

46. Transitional Housing, Supportive Housing, Health facilities

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A. Takeaway

This policy guideline addresses whether and how the *Residential Tenancy Act* (RTA) applies to different types of housing, including transitional housing, emergency shelter, supportive housing, and health facilities. This policy guideline also provides information to help Residential Tenancy Branch (RTB) dispute resolution staff and the public determine whether a unit is one of the housing types mentioned above.

Keywords: transitional housing, emergency shelter, supportive housing, health facilities, rehabilitation facilities, jurisdiction

B. Legislative Framework

<i>Residential Tenancy Act</i>	<i>Residential Tenancy Regulation</i>
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(RTA)	(Regulation)
<ul style="list-style-type: none"> section 4 (f) and (g) (v) and (vi) 	<ul style="list-style-type: none"> section 1 section 1.1 (2) section 2.1

Section 4(f) of the RTA states that the RTA does not apply to living accommodation provided for emergency shelter or transitional housing.

Under section 1 of the Residential Tenancy Regulation (Regulation), “transitional housing” means living accommodation that is provided:

- (a) on a temporary basis,
- (b) by a person or organization that receives funding from a local government or the government of British Columbia or Canada for the purpose of providing that accommodation, and
- (c) together with programs intended to assist tenants to become better able to live independently.

Section 1.1(2) of the Regulation defines “emergency shelter” as including living accommodation that is provided in relation to the COVID-19 emergency

- (a) on a temporary basis,
- (b) free of charge to the occupant, and
- (c) by a person or organization that receives funding from the government for the purpose of providing that accommodation.

Section 4(g)(v) and (vi) of the RTA also states that the RTA does not apply to living accommodation in a housing based health facility that provides hospitality support services and personal health care or to living accommodation that is made available in the course of providing rehabilitative or therapeutic treatment or services.

The RTA applies to supportive housing, but is exempt from the following sections of the RTA:

- section 28 (tenant’s right to quiet enjoyment),

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- 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.

Section 2.1(2) of the Regulation defines "supportive housing rental units" as rental units where all of the following criteria are met:

- (a) the rental unit is located in a residential property that is operated by a supportive housing operator;
- (b) the rental unit is provided to a tenant who has been assessed, according to criteria set by the supportive housing operator,
 - (i) as experiencing homelessness or as being at risk of experiencing homelessness, and
 - (ii) as a person who would benefit from housing stability support;
- (c) housing stability support is available to at least one tenant of the rental unit;
- (d) the rental unit is not provided on a temporary basis.

C. Legislative Purpose

Underlying the Director's interpretation of the provisions specified in Section A is that one of the primary purposes of the RTA is to provide protections to tenants beyond what exists at common law and what most tenants would be able to negotiate on their own. If an accommodation is exempt from the RTA, the resident receives none of the protections under the RTA.

In general, if there is ambiguity in the language of a provision that provides a complete exemption from the RTA, a narrow interpretation best ensures that those who are often vulnerable have protections, which achieves one of the primary purposes of the legislation.

D. Emergency Shelter

The RTA does not apply to emergency shelter. "Emergency shelter" encompasses circumstances where a facility provides an individual with temporary overnight shelter or in some extreme circumstances beyond overnight until the emergency is over.

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Residents in emergency shelters may have an immediate need for support services, including help with meeting basic needs for nutrition, hygiene, and health services. Residents may be required to abide by house rules as a condition of their stay.

It is important to note that since the definition in the Regulation relating to the COVID-19 emergency uses “includes”, the term “emergency shelter” is not limited to this definition.

E. Transitional Housing

Transitional housing is often a next step toward independent living. An individual in transitional housing may be moving from homelessness, an emergency shelter, a health or correctional facility, or an unsafe housing situation. Transitional housing is intended to include at least a general plan as to how the person residing in this type of housing will transition to more permanent accommodation in the future. Individuals in transitional housing may transition to independent living or, if they have a moderate need for ongoing support services, to supportive housing.

Living accommodation must meet all of the criteria in the definition of “transitional housing” under section 1 of the Regulation to be excluded from the RTA. Requiring residents to sign a “transitional housing agreement” does not determine whether housing is exempt from the RTA.

F. Supportive Housing

Supportive housing is long-term or permanent living accommodation for individuals who need some support services to live independently and who are at risk of or experiencing homelessness.

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.

The director must decline jurisdiction over any disputes in supportive housing that relate to quiet enjoyment, entering rental units, and restricting guests. However, all

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other sections of the RTA apply to supportive housing as they would to any other tenancy.

