
Transitional Housing vs Supportive Housing

Identifying whether certain accommodation is transitional housing or supportive housing is critical for both landlords and tenants because it determines legal jurisdiction, rights of the parties and eviction procedures.

Background

Supportive housing is subsidized housing that provides on-site supports for adults, seniors and people with disabilities or those at risk of or currently experiencing homelessness. Subject to certain exceptions, operators of supportive housing units are bound by the BC *Residential Tenancy Act* (the “Act”).

On the other hand, transitional housing are primarily provided as a next step toward independent living and is explicitly exempt from the application of the Act.

Determining the Accommodation Type

The Residential Tenancy Branch (the “RTB”) frequently grapples with the issue of supportive vs transitional housing. To make the appropriate decision, the RTB considers the criteria outlined in the RTB Regulations (the “Regulations”) and RTB Policy Guideline 46.

Here is a tabular representation of the differences between both.

	Criteria	Supportive Housing	Transitional Housing
1.	Purpose	Provides long-term housing with supports to help tenants maintain stable housing.	Provides temporary accommodation while helping residents transition to more independent or permanent housing.
2.	Tenancy Period	Long term or permanent housing.	Temporary housing.

3.	Operator	Must be operated by a supportive housing operator, such as a non-profit organization.	Must be operated by a person or organization receiving government funding, specifically to provide that accommodation.
4.	Tenant Eligibility	Tenant must be assessed for risk of homelessness and whether they would benefit from supports.	No equivalent assessment required.
5.	Support Services	Housing stability support must be provided to at least one tenant living in the rental unit.	Accommodation is provided together with programs intended to assist residents live independently.
6.	Primary Objective	Maintain long-term housing stability and prevent homelessness.	Assist residents transition into independent or permanent housing.
7.	Contract Type	Tenancy Agreement	Program Agreement

Rights of the Parties

Where the RTB determines that the accommodation is transitional housing, the RTB will decline jurisdiction to adjudicate the matter as transitional housing is exempt from the application of the Act. The residential contract between the resident and the operator determines the rights and responsibilities of the parties.

The RTA applies to supportive housing. However, supportive housing rental units are exempt from

- section 28 (tenant's right to quiet enjoyment),
- section 29 (restrictions on landlord's right to enter rental unit), and
- section 30(1)(b) (protections to allow tenant to have guests) of the RTA.

All other sections of the RTA apply to supportive housing as they would to any other tenancy. Providers are advised to have policies in place that regulate unit access and restriction of guests. The agreement should clearly state that these policies form part of the tenancy agreement and the resident should be required to sign the policy.

Provider Pitfalls

The presence of a written agreement with a specific title is not determinative of the type of relationship between a provider and a resident/tenant. The RTB will consider the circumstances and apply the criteria on a case-by-case basis to determine the true relationship between the parties. Difficulty arises where a provider operates a mix of supportive and transitional units in the same building. Often, such providers use the same

written agreement for all units and offer same supportive services to all the units. This overlap makes it difficult to determine the rental status of a resident, and some residents may end up with more rights than a provider initially intended.

Providers should ensure the following is in place:

1. Designate separate agreements for the different types of accommodation provided in a building.
2. Specify the services offered with the accommodation and ensure it aligns with the services contemplated by the Act and the Regulations for the accommodation type. For instance, services such as 24/7 staff support, bathing, dressing, medication administration and escort to meals are typically provided in supportive housing units. Services such as job training, budgeting, tax support, accessing services, harm reduction, and finding permanent housing are associated with transitional housing.
3. Assign separate staff for each type of accommodation. This sets clear expectations for both the staff and the resident.
4. Specify additional costs for services available in the building, where not included in the monthly rent/cost for certain accommodation provided to certain residents. Avoid offering available services to unqualified residents on an “off-and-on” basis. For instance, where a transitional resident requires daily care, the provider must prepare a written agreement stating that the service is an additional paid service, provided for a specific period and for a specific reason.
5. If a transitional resident is at risk of homelessness and requires more supportive services, the resident should be required to apply for supportive housing and must satisfy the criteria required by the Act.

Takeaways

Operators of mixed facilities must understand the different criteria for the units they operate, and any applicable exemptions. If a resident brings a dispute to the RTB, the onus will be on the operator to show that the tenancy falls under an exemption. The RTB will look at things like the terms and nature of the agreement between the housing provider and resident when determining the type of unit and whether the RTA applies.

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