

Business Licence (Short-term Rental) Appeal re 42 Moss Street

Submission of the Licence Inspector

I. Introduction

1. This is an appeal from the decision of the Licence Inspector to refuse to issue a business licence to Birute Curran for the operation of a short-term rental at 42 Moss Street.
2. The business licence was denied pursuant to section 4(b) of the *Short-term Rental Regulation Bylaw*, which states:
 4. *The Licence Inspector may refuse to issue a licence for a short-term rental if, in the opinion of the Licence Inspector,*
...
(b) the short-term rental operation would contravene a City bylaw or another enactment.
5. The appeal is brought pursuant to section 60(5) of the *Community Charter*, which requires that an applicant for a business licence has the right to have a staff decision to refuse such licence reconsidered by Council.
6. On a reconsideration such as this, Council can apply its own judgment and may either uphold the decision to refuse the licence or grant the licence.

II. Facts

7. The appellant owns and resides at the property at 42 Moss Street (under the name Birute Foster). The property is zoned R1-B (Single Family Dwelling). Short-term rentals are not a permitted use under this zone.
8. The property contains a single family home with a basement suite. According to City records (Prospero database), the appellant submitted a building permit application to revert the property to a duplex in 2013, but no further updates have been received by the City. There is no occupancy certificate for the secondary suite.
9. The basement suite consists of a living/dinning room with a full kitchen, two bedrooms and a full bathroom. It has a separate entrance from outside. It is unknown if there is an inside connection between the basement suite and the rest of the house.
10. The basement suite contains its own kitchen facilities, with stovetop, microwave and microwave oven, fridge, kitchen sink, and counters and cabinets. [See attached photos]

11. The appellant has rented the entire basement suite as a short-term rental since at least August 2012. Between 2013 and 2019, the appellant has accepted an average of 11 to 18 short-term rental bookings per year, with stays as short as 2 days. Attached is a report from Host Compliance detailing information about the short-term rental activity at the property.
12. The appellant applied for and received a business licence to operate short-term rental in 2019. The licence was granted on the basis of the appellant's representation that the short-term rental was offered in the appellant's principal residence.
13. Bylaw Officers were unable to complete an inspection of the premises as the appellant was out of the country for most of February 2020, and the COVID-19 pandemic had halted inspections upon her return. The listing photos from VRBO were used to assess compliance instead. These revealed that the basement suite is, in fact, a self-contained dwelling and is not part of the appellant's principal residence. [VRBO listing attached]
14. On March 24, 2020, the Licence Inspector advised the appellant that her application for a short-term rental licence has been refused because short-term rental of a self-contained dwelling did not comply with applicable zoning.

III. Relevant Regulations

15. The City regulates short-term rentals through the *Short-term Rental Regulation Bylaw* and through provisions of the zoning bylaws. In relation to the property, the relevant zoning bylaw is the *Zoning Regulation Bylaw*, which states, in part:

17 ...

(4) *Without limiting the generality of subsection (1), short-term rentals, whether as a principal or accessory use, are prohibited in all zones except*

(a) *where they are expressly permitted subject to regulation applicable in those zones;*

(b) *rental of no more than two bedrooms in a self-contained dwelling unit, as home occupation, provided that:*

(i) *the self-contained dwelling unit is occupied by the operator of the short-term rental; and*

(ii) *short-term rental complies with all regulations in Schedule D as if it were a transient accommodation.*

16. A self-contained dwelling unit is defined in the *Zoning Regulation Bylaw* as "a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities."

17. Prior to the bylaw changes in 2017, short-term rentals were considered to be part of “transient accommodation”. Transient accommodation was not a permitted use in R1-B zone at any time, except as home occupation in accordance with Schedule D, which prior to 2017 amendments allowed for up to two bedrooms to be used as transient accommodation, including short-term rentals:

Subject to the following requirements, where any building is used as a single family dwelling, up to two bedrooms may be used for transient accommodation as a home occupation.

