



302 – 895 Fort Street, Lkwungen Territories,  
Victoria, BC, Canada V8W 1H7  
Tel: (250) 361-3521 Fax: (250) 361-3541  
Web: [www.tapsbc.ca](http://www.tapsbc.ca)

May 28, 2018

City Hall  
1 Centennial Square  
Victoria, BC  
V8W 1P6  
[via email]

ATTN: Mayor and Council

Through Mayor Lisa Helps:

**RE: Supportive Housing and Guest Policies in PHS v. Swait**

We write the following to bring to your attention a recent decision, PHS Community Services Society v. Swait, 2018 BCSC 824 (*PHS v. Swait*), issued May 18, 2018, by the Honourable Justice Sharma in the BC Supreme Court. This decision dismisses a petition from the Portland Hotel Society (PHS) that sought to overturn an order made by the Residential Tenancy Branch (RTB) on July 21, 2017, concerning the property located at 844 Johnson Street.

It is our view that the substance of the earlier RTB order has led to some confusion among councillors and the general public. It is with this in mind that we seek to clarify the effects of the initial order as upheld by the Supreme Court. Attached to this letter you will find copies of the initial Arbitrator's decision and a May 23rd press release, providing further context to Justice Sharma's decision.

The Arbitrator's original order did not remove the rightful obligation of PHS, or any other housing provider, to establish reasonable guest policies that protect the safety, security and quiet enjoyment of tenants. Instead, the Arbitrator found that, "the landlord may refuse access to the residential property of specified individuals, under reasonable circumstances and on a case by case basis."

The most recent Supreme Court decision, in reaffirming the initial RTB order, does not allow for a "free-for-all" whereby non-profit housing providers are rendered unable to provide for the security of vulnerable tenants. Landlords, whether market or non-profit, continue to be allowed to adopt and enforce reasonable guest restrictions on an individual case-by-case basis.

It is our sincere hope that this most recent decision will serve as a positive turning point in the provision of supportive housing in Victoria and throughout BC. Through our advocacy work we have become keenly aware of insufficient resources for adequate support services within the social housing network. This lack of funding and supports limit the ability of good-intentioned

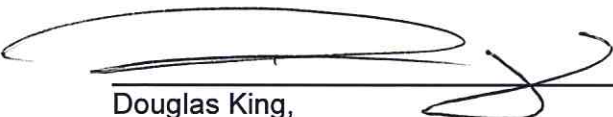
Supported by:  
The Law Foundation of British Columbia, United Way of Greater Victoria,  
Province of British Columbia, and other generous donors.

and hardworking service providers, reducing capacity to create nurturing, safe and supportive housing that promotes the dignity of tenants in all cases.

This decision is an opportunity for non-profit housing providers to engage a new conversation with funders, including the provincial and federal government, with regard to a human rights based approaches to the provision of supportive housing and the resources needed to operate them. If PHS must now approach BC Housing to discuss what resources they will need to implement the court's decision, we hope that Mayor and Council will be there to support them in those discussions. As an organization, we are ready and willing to do our part to advance the conversation in collaboration with community as we work together to address the ongoing housing crisis.

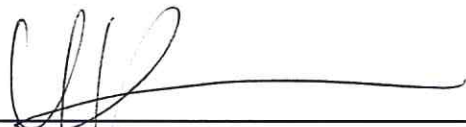
Should you or any member of the public have any questions regarding the implications of this recent decision, or if the City Solicitor's Office wishes further background on the legal proceedings for the purposes of providing opinion, please do not hesitate to contact us.

Sincerely,



---

Douglas King,  
TAPS Executive Director,  
Lawyer



---

Yuka Kurokawa,  
TAPS Tenant Legal Advocate

cc.

Councillor Marianne Alto; Councillor Chris Coleman; Councillor Ben Isitt; Councillor Jeremy Loveday; Councillor Margaret Lucas; Councillor Charlayne Thornton-Joe; Councillor Pam Madoff, Councillor Geoff Young.

Encl.

- Residential Tenancy Branch Decision (July 21, 2017)
- TAPS – Press Release (May 23, 2018)



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 263229**

**Additional File(s), 263230, 263231, 263232, 263233, 263234, 263235, 263236,  
263237, 264100, 264101**

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

Between

**Douglas Swait, Rochelle Campeau, Quinn Frederick, William Wale,  
Owen Braun, Terry Emslie, Tracey Springer, Shane Myers, Ana  
McBee, Alan Seagrave AKA Alan Balatti, Fred Hamm,  
Tenant(s),  
Applicant(s)**

And

**PHS Community Services Society, Landlord(s),  
Respondent(s)**

Regarding a rental unit at: Units 336, 202, 315, 524, 204, 226, 504, 326, 337, 423, and  
519 - 844 Johnson Street, Victoria, BC

Date of Hearing: May 02, 2017, by conference call.

