



**Order under Section 9(2)  
Residential Tenancies Act, 2006**

**Citation:** Suzanne Porter v Tianning (Tina) Ning (Wong), 2023 ONLTB 43064

**Date:** 2023-06-15

**File Number:** LTB-L-014978-23

**In the matter of:** Upper Level, 69 Walmsley Toronto  
Ontario M4V1X7

**Between:** Suzanne Porter Landlord

**And**

Tianning (Tina) Ning (Wong) Tenant

Suzanne Porter (the 'Landlord') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by videoconference on April 17, 2023 and May 3, 2023.

The Landlord, the Landlord's representative D. Ciobotaru, the Tenant and the Tenant's representative M. Yarmus attended the hearing

**Determinations:**

1. The Landlord filed an A1 application with the Board to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies to the current situation.
2. For the reasons that follow, I find the exemption contained in section 5(a) of the Act applies and that the Act does not apply to the subject living arrangement.
3. The subject property (hereinafter, the "subject property" or the "rental unit") is the upper level of a detached home, originally advertised on the online booking platform, AirBNB. Suzanne Porter (hereinafter referred to as the "Landlord" or "Owner") has been an AirBNB host for several years and testified having many nightly reservations at the subject property.
4. In June 2022, Tianning Ning (hereinafter referred to as the "TN", "Tenant" or "Occupant") and her family sought housing in Canada and reached out to the Landlord through the AirBNB platform.

5. On June 17, 2022, TN reserved the subject property through the AirBNB platform for an extended period of time commencing August 23, 2022 and ending on June 30, 2023 – a total of 311 days. After some discussion between TN and the Landlord, the parties agreed upon payment in the amount of \$52,701.66 for the duration of the stay. While the Landlord maintained the price was calculated on a nightly basis, I find the Tenant’s explanation more believable that the parties agreed upon a monthly rate and that the daily rate was pro-rated based upon this monthly rate.
6. TN and her family moved into the rental unit, as planned. Unfortunately, in early January 2023, the Landlord testified that due to a change in personal circumstances and on the advice of medical professionals, the Landlord sought to move back into the rental unit. The Landlord advised TN of the change in circumstances and also contacted AirBNB to request they reach out to the Tenant to help facilitate an earlier checkout date (originally, set for June 30, 2023). Ultimately, the Tenant did not vacate the rental unit on January 31, 2023, claiming protection under the Act. The issue, therefore, is whether the Act applies.
7. It is the Landlord’s position the Act does not apply to the current living situation, relying upon section 5(a) of the Act. The exemption the Landlord seeks to rely on reads as follows:

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;

8. In *Barnes v SSI Property GP Inc.*, 2016 ONSC 6308, the Divisional Court noted the following in relation to the terms of s. 5(a):

The wording of the provision is clear. For the 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. I also agree with and adopt the following analysis by Vice-Chair Carey in *ET-56570-15-RVIN2 (Re)*, 2016 CanLII 52841, albeit in the context of mobile homes:

13. First, the wording of the 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. (See: *Rogers v. Fisherman’s Cove Tent & Trailer Park Ltd.*, [2002] O.J. No 5942 (Ont. Div. Ct.)) In either situation the property itself must be one of the listed types.

14. So the primary task before the Board with respect to the exemption was to explore the intention of the parties at the time the tenancy agreement was entered

into. If the parties intended for the Tenant to have a permanent residence elsewhere and to use the mobile home site as a vacation property only then the exemption applies. That is how the first branch of the exemption is to be applied and analysed.

15. The “living accommodation” in question here is a mobile home site or lot. The Tenants apparently own their own homes which sit on the lots rented from the Landlord. If the mobile homes here are semi-permanent and intended to sit on the lot year-round, then the second branch of the exemption may well be irrelevant.

16. The second thing I would say about the exemption is that the burden of proof rests on the party claiming the exemption. This means that it was up to the Landlord to lead evidence in support of the proposition that when each tenancy agreement was entered into the parties intended the lots to be used as vacation properties and not as permanent residences.

10. In determining whether or not the exclusion under section 5(a) applies, however, section 202(1) of the Act requires the Board to determine the true nature or substance of the living arrangement. In doing so, the Board:
  - (a) may disregard the outward form of a transaction; and
  - (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.
11. The parties’ intent at the time of negotiating the rental agreement must be closely considered. I must also consider whether the parties expressly or implicitly agreed to change the nature of their relationship after entering into the agreement.
12. The rental terms were established through the AirBNB platform and initial discussions 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 applicable taxes were collected directly.
13. As part of the AirBNB booking, the Tenant identified a “checkout” date of June 30, 2023, which in my view creates an inference that the accommodations were intended to be for a limited time. The Tenant testified the checkout date was chosen as it was the end of the school semester and at the time booking, she intended to check out on that date (albeit she indicated her intentions have since changed). The Tenant further acknowledged on cross-examination that at the time of booking, “*one of the options*” on checkout was to return to Switzerland. Similarly, it was the Landlord’s understanding the Tenant was visiting from out of town and thus required accommodations for a 10-month period only. In particular, the Landlord testified it was her understanding through communications with the Tenant, that the Tenant and her family were visiting from Switzerland; that the Tenant’s spouse was employed/paid by a university in Switzerland and was currently on sabbatical; and, that the Tenant’s spouse would have visiting rights at a local university while visiting Canada. The Landlord testified that during the booking stage, the Tenant provided her with their

passports and a letter confirming the Tenant's spouse's employer information. I found the Landlord's evidence to be credible.

