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Shared Accommodation in Alberta: Law for Roommates and Those Sharing Living Space with Their Landlords

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Case Commented On: *Layeghpour v Paproski*, 2024 ABCJ 140 (CanLII)

Shared accommodation has become increasingly common in Alberta for many reasons, including the unaffordability of both owned and rented housing. I discuss this phenomenon in Part One of this post. Shared accommodation includes roommates sharing a dwelling, individuals sharing living spaces with owner-occupiers of single-family homes, duplexes and condominiums, and – sometimes – multigenerational households. Sharing living space usually means sharing a kitchen, bathroom and/or living room. However, shared accommodation law is a grey area of the law – underdeveloped by Canadian courts, its existence is unknown to most people. Contrary to the expectations of many, Alberta's *Residential Tenancies Act*, SA 2004, c R-17, does not apply to shared accommodation. That means the Residential Tenancy Dispute Resolution Service (RTDRS) is not available to resolve any disputes. The *Innkeepers Act*, RSA 2000, c I-2, does not apply either because "innkeeper" is defined to include only those who provide lodging to any person who presents themselves as a guest who appears to be able and willing to pay and "in a fit state to be received" (s 1(b)). It is the common law that applies to the relationship those sharing accommodation are found to have, whether that is a licence or a lease relationship. It is therefore best to prevent disputes with an agreement – preferably a signed, written agreement. The Centre for Public Legal Education Alberta has excellent resources for those planning or already in shared accommodations on their "Roommates and Shared Accommodation" website, which I describe in Part Two. In Part Three, I focus on my primary reason for writing this post, and that is the decision of Justice Sandra L. Corbett in *Layeghpour v Paproski*, 2024 ABCJ 140 (CanLII) in which she sets out much of the common law governing shared accommodations.

Part One: Shared Accommodations are Increasingly Common and Expensive

According to the Rentals.ca Network of Internet Listings Services, the number of listings seeking roommates or people to occupy spare bedrooms in owner-occupied houses and condos – collectively "shared accommodation" – have been increasing dramatically in Calgary and Edmonton, as well as in other large Canadian cities. Across the country, the number of listings seeking someone to share rose 52% between November 2023 and November 2024 (December 2024 Rentals.ca Rent Report). More commercialized forms of shared accommodation are also beginning to proliferate in Alberta, including off-campus housing purpose-built for students (e.g., the Hub in Calgary) and purpose-built "co-living" arrangements intended for young professionals, digital nomads, remote workers and students, where one can rent a bedroom delineated by a bookcase or one with a door, as well as shared use of common areas. (e.g., Co-living.com ads for Calgary).

Affordability is the main motivation for all involved, whether it's the affordability of increased mortgage, insurance and utility payments or that of rent payments. For example, in December 2023, Calgary had the fastest annual rent growth for purpose-built multi-family rental housing and condominiums of all major Canadian cities, with rents increasing 14 percent from December 2022 to an average of $2,071. That 14 percent annual growth followed a 22.6 percent increase in Calgary rents in 2022 (January 2024 Rentals.ca Rent Report). Although rents declined a bit in 2024 in Alberta, with the average asking rent for all rental accommodation decreasing from $2,174 in November 2023 to $2,139 in November 2024 (December 2023 Rentals.ca Rent Report; December 2024 Report), purpose-built rental housing is still unaffordable for many people.

The increased demand for shared accommodation is reflected in increases in the rent being asked for shared accommodation, with Alberta leading the growth in asking rent in Canada for the last few years. For example, Alberta year-to-year roommate asking rents grew 18.8% between November 2022 and November 2023 (December 2023 Report). Calgary had the largest month-to-month increases in the country in roommate asking rent in May 2024 (10 percent), as well as in June (8.8 percent) and July 2024 (8.9 percent). In November 2024, the average asking monthly rent for roommate rentals in Calgary was $901 and in Edmonton it was $784 (December 2024 Report).

Part Two: CPLEA Resources for Roommates and Those in Shared Accommodations

The Centre for Public Legal Education Alberta (CPLEA) has excellent resources on their Roommates and Shared Accommodation website for those currently in or those seeking shared accommodation. These resources include three articles from CPLEA's magazine, *Law Now* written by CPLEA staff lawyers, and two booklets. Except as noted, the only change in the information provided in these resources is the 2023 change of name of the Provincial Court of Alberta, Civil Division, to the Alberta Court of Justice, and the doubling of the limit on damages that the court can award from $50,000 to $100,000:

- Rochelle Johannson, "Living with your Landlord" (July 5, 2013) (referring to CMHC provincial fact sheets that now link only to condominium law)
- Judy Feng, "Shared Accommodation Problems: What Can a Tenant Do?" (March 1, 2016)
- Judy Feng, "Having Problems with another Tenant?" (October 28, 2024)
- "Renting Out a Room in Your Home," booklet, last updated 2019
- "Shared Accommodation," booklet, last updated 2021

On multigenerational households which may fall outside the *Residential Tenancies Act* depending on how ownership and living space is shared, see Megan Pratt, "Legal Considerations of Living in a Multigenerational Household" (November 27, 2024), *LawNow*. See also Nathan Battams, "Sharing a Roof: Multigenerational Homes in Canada" (July 28, 2022), Vanier Institute of the Family.

