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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with 11 tenant Applications for Dispute Resolution joined to be heard together seeking orders to have the respondent landlord comply with the *Residential Tenancy Act (Act)*, the Residential Tenancy Regulation (Regulation), and their respective tenancy agreements.

The hearing was conducted via teleconference and was attended by the lead applicant; two additional applicants; their advocates; a friend to provide support and three agents for the respondent.

The hearing was originally convened on May 2, 2017 at which time I declined to grant an adjournment for reasons outlined in my Interim Decision of May 2, 2017. However, I did allow the parties to submit additional documentary evidence for reasons also outlined in that decision. I also noted that once the written submissions were made I would consider whether to reconvene the hearing or to write a final decision based solely on the written submissions.

In the May 2, 2017 Interim Decision I made the following orders:

- I order the respondent is allowed to submit to the Residential Tenancy Branch and serve to the applicants' advocates, no later than the end of business on May 10, 2017 documentary evidence in response to the applicants' Applications and their oral submissions made during this hearing;
- I order the applicants are allowed to submit to the Residential Tenancy Branch and serve to the respondent, no later than the end of business on May 17, 2017 documentary evidence in response to the respondent's documentary submissions noted above;
- I order each of the parties may exchange one copy of the above noted evidence by email and that such service will be deemed received by the other party immediately upon sending the email. I note the parties, during the hearing, provided specific email addresses for this service and to be used by me to send each of the parties a copy of this Interim Decision;

- I order each of the parties, once they receive the other party's evidence, to provide an email confirmation that they have received that evidence and provide a copy of that email to the Residential Tenancy Branch.

On May 9, 2017 I provided a second Interim decision in response to the landlord's legal counsel's request for an extension of the timeframes set out in the May 2, 2017 Interim Decision. For reasons noted in the Interim Decision dated May 9, 2017 I declined to grant the extension. The landlord's legal counsel submitted their evidence in compliance with the above noted orders from the May 2, 2017 Interim Decision.

I note, however, that on May 15, 2017 the landlord's counsel submitted a letter correcting some minor errors in two sections of their response; specifically providing the correct date of a decision by Chief Justice Hinkson in *British Columbia v Adamson*, 2016 BCSC 1245 and to correct the wording of their submission regarding *Atira Property Management v. Richardson*, 2015 BCSC 751 where they wrote "patently unconscionable" but meant "patently unreasonable". As this letter was submitted for the purpose of accuracy and clarification of typographical errors in the landlord's submissions I find it is not inconsistent or contrary to the orders of the May 2, 2017 interim decision.

In compliance with my order to the tenants, I accept that on May 17, 2017 they submitted their responsive evidence to the landlord's documentary submissions provided by the landlord on May 10, 2017.

On May 23, 2017 in a joint submission from the tenants' advocates and the landlord's legal counsel the parties wrote:

> "The parties to this proceeding request that the RTB adjourn the adjudication process until Monday, May 29, 2017 so that the parties may discuss the possibility of entering into negotiations to settle the claims made by the applicant Tenants."

Notes on file show that the tenants' advocate was contacted by phone and advised that I would allow the parties until May 31, 2017 to submit written notification that they had either resolved the subject issues withdrawing their Applications or they wished for me to proceed.

On May 30, 2017 the parties submitted a follow up joint submission confirming that they were unable to negotiate a settlement and wished for me to proceed with the adjudication of the tenants' Applications. In this submission the parties requested that the tenant originally identified in his Application as AB who was amended to be named AS in the hearing as noted in the May 2, 2017 Interim Decision should be amended back to AB. I have amended this decision to include AS also known as AB.

Also on May 30, 2017 the landlord's legal counsel submitted a request to file sur-reply in response to the tenants' responsive submissions to the landlords' submissions provided on May 10, 2017. Legal counsel submits:

> "First, we submit that fairness to the Respondent requires the opportunity to address new issues and arguments raised by the Applicants in the Reply, particularly with respect to the jurisdiction of the Residential Tenancy Branch ("RTB") over the Applications. The Applicants have filed new evidence in the Reply, making broad and unsubstantiated claims about the Respondent and the services provided by the Respondent. Fairness to the Respondent requires an opportunity to respond to matters that it has had no prior opportunity to address.
>
> The Reply also urges the RTB to discount much of the Respondent's submissions and materials for reason that it is "unsubstantiated opinions and hearsay materials". The Applicants' position raises procedural fairness and substantive considerations that we ought to be permitted to address before the RTB reaches its decision, especially in the full circumstances of this case." [Reproduced as written].

As noted in both of my interim decisions, I found that the landlord was largely responsible for their failure to comply with the requirements set out in the Rules of Procedure in regard to the submission of their response and evidence and, in particular, their position that they were exempted from the *Act*.

Even after the Interim Decision dated May 2, 2017 the landlords' legal counsel sought an additional extension, in part, because the landlords took three more days to get ahold of their counsel which left counsel with little time to prepare their response on behalf of their client,

The landlords and their legal counsel were aware that their primary position is that they should be exempt from the *Act* as submitted by oral testimony of the landlord's agents at the original hearing and as such were obligated to submit **all** evidence they felt would supported their position 7 days before the original hearing.

I note that the additional evidence submitted, on May 30, 2017, included a complete copy of the operating agreement between the respondent and the government agency responsible for the property (a copy of part of the agreement had been submitted by the May 10, 2017 deadline); a copy of a home support consent agreement and a blank tenancy agreement and submissions responding to individual tenant submissions in the applicants' May 17, 2017 submissions.

