

Check Before You Rent

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With Toronto still in the middle of a condominium boom and more people buying condominium units for investment purposes, particularly for short-term rentals, it is important to review both the condominium Declaration and corporation's by-laws and rules to assess whether short-term rentals are allowed. As was recently determined in *Ottawa-Carleton Standard Condominium Corp. No. 961 v. Menzies*, 2016 ONSC 7699, a condominium owner can be precluded from renting his or her unit for short periods of time if the Declaration or by-laws or rules prohibit such use.

In *OCSCC*, the Ontario Superior Court of Justice ("SCJ") held that short-term leasing of a condominium through the use of sites such as "AirBnB" violated the condominium corporation's "single-family" provision in the Declarations and a rule that prohibits leasing for terms of less than 4 months and thus issued a mandatory order against the unit owners directing them to comply with the condominium's Declarations and rules.

An important fact here was that the Declaration outlined that the condominium units could only be used "for the purpose of a single-family dwelling, which includes a home office[.]"

The Court said that:

"Single family use" cannot be interpreted to include one's operation of a hotel-like business, with units being offered to complete strangers on the internet, on a repeated basis, for durations as short as a single night. Single family use is incompatible with the concepts of "check in" and "check out" times, "cancellation policies", "security deposits", "cleaning fees", instructions on what to do with dirty towels/sheets and it does not operate on credit card payments. [...] What has happened in this case is a commercial use of the unit.

The Court also explained that in the absence of a definition within the Declaration of what constitutes a "single-family", courts will narrowly define the word "family" as a "social unit consisting of parent(s) and their children, whether natural or adopted, and includes other relatives if living with the primary group"

Beyond the "single-family" provision, the Court held as well that the rule requiring leases of at least 4 months was valid and enforceable that this provision too prohibited the commercial use of the "hoteling" of units.

This case reinforces the tools Condominium corporations can use to limit the ability of unit owners to "hotel" their units through sites such as "AirBnB".

Thus, if condominium corporations want to prevent their unit owners from using websites such as "AirBnB" to rent units on a short-term basis, they should incorporate "single-family" provisions into their respective declarations, by-laws or rules.

Alternatively, condominium corporations can avoid short-term rentals of units by incorporating a rule that stipulates a minimum lease term.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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