14. This situation is distinguishable from a fixed term lease where a tenant's intentions for the rental unit after the term end date is uncertain, or not contemplated at the time of booking. There was also no suggestion in the parties' initial communications or thereafter that the noted "checkout" date was subject to extension, renewal or anything other than the last day the Tenant intended to occupy the subject property.
15. The evidence also suggests the Tenant was most likely aware of the possibility the current premises may not be covered under the Act - which provides a Tenant may terminate a tenancy at the end of a period or term of the tenancy. On cross-examination, the Tenant acknowledged the booking page provided an option for the Tenant to cancel the reservation at anytime. Moreover, when the Tenant first located the current premises on AirBNB, the Tenant requested the parties sign a residential tenancy lease but this request was denied by the Landlord who advised: "*we prefer the hosting platforms because they include insurance and other protections. We've been with Airbnb for many years now and feel it's the right fit for us*", to which the Tenant responded "*Sure, understood*". Prior to the Tenant's booking, the Landlord also testified having approximately 30-40 short-term, AirBNB "check-in/check-out" reservations at the subject property.
16. Other factors during the booking stage and shortly thereafter, while also not determinative on their own, collectively point to the accommodations being provided – or intended to be provided – to a travelling or vacationing public. The Landlord was offering services typically offered as part of a vacation home: The Landlord specifically advised the Tenant "*as we get closer to your arrival we can set up rooms specifically to your needs*", with the Tenant asking whether "*weekly cleaning*" was provided and the Landlord offering to assist in arranging this service if wanted. The subject property was fully furnished, with Wi-Fi access and utilities included, and the property was stocked with glasses, kitchen utensils, appliances, towels, soap, shampoo...etc. Understandably, when the Tenant asked "*is there any other stuff we need to bring? Bedding stuff? Sheets, towels?*", the Landlord answered "*Nope, that's all provided. Just your personal items and then anything might be specific or unique to your needs.*" Similarly, after move-in, the requests made by the Tenant were consistent with a vacation rental. Following move-in, the Tenant asked the Landlord if they had additional bedding, as well as an additional TV (which the Landlord declined).
17. In an effort to show the Tenants were not simply travelling or vacationing, the Tenant testified she worked from home, her family had integrated themselves within the community and produced government and other documentation, including driver's licences, a T4 Form, credit cards, utility receipts, a report card...etc. showing the rental unit as their residential address. While the documentation produced shows a degree of connection to the subject property, one party of a tenancy agreement cannot unilaterally change the nature of the agreement so as to bring the agreement outside – or by extension - within the protections of the Act (*Cowie v. Bindlish*, [2010] O.J. No. 2193 (Ont. Div. Ct.)).

18. Based upon the evidence presented, I find at the time of booking it was the Tenant's intention to remain at the subject property until June 30, 2023, after which the Tenant and her family would be returning home. While at the hearing the Tenant indicated an intention to extend her work permit in Canada, I accept the Landlord's evidence that any change in intent was not previously communicated to the Landlord and there was no meeting of the minds for such change. Moreover, I do not find the Tenant at any point in time was seeking to establish the subject property as their permanent residence.
19. Although the Landlord was aware of the Tenant's family situation and the fact the Tenant's children would be attending school nearby, in the context of the Landlord's understanding the Tenant would be staying at the subject property due to a family member's sabbatical, I am satisfied the travelling public exemption is made out because (i) the rental was akin to a "vacation home" within the meaning of 5(a), and (ii) because the Tenant here did appear to be a member of the "travelling public", which taken with the Landlord's evidence regarding the traditional use of the subject property as a short term rental for vacationing and travelling public, establishes the parties' intention for the subject property to be provided to the vacationing public, or at the very least, the "travelling" public.
20. While I am sympathetic to the Tenant's situation and family circumstances, upon considering all the evidence, I find the Landlord has established the "*traveling and vacationing public*" exemption under section 5(a) applies to this living accommodation. I am mindful that the "*traveling or vacationing public*" exemption may not apply in other online bookings involving a similar length of time as occurred in this case. In fact, an agreement involving a 10-month stay may very well give rise to a finding, in other circumstances, that the unit was not intended for the vacationing or travelling public. However, in my view the following unique circumstances of this case support a finding that the exclusion under section 5(a) applies:
- the reservation was booked on a platform typically used by the travelling or vacationing public, with payments rendered through this platform;
  - the parties turned their minds to the possibility of entering into a standard lease agreement, but this request was expressly declined by the Landlord who testified having many AirbBNB short-term accommodations at the subject property in the lead up to the Tenant's booking;
  - at the time of booking, the parties mutually intended the living arrangement to be for a fixed period of time as it was mutually understood the Tenant was visiting from Switzerland where residential ties were still being maintained;
  - the services provided by the Landlord resemble those services typically expected by the travelling or vacationing public. The Tenant was required only to bring personal items to the subject property, as the property was fully furnished, with items such as bedding, sheets, towels, soap/shampoo, glasses, kitchen utensils/appliances, and Wi-Fi access provided; and

-the parties did not expressly or implicitly agree to change the nature of their relationship after entering into the agreement

**It is ordered that:**

1. The Act does not apply.

**June 15, 2023**

**Date Issued**

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Peter Nicholson

Member, Landlord and Tenant Board

15 Grosvenor St, Ground Floor Toronto  
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.