I find there was no reason that the landlord could not have submitted all of the documentary evidence they submitted on May 30, 2017 either prior to the hearing or at least by May 10, 2017 as per my original order.

I find that if the landlord had been prepared to present their case and the assertion of the lack of jurisdiction in accordance with the Rules of Procedure the tenants' submissions would have been heard as testimony during the hearing and the landlord would have had an opportunity to respond at that time. Instead, I find the landlord's counsel is attempting to rehabilitate late evidence by submitting it in the guise of reply evidence. As such, I have not considered the landlords submissions dated May 30, 2017.

In regard to the delay in the writing of this decision I note that Section 77 (1) (d) of the *Act* stipulates that a decision of the director must be given promptly and in any event within 30 days after the proceedings conclude. I also note that Section 77(2) states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1) (d).

While I understand the need for the tenants to have these issues resolved both the issues identified in the Application and the issue of jurisdiction raised by the landlord required significant consideration, including the determination of whether or not there was a need to reconvene the proceeding.

I am satisfied that the parties have provided sufficient evidence and testimony to fairly adjudicate both the jurisdictional issue and the validity of the landlord's guest policy without the need to reconvene the hearing. I do not find that reconvening the proceeding will contribute to the resolution of these matters. I apologize for the delay in providing this final decision.

Issue(s) to be Decided

The issues to be decided are whether the applicants are entitled to an order requiring the respondent to comply with the requirements set forth in the *Act* and Regulation, pursuant to Section 30 of the *Act* and Section 9 of the Regulation Schedule.

Prior to the determination of the tenants' Applications it must be determined if the tenancy is exempted from the jurisdiction of the Residential Tenancy Branch pursuant to Section 4 (g)(v) of the *Act*.

Background and Evidence

Both parties submitted a substantial volume of evidence. The landlord submitted the following documents related to jurisdiction:

1. A copy of a printed webpage showing their mission statement which reads: "To develop, maintain, and promote affordable housing. Our housing is for individuals who are poorly served elsewhere in the community due to their physical health, mental health, behavioural issues, substance dependencies, forensic history, and for those who are homeless";

2. A copy of part of a document entitled “Operator Agreement Combine Property Management and Support Services” which includes the following relevant clauses:
    a. Part 1, Clause 1 states “The goal of this Agreement is to help provide Stable Housing and Support Services for people who are Absolute Homeless or At Risk of Homelessness”;
    b. Schedule A, Section A, Clause 1 states: “Absolute Homeless means individuals or families who are living in: public spaces without legal claim; a homeless shelter; a public facility or service and cannot return to a stable residence; or individuals and families who are financially, sexually, physically, emotionally or otherwise exploited to maintain their shelter”;
    c. Schedule A, Section A, Clause 3 states: “At Risk of Homelessness means individuals or families who are living in temporary accommodation where they do not have control over the length and conditions of tenure, and do not have adequate personal space; time-limited housing designed to help them transition from homeless to living in a permanent form of housing; or accommodation where residency will be terminated in three months of application”;
    d. Clause 7 states: “The management of property and the delivery of services is guided by these principles:
        i. Services are resident-focused and provide residents with a sense of personal security;
        ii. All reasonable efforts will be made to foster residents’ capabilities to live successfully and independently;
        iii. An atmosphere of dignity and respect for all residents is to be maintained; and
        iv. Operations are transparent and accountable;
    e. Part 2, Clause 1 identifies 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”;
    f. Part 2, Clause 1, Sub-clause d) indicates that services include: “connecting residents to community supports and services such as education; employment; health; life skills”;
    g. Part 2, Clause 1, Sub-clause e) provides for the additional services to include: referrals and linkages with other community-based organizations, local government agencies, and the continuum of health, mental health, and addictions services”
    h. Part 3 of the Agreement indicates a number of details such as the term; payment; and standards and outcomes. Part 3, Section 2 lists that the outcome will be increased stability of residency and will be assessed by the percent of residents who remain housed after 6 months; length of tenancy at exit; and reasons for resident leaving.

3. A copy of Supreme Court of British Columbia decision *British Columbia v Adamson*, 2016 BCSC 1245. This decision provides context and background in regard to the creation of the subject residential property;
4. A copy of a "Service Provider Contract" between the landlord and the local health authourity which includes the following relevant clauses:
    a. Clause 1 states the Service Provider provides 147 units of low-barrier permanent housing…."for individuals living with physical and mental health issues, substance use dependencies and other challenges. Individuals will have experienced multiple barriers to housing, have a history of shelter use, homelessness and/or unsuccessful tenancy";
    b. Clause 2 outlines that the health authourity and BC Housing will jointly determine who will be eligible to move into any vacancies. This Clause goes on to state that "the services will be offered only to residents who may need access to primary care and other health and social supports;
    c. Clause 3 outlines the desired outcomes which include:
        i. 10 hours per day of clinical supports and program staff Monday through Saturday every week of the year;
        ii. "Improve effective engagement with medical care to address health problems that may have gone untreated or undiagnosed due to social barriers or substance use";
        iii. "Promote the stability and independence of clients, and with a focus on building skills";
        iv. "Reduce hospital bed-days for those withdrawing from substances or concurrent substance use and mental health concerns";
        v. "Ensure efficient use of community-wide supported housing and health resources";
        vi. "Assistance for community mental health and Assertive Community Treatment (ACT) teams in engaging with complicated residents who would otherwise be lost to follow up";
        vii. "Improve client self-sufficiency, security of tenure, reduced reliance on emergency services and quality of life";
        viii. "Increase continuity of services within MHSU and the community for individuals requiring supported housing services";
        ix. "Enhanced medication adherence and management";
        x. "Reduced barriers to access medical, psychiatric and addiction specific treatment"; and
        xi. "Timely and privileged access to a population that can otherwise be very difficult to engage";
    d. A copy of a service agreement with the Ministry of Children and Family Development for the provision of housing to "young people whose high risk behaviours prevents them from accessing other housing situations." The agreement stipulates the following 3 goals:
        i. "Improve youth's immediate day-to-day living through the provision of housing and food security";