18. Use of an entire self-contained dwelling unit for transient accommodation was never permitted in the R1-B zone.

IV. Argument

19. When short-term regulations were initially introduced, the City was flooded with applications of business licences. In an effort to encourage compliance with regulations, these applications were processed very quickly and were not always fully screened. More careful reviews and inspections have been conducted as part of 2020 application process. Therefore, the fact that the appellant was issued a short-term rental business licence in 2019 is not an indication that a 2020 licence should also be issued.
20. Although the appellant resides in the house at 42 Moss Street, the premises that are rented as a short-term rental are not part of her principal residence, because the basement suite is an independent self-contained dwelling unit.
21. It is clear that the basement suite at 42 Moss Street is a self-contained dwelling unit: it has its own entrance from outside, its own full kitchen, and full bathroom – it meets all the requirements of the definition of “self-contained dwelling unit” in the *Zoning Regulation Bylaw*.
22. For all these reasons, the Licence Inspector submits that the appellant’s application for a short-term rental business licence had to be refused as it contravened the *Zoning Regulation Bylaw*.
23. The appellant’s claim that this use is permitted as a lawful non-conforming use, pursuant to section 528 of the *Local Government Act*, is without merit. For section 528 to apply, the use must be lawfully allowed under the zoning prior to bylaw changes. However, use of an entire self-contained dwelling unit for transient accommodation was never lawful in the R1-B zone and, therefore, it cannot be “grandfathered” as suggested by the appellant.
24. The B.C. Supreme Court decision in *Newton v. The Corporation of the City of Victoria*, referenced in the appellant’s submission is of no assistance in this instance because in that case, “transient accommodation” was expressly permitted as a use and the petitioner in that

case was not relying on a much narrower provisions for “home occupations” under Schedule D, which is what is at issue in the case of 42 Moss Street.

25. At most under the former rules, the appellant had a right to use up to two bedrooms as transient accommodation. The appellant can still use up to two bedrooms as short-term rental within her principal residence. However, that is not what she has been doing. The basement suite is clearly a separate self-contained dwelling and is being rented out in its entirety – something that was never allowed in this zone and still contrary to City bylaws.
26. One of the objectives of the City’s regulations of the short-term rentals was to address the problem of self-contained dwelling units being diverted from the housing market to a vacation rental market. This is the rationale behind the provisions of the zoning bylaw which limit short-term rentals to bedrooms within self-contained units rather than entire self-contained units.
27. The property at 42 Moss Street is an example of a self-contained dwelling unit that has been lost to the regular housing market in the past, contrary to the intent behind City regulations, which prohibit rental of entire self-contained dwelling units as short-term rentals.
28. Therefore, the Licence Inspector submits that this appeal should be dismissed and the decision to refuse a short-term rental business licence for 42 Moss Street upheld.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Dated: October 29, 2020

Shannon Perkins, Manager of
Bylaw Services

Rental Unit Record

42 Moss St, Victoria, BC, Canada

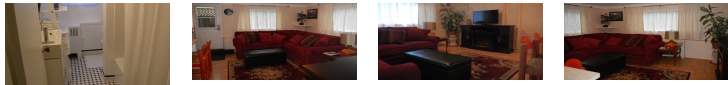
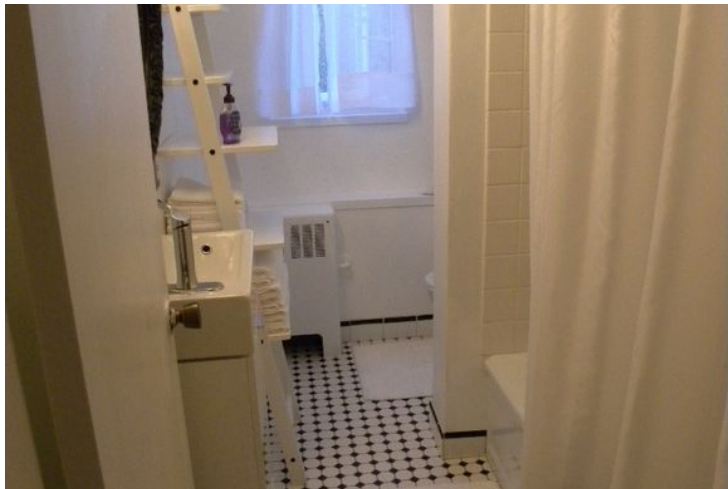
Active
Identified
Compliant



PRINT

Listing(s) Information

VRBO - 321.482369.1065550	Airbnb - 1345737	Airbnb - 2355034	▼
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Matched Details

Analyst EGPL

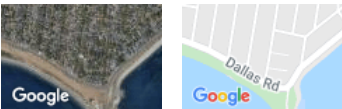
Explanation
Duplicate of fli3231768 .
Duplicate of fli3231768. The same exterior and interior photos are used.

