



**Order under Section 31
Residential Tenancies Act, 2006**

Citation: Govedaris v Mcilquham, 2023 ONLTB 80222

Date: 2023-12-14

File Number: LTB-T-063917-23
LTB-T-064272-23

In the matter of: Basement, 29 SCARTH RD TORONTO
ON M4W2S5

Tenant

Between: Giorgio Govedaris

And

Landlord

Gordon Mcilquham

Park Place Property Management

Landlord's
Agent

Giorgio Govedaris (the 'Tenant') applied for an order determining that Gordon Mcilquham (the 'Landlord') and Park Place Property Management (the 'Landlord's Agent') entered the rental unit illegally; altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys; substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household and harassed, obstructed, coerced, threatened or interfered with the Tenant. **(T2 application - LTB-T-063917-23).**

The Tenant also applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies **(A1 application - LTB-T-064272-23).**

These applications were heard by videoconference on September 27, 2023. The Tenant, the Landlord, the Landlord's legal representative Timothy Duggan and the Landlord's witness Nakul Sharma attended the hearing.

Determinations:

1. The hearing was originally scheduled to hear the Tenant's T2 application. At the hearing, I learned that the Tenant had also filed an A1 application to determine whether the Act applied. As such, I found it appropriate to hear both applications as the outcome of the A1 would ultimately determine whether the Board had jurisdiction to consider the T2 application.
2. The main issue argued at the hearing was whether or not the rental unit and/or living accommodation is exempt from the *Residential Tenancies Act, 2006* ("Act") pursuant to section 5(a) of the Act which states:
 5. This Act does not apply with respect to,
 - (a) living accommodation intended to be provided to the travelling or vacationing public or occupied for a seasonal or temporary period in a hotel, motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment, inn, campground, trailer park, tourist home, bed and breakfast vacation establishment or vacation home
3. For the reasons set out below, I find that *Residential Tenancies Act, 2006* (the Act) does not apply to this tenancy. As such the T2 application is dismissed as the Board does not have the jurisdiction to consider the allegations.

Evidence:

4. The residential complex is a single detached dwelling consisting of five rental units. The applications in question relate to the basement unit, which the Tenant resided in from March 3, 2023 to August 14, 2023.
5. There is no dispute that the rental unit was listed for short-term rent on the Airbnb website and that the Tenant initially inquired about renting the unit via this platform.
6. The Landlord entered into evidence email correspondence and the Airbnb listing for the rental unit. The emails confirm that the Tenant booked the rental unit via the Airbnb website on or about March 1, 2023 for a initial stay from March 3, 2023 to April 3, 2023. The Tenant was charged \$2,281.44 for this period which included a daily charge of \$71.03, taxes and a cleaning fee. The amounts were charged and paid through the Airbnb website. The parties also agreed that the unit was fully furnished by the Landlord and included kitchen cutlery, bed and bathroom linens.
7. After the Tenant booked the rental unit via Airbnb, the Landlord's agents sent a welcome email and confirmed the terms of the stay with the Tenant. The Tenant replied on March 1, 2023 at 3:57pm stating the following:

“I’m the only person staying there. Purpose of stay is for work/leisure. To see what it’s like to live/work in that type of basement unit. I understand those rules. I will be very easy and no noise”.

8. On or about March 4, 2023 at approximately 11:29am, the Tenant emailed the Landlord’s agents stating the following:

“I’d like to extend the booking if possible, For as long as possible to. I’ve been trying to find a lease but cannot find anything suitable...I planned to use AirBNB until I found something, but it could be for a very long time. We should be in a good working relationship with each other. Let me know if we can work something out or at the end of the month if you can also suggest some other of you property I can go to at the end of it”

The Landlord accepted the Tenant’s request to extend his stay in the unit until May 13, 2023. The booking was extended via the Airbnb website.

9. The Tenant subsequently made further requests to extend his stay on April 8, 2023, May 2, 2023, June 5, 2023 and on June 22, 2023. During each request, the Tenant sought the permission of the Landlord to renew his stay and had to first confirm that nobody else had booked the unit through Airbnb. The Tenant booked each extension through the Airbnb website and confirmed that the prices and/or daily charges changed during each booking and that taxes were charged in addition to the daily charges.

10. On June 5, 2023 the Tenant emailed the Landlord the following:

“Hey can I also say I found 2 alternate places to stay I’m gonna book one tomorrow So if you want I can re-rent for 1 month until august but I need an answer in 24hrs and a reasonable price. After 24hrs I 100% won’t be able to re-rent once the current term is over. I can do it for the original price of \$2,700 for July. I really don’t think anyone would rent the place for \$4,700. Up to you.”

