in this matter.

Result

Given the above, I set aside the original decision pursuant to section 82(3) of the *Act* as it relates to the Tenants.

An issue arose during these hearings in relation to Tenant B.F. as nobody appeared for him at the three review hearing dates.

The original decision related to Tenant B.F. I do not see Tenant B.F. mentioned on the Review Application.

Given I do not see Tenant B.F. named on the Review Application, and given Tenant B.F. did not appear, or have an agent appear, at the review hearings up to this point, I consider Tenant B.F. to have either not sought review of the original decision as it relates to him or to not have pursued the review. Given this, I confirm the original decision as it relates to Tenant B.F. as, in my view, review of the decision as it relates to Tenant B.F. is not before me. I note again that the Tenants and Tenant B.F. live in separate rental units and have separate tenancy agreements with the Landlord. I did not hear from Tenant B.F. on the review hearings. Therefore, I am not satisfied my findings apply to Tenant B.F.

Given the above, the hearing will be reconvened to hear the parties on the request for an order that the Landlord comply with the *Act*, regulation and/or tenancy agreement. The parties will be sent a new Notice of Hearing with this decision. Both parties must appear at the next hearing date.

Conclusion

I find the *Act* applies and the RTB has jurisdiction to decide this matter.

I set aside the original decision issued March 02, 2020 as it relates to the Tenants. I confirm the original decision as it relates to Tenant B.F. as I find Tenant B.F. either did not seek review of that decision or did not pursue a review of that decision.

I reconvene the hearing to hear the parties on the request for an order that the Landlord comply with the Act, regulation and/or tenancy agreement. A new Notice of Hearing will be sent to the parties with this decision.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 22, 2020



K. Selbee, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

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Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

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

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

Residential Tenancy Branch

#RTB-136 (2014/12)