ii. "Improve youth's well-being through access to on-site medical care"; and
iii. "Provide support services that encourage youth to build and maintain appropriate relationships, increases their ability to stabilize housing security. Provide Housing security for youth";

e. A copy of a letter dated April 28, 2017 from the Director of Mental Health and Substance Use for the local health authourity which states, in part: "Based on the public-funded services and supports available and provided in the [residential property], [The health authourity] considers the [residential property] to be a Housing-Based Health Facility." The letter goes on to state the health authourity funds "a primary care clinic which operates six days per week with daily nursing support and weekly physician visits. Services provided include primary health care, medication management and addictions medicine". In addition, an overdose prevention unit also operates on site 7 days per week for extended hours which includes witnessing of injection drug use; peer/social supports and linkages to on-site primary care clinic and other health authourity delivered mental health and substance use programming;

5. A copy of an example of a tenancy agreement which outlines that the tenancy will be on a month to month basis for a monthly rent of $375.00 due on the 1st of each month; that the tenant will pay a security deposit of $187.50; and that water, electricity, and heat are included in the rent. There additional clauses that outline that visitors are permitted between 9:00 a.m. and 10:00 p.m.; that the landlord may restrict access to visitors under reasonable circumstances; tenants are required to register their guests and their guests must have photo identification and that the landlord will perform a room check every 24 hours, only if the tenant has not been seen in the previous 24 hours and will occur before 9:00 p.m. nightly.
6. A copy of a blank "Home Support Consent" in which the tenant can agree to allow support staff for regular cleaning and "fire code maintenance";
7. A copy of a blank "Guest Information Form" asking for emergency contact information; "pertinent health information" and other agency involvement; and
8. 4 previous Residential Tenancy Branch decisions where arbitrators determined various landlords were found to provide sufficient to establish their facility was exempt from the *Act* pursuant to Section 4(g)(v). The decisions were dated June 23, 2014; November 18, 2011; January 27, 2012; and December 2, 2009. The landlord submitted that the June 23, 2014 decision was in relation to a property that they manage in a similar fashion to the subject property.

The landlord submits that the subject tenancies are exempt from the *Act* because they are a home based health facility that provides hospitality support services and personal health care. They submit they provide 147 units of low-barrier permanent housing for individuals living with physical and mental health issues, substance use dependencies and other challenges.

They submit that they provide the following optional services: 2 meals per day (breakfast) and an afternoon meal; access to mental health workers 24 hours per day/7 days per week; home support workers; a clinic that is open 6 days per week; access to outreach social workers; skills training; and an overdoes prevention unit.

The landlord submits that the residential property is a former care facility and the site is zoned by the city for this purpose and is owned by the province. The parties agree that the property was purchased by the province in response to a local housing crisis. The parties also agree the *British Columbia v Adamson*, 2016 BCSC 1245 decision result from, at least in part, the availability of the rental units at this residential property.

The landlord submits the property is managed by them on behalf of BC Housing and is subject to the Operator Agreement noted above. They also submit that they have entered into additional agreements with the local health authourity to provide the services as outlined above.

In relation to the agreement with BC Housing the landlord specifically notes the purpose of the arrangement is reflected in Clauses 6 and 7 of Part 1 of the Operator Agreement. Clause 6 states that BCH and the landlord are to work together to help the Facility's residents acquire and maintain housing, and to accomplish this goal, each party recognizes that it is essential to connect residents with supports that meet their immediate need. Clause 7 is noted above.

The landlord specifically identified additional services (not noted above) that they are required to provide as a part of the Operator Agreement. These services include: evaluation of the resident's vulnerability to continued instability using a Vulnerability Assessment Tool that is provided in the agreement; supporting residents to maintain their residences, including directly assisting with room de-cluttering, resident rent contribution payment and/or repayment plans; individual or group support services such as life skills, community information, social and recreational programs; liaison between residents and case managers; 1 hot meal plus a light breakfast; and 3 staff persons, provide on-site "coverage twenty-four (24) hours per day, seven (7) days per week".

In response to the landlord's position on jurisdiction the tenants submitted the following relevant documents:

1. A local newspaper article dated June 15, 2016 in which is reported that the government purchased the subject property to provide 140 units of long-term supportive housing for people, including those with mental health and addictions issues. The article goes on to quote the responsible Minister as saying: "Our success with these folks, when we add in stable housing with supports, is usually very good, and I wouldn't expect that would be any different in this case";
2. A print out from BC Housing's website that defines supportive housing as providing a wide range of on-site, non-clinical supports, such as life-skills

training, and connections to primary health care, mental health or substance use services. The page also describes who might be eligible for supportive housing as someone who is a low-income adult; homeless or at risk of homelessness; requires supports with mental health and/or substance abuse; and need support services that can help you maintain a successful tenancy;

3. Additional affidavits from 7 of the applicants;
4. An affidavit from an Advocacy Lead from a local advocacy agency (the same agency that the tenant's Advocates work for). In this affidavit, the Lead submitted that he was advised by representatives of the landlord in July 2016 that the tenancy arrangements for any of the people transitioning from a local tent city would be subject to the *Act*; that informed potential tenants of that information; and that he was advised the landlord would provide a meal service but not of any specific health care services;
5. A copy of Supreme Court of British Columbia decision *Barry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator)* 2007 BCSC 257, specifically to identify paragraph 11 that states: "I conclude that the *Act* is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the *Act*, tenants would have only the benefit of notice of termination provided by common law. In other words, while the *Act* seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group."

