

Are Short-Term Rental Occupants Considered to be Tenants or Guests under Michigan Law?

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As vacation rental marketplace websites, such as Airbnb and Vrbo, continue to gain popularity, landlords, homeowners, tenants, and municipalities must grapple with various legal issues involving Short-Term Rentals (STR) of residential property. Accordingly, Michigan Courts have had to interpret the legal status and rights of STR occupants under the Summary Proceedings Act (MCL 600.5701 et. seq.) Indeed, some property owners build clauses into their leases that more clearly define the STR relationship held between themselves and the individuals they rent to. Often in these STR leases, occupants are defined as “temporary lodgers” or “guests” as opposed to “tenants” in their efforts to bypass the jurisdiction of courts in relation to the occupant removal process.

These lease clauses, or addendums, essentially state that the lease agreement does not create a traditional landlord/tenant relationship. This appears to make it easier to remove hold-over tenants through lockouts or other self-help tactics. Also, once executed, the boilerplate language is meant to serve as a waiver for tenants to proceed under state law to enforce their legal rights.

In Michigan, however, statutory and case law govern by distinguishing “guests” as in a hotel setting and “tenants” as in a residential lodging setting. Specifically, a landlord-tenant relationship for enforcement purposes is created when the “Landlord” (the owner of the estate or person that legally controls the premises) conveys to another a lesser interest and term in the property for valuable consideration. If the lessee has use and enjoyment of the premises during the stipulated period, then the court will most likely find that an express or implied tenancy was created for enforcement purposes.

These are the essential elements of a residential tenancy as generally defined under Michigan law:

- permission to occupy a unit and consideration in money or services;

- subordination of landlord’s title and rights to tenant;
- reversion rights of premises to landlord;
- creation of the tenancy estate in the tenant;
- transfer of possession and control to tenant; and
- contractual agreement, either express or implied, as held between the parties.

Using this criterion, Michigan courts have recognized implied tenancies for use of a cottage for a week even without a written contract. But there is a legal difference in being identified as a “tenant” as opposed to a “guest” (in an innkeeper/hotel situation for example). Exclusive possession and control of the premises by the occupant is the most important factor for determining tenancy rights. Courts will look at the totality of the circumstances, including how the occupant is described in the lease, if the occupant has other permanent housing or plans to reside indefinitely, and whether they pay weekly or monthly as opposed to daily.

Thus, the nomenclature used to describe the occupant as a guest or as a tenant is not necessarily probative of the relationship and does not preclude establishment of a legal tenancy. A tenancy for a definite term (days, weeks or months) will be subject to statutory rules in court as would a tenancy “at will” (indefinite term). Any rental term of one year or longer must be in writing per the Michigan Statute of Frauds. However, stays for less than one year that are oral or written are still considered to be a tenancy if the above stated relationship factors are established.

It should be noted that unclear provisions in leases are generally interpreted judicially against the landlord/lessor unless the lessee drafted the clause. So even though one portion of the lease, such as a restrictive covenant, is stricken as unenforceable, the rest of lease will most likely be enforced.

The Michigan Truth in Renting Act (MCL 554.631 et. seq.) applies to written rental agreements for residential

premises and can be used to prohibit enforcement of certain provisions in residential leases. Even if the parties agree that no landlord-tenant relationship has been created, and the occupant is merely considered to be a guest, the courts will look at all of the circumstances and probably still find an implied tenancy (if not an express one). This may allow a landlord to enforce provisions related to eviction for overstay and keep other lease provisions intact for enforcement purposes, even if a “guest clause” is stricken. ■■

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