



Denise Lash
Founder
Lash Condo Law

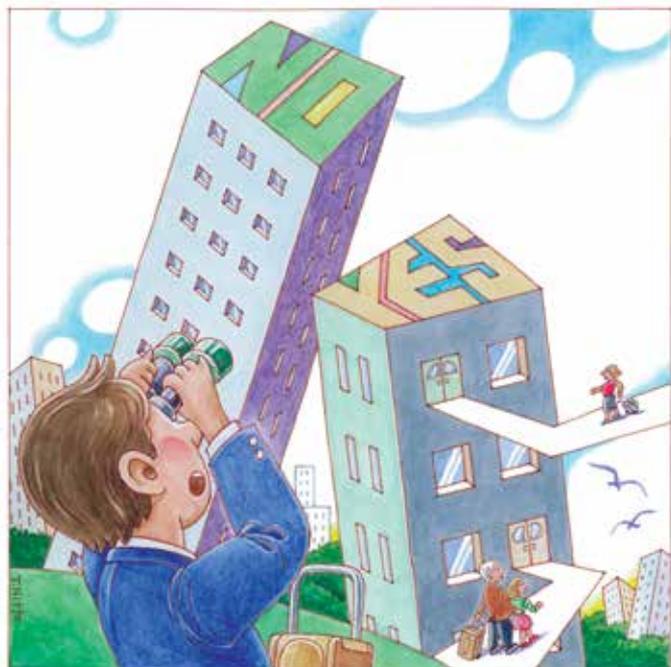


Danielle Swartz
BA, J.D.
Lash Condo Law

Short Term Rentals

The Rise of Online Short-Term Rental Platforms

What Does This Mean for Condominium Owners and Corporations?



With the rise of online short-term rental platforms such as Airbnb, many condominium corporations have been forced to turn their minds to the issue of short-term stays. For condos, many owners and boards have expressed concern over the constant flow of guests who have no vested interest in the unit they are occupying. From the perspective of resident owners, short-term rentals have negative ramifications such as:

1. It detracts from the sense of community that many residents desire
2. There are increased concerns about safety with so many strangers coming and going at all hours
3. There is increased wear and tear on the common elements
4. Inappropriate behavior by many short-term renters interferes with the quiet enjoyment of residents
5. The condominium is in effect an uncensored, unregulated hotel.

On the other hand, for other owners, be-

ing allowed to rent out a unit when they go on vacation or investors who bought their unit for the purpose of using it for short-term rentals look at the ability to use their units for that purpose as a source of income.

The issue becomes even more complicated by Declarations that were drafted without any reference to short-term rentals or lease terms or those that specifically allow for short-term rentals. For boards of directors, the challenges are divided by into two camps: those that permit short-term rentals and those that do not. Where Declaration's permit short-term rentals and no amendment to Declaration is obtained to change such use, the key has been to try to put rules and procedures in place to ensure that the continued short-term rental use does not detract or negatively impact on their corporation. For those that don't permit short-term rentals, trying to find out which units are not in compliance is often a matter of tracking sites of those

short-term rental platforms and doing investigative work. Some Corporations have engaged companies that specialize in tracking those non-compliant short-term rentals so that condominium corporations have evidence and can pursue the non-compliant unit owners.

The short-term rental market has been operating largely unregulated in the City of Toronto. It has only be recent that the City has taken active steps to gather the many stakeholders together for by public consultations and written submissions. These include including short-term rental platforms, neighbourhood associations, condominium industry associations, tenant advocates, hotel and hospitality representatives, and various provincial government ministries. After an extensive consultation process, the City of Toronto approved short-term rental regulations in Toronto for the first time. As of June 1, 2018, the long-anticipated short-term rental by-laws are scheduled to take effect.

ILLUSTRATION BY TOMIO NITTO

A Short-Term Rental By-Law for the City of Toronto

Under the City’s new by-law, short-term rentals will be permitted, but under one caveat: all short-term rentals must occur in a person’s principal residence, which is defined under the new regulations as a place where a person is ordinarily resident. In a principal residence, any owner or tenant (called “operators”) will be able to rent out up to three rooms, a secondary suite, or an entire home, as long as their entire unit is not rented out for more than 180 nights per calendar year.

So What Does This Mean for Condominium Owners and Corporations?

In buildings that allow short-term rentals, owners or tenants who “operate” short-term rentals will have to register with the City by paying a \$50 registration fee. They will need to include their City-issued registration number in all advertisements and will have to provide contact information, including their name, address, emergency contact and building type to the City’s short-term rental registry. If a person is not registered, they will not be able to operate

All short-term rentals must occur in a person’s principal residence, which is defined under the new regulations as a place where a person is ordinarily resident



or advertise any short-term rental and will risk having their listing taken down from the company’s platform.

The new by-law also sets out a regulatory framework for short-term rental companies who must now obtain a license and pay a one-time fee of \$5,000, followed by a \$1.00 fee per night booked on their platform.

In addition, short-term rental companies and operators will now be required to keep specific records of their short-term rental activity for a 3 year period and make them available to Municipal Licensing and Standards officials upon request, or in the case of short-term rental companies, disclosure must be made accordance to a determined schedule. The penalty for violating any of these rules is a fine that is set to a maximum of \$100,000.