The tenants submit that while providing personal care and hospitality serves the residential property is not a housing-based health facility. They further submit that there is no definition of the term in legislation. Specifically the tenants point out that the issue is whether "at the time the tenancy agreements were signed with the tenants, it is reasonable to conclude that the tenants were entering into a tenancy agreement as defined in the RTA and to which the RTA applies."

The tenants submitted, in their written submission of May 17, 2017, 10 points identified under statement 19 on page 5 as to why they believe the subject tenancy agreements fall within the jurisdiction of the *Act*. Specifically they state:

1. The tenants were never made aware of the majority of the services now being provided by the landlord and they did not agree to access these services;
2. The tenants were not screened or assessed for particular personal health care and/or hospitality needs at the outset of their tenancies;
3. The tenants were not accepted as residents under the premise that a purpose of their residency would be to participate in health programming or to be supported with personal health care while recovering from health issues;
4. The tenants believe that the services offered at the residential property are optional supports provided as a benefit above and beyond the services set out in the terms of their tenancy agreements;

5. Despite the landlord's submission that the tenants were asked to provide medical information they have not provided any information about when the use of the form was initiated;
6. The Operator Agreement sets out the goal to provide stable housing and support services but does not outline any specific mandate to operate a housing-based health facility with personal healthcare and hospitality services;
7. The Operator Agreement defines support services as "social programs that encourage and enhance the well-being, independence and self-reliance of Residents in the Development";
8. The Overdose Prevention Site is one of a number locally provided and there is no indication that the intent of locating one at this property was because it was a health facility;
9. While the landlord identifies staff as "Mental Health Workers" there are no specified qualifications other than a high school diploma and a "good knowledge of mental illness"; and
10. At the time of establishment it was a food truck that provided meals to resident and not an established kitchen or dining room.

In relation to the issues brought forward by the tenants in these joined applications, the tenants submit that the landlord has failed to comply with the *Act* and the Residential Tenancy Regulation by imposing a restrictive guest policy that infringes on the tenants' right to quiet enjoyment and access to their homes by their guests.

The tenants submit that the landlord has imposed the following guest policy:

- A requirement for all guests to show identification or provide other personal information to staff in order to enter the residential property;
- Staff have the right to refuse any guest entry;
- Tenants must sign in guests, in person, at the front desk;
- No one under the age of 19 is allowed to enter as a guest;
- Guests are only allowed between 8:30 a.m. and 10:00 p.m. with no overnight guests;
- The landlord restricts the number of guests; and
- Tenants must accompany their guests at all times in the building.

The tenants submit that this guest policy contravenes the landlords obligations to the tenant set out in Sections 28 and 30 of the *Act* and Section 9 of the Residential Tenancy Regulation Schedule (Schedule).

Specifically the tenants submit:

- The requirement for a guest to show identification forcibly intrudes on the privacy of both the tenants and their guests in contravention of Section 30(1)(b) of the *Act* and Section 9 of the Schedule;

- The *Act* allows the landlord remedies to deal with tenants who have guests who cause disturbance including the right to end the tenancy under Section 47;
- The enforcement of the policy seems to be at the "whim" of the person working at the front desk and is not uniformly administered;
- It is unfair to the tenants. as there is no mechanism to contact the tenant when a guest arrives to inform them that they will need to go to the front door to sign them in and the guest is denied entry at all because the tenant did not know they were coming. In some cases, it is hardship, due to medical conditions, for the tenant to go to the front desk to sign guests in;
- The limitation of guests to adults 19 and older imposes unreasonable restrictions on the tenants' ability to have friends and family and discriminates on the basis of age;
- The time restrictions imposed unduly restrict the tenants' activities. They submit that not all tenants' lifestyles operate according to a typical business hour schedule;
- Restrictions on the number of guests allowed puts undue restrictions on the tenants' activities; and
- Being required to be with guests at all times can be problematic for tenants with mobility and health issues who find it challenging to escort their guests to and from the front door.

The landlords submit, in regard to the issue of their guest policy:

- Staff are instructed to administer the policy flexibly in order to encourage residents to receive guests, friends, family and build community while dissuading criminal, predatory and disruptive people from entering and causing on residents;
- The landlord has expanded acceptable methods of identification to include things such as mail; medical prescriptions; Correctional Services identification; hospital bracelets and welfare stubs;
- Staff are instructed to provide flexible application of the policy for emergency services personnel; outreach workers; legal advocates; family and regular guests previously known to staff;
- The landlord submits that they are currently looking at installing intercoms in units so that they can contact them when a guest arrives;
- The landlord submits that despite the current guest policy the residents and staff still face a significant number of ongoing threats and risks. The landlord supports this submission through the provision of a copy of a letter from a local police inspector dated May 4, 2017. The inspector wrote:
    - "Since the beginning of operations at [residential property] police officers and other emergency responders are called to the facility at the behest of residents or PHS staff. Many of these calls to police are the result of residents begin assaulted, threatened, or extorted. In many cases, these offences are committed by persons who do not live at the facility. Additionally, there have been multiple serious incidents that threaten public safety inside and outside the facility including seizures of fentanyl,

edged weapons, firearms, and ammunition. In the most serious of these cases, the perpetrators were found to not be residents of the building. In a number of cases individuals with criminal histories, including gang members and associates, have taken over persons' suites and forced them out. We have heard directly from many residents that they live in fear of these non-residents and are afraid to speak up or notify [landlord] staff."

