

## **Business Licence (Short-term Rental) Appeal re 105-1234 Wharf 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 Francois Oosthuizen for the operation of a short-term rental at 105-1234 Wharf St.
2. The business licence was denied pursuant to section 4(b) of the *Short-term Rental Regulation Bylaw*, which states:
  1. *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.*
2. 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.
3. 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**

4. The appellant owns the property at 105-1234 Wharf Street. The property is zoned IHR (Inner Harbour Regent District). Short-term rentals are not a permitted use under this zone.
5. The appellant applied for a business licence to operate a short-term rental on December 23, 2021. On December 31<sup>st</sup>, 2021, based on the information provided by the appellant on his application, the licence for a Principal Resident Operator was approved.
6. On February 3, 2022, an advertisement was located on Airbnb.ca, and identified as 105-1234 Wharf St. While the appellant represented his unit as a 2-bed 2-bath condo in an email to the Short-Term Rental Coordinator on March 11<sup>th</sup>, the Airbnb advertisement was for a self-contained one-bedroom suite [see attached copy of Airbnb advertisement, p.24-30].
7. The rented property at 105-1234 Wharf Street (one bedroom suite with kitchen, bedroom and bathroom) was inspected on March 14, 2022. The 'lock-off room' occupied by the appellant (one bedroom and bathroom) was later inspected on April 8, 2022.

8. The advertised rental property known as 105-1234 Wharf Street consists of a one-bedroom suite, shown in blue and orange in the appellant's submission. The space shown in green is a one-bedroom and one-bathroom 'lock-off suite', as commonly found in hotel buildings. Both units have separate entrances and bathrooms, and only the short-term rental unit has a full kitchen. [see attached appellant's submission, p.3 ]
9. On March 11, 2022, the appellant confirmed through an email exchange with the Short-Term Rental Coordinator, that his property has two separate entrances, one for each suite and an interlinking door between [see attached email, p.40].
10. The appellant has provided a colour coded plan within his submission. This plan shows the kitchen, living room and balcony of the short-term rental unit coloured as 'common living space' that is shared with the other suite that only has a bedroom and a bathroom. However, during the March 14<sup>th</sup> inspection, the guests were interviewed and advised that there were no shared spaces with the other unit and they were renting their unit as a stand-alone suite. This information is supported by the Airbnb advertisement.
11. On May 9, 2022, at the direction of the Licence Inspector, the Short-Term Rental Coordinator advised the appellant that their licence had been approved based on their application, but it was discovered that the appellant does not reside within the unit rented on Airbnb, advertised as a self-contained one-bedroom suite. The Licence was therefore cancelled, and the licence fee was refunded to the appellant. The appellant was advised that they could submit a new application, which would be denied. Once denied, the appellant would be able to appeal the decision.
12. On May 20<sup>th</sup>, a new application was processed and subsequently denied on the grounds that a short-term rental cannot occupy a self-contained suite, as the appellant was offering a self-contained one-bedroom unit. The STR office re-processed the application in order to allow the owner to request an appeal.

### III. Relevant Regulations

13. 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.*

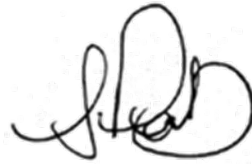
14. A self-contained dwelling unit is defined in the *Zoning Regulation Bylaw* as “a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities.” A kitchen is not defined in the bylaw. However, the Oxford English Dictionary defines “kitchen” as “a room where food is prepared and cooked”.