Date of Decision: July 21, 2017

Attending:

For the Landlord: Andy Bond, agent  
Matthew Camirand, agent  
James Dougherty, agent

For the Tenant: Yuka Kurokawa, advocate  
Emily Rogers, advocate  
Doug Swait, lead applicant  
Terry Emslie, applicant  
Ana McBee, applicant  
Jim McGrath, support





# Dispute Resolution Services

Page: 1

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 authority 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 authority 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 authority which states, in part: "Based on the public-funded services and supports available and provided in the [residential property], [The health authority] considers the [residential property] to be a Housing-Based Health Facility." The letter goes on to state the health authority 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 authority 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 1<sup>st</sup> 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 overdose 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 authority 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.”

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 authorities. 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

  
\_\_\_\_\_  
R. Maddia, Arbitrator  
Residential Tenancy Branch



302 – 895 Fort Street, Lkwungen Territories,  
Victoria, BC, Canada V8W 1H7  
Tel: (250) 361-3521 Fax: (250) 361-3541  
Web: [www.tapsbc.ca](http://www.tapsbc.ca)

## **FOR IMMEDIATE RELEASE: BC SUPREME COURT FINDS IN FAVOUR OF FORMER TENT CITY RESIDENTS (May 23, 2018)**

(Victoria, BC) Former residents of Super-in-Tent City (SIC), a tent city formerly located on the Victoria law courts property, are celebrating a May 18, 2018, decision from Justice Sharma of the BC Supreme Court, affirming their rights as tenants in the social housing building at 844 Johnson Street which was set up to house them when the tent city was dismantled.

This precedent setting decision dismisses an appeal brought by the Portland Hotel Society (PHS), a non-profit supportive housing provider and operator of the property located at 844 Johnson Street, and affirms the findings of the Residential Tenancy Branch that tenants in the building are covered under the Residential Tenancy Act and should be afforded all the same rights as tenants who reside in market housing. The decision also clearly mandates that blanket guest restrictions, like those imposed on the tenants at 844 Johnson Street, are illegal and must be removed. The decision will have positive and lasting effects on the lives of thousands of tenants living in supportive housing in Victoria and across the province.

The decision provides a snapshot into the lives of many low income tenants who live in supportive housing under strict guest policies that deprive them of rights that some renters paying market rents take for granted. At paragraph 56 of the decision, Justice Sharma writes, "... the petitioner has not provided any justification of why tenants who are being given a social benefit of below market housing, in an effort to try and stabilize their living situation, ought to be given less legal rights than tenants paying market rates..."

Current and former residents are applauding the decision. "I am pleased that the court has recognized that tenants living in supportive housing have the right to visit their friends and family inside their own home," said Doug Swait, Plaintiff and resident of 844 Johnson Street. "This decision will go a long way toward ensuring that individuals living in supportive housing across BC know that they have rights and that these rights can be enforced, even when their landlord is a non-profit service provider."

*Supported by:  
The Law Foundation of British Columbia, United Way of Greater Victoria,  
Province of British Columbia, and other generous donors.*



Kevin love, a staff lawyer at Community Legal Assistance Society, who represented the plaintiffs in the court proceedings, said "This case confirms that subsidized and supported housing providers have to follow the rules just like everyone else. Tenants do not give up all their rights just because they need support or help paying the rent."

The Supreme Court decision confirms and strengthens an earlier finding by the Supreme Court that blanket guest policies restricting access to a building are illegal, and emphasizes that landlords will still be permitted to place reasonable restrictions on a tenant's guests, but only on a case by case basis.

"This decision is about reaffirming respect for legal protections for all tenants," said Douglas King, Executive Director, Together Against Poverty Society (TAPS), "this decision ensures that tenants are treated fairly as individuals, and rejects the one size fits all approach in many social housing buildings that punishes all tenants regardless of whether or not they have done anything wrong."

Ana McBee, plaintiff and former resident of Super-In-Tent-City said, "This victory is for tenants everywhere in that it will enable us to assert, no more and no less, than what everyone else expects."

## **MEDIA CONTACTS**

Kevin Love, Staff Lawyer, Community Legal Assistance Society, Vancouver

Ph: (604) 771-5463 Email: klove@clasbc.net

Doug King, Executive Director, Together Against Poverty Society, Victoria

Ph: (778) 898-6349 Email: ed@tapsbc.ca