- The landlord provides a number of examples of when they would refuse access to a non-resident such as the pulling of fire alarms; arson; assault of residents; after the discovery of drugs and firearms found in a unit overtaken by a non-resident; after a robbery and stabbing by a non-resident and threaten of a staff member. The landlord submits that in general for tenants who engage in survival sex work and those who are survivors of sexual abuse who are subject to predators consider the policy a respite from street life;
- The landlord requires guests to sign in to the property to comply with Fire and Safety Codes, to track building occupancy in case of emergency, to ensure visitors are not "room shopping", disturbing other residents, or otherwise disturbing building safety and security;
- The landlord provided that other than those allowed as residents guests under 19 are asked to leave or removed by police;
- The reason the tenants are not allowed overnight guests is because they must ensure that guests do not become *de facto* residents;
- The restriction on the number of guests is required due to Fire and Safety Codes limiting the maximum occupancy of the building. These restrictions are also required "to maintain safe and secure order of the building and to reduce undue stress or complications for all residents' right to quiet enjoyment";
- In regard to the requirement for tenants to accompany their guests the landlord indicated it is required to ensure predatory and criminal behaviour is limited. They also submit that because of the opioid crisis tenants and their guests "need to be encouraged to remain together at all times."

I note that the tenants submitted, in support of their position on the landlord's guest policy photographs of the landlord's guest policy posted; a copy of a Residential Tenancy Branch Decision dated September 2, 2009; and a copy of Supreme Court of British Columbia decision *Atira Property Management v Richardson* 2015 BCSC 751.

Analysis

I note that both parties provided in their written submissions that they understood that while I may consider previous Residential Tenancy Branch decisions I am not bound by them in the adjudication of this Application, in accordance with Section 64(2) of the *Act*.

Section 2(1) of the *Act* stipulates that despite any other enactment but subject to Section 4, this *Act* applies to tenancy agreements, rental units and other residential property. Section 1 provides the following relevant definitions:

- "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;
- "rental unit" means living accommodation rented or intended to be rented to a tenant;
- "residential property" means
    - (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
    - (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
    - (c) the rental unit and common areas, and
    - (d) any other structure located on the parcel or parcels.

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

While I accept from the submissions of both parties the landlord provides a wide range of services including some meals; support services; and health services, I am persuaded by the submissions of the tenants that the landlord has failed to establish that the residential property is a home based health facility.

From the substantial submissions by both parties regarding the background on how and why the facility was created, I concur with the tenants' submissions that there is nothing in the Operator Agreement that specifies the BC Housing intended for the property to be a health facility.

I also accept from the tenants' submitted news article that the intention of government was to provide supported housing as defined by BC Housing's own website which clearly outlines supportive housing is not specifically identified as the provision of health care.

I note, in *British Columbia v Adamson* 2016 BCSC 1245 at paragraph 19, Chief Justice Hinkson wrote: "The Province of British Columbia has recently purchased CCH in downtown Victoria, and is in the process of converting the property to 140 housing units for the use of the residents of the Encampment." Chief Justice Hinkson also wrote at paragraph 83:

> "I have come to the conclusion that the Encampment is unsafe for those living there and for the neighbouring residents and businesses and cannot be permitted to continue. The residents of the Encampment can no longer remain where they are pending the trial of the plaintiff's action against them, and the Encampment must be closed. That said, I accept that I must still address the

> balance of convenience. To accommodate that balance, the residents of the Encampment must leave the Encampment as soon as the housing being made available by the Province is available."

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While this background information provides insight into whether or not there were intentions to create health facilities or tenancies that would not be bound by the *Act*, it does not provide sufficient evidence, by itself, to establish if the agreements entered into by each of these tenants constitutes a tenancy that is exempted under Section 4(g)(v).

Rather, I need to turn to the tenancy agreements signed and how the tenancies were created. I note that while the landlord had provided a copy of a medical questionnaire they request potential tenants to submit, they did not provide any evidence that each of these tenants submitted them completed or if they had how these documents were used by the landlord to determine if they would accept the tenants to live at the residential property.

I find that while the landlord provides an onsite medical clinic and overdose prevention site the services are optional and tenants are not required to participate in any service or course of treatment. I find the landlord has provided no evidence that if any of the tenants sought treatment for medical conditions elsewhere that they would not be allowed to live in the residential property.

In regard to the tenancy agreement signed by the parties there is no indication on the agreement that the tenancy would be exempted from the *Act* or that the rental unit and/or the residential property that each tenant was agreeing to rent constituted a health facility or that any health services or medical treatment would be provided.

Regardless of the submissions of both parties regarding what was said and to whom in relation the jurisdiction of the *Act*, I find, all the documented accounts of what circumstances lead to the creation of this property and on a balance of probabilities, the understanding the tenants may have had at the time they entered into their tenancy agreements was that the province was responding to a housing crisis for individuals who had, in the past had difficulties maintaining tenancies.

There is absolutely no documented evidence from either party that anyone saw this as a health crisis or in response to any specific health crisis that required the creation of a specific health facility.

The agreement stipulates that the only services or facilities included in the tenancy would be water, electricity and heat and the landlord would do a room check every 24 hours and only if the tenant has not been seen in the previous 24 hours. I find none of these services provides any indication that the property might be a health facility.

