

Town's short-term rental by-law enforceable against tenant (*Munir v. Garg*)

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Platforms such as Airbnb and VRBO allow property owners to rent their property to others on both a long-term and short-term basis. These platforms essentially increase the number of rooms available to travellers who do not want to stay at hotels. Properties offered through Airbnb or VRBO are often less pricey than hotels and allow a traveller to secure more space than just an ordinary hotel room.

However, the use of properties for short-term rental ("**STR**") purposes has caused much debate around issues such as affordable housing and has pitted the hotel industry against the STR industry. These debates have led to municipalities all over the world adopting by-laws either to prevent properties from being used as STRs or to require a property owner to obtain a permit or license to use their property as an STR. In some jurisdictions, the ability to use a property as an STR can be found in a zoning by-law.

In *Munir v. Garg*, 2025 ONCA 334 (CanLII) (affirming 2024 ONSC 6073 (CanLII)), the Court of Appeal for Ontario was required to determine whether an application judge had committed a reversible error in finding that a town's by-law to regulate STRs was enforceable against a tenant who was re-letting his landlord's house, through Airbnb, as an STR.

Under a town by-law, a property could only be used as an STR (in this case, an occupancy period of less than 28 days) under a licence obtained from the town. However, no licence had been obtained, and the landlord did not consent to the property's use as an STR.

Accordingly, after learning of the tenant's use of the property, the landlord made a complaint to the town about the unauthorized use by its own tenant.

In response to the landlord's complaint, fire officials from the town inspected the house and discovered numerous Fire Code violations.

The house had been modified to create additional sleeping quarters, with the laundry room converted into a bedroom and two makeshift bedrooms constructed in the home's unfinished basement.

Fire officials found that there was inappropriate fire separation between the bedrooms, that the basement bedrooms had no means of egress in the event of an emergency, that one of the basement bedrooms was directly beside the furnace and that the increased occupancy in the house changed the use of the property from personal occupancy rental home to a lodging/rooming/boarding house designation.

The Fire Code violations were serious and resulted in the issuance of a compliance order that was posted on the front door of the property to alert anyone entering the property of the fire and safety deficiencies.

The town also inspected the property, and issued a compliance order requiring the tenant to obtain an STR license or cease using the property as an STR.

The tenant sought a declaration that the town's STR by-law was illegal and unenforceable, that it did not apply to the property, and that the town's enforcement infringed his rights under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. In addition, the tenant sought \$3,980,000 in damages for emotional distress and loss of income.

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With respect to the legality of the town's by-law, the tenant argued that it conflicted with Ontario's *Residential Tenancies Act, 2006* ("RTA"). The tenant submitted that the RTA granted tenants the right to use a rented property for residential purposes, including having guests stay at a rented property for an indeterminate time if they contributed toward paying the monthly rent obligation.

The application judge rejected all of the tenant's arguments.

More specifically, the application judge found that there was no operational conflict between the town's by-law and the RTA and that the RTA did not apply to STRs.

As determined by Ontario's Landlord and Tenant Board, properties listed on Airbnb are intended for temporary occupation and therefore are not captured by the RTA: see *Bhalla v. Bryan*, 2023 ONLTB 74357.

Furthermore, the application judge found that the town had broad legislative authority under section 151 of the *Municipal Act, 2001* to require residential rental businesses to operate with a license.

In this regard, the by-law was legal.

With respect to the tenant's allegations under the Charter, the application judge rejected the tenant's complaint that the threat of excessive fines, enforcement action that would ruin him financially and the alleged harm caused by the posting of an inspection order infringed his Charter rights. The application judge noted that the tenant was present throughout the fire safety inspection and that he readily admitted to the fire inspector that he was operating an STR without a license.

There was no evidence to support a breach of the tenant's section 7 Charter rights, and the tenant did not specify how his section 15 Charter rights were violated.

Section 7 of the Charter protects a person's right to life, liberty and security of the person.

Section 15 of the Charter provides that every individual is equal before and under law and has the right to the equal protection and equal benefit of the law without discrimination. "Tenancy", however, is not an enumerated or analogous ground under this section.

The Court of Appeal for Ontario upheld the application judge's decision on the grounds that the tenant had failed to identify any reversible errors and that the application judge's factual findings were entitled to deference.

The Court of Appeal also agreed with the application judge's legal analysis that there was no conflict between the STR by-law and the RTA or that the tenant's rights under the Charter had been infringed.

The key takeaways from this decision are that Ontario municipalities have the authority to regulate STRs, and that residential landlords should be wary of the use that a tenant might make of the landlord's property. While a tenant's use of a landlord's property as an STR can be viewed as a business use, the landlord's agreement with the tenant constitutes a residential tenancy that is subject to the RTA. Accordingly, a landlord who discovers that a tenant is using the landlord's property for a business purpose may nevertheless be required to follow the RTA in order to evict their tenant for any unauthorized use.

Although not discussed in the decision, one might query whether platforms like Airbnb should be responsible for permitting a tenant to list thereon a landlord's property as an STR without verifying whether the property is licensed for STR use or whether the landlord has agreed to the listing. A PDF version is available to download [here](#).

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