



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BELACOSTA INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AS CNC FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking orders cancelling notices to end the tenancies for cause; for an order allowing the tenants to sublet or assign because the landlord's consent has been unreasonably withheld; and to recover the filing fees from the landlord for the cost of the applications.

Individual applications with respect to 4 rental units have been filed, which have been joined to be heard together. Each of the applications names 2 tenants, one of whom is consistent in all applications.

Two of the named tenants attended the hearing, gave affirmed testimony, and were assisted by Legal Counsel. An agent and a witness for the landlord also attended and were also assisted by Legal Counsel. The landlord's witness also gave affirmed testimony and counsel for each of the parties was given the opportunity to question all those who testified, and to give submissions.

During the course of the hearing, the issue of jurisdiction was raised by the tenants which is dealt with in this Decision.

### Issue(s) to be Decided

- Does the *Residential Tenancy Act* apply to the rental units that are the subject of this dispute?
- Has the landlord established that the notices to end the tenancies were given in accordance with the *Residential Tenancy Act*?
- Have the tenants established that the tenants should be permitted to assign or sublet because the landlord's consent has been unreasonably withheld?

### Background and Evidence

**The parties agree that** the rental units are suites within a rental complex currently owned by the landlord, and previously owned by another landlord during these tenancies. The sale of the complex was completed on or about August 1, 2017. Rental amounts vary, being monthly sums of \$2,300.00; \$1,900.00; \$1,870.00; and \$1,900.00. Tenancy agreements have been provided as evidence for this hearing for 2 of the tenancies to commence on November 1, 2016 on a fixed term basis expiring on October 31, 2018; and 2 tenancies to commence on December 1, 2016 expiring on November 30, 2018. The parties agree that none of the tenants named in the tenancy agreements currently reside in the respective rental units, and are rented on Air BNB by the tenants, (AWS and SBH) who occupy a different unit within the complex that is not subject of this dispute.

### Jurisdictional Issues

**The first tenant** (SBH) testified that pursuant to the *Residential Tenancy Act* and the Policy Guidelines, the *Residential Tenancy Act* does not apply to vacation rentals or business use. The predominant use of each of the 4 rental units is for a business, used by others as vacation rentals.

The tenant further testified that the previous landlord had an agreement with the tenants (AWS and SBH – hereafter referred to as “the tenants”) that was different than on paper and the previous landlord had allowed the tenants to occupy the rental units as Air BNB short-term rentals. To corroborate that testimony the tenants have provided a copy of a string of emails between the tenants and the previous owner/landlord wherein the previous owner/landlord requests a summary of the Air BNB performance setting out the profits made by the Air BNB rentals.

It started on October 12, 2016 when the property manager at the time approached one of the tenants by text messaging about renting units on Air BNB. On October 20, 2016 the parties met and the landlord wanted to refinance but couldn't have one tenant's name on 5 tenancy agreements. Text messages continued about signing leases and whose names would be on the tenancy agreements. The landlord sent tenancy agreements to the tenants with a note to add tenants' names, and the text messages confirm that the short-term rental situation is confirmed. The tenants paid rent and security deposits for 2 units.

On November 7, 2016 the property manager approached the tenant about renting 2 more rental units on Air BNB. The property manager told the tenants that the owner agreed if certain terms were followed including record books and performance numbers because the owner wanted to see how it was going. The tenants received the keys to the other 2 units on December 2, 2016 without any paperwork. Texts also show a discussion about repairs and maintenance and hydro. The tenants paid the security deposit and rent for the additional 2 units. Another text dated January 2, 2017 requests the performance numbers.

Walk-throughs were completed many months after possession, and the tenants didn't receive that paperwork. Just before the building sold, the landlord wanted to view the Air BNB units.

The new landlord continued to accept rent for all units. The parties attempted to negotiate an end of those tenancies, but the landlord wanted Mutual Agreements to End Tenancies with the names of the tenants who had signed the tenancy agreements, but the tenants could not produce them.

There were no written or verbal notices about unreasonable disturbances and no noise complaints verbal or written. There are 38 suites in the building and a lot of people coming and going. There is no way of knowing what suites any noise may have come from. The tenants have stricter noise policies for the short term rentals than the rental complex rules.

There is no evidence that the landlord's property is at risk. The new property manager has never been inside. There is no illegal activity, and only speculation by the landlord. The City sent a letter about short-term rentals being a by-law infraction, but there is no evidence that the City is still pursuing that. If the landlord is worried about financial loss, the landlord would have made an agreement to end the tenancies or some other agreement.