#### **IV. Argument**

15. 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 and limit the rental of entire principal residences to only occasionally while the operator is temporarily away.
16. Although the appellant resides in the unit at 105-1234 Wharf St, the space that is rented as a short-term rental is a self-contained suite, and not simply a spare room. The appellant resides in the locked off bedroom, which has its own private entrance and bathroom, and he does not reside within nor does he enter the self-contained rental suite when it is rented.
17. The rental unit at 105-1234 Wharf St has its own entrance, a full kitchen, and separate bathroom – it meets the requirements of the definition of “self-contained dwelling unit” in the *Zoning Regulation Bylaw*.
18. The rental unit was inspected on March 14<sup>th</sup>, and the separate ‘lock-off’ suite occupied by the appellant was later inspected on April 8<sup>th</sup>, 2022. During the inspections, it became apparent that the appellant was operating as a self-contained dwelling which was separate from the space the appellant is occupying as his principal dwelling unit [see attached photos, p.6-23].
19. As stated in the appellant’s submission, many units at 1234 Wharf Street operate as hotel rooms. Owners of the strata also have the option to rent their units through the hotel pool.
20. 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*.

21. Therefore, the Licence Inspector submits that this appeal should be dismissed and the decision to refuse a short-term rental business licence for 105-1234 Wharf Street upheld.

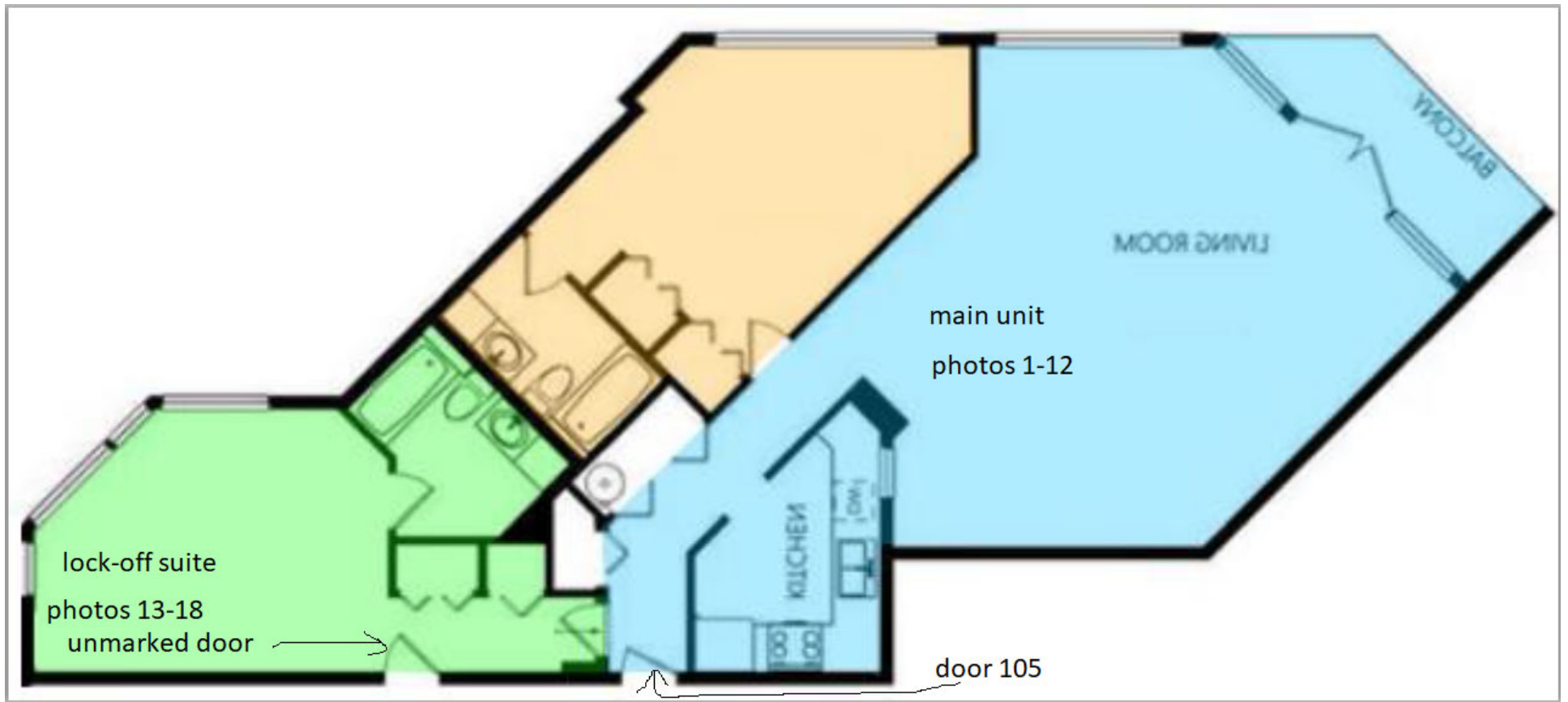
**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