Owner Name Match

Listing Details

Listing URL	— https://www.vrbo.com/482369
Listing Status	● Active
Host Compliance Listing ID	— hma321.482369.1065550
Listing Title	— Beautiful 2 bedroom suite close to all the best sites in Victoria

Rental Unit Information



Identified Address
42 Moss St, Victoria, BC, Canada

Identified Unit Number
None

Identified Latitude, Longitude
48.407120, -123.351165

Parcel Number
0123403239019

Owner Address
42 Moss St, Victoria
Victoria, BC V8V 4L8, CA

Timeline of Activity
View the series of events and documentation pertaining to this property

- 4 Documented Stays
September, 2020
- 3 Documented Stays
August, 2020
- 1 Documented Stay
July, 2020

Property type	— House
Room type	— Entire home/apt
Listing Info Last Captured	— Oct 15, 2020
Screenshot Last Captured	— Oct 13, 2020

Information Provided on Listing

Contact Name	— Birute Curran
Minimum Stay (# of Nights)	— 2
Max Sleeping Capacity (# of People)	— 4
Max Number of People per Bedroom	— 2.0
Number of Reviews	— 58
Last Documented Stay	— 09/2020





















Listing Screenshot History  View Latest Listing Screenshot



























August 7

September 7

October 4

- ✕ Listing fli3231768 Removed July 1st, 2020
- 📅 1 Documented Stay June, 2020
- ✓ Listing air2355034 Identified April 4th, 2020
- Listing air1345737 Reposted April 2nd, 2020
- ✕ Listing air2355034 Removed April 2nd, 2020
- ✕ Listing air1345737 Removed March 26th, 2020
- Listing air2355034 Reposted March 26th, 2020
- 📅 1 Documented Stay March, 2020
- 📅 1 Documented Stay February, 2020
- 📅 2 Documented Stays January, 2020
- 📅 1 Documented Stay November, 2019
- 📅 2 Documented Stays October, 2019
- 📅 4 Documented Stays September, 2019
- 📅 2 Documented Stays August, 2019
- 📅 2 Documented Stays July, 2019
- 📅 4 Documented Stays June, 2019
- 📅 1 Documented Stay May, 2019
- 📅 1 Documented Stay April, 2019
- 📅 1 Documented Stay March, 2019
- 📅 1 Documented Stay January, 2019
- 📅 1 Documented Stay December, 2018
- Listing fli3231768 Reposted December 13th, 2018
- ✕ Listing fli3231768 Removed December 10th, 2018
- 📅 2 Documented Stays November, 2018
- 📅 1 Documented Stay October, 2018
- 📅 3 Documented Stays September, 2018

-  1 Documented Stay
August, 2018
-  2 Documented Stays
July, 2018
- ✓ Listing hma321.482369.1065550 Identified
July 10th, 2018
- ✓ Listing air1345737 Identified
July 10th, 2018
- ✓ Listing fli3231768 Identified
July 10th, 2018
-  2 Documented Stays
June, 2018
-  2 Documented Stays
May, 2018
-  2 Documented Stays
April, 2018
- Listing hma321.482369.1065550 Reposted
March 2nd, 2018
-  1 Documented Stay
February, 2018
- ✗ Listing hma321.482369.1065550 Removed
February 20th, 2018
-  1 Documented Stay
January, 2018
-  1 Documented Stay
December, 2017
- ✗ Listing air2355034 Removed
December 19th, 2017
-  2 Documented Stays
November, 2017
-  1 Documented Stay
October, 2017
-  1 Documented Stay
September, 2017
-  3 Documented Stays
August, 2017
-  6 Documented Stays
July, 2017
-  2 Documented Stays
June, 2017
-  1 Documented Stay
May, 2017
-  1 Documented Stay
March, 2017
-  1 Documented Stay
December, 2016
-  2 Documented Stays
November, 2016
-  3 Documented Stays
September, 2016
-  4 Documented Stays
August, 2016