Under section 5 of the RTA, landlords and tenants cannot avoid or contract out of the RTA or regulations. Any policies put in place by supportive housing landlords must be consistent with the RTA and regulations.

Living accommodation must meet all of the criteria in the definition of “supportive housing rental unit” under section 2.1 of the Regulation to be exempt from sections 28, 29, and 30(1)(b) of the RTA. These criteria are described in subsections F.1-F.4.

1. Rental unit must be operated by a supportive housing operator

To be a supportive housing operator, the rental unit must be operated by:

- BC Housing,
- the Canada Mortgage and Housing Corporation (CMHC),
- a municipality or regional district,
- a corporation set up by a municipality or regional district to provide affordable housing (e.g., Capital Region Housing Corporation),
- a treaty first nation,
- a regional health authority (e.g., Vancouver Coastal Health, Island Health), or
- a non-profit organization.¹

This information can typically be found in the tenancy or program agreement, or in the operating agreement between the housing provider and their funding organization.

2. Tenant must be assessed for risk of homelessness and whether they would benefit from supports

¹ There are three types of non-profit organizations that can be a supportive housing operator:

1. A society under the *Societies Act*
2. A corporation under the *Canada Not-for-profit Corporations Act*
3. A charity registered under section 248(1) of the *Income Tax Act* (Canada)

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Supportive housing operators establish eligibility criteria to determine whether a tenant would benefit from supportive housing. To live in supportive housing, tenants must be assessed by the operator as:

- experiencing homelessness or at risk of experiencing homelessness, and
- a person who would benefit from housing stability supports.

The operator is responsible for establishing the assessment criteria for determining whether potential tenants meet these criteria. This information can often be found in the operating agreement between the housing provider and their funding organization.

3. Housing stability support must be provided to at least one tenant living in the rental unit

Supportive housing operators must also provide “housing stability support” to at least one tenant living in the rental unit. To be a “housing stability support,”² the support must be one of the following:

Criterion	Examples
1. Providing opportunities to participate in social or recreational activities intended to promote community inclusion	Attending or hosting social or health-oriented groups; Facilitating access to community recreation activities; Art-based activities; Participation in community activities or events.
2. Providing opportunities to participate in skills training intended to facilitate independent living, including social and economic participation	Learning to cook and maintain one’s home; career/job-related training; Personal hygiene skills; Accessing identification; Assistance setting up personal banking; Tenant literacy courses; Arranging ongoing transportation needs such as HandyDART; Assistance with federal or provincial income assistance programs; Budgeting skills.
3. Assisting with short- or long-term collaborative planning and providing follow-up with respect to setting goals,	Goal identification between tenant and support worker; recurring follow-up meetings to discuss progress and strategies

² The criteria for “housing stability support” are established under section 2.1(4) of the Regulation.

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assessing needs, identifying resources and supports, and reducing barriers to services	to goal attainment; Engage in activities to achieve goal.
4. Making referrals to, and providing regularly-available assistance in accessing, community resources and health services for conditions that do not require emergency or acute care	Facilitating access to: Opioid Agonist Treatment; Addictions Outpatient Treatment; Cultural Supports; Peer Support Networks; Long-term care or other housing; Specialized programs to support individuals needs such as Community Living BC (CLBC) support work for adults with development disabilities; Assistance setting up and managing fall-detection services.

The support must also be:

- made available on the residential property,
- provided by a support worker who is an employee of the housing operator,
- voluntary for a tenant to receive, and
- funded by BC Housing, CMHC, a municipality or regional district, a housing corporation established by a municipality or regional district, a treaty first nation, a regional health authority, or the Government of BC or Canada.

For clarity, to meet criteria 1 or 2 in the above table, the programming itself can be provided on the residential property or elsewhere (e.g., the social or recreational activities under criteria 1 can be offered at a community recreation centre), but the opportunity to participate in these activities must be offered to tenants at the supportive housing facility.

The supports the landlord has agreed to provide a tenant are typically described in the program or tenancy agreement.

4. Rental unit must not be provided on a temporary basis

Lastly, supportive housing rental units must be offered to tenants as long-term or permanent living accommodation. Supportive housing may offer supports to help tenants to develop skills to live independently. However, transitioning tenants into independent living is not the primary goal of supportive housing.