Once the short-term rental by-laws take effect, the City of Toronto also plans to roll out a new 4% Municipal Accommodation Tax (the “MAT”) on short-term rental operators and short-term rental companies who have entered into a col-

ISO-SEP PM
THIN MAT TECHNOLOGY
 SOUND CONTROL UNDERLAY

AcoustiGuard™
 SOUND & VIBRATION CONTROL

FIIC 68
 Tested With
NO DROP CEILING

For
Engineered Wood & Laminate Floors

1-888-625-8944
info@wilrep.com
WWW.ACOUSTIGUARD.COM

Condominium | Residential | Commercial | Rental

Nadlan-Harris
 Property Management Inc.

We are a team of dedicated experts, specializing in professional property management of:

- High-Rise/Low-Rise Condominiums
- Residential/Commercial/Industrial
- Town Home Condominiums
- New Condominium Development Consulting
- Customized Community Websites
- Shared Facilities

Proud members of:

500 Champagne Drive, Toronto, Ontario, M5J 2T9
 Tel: 416-915-9115 Ext. 25 Fax: 416-915-9114 Email: info@nadlan-harris.com
 www.nadlan-harris.com

lection agreement with the City.

The implementation of a principal residence restriction is likely to have a lasting impact on the condominium investment market. After June 1, 2018, any person looking to purchase a condominium unit as an investment will be prohibited from hosting short-term stays, unless they are living there as a principal residence. For owners and tenants of properties with secondary suites (defined as a self-contained living accommodation with food preparation and sanitary facilities for the exclusive use of occupants located within a dwelling unit) they will only be able to use their secondary suite as a short-term rental if the owner or tenant is living as their principal residence.

While people can still purchase condominium units as investment properties for long-term rentals, they will not be able to use them on short term basis, which is defined under the new by-law as a rental that provides sleeping accommodations for less than 28 consecutive days.

But What If Your Condo Declaration Permits Short-Term Rentals?

Nonetheless, short-term stays could still be permitted by a condominium's governing documents, although owners and tenants will have to comply with the City's regulations once they come into effect. The first step to determining whether your condo can be used as a short-term rental is to review your condominium's declaration, by-laws and rules as this will shed some light onto the types of restrictions and prohibitions in place. If the Corporation's documents are silent about short-term rentals, then rules may be adopted to restrict or prohibit this type of use. Rules, however, must be consistent with the condominium declaration and must be reasonable pursuant to the Condominium Act, 1998, S.O. c. 19.

Owners and tenants should be aware of any restrictive use language in their condominium corporation's declaration as this too may limit their ability to use their property as a short-term rental. In the 2016 case of *Ottawa-Carleton Standard Condominium Corporation No. 961 v Menzies*, 2016 ONSC 7699, the Superior Court concluded that condominium declarations which restricts



Short-term rental companies and operators will now be required to keep specific records of their short-term rental activity for a 3 year period and make them available

the use of residential units to a “single family dwelling” would not be interpreted to include operating their unit as a “hotel-like business”. Therefore, if your condominium corporation uses such language, then you may be prohibited from engaging in short-term rental activity, which was defined in the case to include “units being offered to complete strangers on the internet, on a repeated basis, for durations as short as a single night.”

However, if short-term rentals are permitted in your condominium's declaration, then the board may consider amending the declaration to prohibit this type of use. In order to amend the declaration, however, the board will need to obtain the necessary consent of at least 80% of unit owners required under the Condominium Act; a very high threshold.

Where condominium declarations permit short-term rentals, but the board cannot muster the strength of 80% of unit owners to vote in favour of an amendment, then short-term rentals will con-

tinue to operate and the condominium corporation will need to consider other creative alternatives that can strike the appropriate balance between the short-term rental naysayers and defenders.

One of these creative options is the Airbnb Friendly Buildings Program, which at its very core, puts rules and conditions on something that is going to keep occurring in condominiums whose declarations permits short-term rentals.

Under the Airbnb Friendly Building Program, condominiums will be able to enter into an agreement with Airbnb to regulate short-term rentals in their building. Under these agreements, the condominium corporation can establish a number of provisions that will be beneficial to the building such as setting up a website to monitor what units are being rented, the dates guests will be checking in and out and the number of guests being hosted at a given time. The agreement can also require guests to provide government issued ID and allow incidents that occur in condominium units and on common elements to be covered under Airbnb's property and liability insurance programs at no cost to enrol. Another benefit of these agreements, is that condominium corporations can obtain a percentage of the revenue generated from short-term stays in their building which can put towards the upkeep of common elements. Lastly, the Airbnb Friendly Building Program can help minimize the nuisance issues that typically arise with short-term stays by refusing hosts that generate too many complaints from using the company's platform.

The long story is that hoteling is here to stay. Although after June 1, 2018, short-term rentals will only be permitted in a person's primary residence, prudent owners and tenants should review their condominium corporation's governing documents to determine whether short-term stays are permitted in their buildings or not. If they are, it may be time for condominium corporations to get creative and consider options like the Airbnb Friendly Building Program, which may strike the ideal balance of rules to regulate an industry that is inevitably going to continue. 