-  3 Documented Stays
July, 2016
-  2 Documented Stays
June, 2016
-  1 Documented Stay
May, 2016
-  Listing air1345737 First Crawled
April 20th, 2016
-  Listing air2355034 First Crawled
April 20th, 2016
-  Listing fli3231768 First Crawled
April 15th, 2016
-  Listing hma321.482369.1065550 First
Crawled
April 15th, 2016
-  2 Documented Stays
January, 2016
-  2 Documented Stays
December, 2015
-  1 Documented Stay
November, 2015
-  2 Documented Stays
October, 2015
-  2 Documented Stays
September, 2015
-  3 Documented Stays
August, 2015
-  4 Documented Stays
July, 2015
-  4 Documented Stays
May, 2015
-  2 Documented Stays
April, 2015
-  2 Documented Stays
March, 2015
-  3 Documented Stays
December, 2014
-  2 Documented Stays
October, 2014
-  2 Documented Stays
September, 2014
-  1 Documented Stay
August, 2014
-  2 Documented Stays
July, 2014
-  2 Documented Stays
June, 2014
-  Listing air2355034 First Activity
June 23rd, 2014
-  2 Documented Stays
May, 2014
-  3 Documented Stays

December, 2013

- Listing fli3231768 First Activity
December 26th, 2013
- Listing air1345737 First Activity
December 25th, 2013
- 📅 1 Documented Stay
November, 2013
- 📅 1 Documented Stay
October, 2013
- 📅 1 Documented Stay
September, 2013
- 📅 2 Documented Stays
August, 2013
- 📅 3 Documented Stays
July, 2013
- 📅 1 Documented Stay
August, 2012
- Listing hma321.482369.1065550 First Activity
August 1st, 2012

Where: Victoria, British Columbia, Canada

Check In: Check Out: Guests: Check Availability

View all Victoria properties



\$109 avg/night

★★★★★ 58 Reviews

Excellent! 4.7/5

Save Share

Enter dates for accurate pricing

Check In Check Out

Guests

Check Availability

Free cancellation up to 60 days before check-in

Ask owner a question

Property # 482369

- Overview
- Amenities
- Policies
- Reviews
- Map
- Owner
- Rates & Availability

Beautiful 2 bedroom suite close to all the best sites in Victoria

Birute Curran
Premier Host

Overview Amenities Policies Reviews Map Owner Rates & Availability

House · 600 sq. ft.

Sleeps: 4

Bedrooms: 2

Bathrooms: 1

Min Stay: 2 nights



Fairfield, Victoria, British Columbia, Canada · 1.6 mi to Victoria center

Pets Welcome No Smoking Internet TV Satellite or Cable

2 Bedrooms, 1 Bathroom, Sleeps 4/5

A two bedroom suite provides its guests all amenities. On a quiet street just steps away from the beach and easy walking distance to downtown, parks, the Mile 0 landmark, and The World's Tallest Totem Pole!

We pride ourselves in continually updating our suite and always make sure the suite is suitable for guests to enjoy themselves. We put all our sheets and towels through a sanitization cycle between guests and take pride in our comfortable beds and living space. Back bedroom has double bunk beds and main bedroom has a queen size bed. Kitchenette includes stove top, microwave convection oven, refrigerator and dishwasher. Easy access to grocery, shopping and pubs, all within a short, picturesque walk.

Moss Street is known for its gorgeous canopy of cherry blossoms in the spring, the Moss Street Paint-In features local artists displaying their art work along the whole street, from the art gallery to the ocean (Third Sat in July). Saturday mornings is a local outdoor market with all kinds of wonderful treasures to discover.

Steps away from Beacon Hill Park, where the flowers are plentiful, featuring (all free) outdoor concerts, turtle and duck ponds, playgrounds, children's water playgrounds, petting zoo (with twice-daily goat stampede!) and even a 18 hole putting range (for those who need to carry a golf club at all times!).

If you are interested in relaxing and enjoying all Victoria has to offer this suite will not disappoint.