The new landlord accepted rent from the tenants for 3 months, September, October and November, and provided a note about accepting rent for Use and Occupancy with November's rent after the notice to end the tenancy was issued in September. There was no warning about correcting a material breach.

The tenants seek to cancel all of the notices to end the tenancy and be permitted to sublet. New legislation will be passed about Air BNB and the tenants want to sublet or assign those units.

**The second tenant** (AWS) testified that the resident property manager approached her about an Air BNB proposal. There had been noise transfer between the rental unit that the tenant resides in and those on the 3<sup>rd</sup> floor. The landlord was hoping to counter-act that and wanted to keep the tenants as tenants, and provide quiet enjoyment of their rental unit.

The tenant paid the landlord the security deposits for each of the rental units and has continued to pay rent for all of the rental units, and there are no rental arrears. The text messages show that the parties discussed repairs, maintenance and hydro, and that the landlord wanted performance numbers. The landlord trusted the tenant to add names to the tenancy agreements, which she did, and returned them to the landlord but did not get copies back signed by the landlord until the tenants were served with the landlord's evidence for this hearing. None of the tenants named in the tenancy agreements were tenants, but were Air BNB guests who agreed to sign the tenancy agreements and also signed Assignments. The tenant asked in writing for copies in an email dated June 14, 2017, but the property manager replied that he's not obligated to do assignments, and that the owner may not grant it, and would not put anything in writing but wanted information about revenue and expenses from the Air BNB.

The tenants were not aware that the landlord intended to sell the rental complex, however the tenant informed the new landlord that the tenant was paying the rent for all 5 units and confirmed that the tenant could continue to pay by bank draft or cheque. The tenant emailed the new property manager again to confirm use of the suites, and he agreed that he had been told by the previous property manager. The parties spoke on August 24 again about short-term rentals, and he said he would talk to the landlord, but didn't inform the tenants of a violation from the City or ask the tenants to stop the Air BNB. However, the property manager's lawyer sent the tenants a copy of a letter from the City about a by-law violation so the tenants took down the advertisements from Air BNB. The property manager didn't contact the tenants again as promised and the advertisements went back up on September 22, and the tenants paid the rent in good faith.

**The landlord's witness** is the current property manager and testified that the Air BNB business first came to his attention on August 1, 2017 when he picked up the keys. No authority has been given to anyone to run an Air BNB operation, and the current owner directed the witness to arrange termination of such an operation.

The witness has never had any communication with the tenants named in the 4 tenancy agreements, and learned on August 1, 2017 that there were no tenants. However the tenants in this dispute made reference to short term rentals and the witness expected to

get something from the previous landlord about it but didn't. When the witness asked the previous property manager about it, he was very evasive, and would not provide any information. It had not been previously disclosed.

The landlord received a letter from the City with respect to a by-law, but there are no fines or Orders in place.

On September 27, 2017 the landlord's witness posted One Month Notices to End Tenancy for Cause to the doors of the respective rental units and copies have been provided for this hearing. They are addressed to the tenants named in tenancy agreements provided to the current landlord from the previous landlord. All of the notices are dated September 27, 2017 and contain an effective date of vacancy of October 31, 2017. The reasons for issuing them are identical on each of the 4 notices, which state:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Rental unit/site must be vacated to comply with a government order;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

### Analysis

I have reviewed the evidentiary material of the parties and it's clear to me that even if the current landlord was not aware of it, the tenancy agreement signed by the tenants did not actually reside in any of the 4 rental units. I also accept the testimony of the tenants that the previous landlord/owner or property manager consented to sub-leases

of the 4 rental units to the tenants, which is corroborated by the text messages wherein the previous owner wanted performance numbers, such as revenue and expenses. It is also corroborated by the fact that the tenants who appeared for this hearing paid all of the rent for the 4 rental units and paid security deposits for each of the 4 rentals. The fact that it wasn't disclosed in the sale negotiations doesn't change the fact that a short-term rental business advertised on Air BNB is the primary purpose of the rental units.

The *Residential Tenancy Act* specifies that it does not apply to living accommodation included with premises that are primarily occupied for business purposes. In the circumstances, I find that the rental units that are the subject of this dispute were predominantly used for a commercial purpose as short-term rentals on Air BNB, and the *Residential Tenancy Act* does not apply.

### Conclusion

For the reasons set out above, I decline jurisdiction with respect to this dispute.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 27, 2018

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Residential Tenancy Branch