

AirBnB unit not covered under residential tenancy law

Exemptions | Landlord and Tenant | Litigation | Litigation & Dispute Resolution | Residential Tenancy

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A vacationer has a variety of accommodation options when travelling in a foreign destination. A vacationer might stay with family or friends or stay in a bed & breakfast, motel or hotel. Another option is to stay in a privately-owned, fully-furnished house or condominium that is marketed to the vacationing public. Usually, these properties are made available for short-term accommodations. One of the platforms that offers such accommodations is AirBnB.

Although one would suspect that such a rental is not subject to landlord and tenant laws, the Landlord and Tenant Board in *Porter v. Ning*, 2023 ONLTB 43064 (unreported) was required to grapple with this issue.

In this case, the landlord, advertised their property, the upper-level of a detached home, on AirBnB for several years. The property was fully-furnished and had received many nightly reservations during this period of time.

In June 2022, the tenant was seeking 10-months' accommodation in connection with some upcoming travel to Canada and found the property on AirBnB's platform.

The tenant was travelling from Switzerland and required a 10-month accommodation because her spouse was taking a sabbatical from his job at a university there and would have visiting rights at a local university while in Canada. The end of the 10-month period coincided with the end of the school semester.

After exchanging communications, the landlord agreed to permit the tenant and her family to stay at her property from 23 August 2022, to 30 June 2023. The total payment, based on a monthly rate, was over \$50,000.

Although the tenant asked for a formal residential tenancy agreement, the landlord declined to enter into such an agreement. The landlord preferred using AirBnB because this kind of platform provided insurance and other protections.

The tenant advised the landlord that she understood and ultimately made a reservation through AirBnB, indicating that her check-out date would be 30 June 2023.

All of the monthly payments were made through AirBnB, with applicable taxes being collected directly through the hosting platform.

Eventually, the landlord's circumstances changed and the property was required for her own family needs. Through AirBnB, she sought to have the tenant check out on 31 January 2023. The tenant refused to vacate and sought protection under Ontario's [Residential Tenancies Act, 2006](#).

This Act does not apply to every form of rental agreement or arrangement. Under [section 5\(a\)](#), the following living situations are exempt:

- living accommodations intended to be provided to the travelling or vacationing public; or
- living accommodations intended for occupation for a seasonal or temporary period.

The landlord argued that this exemption applied.

In contrast, the tenant argued that she and her family were not simply vacationers or travellers. She contended that her family had become integrated in the local community, and that, among other things, they had obtained government-issued documents which showed the property as their home address.

In the result, the Board sided with the landlord and concluded that the property was exempt from the application of the Act.

The Board considered the parties' intent at the time the rental agreement was made and whether there had been any change in the nature of the arrangement afterward. The Board found that the tenant's booking of the property through AirBnB established an intent to return home to Switzerland on the check-out date of 30 June 2023, and that there was no change in the nature of the parties' arrangement.

As well, the Board explained that based on *Cowie v. Bindish*, 2010 ONSC 2628 (CanLII), the tenant's evidence of a connection to the community and the property could not unilaterally change the nature of the living situation so that it could fall under the jurisdiction of the Act.

The Board was satisfied that the rental was akin to a "vacation home" and that the tenant was a member of the travelling public. The Board's decision was influenced and supported by the fact that:

- a. the reservation was booked on a hosting platform used by the vacationing or travelling public;
- b. the parties had considered entering a residential lease agreement, but this was expressly declined by the landlord and not pursued by the tenant who instead booked her accommodation through the hosting platform;
- c. the parties intended that the living situation be for a fixed period because the tenant was visiting from Switzerland;
- d. the property was fully-furnished, with services typically provided and available for the vacationing and travelling public; and
- e. there was no change in the nature of the parties' dealings with one another.

This case has lessons for those who rent out their properties to the travelling public and those who seek longer-term rental accommodations when travelling.

For the entrepreneur who seeks to earn additional income from short-term rentals, it is wise to ensure that only short-term rentals are accepted. Accepting a request for accommodations that is months-long should be discouraged notwithstanding that it may provide the entrepreneur with potentially more income because it may result in the entrepreneur inadvertently becoming a landlord subject to the obligations under the Act. Indeed, the Board in this case noted that other cases involving a booking of a similar length might not fall within the travelling or vacationing public exemption, thus acknowledging that this case turned on its particular facts.

For the renter seeking a lengthy accommodation, it is wise to not use a hosting platform to rent a property because doing so could, like the tenant here, result in an inability to gain the protection of favourable landlord and tenant laws. A person, particularly a foreign traveller, who seeks long-term accommodation should insist on a formal residential tenancy agreement and should approach with caution any rejection of such a request and the insistence that even a lengthy accommodation be booked through a hosting platform, like AirBnB.

Media reports indicate that the tenant is appealing the Board's decision. A PDF version is available to download [here](#).

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