We are pet friendly (please ask) although do charge a pet fee of \$25 per pet per week.

[View less](#)

\$109 avg/night

★★★★★ 58 Reviews

Excellent! 4.7/5

Save

Share

Enter dates for accurate pricing

Check In

Check Out

Guests

Check Availability

Free cancellation up to 60 days before check-in

[Ask owner a question](#)

Property # 482369

queen

double (2)

 Save

(Share

Excellent! 4.7/5


Enter dates for accurate pricing

Check In

Check Out

Guests

[Check Availability](#)

 **Free cancellation** up to **60 days before check-in**

[Ask owner a question](#)

Property # 482369

You might like these similar properties

[See more](#)



2BR • 1BA • Sleeps 4

Beautiful 1 or 2 Bedroom Suite in ...
Victoria, BC, CA

\$115 avg/night

★★★★★ (50)



2BR • 2BA • Sleeps 6

Tudor Cottage Rental
Victoria, BC, CA

⚡ **\$131** avg/night

★★★★★(4)



2BR • 1BA • Sleeps 4

Perfectly Located Victorian Gem
Victoria, BC, CA

\$131 avg/night

★★★★★(62)



2BR • 1BA • Sleeps 5

The Sage Suite - 2BD/1BA
Victoria, BC, CA

\$99 avg/night

★★★★★ (22)

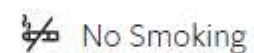
Popular destinations in the area






James Bay, Victoria, British Col...

Featured

 Parking

 No Smoking

 Heater

toilet, combination tub/shower

House is the fourth house up the street from the ocean

4:11 PM
2020-10-2

Overview

Amenities

Policies

Reviews

Map

Owner

Rates & Availability

General

Telephone
Local calls

Heating

Linens Provided

Washing Machine

Clothes Dryer

Parking
Street parking

Internet
secure wireless

Towels Provided

Iron & Board

Hair Dryer

Living Room

Kitchen

Dishwasher

Refrigerator

Stove

Oven
microwave convection and toaster convection ovens

Microwave
convection oven

Grill

Coffee Maker

Toaster
toaster convection oven

Pantry Items
staples provided

Dishes & Utensils

Kitchen

Dining

Seating for 4 people

Dining Area

Child's Highchair

Dining
Bistro table seats two and kitchen counter serves as seating for two.

Entertainment

Television

Satellite / Cable

DVD Player

Books

Games

\$109 avg/night

★★★★☆ 58 Reviews

Excellent! 4.7/5

Save

Share

Enter dates for accurate pricing

Check In

Check Out

Guests

Check Availability

Free cancellation up to 60 days before check-in

Ask owner a question

Property # 482369

Overview

Amenities

Policies

Reviews

Map

Owner

Rates & Availability

Onsite Services

Housekeeper Optional

Policies


Cancellation Policy

100% refund if you cancel at least 60 days before check-in.

50% refund (minus the service fee) if you cancel at least 30 days before check-in.

No refund if you cancel less than 30 days before check-in.

Learn more about our [cancellation policies](#).

 *If you have upcoming trips, you can manage or cancel your booking in your traveler account.*

[View upcoming trip](#)



Damage and Incidentals

You will be responsible for any damage to the rental property caused by you or your party during your stay.

House Rules

 **Check in after:** 3:00 PM  **Check out before:** 11:00 AM

• Children allowed • Max guests: 4

\$109 avg/night

★★★★★ [58 Reviews](#)

Excellent! 4.7/5

 Save

 Share


Enter dates for accurate pricing

Check In

Check Out

Guests

Check Availability

 **Free cancellation** up to **60 days before check-in**

[Ask owner a question](#)

Property # 482369

Overview Amenities Policies Reviews Map Owner Rates & Availability

📅 Check in after: 3:00 PM ➡️ Check out before: 11:00 AM

- Children allowed
two full size beds (bunks)
- Pets allowed
need pet information if agreeable additional costs
- Max guests: 4
- Minimum age of primary renter:



Cancellations handled with care

Travelers who canceled due to COVID-19 told us they recovered the full value of their booking through refund, credit, or rebook options. ⓘ

5/5 ★★★★★

Remelito D.