A handwritten signature in black ink, appearing to read 'Shannon Perkins', written in a cursive style.

Dated: August 11<sup>th</sup>, 2022

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Shannon Perkins, Manager of  
Bylaw Services









































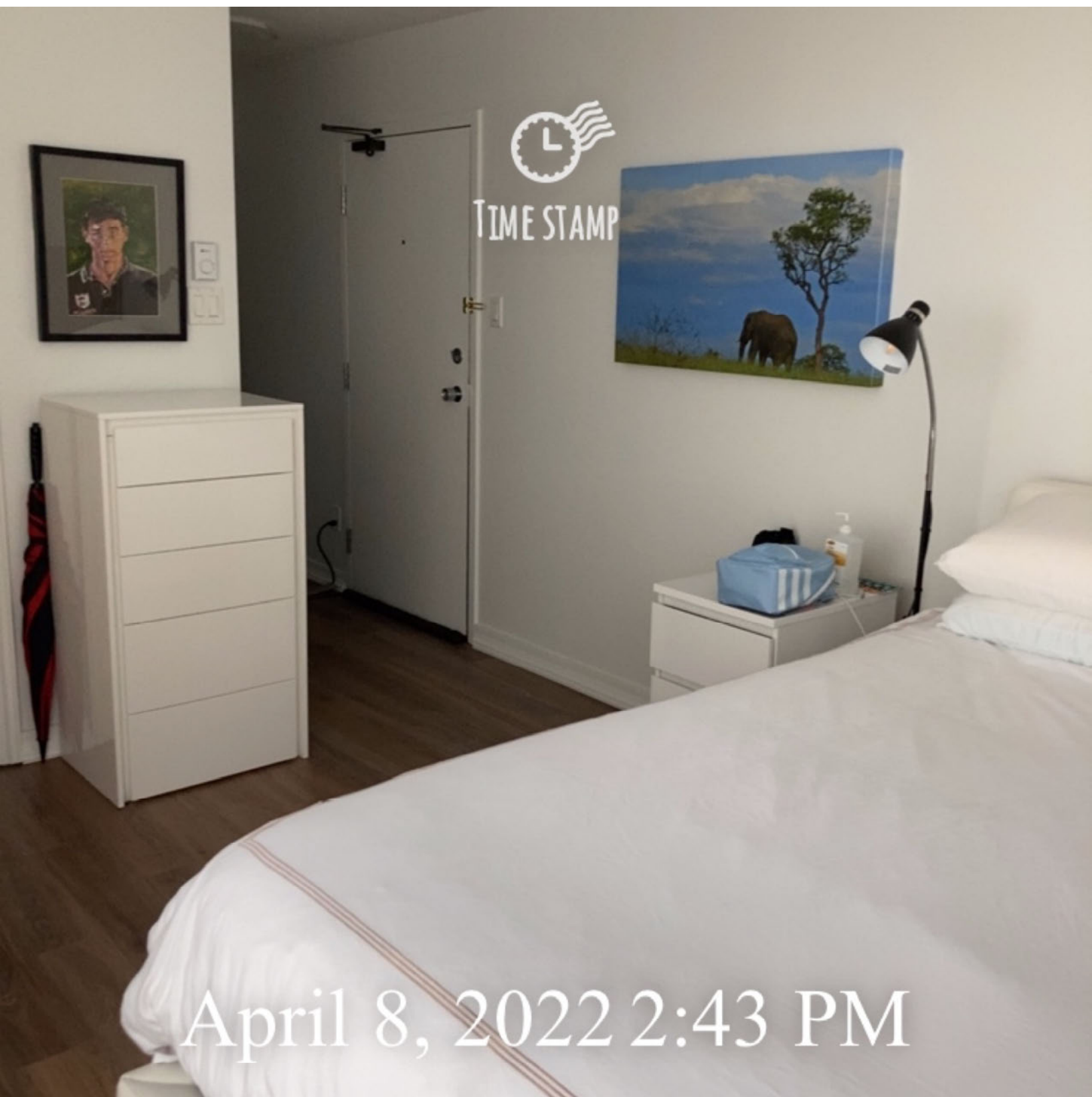


April 8, 2022 2:44 PM









April 8, 2022 2:43 PM



April 8, 2022 2:43 PM

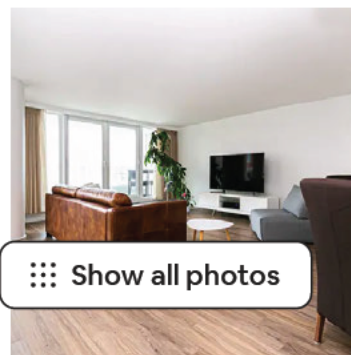
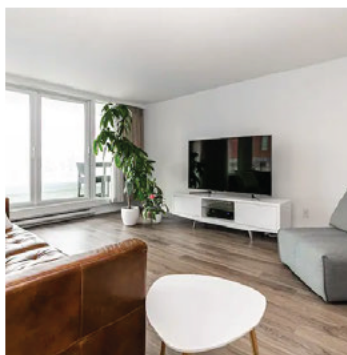




# HARBOUR VIEWS DOWNTOWN CONDO

Victoria, British Columbia, Canada

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Entire condominium (condo) hosted by Hands Free Property

2 guests · 1 bedroom · 1 bed · 1 bath



## Entire home

You'll have the condominium to yourself.



## Enhanced Clean

This host committed to Airbnb's 5-step enhanced cleaning process. [Show more](#)



## Wifi

Guests often search for this popular amenity



## Experienced host

Hands Free Property has 1709 reviews for other places.

Enjoy a great experience at this centrally located Condo.

From your private patio you will have Lovely views of the World Famous Victoria Harbour

Everything you need for a comfortable stay is just steps...

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## Where you'll sleep



**Bedroom**  
1 king bed

## What this place offers

- Waterfront
- Kitchen
- Wifi
- TV
- Washer
- Dryer
- Air conditioning
- Bathtub
- Patio or balcony

**\$231** / night

CHECK-IN 02-04-20...	CHECKOUT 02-05-20...
GUESTS 1 guest	

Reserve

You won't be charged yet

<u>\$231 x 1 night</u>	\$231
<u>Cleaning fee</u>	\$125
<u>Service fee</u>	\$50
<u>Occupancy taxes and fees</u>	\$39
<hr/>	
Total	\$445

[Report this listing](#)

 Carbon monoxide alarm

Show all 44 amenities

## 1 night in Victoria

Feb. 4, 2022 - Feb. 5, 2022

February 2022									
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu
		1	2	3	4	5			1
6	7	8	9	10	11	12	6	7	8
13	14	15	16	17	18	19	13	14	15
20	21	22	23	24	25	26	20	21	22
27	28						27	28	29

## No reviews (yet)

This host has 1,709 reviews for other places to stay. [Show other reviews](#)