11. The Tenant subsequently re-booked the unit and paid the required daily compensation via the Airbnb website.

12. Around the beginning of August 2023, the Tenant again attempted to extend his stay through the Airbnb platform and noticed that there was no availability beyond August 14, 2023. On August 8, 2023 the Tenant emailed the Landlord the following:

“Hello, it looks like the stay is nearing the end. I would’ve liked to stay in it longer. Do you know if this place will be available again? If so, I’d like to express my interest in returning my business. Thanks.”

13. On August 8, 2023 the Landlord advised the Tenant that the unit would be available again from October 2023 to November 10, 2023 to which the Tenant responded "That won't work. Thanks anyway. It's been a pleasure."
14. The Landlord takes the position that the Tenant's stay at the Airbnb unit ended effective August 14, 2023 and that the Tenant checked out of the unit. The Landlord denies that they locked the Tenant out of the rental unit on August 14, 2023.
15. The parties agree that the Tenant removed his personal belongings from the unit on or about this date.
16. The Landlord and their agent testified that the rental unit was intended to be for a shortterm rental period and that all bookings were made through the Airbnb website. The Landlord also stated they paid a commission to the Airbnb platform for advertising the rental unit and that all funds were paid through Airbnb and not directly to the Landlord.
17. The Tenant disputed that the rental unit is exempt from the Act, that he is a member of the traveling or vacationing public or that the rental unit is permitted for short-term rentals. The Tenant relied on *Toronto Municipal Code Chapter 547, Licensing and Registration of Short-term Rentals* which defines a short-term rental as follows:

All or part of a dwelling unit used to provide sleeping accommodations for any rental period that is less than 28 consecutive days in exchange for payment, and includes bed and breakfasts but does not include hotels or motels.

18. The Tenant stated that because he resided in the rental unit for more than 28 consecutive days, that the unit cannot be deemed exempt from the Act or a short-term rental.
19. On cross examination the Tenant agreed that he did not change and/or update any of his government identification or documents to reflect his current address as the rental unit, but rather continued to use his parents address as his lawful primary address. The Tenant also agreed that at the time of renting the Airbnb, he was searching for a permanent fulltime residence.

Analysis:

20. The wording of the section 5(a) exemption has been interpreted to include two different situations: where the accommodation is intended for the travelling or vacationing public; or where it is in fact only occupied for a seasonal or temporary period. In either situation the property itself must be one of the listed types.
21. Section 202 of the Act states the following:

- 202** (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,
- (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.
22. In my view, it is clear that Tenant's occupation of the rental unit was intended to be for a short-term and/or temporary period and not as a permanent residence or living accommodation. As such, the Act does not apply as a result of section 5(a) and the Tenant's T2 application is dismissed.
23. The email correspondence between the parties on March 1 & 3, 2023 clearly indicates that at the time the Tenant took possession of the rental unit the parties intended the occupation to be for a temporary period, until the Tenant secured a full-time residence. The emails sent by the Tenant to the Landlord on both of these dates state that the Tenant is using the rental unit as a temporary accommodation until he finds a full-time rental unit and that the unit is being used to experiment what it's like to live in a basement apartment.
24. I further note that although the Tenant's stay was extended on a number of occasions, each time the Tenant had to obtain the consent of the Landlord to extend his stay, including confirming that the rental unit had not been booked by another individual for this respective period and that the rent and/or daily amounts charged fluctuated based on the time of the year and included taxes on the price. It is clear that the rental terms were established through the Airbnb platform and initial and subsequent bookings between the parties took place through the Airbnb app. There was no suggestion the subject property was viewed by the Tenant outside of the Airbnb platform. Monthly payments were also made by the Tenant through the booking platform, where the daily rent charged fluctuated based on the time of booking and where applicable taxes were collected. The evidence also suggests that at no point did the Tenant pay the Landlord the monthly rent directly, but rather all payments were made through the Airbnb platform. This suggests to me that there was simply a continuation of the Tenant's temporary occupation of the Airbnb unit, and not the creation of a new tenancy subject to the Act.
25. I do not accept the Tenant's argument that the Act applies simply because the rental unit does not meet the City of Toronto's Bylaw code with respect to short term rentals. The fact that the Landlord may be in breach of a Municipal Bylaw does change the overall substance and intention of the parties at the time the tenancy commenced.
26. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The *Residential Tenancies Act, 2006* does not apply to this tenancy.
2. The Tenant's T2 application is dismissed.

December 14, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Fabio Quattrociochi

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.