Despite the landlord's submission of the June 23, 2014 decision in which they were the landlord where jurisdiction was declined, I find that decision is not particularly instructive in the determination of whether or not this residential property is a health facility. That decision does confirm that the landlord provides hospitality support, personal health care, and/or rehabilitative or therapeutic treatment or services, but does not expand on how she determined that property was a health facility.

When I look at the tenancy agreement together with the circumstances around when the facility was purchased by the Province and created by BC Housing I find that there is no evidence presented to me that the residential property could be considered primarily a health facility. I find that the subject property is a residential property containing rental units, as defined under Section 1 of the *Act* which provides access to support and medical services.

The *Act* does contemplate the provision of some services that are not typical in tenancies as evidenced by the wording of Section 29(1)(c) which states: "A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms."

Therefore, I find that while the landlord provides hospitality support services and personal health care, the subject residential property and rental units are not exempt by Section 4(g)(v) as they are not a housing based health facility.

As a result of these findings I accept jurisdiction in relation to the issues raised in the joined Applications for Dispute Resolution.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Section 30(1) of the *Act* requires that a landlord not unreasonably restrict access to the residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant.

Section 9 of the Residential Tenancy Regulations states the landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit; the landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests; subject to Section 27 of the *Act*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property; and if the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve

a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Act*.

Despite the landlords' submissions that the guest policy is required to be able to ensure safety and security for residents in particular because of ongoing issues related to the entry of dangerous and disruptive non-residents, I find the landlord has provided no evidence to support how the specific requirements of their guest policy is a reasonable intrusion against the tenants' rights to access and privacy.

Specifically in regard to the landlord's guest policy, I make the following findings:

Despite their submissions that they are required to limit the occupation and number of guests of the rental unit and to sign in guests arises, in part, because of their obligations under Fire and Safety Codes; the landlords have provided no evidence of any such codes.

Furthermore, I am not aware of any multiple unit housing facilities that are required by local codes to provide a signed in guest list or sign in sheet and knowledge of where any particular person is in the residential property at all times. If this were the case, would the landlord also be required to have knowledge of whether the tenant was away and have them sign in and out?

As such, I am not satisfied that these policies comply with Section 9 of the Regulation and Section 30 of the *Act*.

I find that the landlord has failed to provide evidence that by seeing a guest's identification they will prevent harm to the residents. I also find that by requesting any guest's identification the landlord not only infringes on the tenants' right to privacy and exclusive possession of the rental unit but also on the guest's privacy as well.

In fact, the landlord's own submissions confirm that despite having any of these policies in place they still have a significant involvement with police and dealing with non-residents taking over rental units. As a result, I don't find the landlord has established that the viewing of identification achieves the stated purpose of preventing harm to the tenants.

As such, I find that this requirement is an unreasonable policy and is not compliant with Section 30 of the *Act* or Section 9 of the Regulation.

The landlord submits that some of the reasons for these policies, including the limitation of guests being only allowed between 8:30 a.m. and 10:00 p.m. with no overnight guests, is to prevent tenants from having people move in with them over the occupancy rate allowed and to reduce any incidents of tenants and their guests disturbing other occupants of the residential property.

The landlord provided no evidence of any mandated maximum occupancy from either local or provincial authourities. In addition, I note the landlord has other remedies under the *Act* to achieve these goals including the ability to complete a monthly inspection of the rental unit, pursuant to Section 29 of the *Act* and/or to end the tenancy under Section 47 for having an unreasonable number of occupants and/or for causing unreasonable disturbances of other tenants.

I also find that the landlord has provided no justification at all in their submissions as to why they require guests to be 19 years of age or older. The landlord has submitted that they have some under 19 year old tenants and they may allow family members under 19 to visit any tenant, but nothing specifically to identify why this policy exists. As the landlord has provided no reason for this part of their guest policy, I find this restriction is not compliant with Section 30 of the *Act* or Section 9 of the Regulation.

In regard to the landlord's requirement to have the tenant be with their guests at all times the landlord submits it is because of the vulnerability of their tenants. They require tenants to have the guests with them in an effort to ensure that "predatory and criminal behaviour is limited". In the absence of any assessment of any of the tenant's guests it is unclear to me why the landlord considers it reasonable to restrict **all** of the tenants' guests in this manner.

I find such policy is contrary to the provisions of Section 30 of the *Act* and Section 9 of the Regulation. For the sake of clarity, I also find that conducting an assessment of each of the tenant's guests would be contrary to the Section 28 and the guest's right to privacy.

However, I acknowledge that should the landlord or any of their agents have specific knowledge that a guest of any of the tenants has caused disturbances on the property; taken over any rental units on the property; or conducted themselves in a predatory and/or criminal manner they should discuss this with the tenant and may be justified in restricting the access of that specified individual.

The landlord also submits that this policy is necessary because tenants and their guests should be encouraged to remain together at all times because of the current opioid epidemic and overdose crisis. Specifically, the landlord submits that one tenant died because they felt they were forced to use drugs alone in a shower because of the behaviour of non-residents and one tenant's guest was discovered dead in their unit after they had been left alone by the tenant.

While I accept that the landlord's intention in this regard might be considered altruistic, I find that to apply this policy to all tenants for all of their guests assumes that each one of them will be engaged in drug use that will result in overdose and/or death. In addition, I find the landlord has provided no evidence that such a policy is a reasonable exemption to the tenant's right to exclusive possession of the rental unit and privacy as allowed under Section 28 of the *Act*.

