



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

Citation: Cityzen-Hideaway v Patterson, 2025 ONLTB 24621

Date: 2025-03-28

File Number: LTB-L-000450-25

In the matter of: BASEMENT, 47 MANDERLEY DRIVE
SCARBOROUGH ONTARIO M1N3E8

Between: Cityzen-Hideaway
Ricky De Castro
Leila De Castro

I hereby certify this is a
true copy of an Order dated

MAR 28, 2025

Landlord

And

Cheryl Ann Patterson

Landlord and Tenant Board

Tenant

Cityzen-Hideaway, Ricky De Castro and Leila De Castro (the 'Landlord') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by videoconference on March 24, 2025.

The Landlords, the Landlord's Legal Representative, Angela Smith, and the Tenant attended the hearing.

The terms "landlord" and "tenant" are used in this order to facilitate the process.

Determinations:

1. The Landlords filed an A1 application with the Board to determine whether 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 "rental unit") is the basement of a detached home, advertised on the Landlords' website, Cityzen Hideaway, and the online booking platform, Airbnb. Ricky De Castro and Leila De Castro (hereinafter, the 'Landlord') have been a short term rental hosts since they purchased the house. Two booking platforms are used by the owners to reserve the rental unit: Lodgify and Airbnb. Cheryl Ann Patterson (hereinafter the 'Tenant') first occupied the unit on October 2, 2024.
4. In his testimony, Ricky De Castro ('D.C') stated he was approached by a social housing worker who referred the Tenant to him for transitional short-term housing. He stated there was no tenancy agreement between the Landlord or the Tenant and it was understood the

Tenant would occupy the unit on a weekly basis until she was able to find permanent housing.

5. D.C. testified that at the end of each week, he would contact the Tenant to confirm if she was extending her stay or if she was vacating the property. For the period of October 2, 2024 to November 14, 2024, the Tenant paid the weekly rental amount for the unit. He testified that on December 1, 2024, he received a text message from the Tenant in which she informed him she found the listing on the Airbnb website and questioned the amount she was paying to him each week. When the Tenant did not pay the rental fees after November 14, 2024, any subsequent stays were cancelled and it was requested that the Tenant leave the premises.
6. The Tenant testified it was the Landlord who contacted the social housing agency suggesting they had accommodation for those in need of transitional housing. She testified it was her expectation that she would be occupying the unit for six months. She testified she never booked the unit through the Landlords' platform and it was the Landlord who took care of it on her behalf although she had not consented to this. She stated that on December 1, 2024, she found the unit on the Airbnb website and confronted the Owners about the nightly rates as she was paying a much higher weekly amount.
7. The Tenant testified that on December 6, 2024, the Landlord changed the locks to the unit and refused to let her in. She contacted the police who advised her she was a tenant and the Landlord must permit her entry into the unit. Although she admitted there is no lease agreement between herself and the Landlord and she understood the unit was not her permanent residence, it is her belief that she is a tenant and therefore is afforded the protections pursuant to the Act.
8. It is the Landlords' 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;

9. 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."

10. I also agree with and adopt the following analysis by Vice-Chair Carey in *EAT-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.

11. 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.

12. 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.

13. Based on the evidence presented, I find at the time of occupation of the unit, it was the Tenant's intention to reside in the unit on a temporary basis and it was the Landlords' understanding that she would be ending her stay once permanent housing was attained. At no time did the Landlord intend on entering into a landlord/tenant relationship with the Tenant.

14. While I am sympathetic to the Tenant's situation, upon considering the evidence presented, I find the Landlord has established the "traveling and vacationing public" exemption under section 5(a) applies to this living accommodation. The Tenant may have believed that the rental unit was part of a tenancy that comes under the Act, but I find, on a balance of probabilities, that the Landlord never intended to create a tenancy with the Tenant.

15. The rental terms were established between the Landlord and the Tenant at the outset of the occupancy of the unit. Although the Landlord manually booked the unit weekly through the Lodgify platform, this only took place because the Tenant informed the Landlord she would be staying each week. The Tenant paid the Landlord the weekly rate, although only until up to November 14, 2024, by e-transfer and applicable taxes were collected directly.
16. This situation is distinguishable for a fixed term lease where a tenant's intentions for a 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 check out date was subject to extension, renewal, or anything other than the last day the Tenant intended to occupy the unit.
17. The Tenant was charged, and paid, a weekly amount, on a weekly basis, in addition to HST, as she would for a hotel. The only rates advertised by the Landlord are for the short term. This amount does not come to any regular, consistent, monthly amount for rent. Rent that comes under the definition of the Act does not include HST.
18. Given the above, I find the Act does not apply pursuant to section 5(a).

It is ordered that:

1. The Act does not apply.

March 28, 2025
Date Issued



Susan Priest
Member, Landlord and Tenant Board

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