

Short-term leasing is legal in the province of Ontario. Corporations that wish to curtail or prevent owners from renting their units for short-term tenancies have remedies available in their declaration and rules. >

When Airbnb Moves into Your Condo

BY ROD ESCAYOLA

MANY CONDOMINIUM corporations have had to struggle with owners (or occupants) leasing their units on short-term basis through Airbnb or other similar short-term rental organizations. These kinds of rentals increase traffic and impose a burden on the rest of the condominium community, in addition to reducing the safety and security of all. While condominium corporations cannot prohibit the rental of units altogether, they have numerous tools to control and curb such short-term rentals.

What's Airbnb?

Airbnb and other similar providers are web-based businesses providing an alternative to hotel accommodations by connecting out-of-town travellers to local owners (or occupants) who want to rent out their homes (or sometimes just a room in their home). These rentals are usually for very short periods of time (often only for a few nights). These arrangements constitute a

real bargain for the traveller (be it tourist or business traveller) as they obtain a fully furnished and all-inclusive home at rates which are usually far cheaper than those of hotels. These short-term leases can also be very lucrative for the owners who are able to generate far more income out of their unit than they would if the unit was leased on a yearly basis.

Airbnb has literally boomed recently. Founded in 2008, it has expanded to over 34,000 cities, in 190 countries. There are presently more than 1.5 million listings of units, homes (or castles) for rent according to the Airbnb website. The Vancouver Sun has recently reported that, according to Airbnb, the number of rentals in Paris jumped from 144 in 2009 to more than 517,000 this past year! Closer to us, a quick visit of the Airbnb site informs that they presently have more than 1,000 listings in Toronto (I suspect a lot more than that), with prices ranging from \$13/night to



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CONDO TEAM

www.shibleyrighton.com

ARMAND CONANT (Practice Leader)
aconant@shibleyrighton.com 416.214.5207

DEBORAH HOWDEN
deborah.howden@shibleyrighton.com 416.214.5279

JOHN DE VELLIS
john.devellis@shibleyrighton.com 416.214.5232

JOEL BERKOVITZ
joel.berkovitz@shibleyrighton.com 416.214.5264

MEGAN MARRIE
megan.marrie@shibleyrighton.com 416.214.5219

HEATHER PATERSON
heather.paterson@shibleyrighton.com 416.214.5208

MARY BENJAMIN (Condo Clerk)
mary.benjamin@shibleyrighton.com 416.214.5217

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\$1,500/night (with an average of \$116/night). Now, don't get excited about the more affordable options. For \$17/night, you can rent a "large spacious tent in the owner's backyard." On the "plus" side it includes free parking and is only 28 minutes away from the CN Tower. On the luxury end, for \$999/night, you can rent a 3,300 sq. ft. penthouse suite on the 43rd floor of Capreol Court, in the downtown business district. This rental includes, amongst other amenities and services, shampoo and parking.... I can't make that stuff up.

Recently, Airbnb has made the news as condo owners in Toronto (and elsewhere) have realized that their tenants never intended on actually occupying the unit but rather leased it at a monthly rate to turn it around and offer it on Airbnb for more money per night. A couple in Calgary made the news last spring after their house was completely trashed by Airbnb renters in what police described as a "drug induced orgy." Visitors were dropping in by the busload! The damages exceeded \$100,000 and required that people in hazmat suits attend the property to clean it.

The Problem for Condos

In the condo world, this very short-term rental business is often conducted to the detriment of other residents who see their condominiums turned into hotels. These rentals result in increased traffic (with strangers coming and going at all hours of the day and night) and in a reduced sense of security and community. The renters are not informed of the condominium rules and bylaws, and they often impose an additional burden on the rest of the community. They are less invested and less concerned about the security and comfort of the rest of the occupants. After all, they view your home as a hotel.

The owners who claim a right to rent to whoever they want often do not realize that they are not just renting out their unit. They are, in effect, renting out the common elements and all of the shared facilities. The other occupants now have to share

the lobby, pool, sauna and gym with strangers and have to deal with increased traffic in their garage. Often, renters use visitors' parking spots, leaving less available space to the bona fide visitors.

What Can Condominium Corporations Do About It?

At the present time, Airbnb is legal in all provinces. The province of Québec is looking to regulate (and tax) this business. Some American cities are looking to control this unregulated business and, undoubtedly, cities in Canada will follow suit.

Still, condominium corporations have many tools to prevent or control this kind of short-term leasing. Here are some preliminary tools to keep in mind.