For these reasons, I find the landlord's guest policy is unenforceable, with one minor exception. The exception is that the landlord may refuse access to the residential property of specified individuals, under reasonable circumstances and on a case by case basis.

In note that in these determinations I found *Atira Property Management* v. Richardson 2015 BCSC 751 to be instructive. As such, I point out that this decision applies only to the tenancies involved in these Applications based on the evidence presented to me. However, I urge the landlord to consider the application of their guest policy, in light of my findings, as it relates to other tenancies in the residential property.

Conclusion

Based on the above, I find the tenants have established the landlord has failed to comply with Section 28 and 30 of the *Act* and Section 9 of the Regulation. I order the landlord to rescind the guest policy for these tenancies.

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: July 21, 2017

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Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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

Residential Tenancy Branch

#RTB-136 (2014/12)

BRITISH COLUMBIA

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

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes OLC

Introduction

This hearing dealt with 11 Applications for Dispute Resolution joined to be heard together seeking orders to have the respondent comply with the *Residential Tenancy Act (Act)*, the Residential Tenancy Regulation (Regulation), or the respective tenancy agreements.

The hearing was conducted via teleconference and was attended by the lead applicant; two additional applicants; their advocates; a friend to provide support and three agents for the respondent.

At the outset of the hearing the advocates for the applicants indicated they had some changes to the applicants. Specifically, the advocates indicated that the applicants RC and OB are no longer a party to this dispute; the correct spelling of the first name of the applicant QF, and to correct the surname of the applicant originally named AB to AS. I have amended the respective applications of each of these parties.

As a result, I note that this decision does not provide any direction or decision on the tenancy relationship between the applicant RC and the named respondent or the applicant OB and the named respondent for the rental units 202 or 204 respectively.

I noted, at the start of the hearing that in the evidence submitted by the applicants that there was at least 1 page each missing from affidavits provided by the applicants DS and TS. The respondent's agent confirmed the same pages missing in the evidence they had received from the applicants.

I allowed the applicants' advocates to serve these missed pages to the respondent and to the Residential Tenancy Branch as this was clearly an administrative error. I provided the applicants' advocate with a fax number for the Branch and the respondent provided an email address for these pages to be sent.

In reviewing the service of evidence from the applicants to the respondent, the agent for the respondent submitted that they had not received the applicants' evidence until April 25, 2017. The agent did acknowledge that the applicants served their evidence to an

address that is no longer the respondent's headquarter office and that it was received at that location on April 18, 2017, but not forwarded until the following week.

The agent for the respondent explained that while the address to which the applicants served their evidence is still managed by the respondents; staff at that location are not as diligent at opening mail as the headquarter office staff are and it sat for several days before it was forwarded to the headquarter office. The agent submitted that as a result they have only had the evidence for 8 days including weekend days that they do not work and are not yet able to respond to the Application.

The respondent acknowledged that the address for their office on the document entitled Residential Tenancy Agreement Non Profit Housing was their former address for service. They also confirmed that they have not provided a change in address to the applicants in relation to an address for service. The agent indicated that they have updated new tenancy agreements but not existing ones.

The respondent's agent requested an adjournment to allow time to prepare and serve evidence and to seek legal counsel on issues related to the claims put forth in these Applications and whether or not the Residential Tenancy Branch has jurisdiction over the tenancies that are the subject of this hearing. The agent confirmed that they have not yet sought advice from legal counsel but that they have tried to contact their counsel and they have not yet returned their call.

The applicants' advocates submitted that a delay in these proceedings would be extremely unfair to the applicants who have been trying to get some resolution to the issues put forth in these Applications for several months and to which the respondent has failed to acknowledge or respond to. The advocates also submitted that the impact of the policies that have precipitated the need for these Applications is significant to the mental and physical well-being of each of the applicants and warrants a speedy resolution.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;

- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party.

At the start of the hearing, I considered the oral submissions of both parties. While I accept that the respondent's office, at the address for service, received the applicants' evidentiary package on April 18, 2017 I note that this is only 1 day late to be compliant with the requirements set forth in Rule of Procedure 3.1.

However, I find the fact that the respondent has not provided the applicants with a current service address and staff did not forward the evidence package to the their new headquarter office immediately should not impact the applicants' pursuit of these applications. Based on the oral submissions of the respondent's agent, I find the request for the adjournment arises, to a significant degree, out of neglect of the respondent to provide a current service address and delays in forwarding of their own internal mail.

I do find that allowing for an adjournment would contribute to providing an opportunity for the respondent to be heard. However, I find the prejudice to the applicants because of any unreasonable delay that has resulted in part by the neglect of the respondent would be substantial to the applicants.

For these reasons, I declined the respondent's request for a complete adjournment and proceeded to have the parties present their oral submissions and current documentary evidence. I do, however, find that it is necessary to have the respondent provide some documentary evidence that is essential to the determination of these applications and as a result I provided the parties with these following orders orally during the hearing:

- I order the respondent is allowed to submit to the Residential Tenancy Branch and serve to the applicants' advocates, no later than the end of business on May 10, 2017 documentary evidence in response to the applicants' Applications and their oral submissions made during this hearing;
- I order the applicants are allowed to submit to the Residential Tenancy Branch and serve to the respondent, no later than the end of business on May 17, 2017 documentary evidence in response to the respondent's documentary submissions noted above;
- I order each of the parties may exchange one copy of the above noted evidence by email and that such service will be deemed received by the other party immediately upon sending the email. I note the parties, during the hearing, provided specific email addresses for this service and to be used by me to send each of the parties a copy of this Interim Decision;

- I order each of the parties, once they receive the other party's evidence, to provide an email confirmation that they have received that evidence and provide a copy of that email to the Residential Tenancy Branch.