5. Breach of Quiet Enjoyment as Cause for Ending Tenancy

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Supportive housing rental units are exempt from section 28 of the RTA. This section establishes a tenant's entitlement to quiet enjoyment. Because of this, a tenant cannot apply for dispute resolution or submit a complaint with the Compliance and Enforcement Unit with the RTB to request an order or investigation for their landlord to protect their right to quiet enjoyment.

Sections 47 [*Landlord's notice: cause*] and 56 [*Application for order ending tenancy early*] allow a landlord to end a tenancy in circumstances where the tenant or a tenant's guest has engaged in illegal activity that "has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property." Supportive housing rental units are not exempt from section 47 and 56 of the RTA, so supportive housing providers can still end a tenancy for cause, including for reasons related to quiet enjoyment.

G. Housing Based Health Facilities that Provide Hospitality Support Services and Personal Health Care

There are three requirements for living accommodation to be exempt from the RTA under section 4(g)(v):

1. the housing is in a health facility,
2. hospitality support services are provided, and
3. personal health care is provided.

Based on principles of statutory interpretation, each of these three requirements must mean something different. For instance, a "health facility" means something other than providing hospitality support services and personal health care.

To be a "health facility," general health services should be a primary focus or the feature service of the location. Having a private nurse attend or other employees to conduct safety checks at a rental unit would not qualify it as a "health facility." The Director will consider whether the facility is licensed or regulated to provide health services or is otherwise operating as a health institution.

Hospitality support services could include providing meals, housekeeping, laundry, social and recreational opportunities, or a 24-hour emergency response system.

Personal health care is considered assistance with aspects of essential everyday

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activities that are tied to a person's health or otherwise managing daily aspects of health but are not otherwise a hospitality support service. This could include assistance with bathing, managing medication and diets, behaviour management, or psychosocial supports. Providing personal health care means the facility takes an active role in that care through its staff or contractors.

A residence that offers minimal services will not meet the requirements for an exemption under section 4(g)(v). For example, providing housekeeping for the units and bringing in a flu vaccine service once a year will not meet the requirements. Similarly, offering a 24-hour emergency response system and agreeing to wait with a tenant until medical assistance arrives would not be sufficient.

H. Providing Rehabilitative or Therapeutic Treatment or Services

Under section 4(g)(vi) of the RTA, a living accommodation is exempt from the RTA if the living accommodation is made available in the course of providing rehabilitative or therapeutic treatment or services.

There are two characteristics generally determinant of this type of living accommodation:

1. Residency is dependent on the occupant actively receiving rehabilitative or therapeutic treatment or services provided by the housing provider at the housing location. If a resident stops actively receiving treatment or service, their occupancy is terminated. Conversely, residency is not permitted for an individual if they do not require or choose not to receive rehabilitative or therapeutic treatment and services.
2. Residency is time-limited, meaning that the occupant and housing provider agree that the period of occupancy will be for a specified duration and/or will terminate once the objectives of services and treatments provided have been met.

Rehabilitative treatments or services aim to restore the individual to their greatest physical, mental, social, or vocational potential.³ It can also be designed to improve the skills and behaviour of a person through things like training, counselling, or education to allow for better integration into society. Therapeutic treatments or

³ *Keith Whitney Homes Society v. Payne* (1992), 9 O.R. (3d) 186 (Ont. Gen. Div.) (<https://canlii.ca/t/q150w>).

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services aim to respond to an individual's needs in the treatment of a disease or disorder.

In general, the treatments and services provided are the primary focus, and the housing is made available in the course of providing the treatment and services.

I. Policy Guideline Intention

The Residential Tenancy Branch issues policy guidelines to help Residential Tenancy Branch staff and the public in addressing issues and resolving disputes under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. This policy guideline may be revised and new guidelines issued from time to time.

J. Changes to Policy Guideline

Section	Change	Notes	Date Guideline Changed
All	new		December 5, 2016
B	am	Update to reflect the addition to the regulation of a definition of emergency shelter	June 2, 2020
B	new	Added section on legislative purpose	February 3, 2023
E and F	new	Added director's interpretation of sections 4(g)(v) and (vi) of the RTA	February 3, 2023
A	am	Updated to include legislative framework for sections C and D	February 3, 2023
A	am	Added section on emergency shelters based on previous versions of the PG	February 17, 2023
All	am	Formatted to new template	February 28, 2024
B	am	Added references to new supportive housing sections in	February 28, 2024

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		the Regulation	
F	am	Amending supportive housing section to reflect amendments to the Regulation	February 28, 2024

Change notations

am = text amended or changed

del = text deleted

new = new section added