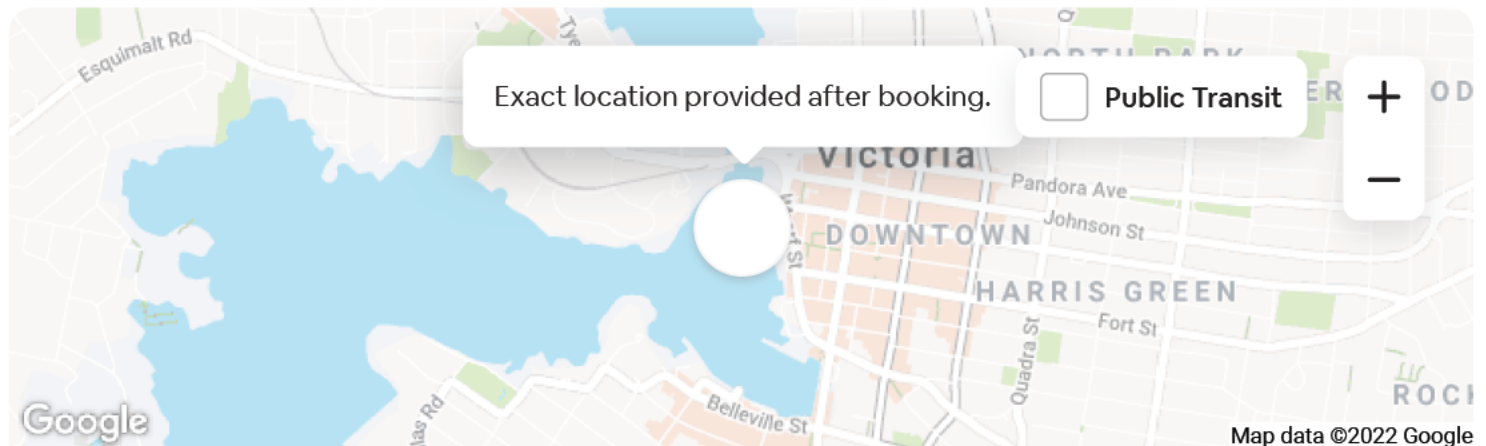
We're here to help your trip go smoothly. Every reservation is covered by [Airbnb's Guest Refund Policy](#).





## Where you'll be

Victoria, British Columbia, Canada



**Hosted by Hands Free Property**

Joined in July 2016

★ 1,709 Reviews

✓ Identity verified

At Hands free property, we provide home owners a hands free approach on managing your rentals and provide travellers amazing, clean, furnished places to call home during your stay in Beautiful British Columbia.

Response rate: 97%

Response time: within an hour

[Contact host](#)







To protect your payment, never transfer money or communicate outside of the Airbnb website or app.







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## Things to know

### House rules

-  Check-in: After 4:00 p.m.
-  Checkout: 11:00 a.m.
-  Not suitable for children and infants
-  No smoking
-  No pets
-  No parties or events

### Health & safety

-  Committed to Airbnb's enhanced cleaning process. [Show more](#)
-  Airbnb's social-distancing and other COVID-19-related guidelines apply
-  Carbon monoxide alarm not reported [Show more](#)
-  Smoke alarm

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### Cancellation policy

Non-refundable: Cancel before check-in and get back only the cleaning fee, if you paid one.

[Show more](#) >

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## Celine Kobenter

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**From:** Francois Oosthuizen [REDACTED]  
**Sent:** March 11, 2022 3:48 PM  
**To:** str@victoria.ca  
**Subject:** Re: 105-1234 Wharf St

Hi Celine

The suite has 2 entrances and an interlinking door. Maybe I should use different wording ?

Francois.

On Fri, Mar 11, 2022 at 3:40 PM [str@victoria.ca](mailto:str@victoria.ca) <[str@victoria.ca](mailto:str@victoria.ca)> wrote:

Hi Francois,

Is it a lock-off suite? I'm just trying to understand why it is listed as an entire self-contained dwelling unit.

Thank you,

**Celine Kobenter**

Short-Term Rental Coordinator, Bylaw and Licensing Services

Legislative and Regulatory Services Department

City of Victoria

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