I advised the parties that once I received the above noted packages I would determine if there was a need to reconvene the parties to another participatory hearing or whether I could write a final and binding decision based on the supplementary evidence.

This Interim Decision records only submissions and considerations related to the housekeeping issues raised in regards to the applicants and the issues of evidence and request for an adjournment on the part of the respondent. I have not recorded, in this interim decision any findings of fact or law or made any orders in relation to the issues that are the subject of these joined Applications.

Issue(s) to be Decided

The issues to be decided are whether the applicants are entitled to an order requiring the responded to comply with the requirements set forth in the *Act* and Regulation, pursuant to Section 30 of the *Act* and Section 9 of the Regulation Schedule.

Conclusion

As noted above, this hearing is adjourned until the parties have provided their additional evidentiary submissions and I determine if there is a need to reconvene or a final decision is written.

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: May 02, 2017

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Residential Tenancy Branch

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes OLC

Introduction

This hearing dealt with 11 Applications for Dispute Resolution joined to be heard together seeking orders to have the respondent comply with the *Residential Tenancy Act (Act)*, the Residential Tenancy Regulation (Regulation), or the respective tenancy agreements.

The hearing was conducted via teleconference and was attended by the lead applicant; two additional applicants; their advocates; a friend to provide support and three agents for the respondent.

While the hearing was originally convened on May 2, 2017 and I declined to grant an adjournment in my Interim Decision of May 2, 2017 I did allow the parties to submit additional documentary evidence for reasons outlined in that Interim Decision. I also noted that once the written submissions were made I would consider whether to reconvene the hearing or to write a final decision based solely on the written submissions.

In that May 2, 2017 Interim Decision I made the following orders:

- I order the respondent is allowed to submit to the Residential Tenancy Branch and serve to the applicants' advocates, no later than the end of business on May 10, 2017 documentary evidence in response to the applicants' Applications and their oral submissions made during this hearing;
- I order the applicants are allowed to submit to the Residential Tenancy Branch and serve to the respondent, no later than the end of business on May 17, 2017 documentary evidence in response to the respondent's documentary submissions noted above;
- I order each of the parties may exchange one copy of the above noted evidence by email and that such service will be deemed received by the other party immediately upon sending the email. I note the parties, during the hearing, provided specific email addresses for this service and to be used by me to send each of the parties a copy of this Interim Decision;

- I order each of the parties, once they receive the other party's evidence, to provide an email confirmation that they have received that evidence and provide a copy of that email to the Residential Tenancy Branch.

On May 9, 2017 the landlord's legal counsel submitted a letter to request an extension of the timeframes set out in the May 2, 2017 Interim Decision. Counsel seeks to extend the deadline for the landlord's submissions to May 15, 2017 and to allow the tenants' to provide their responses by May 22, 2017.

In their letter the landlord's legal counsel wrote:

> "The Respondent took the steps to seek out counsel following the hearing. The Respondent contacted us on Friday, May 5, 2017, and we have since been reviewing the Application materials, including the ten affidavits filed with the Applications, and the supporting documents."

As noted in the May 2, 2017 Interim Decision, I found that for the most part, the reason for the landlord's original request for an adjournment arose out of their negligence in providing a current service address and then internally forwarding their mail.

In addition, at the time of the hearing on May 2, 2017 the landlord's agents had stated that they had already been trying to contact their legal counsel and yet from the landlord's counsel's May 9, 2017 I am informed that the landlord did not contact legal counsel until 3 days after the May 2, 2017 hearing and both my oral orders and written Interim Decision had been provided to both parties.

Again, I find the landlord is failing to prepare for their submissions in a diligent manner. I find that this delay is again based on the failure of the landlord to be responsive to this Application for Dispute Resolution.

Residential Tenancy Branch Rule of Procedure 3.14 states, in regard to evidence not submitted at the time of Application for Dispute Resolution by the applicant, that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

Rule of Procedure 3.15 states that evidence that is intended to be relied on by the respondent at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

As such, in a normal proceeding the respondent would receive the applicant's evidence no later than14 days before the hearing and the respondent would have, at most, 7 days to compile and serve their evidence to the other party.

In this case that means that the landlord should have received the tenants' evidence by April 17, 2017 and the landlord would have had until April 24, 2017 to serve the tenants and the Residential Tenancy Branch with all of their responsive evidence or a total of 7 days.

At the time of the hearing and my Interim Decision of May 2, 2017, I accepted the landlord had received the tenants' Applications and evidence by April 18, 2017. As such, the landlords should have served the tenants with their evidence still by April 24, 2017 to comply with Rule 3.15 or perhaps to extend the time frame so they would have had the full 7 days to April 25, 2017.

Yet, I granted the landlord until May 10, 2017 to provide their documentary evidence or a total of 22 days from the date that they received the tenants' Application and evidence. I find it is audacious of the landlord to request an additional 5 days when all of the delays have been because of their own lackadaisical approach to these proceedings.

For these reasons, I find any further delays in this proceeding are unacceptable.

Issue(s) to be Decided

The issues to be decided are whether the applicants are entitled to an order requiring the responded to comply with the requirements set forth in the *Act* and Regulation, pursuant to Section 30 of the *Act* and Section 9 of the Regulation Schedule.

Conclusion

Based on the above, I decline to grant the landlord an extension to the previous orders made in the Interim Decision of May 2, 2017.

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: May 9, 2017

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Residential Tenancy Branch