The Declaration

First, have a look at your declaration. Some declarations already contain language limiting the use of units to "private single families" or to "residential purposes." Other declarations prohibit rooming, boarding as well as transient or hotel-like occupancy.

One of my recent court cases in Ottawa (the Ballingall case) confirmed that a corporation can (and in fact should) enforce this kind of provision. In this case, the declaration contained a provision that "each unit ... shall be occupied and used only as a private single family residence and for no other purpose". Nearly half of the units were rented and 22% were rented to unrelated students attending a nearby university. Even the president of the corporation was in breach of this provision of the declaration. He lived in one unit but rented four others to students. Many of the resident owners complained that their homes were being turned into a student dorm, with garbage being abandoned at the end of the semester and with ongoing parties and disruptions.

On the other hand, the landlord owners argued that this clause of the declaration had never been enforced in the corporation's 38 years of existence. Unfortunately for them, the declaration also contained a strong non-waiver clause. In the midst of

litigation, the corporation (probably guided, at least in part, by the president) attempted to adopt a rule suspending the application of the single-family clause of the declaration for 10 years!

The courts found that the rental to unrelated students breached the single-family provision of the declaration and struck down as unreasonable the new rule seeking to permit these kinds of rentals. The judge also found that the president had acted in bad faith and in an oppressing manner towards the other owners during his campaign against the enforcement of the single-family provision.

If your declaration contains language controlling the kind of use that can be made of units, you may be able to deal with these kinds of rentals through normal compliance. If your declaration does not contain adequate language to prevent this kind of leasing, the corporation can consider amending its declaration. But amending a declaration presents challenges of its own. Such amendments require a very high level of approval by the owners.

The Rules

A second and far easier alternative to amending the declaration is to adopt a rule preventing this kind of leasing. Indeed, a corporation can adopt rules to promote the safety, security or welfare of the owners or to prevent unreasonable interference with the use/enjoyment of the common elements and units. A corporation can therefore adopt rules regulating the leasing of a unit. A common example of such a rule could be to prohibit short-term leases. For instance, the rule could prohibit leases of less than three months. The language of the rule is key to ensure that they resist the scrutiny of the courts should an owner contest the rule. Indeed, rules must be reasonable and must comply with the *Condominium Act*, the declaration and the bylaw.

In the Ballingall case, the judge concluded that the proposed rule suspending the single-family provision for 10 years was unreasonable and that it did not comply with the declaration. Corporations must



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also remain aware of the potential requirement to grandfather existing owners if they adopt a new rule. The Ballingall case provides a lengthy discussion as to what can be considered a reasonable rule and a reasonable grandfathering clause.

Other Options – Municipal Bylaws and Insurance

A third option is to look into whether the use being made of the unit complies with your local municipal bylaws. The condominium may be zoned in such a way as to prohibit certain commercial uses. In my view, the rental of a unit on a per night basis, which provides check in and checkout times, cancellation policies and amenities such as housekeeping, WiFi and towel services probably amount to a hotel-like business more than to a residential occupancy.

Finally, inquire as to whether short-term leasing to Airbnb may put at risk the corporation's insurance. This may be another ground to prohibit short-term leases.

At the end of the day, the corporation's success to prevent short-term leasing will be a question of enforcement and compliance. In fact, in most cases, the short-term landlord does not even comply with section 83 of the *Condominium Act*, which provides that an owner must advise the corporation every time it enters into, renews or terminates a lease of the unit. The owner must also provide the corporation with the lessee's name and with a copy of the lease or a summary of it in the form prescribed. The owner must also provide the lessee with a copy of the declaration, bylaws and rules of the corporation.

As with any enforcement and compliance matter, it is important to properly document your files and gather as much evidence as possible before turning the matter to the corporation's lawyer. The good news is that most of the evidence you need can easily be found on the Internet since this is how owners advertise their unit. Even better, the short-term tenants often rate or

comment on the accommodations, indicating how long they leased the unit for. Many pictures of the unit will assist you in confirming which unit is being rented out through Airbnb. This will provide very good evidence of the existence of short-term rentals. ❖



Rod Escayola heads Gowlings' Condominium Law Group. He is the editor of Gowlings' condo law blog the Condo Adviser.ca. He is on the board of directors of the Ottawa chapter of CCI and is the co-editor of its quarterly magazine Condo Contact. He also sits on the board of directors of his own condominium corporation. This article was initially published in the CondoAdviser.ca and is reproduced here with permission.

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