



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

Citation: Bhalla v Bryan, 2023 ONLTB 74357

Date: 2023-11-27

File Number: LTB-T-037611-23

In the matter of: 27 BROADVIEW AVE
MISSISSAUGA ON L5H2S8

Between: Varsha Bhalla Tenant

And

Arthur Bryan Landlord

Varsha Bhalla (the 'Tenant') applied for an order determining that Arthur Bryan (the 'Landlord'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on June 21, 2023. The Tenant and the Landlord attended the hearing.

Determinations:

1. The parties disagreed whether this was a residential tenancy subject to the *Residential Tenancies Act, 2006* (the 'Act'). Therefore, before I consider the merits of the Tenant's application for lockout, substantial interference and harassment, I must be satisfied that the Act applies.
2. The parties agreed that the Tenant originally moved into the rental unit on November 6, 2022 as Airbnb guests of the Landlord and that the rental was intended to be short term while the Tenant and her husband sought to purchase their first home in Canada.
3. The relationship started with a booking reservation and payment made via Airbnb for November 6, 2022 to January 13, 2023. Within one week of her stay, the Tenant requested to extend her stay and revise the agreement with the Landlord. On November 13, 2022, the Landlord provided an updated booking reservation to the Tenant through Airbnb, however, the Tenant requested a private agreement to save on Airbnb fees. The Landlord testified that he reluctantly agreed to the Tenant's request and entered into a short-term rental agreement for the period December 13, 2022 to March 12, 2023 with a rental fee of \$6,3000 to be paid in three installments:

- \$1,500 due on signing
- \$2,400 due on December 13, 2022

File Number: LTB-T-037611-23

- \$2,400.00 due on January 15, 2023
4. Between December 13, 2022 and March 14, 2023, additional agreements were made between the parties to accommodate the Tenant's several requests for extensions until April 30, 2023.
 5. The parties also entered into a separate agreement for the Tenant to stay in a different location because the unit had previously been booked by another guest on Airbnb for check in at 3 pm on April 30, 2023. The Tenant had a final check out date and time of 11 am on April 30, 2023 and was scheduled to transfer to another location owned by the Landlord that date. Due to issues that led to the filing of the T2, the Tenant did not check out of the unit on April 30, 2023, and was still in occupation of that unit as of the hearing date.

Analysis

6. Section 3(1) of the Act provides that the Act applies with respect to all rental units despite any other Act and despite any agreement or waiver to the contrary. "Rental unit" is defined in section 2(1) of the Act as "any living accommodation used or intended for use as rented residential premises".
7. However, the Act also contains several exemptions. Section 5 (a) of the Act states that the Act does not apply with respect to 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.
8. In *Barnes v SSI Property GP Inc.*, 2016 ONSC 6308 (CanLII), the Divisional Court found, at para. 9:

...For the [section 5(a)] exemption to apply, the living accommodation in question must either be "intended to be provided to the travelling or vacationing public", or be "occupied for a seasonal or temporary period." ...
9. Airbnb is not specifically listed as one of the forms of accommodation under s. 5(a) of the Act. However, I take judicial notice of the fact the houses and apartments listed on Airbnb are generally intended for temporary occupation by members of the travelling or vacationing public.
10. The key issue is whether the living accommodation was intended to be for a temporary period in a hotel, or vacation home and to that end, I must consider the intent and understanding of the parties when they entered into the agreement, and whether the nature of their agreement changed at some point during the Tenant's occupation.

11. The parties each testified they intended to enter into a short-term accommodation arrangement through Airbnb. Text and email messages between the Tenant and Landlord confirm that the space was to be occupied for approximately two months. Fees were paid

File Number: LTB-T-037611-23

up front. The subsequent rental agreements were similarly drafted with specific booking periods with check in/checkout dates and times.

12. In this case, I am satisfied that it would have been clear to the Tenant at the outset of the parties' relationship that she had contracted for a short-term furnished unit using a website designed specifically to allow parties to enter into such arrangements. The evidence does not establish that it was the intention of either party that the unit would be used by the Tenant ongoing as a long-term residence or full-time residential occupation. In my view, the "real substance of the transaction" is supported by the Airbnb reservation and I find the continued use of language such as "check-in and check out" consistent with an intention that this be temporary accommodation. I find that whether the payment was made through Airbnb or directly to the Landlord is not relevant for the purpose of whether section 5(a) applies.
13. There was no dispute that during the Tenant's stay the parties moved away from the Airbnb platform and the parties contracted an extension of the original reservation amongst themselves. However, in considering these extensions I still arrive at the same conclusion. I say this because the basic terms of the contract did not change insofar as the services and amenities provided, the fees charged and the reference to check-in/check-out dates and times and rules. The various extensions remained short-term and I find that the move from the Airbnb platform was solely for financial savings. Therefore, I do not find that the extensions or changes formed a tenancy which would cause subsection 5(a) to not apply.
14. Having considered all circumstances and on a balance of probabilities, I find the real substance of transactions between the Landlord and Tenant (as they are defined in the T2 application) has been that of a short-term or temporary rental arrangement under an Airbnb style or motel-type or tourist-home business arrangement, which I believe falls squarely into the exemption given in subsection 5(a) of the Act.
15. Consequently, the Board does not have jurisdiction to hear the T2 application.

It is ordered that:

1. The Act does not apply.

2. The Tenant's application is dismissed.

November 27, 2023

Date Issued

Donna Adams

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor, Toronto ON M7A 2G6

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

2023 ONL/TB 74357 (CanLII)