Verified booking | June 2020

5/5 ★★★★★

E. Jill S.

Verified booking | May 2020

58 Reviews

★★★★★ *Excellent* 4.7/5

Fantastic property, excellent location!

5/5 ★★★★★ Stayed Sep 2020

Lisa P.

📌 Booked on Vrbo

\$109 avg/night

★★★★★ 58 Reviews

Excellent! 4.7/5

❤ Save

🔗 Share

Enter dates for accurate pricing

Check In

Check Out

Guests

Check Availability



Free cancellation up to 60 days before check-in

Ask owner a question

Property # 482369

Fantastic property, excellent location!

5/5 ★★★★★ Stayed Sep 2020

Lisa P.

Booked on Vrbo

We really enjoyed our stay here. Very clean, well stocked and had all the comforts of home. It was fantastic to be able to walk to the beach each day which was only a half a block away. It really is the perfect place.

Published Oct 7, 2020

Location is amazing!

5/5 ★★★★★ Stayed Aug 2020

Aran C.

Booked on Vrbo

We loved our stay here. Small but quite comfortable with everything we needed. The beach was 1/2 a block away and we spent our morning and afternoons there. Cook street village is just a walk or bike ride way. We will definitely return!

Published Sep 10, 2020

Enjoy Victoria

5/5 ★★★★★ Stayed Aug 2020

brad u.

Booked on Vrbo

First thought that comes to mind is cozy. Most times that just means small, but it was also comfortable. Everything was well kept and working.

Super close to the ocean, parks, shopping and restaurants. You could walk to downtown or better yet bike. I did not realize how bike friendly Victoria is.

Published Aug 20, 2020

\$109 avg/night

★★★★★ 58 Reviews

Excellent! 4.7/5

Save

Share

Enter dates for accurate pricing

Check In

Check Out

Guests

Check Availability

Free cancellation up to 60 days before check-in

Ask owner a question

Property # 482369

Quiet, Clean, Comfortable

5/5 ★★★★★ Stayed Jul 2020

Dave H.

✓ Booked on Vrbo

I really enjoyed staying here.

The place is very comfortable and the chairs out front are perfect for eating lunch and dinner outside.

There was a problem with the internet connection. Birute called Telus right away and had it taken care of.

I would stay here again. Awesome place

Published Aug 14, 2020

Great Victoria spot.

5/5 ★★★★★ Stayed Jun 2020

Tina A.

✓ Booked on Vrbo

Comfortable and beautifully appointed. Close to the beach with many walking options. Some nice touches in the suite were much appreciated.

Published Jul 19, 2020

Owner's Response:

Thank you Tina!



1-5 of 58



\$109 avg/night

★★★★★ 58 Reviews

Excellent! 4.7/5

Save

Share

Enter dates for accurate pricing

Check In

Check Out

Guests

Check Availability

Free cancellation up to 60 days before check-in

Ask owner a question

Property # 482369

Detailed location provided after booking

1. Victoria Harbour	1.4 mi
2. Victoria Clipper Ferry Terminal	1.5 mi
3. University of Victoria	4.2 mi
4. Royal BC Museum	1.2 mi
5. Royal Jubilee Hospital	2.2 mi
6. Save-On-Foods Memorial Centre	1.7 mi



Map data ©2020 Google 2 km Terms of Use

Get a fast response about property amenities, check-in times, and general questions.

 Save

 Share

Excellent! 4.7/5


Enter dates for accurate pricing

Check In

Check Out

Guests

[Check Availability](#)

 **Free cancellation** up to **60 days before check-in**

[Ask owner a question](#)

Property # 482369

Taxes and fees are additional

Additional information about rental rates

Cleaning Fee	\$56
Pet Fee	\$18
Additional Guest Fee	\$15

Rate is based on 3 person occupancy. Additional occupants will be charged \$25 per night.

Enter dates for accurate pricing

Check In

Check Out

Guests

Check Availability

 Free cancellation up to 60 days before check-in

Ask owner a question

Property # 482369



More properties managed by Birute Curran



1BR • 1BA • Sleeps 4

'New listing' Renovated 4th floor Oceanf...

Lahaina, HI, US

\$271 avg/night