Because the usual statutes governing landlord and tenant relationships do not apply to those in shared accommodations, prevention of potential problems should be the goal. CLPEA has several

forms for shared accommodation agreements that can be used by roommates and others to remind them of the usual areas of dispute that need to be discussed and to help them put their agreement into writing. See "Roommate Agreement" (sample), "Living with your Landlord Agreement" (sample); "Living with Your Landlord – Fillable Form," and "Roommate Agreement – fillable" – all available to download or order in print form from the "Roommates and Shared Accommodation" website.

Part Three: The Common Law of Shared Accommodations

Both the claim and counter-claim in *Layeghpour v Paproski* were frivolous and vexatious. As a result, this was not the ideal case in which to set out the law of shared accommodation, as Justice Corbett noted (at para 23). The frivolous and vexatious nature of the case is the primary reason her judgment runs to 191 paragraphs. My discussion focuses solely on shared accommodation law.

Paproski owned a house that she lived in with her three children and three tenants. She rented a room to Layeghpour that he occupied for two months, from April 1 to May 31, 2023. Layeghpour gave notice to terminate the arrangement on April 3, claiming the accommodation did not meet minimum housing standards. He sued for $4,550, alleging that Paproski breached their shared accommodation agreement, and he was entitled to a rant abatement, return of his security deposit, and damages for mental distress. Paproski counter-claimed for $4,550 for mental distress, another month's rent, and other damages.

Justice Corbett first discussed whether the *Residential Tenancies Act* applied. According to section 2(1) of that act, and subject to section 2(2), the act only applies to "tenancies of residential premises." Section 2(2)(c) states that the act does not apply to "rooms in the living quarters of the landlord, if the landlord actually resides in those quarters." Because Layeghpour was renting a room in Paproski's home, and Paproski was living in the home, Justice Corbett found that the *Residential Tenancies Act* did not apply to their relationship and they could not seek help from the RTDRS (at para 13). I note that this reasoning also applies if a roommate rents from a tenant with whom they live, rather than the landlord; these roommates are excluded from the *Residential Tenancies Act* by section 2(2).

Second, Justice Corbett discussed the shared accommodation agreement that Layeghpour and Paproski claimed to have. However, because they did not agree on the terms of their agreement and it was only partially in writing, it was difficult for the court to determine what their agreement was or to imply any terms or conditions (at para 24).

The evidence of their shared accommodation agreement was found in the parties' testimony during a two-and-one-half day trial, Paproski's online advertisement of an unfurnished room in her house available on a month-to-month basis that had been rented to someone else before Layeghpour inquired about it, the parties' telephone conversations and text messages about Layeghpour's renting a different furnished room in Paproski's house, and by recordings that Layeghpour made of his conversations with Paproski. Justice Corbett determined that the terms and conditions of their agreement were the following:

- Layeghpour would rent the alternate room offered by Paproski in Paproski's home;
- The home was being shared with Paproski, her family and other tenants;
- The rent would be $550/month;
- Layeghpour would provide Paproski with a security/damage deposit of $550;
- The tenancy would be on a month-to-month basis;
- The tenancy would commence on April 1, 2023; and
- The tenancy could be terminated by Layeghpour giving Paproski notice of termination and the termination would be effective at the end of the following month (at para 56).

The parties argued about two other possible terms. One was about the purpose of the security deposit, which has initially been paid to hold the room. After considering the evidence, Justice Corbett added one more term to the shared accommodation agreement:

- The purpose of the security/damage deposit was to secure rent or cover damage caused by Layeghpour;

The second term she considered adding was whether the province's minimum housing standards applied to the accommodation. Justice Corbett found that the parties had not discussed the application of the Minimum Housing and Health Standards, MO 57/2012, which are made under the *Housing Regulation*, Alta Reg 173/1999, which is authorized by the *Public Health Act*, RSA 2000, c P-37, and, therefore, those standards were not an express term of their agreement (at para 57).

Paproski argued the standards could not be implied as a term of their agreement because her house was not a "public place" as defined in the *Public Health Act*. Public places are defined under section 1(ii)(viii) of the *Public Health Act* to include "accommodation facilities, including in rental accommodation." The Court of Appeal of Alberta has held that "rental accommodation" under the *Public Health Act* include "privately owned premises offered to members of the public"; see *BPCL Holdings Inc v Alberta*, 2008 ABCA 153 (CanLII) (at paras 11, 12, 14). The *Housing Regulation* applies to all housing except that "occupied solely by the owner and the owner's dependants" (section 2). Justice Corbett therefore determined that the *Public Health Act*, *Housing Regulation*, and Minimum Housing and Health Standards applied to Paproski's house for the purposes of the regulatory scheme set out in Part 4 of the *Public Health Act*, which provides for government inspections, enforcement, and expense recovery under Alberta's Environmental Public Health Program and their Health Enforcement Orders. Justice Corbett reasoned that the legislature could have required that shared accommodation premises meet the minimum housing standards – as they did for residential tenancies in section 16(c) of the *Residential Tenancies Act* – but they had not done so (at para 21). Without evidence of a "custom, obviousness, or necessity requiring the implication of a term" about meeting minimum housing standards, Justice Corbett was not willing to imply such a term (at para 58).

The third matter Justice Corbett examined was the nature of the relationship between Layeghpour and Paproski and whether there were any common law principles applicable to that relationship. Was the relationship a lease or a licence? Because Layeghpour paid rent for a term (month-to-

month) and had exclusive possession of his room, Justice Corbett held Layeghpour had a tenancy under a lease (at para 66).

One of the common law rights afforded to tenants under a lease (but not a license) is the right to quiet enjoyment (at para 68). This is a right to have one's exclusive possession of the rental premises not be disturbed by the landlord or anyone who the landlord is responsible for. That includes, as Justice Corbett noted, the right to be free from direct physical interference by the landlord, such an entering the tenant's room. However, the right does not require a landlord to meet a certain standard of habitability (at para 69).

The parties' specific claims were the fourth and fifth matters that Justice Corbett dealt with. Layeghpour had sued for a rent abatement based on alleged breaches of the shared accommodation agreement. However, his complaints about the cold temperature, cold water, noise, unsanitary food preparation areas, and more faced two main problems. His proof of these problems and their cause was lacking, and he was not able to show any problems were violations of the shared accommodation agreement or the common law right to quiet enjoyment (at para 80).

The only complaint by Layeghpour that Justice Corbett found to have any merit was his complain that his security deposit had not been returned (at para 134). Of the original $550 paid by Layeghpour, Paproski refused to return all but $12.50 when Layeghpour moved out. One of her claims was for additional painting costs incurred because Layeghpour refused to let his room be painted while he occupied it. There was, of course, no term in their shared accommodation agreement that said Paproski could access Layeghpour's room for maintenance or repairs while he occupied it. Paproski's claim to withhold the security deposit for this reason failed (at paras 140-142), as did every other claim she made (at para 183).

The matter of costs was the last issue to be dealt. The awarding of costs is in the discretion of the presiding Justice and the general rule is that a successful party (Layeghpour in this case) is entitled to a costs award against the unsuccessful party (at para 184). The *Alberta Rules of Court*, Alta Reg 124/2010, set out a number of factors for the presiding Justice to consider in deciding whether to award costs and how much to award. Layeghpour's claim for costs was denied because Paproski had not refused to return Layeghpour's security deposit when he filed his claim for it, he tried to wrongfully terminate his tenancy on April 30 with an April 3rd notice, he sued in the RTDRS which was not available to him, he only recovered a small portion of the amount he sued for, and his claim was frivolous and vexatious (at para 189).

Costs were denied Paproski as well, in her case because all her claims were unsuccessful (at para 190). Because Paproski's conduct during the two-and-a-half-day trial was "inexcusable," Justice Corbett "seriously considered" ordering her to pay a cost penalty for failing to comply with the Rules of Court or court directions in a manner that "interfered with the proper and efficient administration of justice" (at para 191, with the conduct described at paras 174-182). However, Paproski's conduct was not as problematic, abusive, or egregious as that of parties who had been penalized with costs by the Court of King's Bench of Alberta, so Paproski escaped this penalty.

All in all, this case was a waste of everyone's time.

Conclusion

If the law remains as it is, those who are tenants in shared accommodation or occupying premises with their landlord, are bound by the terms of the agreements they reach and can prove. Agreements in writing are superior to oral agreements for several reasons. They force parties to discuss their expectations and come to agreements on a number of issues. Inability to reach agreement may be a signal to avoid entering into the shared accommodation arrangements. Written agreements signed by both parties are much easier to prove in court. Anyone contemplating a shared accommodation arrangement should make use of the easy-to-access and easy-to-use CPLEA resources.

If a shared accommodation agreement does not exist, or the necessary terms and conditions cannot be proven, then the question will arise whether the arrangement is a lease or licence. A licence provides a roommate or boarder with much less protection than does a common law lease. Most licences to occupy another's property are revocable at any time, and possession is often not exclusive. Nevertheless, the common law does not imply many terms into a lease, even though a lease is a property right. It does imply a tenant's right to quite enjoyment of their exclusive possession of the leased premises, which is very important. It also implies a term that the leased premises will be available for occupation by the tenant at the start of the agreed-upon term. And it sometimes implies that furnished premises will be reasonably fit for habitation at the beginning of the tenancy. But that is about it.

Justice Corbett noted that rental accommodations has become much more diversified in the twenty years since the *Residential Tenancies Act* was enacted and that those who share more affordable accommodation should have the protections of the act and access to the RTDRS (at para 25). I would reiterate that shared accommodations are becoming much more common and roommates and those sharing living spaces with their landlords need at least the protection of Alberta's woefully inadequate *Residential Tenancies Act*. Failing any legislative changes, anyone entering into shared accommodation arrangements needs to protect themselves with a written agreement.

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