



DAVIDSON HOULE ALLEN LLP Condominium Law

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Prohibiting Short-Term Tenancies During the COVID-19 Crisis

There is no question that the virus that causes COVID-19 can be very contagious, and that widespread community transmission is now happening. This is a concern in a condominium community, where residents are living in close proximity and are sharing common element areas with others. This concern is particularly heightened in condominium communities experiencing a high turnover rate of short-term renters coming and going from the properties (and therefore increasing the chance of community transmission).



This novel situation raises the question of whether a condominium can temporarily prohibit any new short-term leasing during the COVID-19 crisis.



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In our view, a board of directors has the mandate to assess and prevent conditions or activities that they feel are necessary to ensure the safety and security of the residents and the property. Under the *Condominium Act*, a condominium corporation is charged with the following obligations:

- To manage the property (which includes the units and the common elements) (section 17);
- To be the occupier of the common elements (meaning that it is liable for any injuries or damages that occur on the common elements) (section 26); and
- To ensure that there are no conditions or activities on the property that could cause injury to an individual (section 117).

With these statutory provisions in mind, in our view, there is an argument to support a temporary prohibition on all short-term tenancies (by way of board resolution and a notice to owners) **if** the board believes that allowing short term rentals will increase the safety risks of its residents (by way of increasing the transmission of the virus within the condominium community or otherwise).

A temporary prohibition on short term tenancies could likely be implemented by way of board resolution and a notice to owners, even if the condominium has not implemented a rule restricting short term rentals. If the condominium has not passed such a rule, its decision to implement a temporary prohibition would be further supported if its declaration states that its units can only be used as “single-family residences” or for “residential purposes”.

Any temporary prohibition on short term tenancies would presumably continue until the board’s safety and security concerns have passed – which assessment will likely be informed by the government’s own decision making, as the crisis continues to evolve.

If short term tenancies are to be permitted, the board could also consider making short term tenancies subject to added or special restrictions during the COVID-19 crisis, including:

- Ensuring landlord owners implement enhanced cleaning measures in units in between rentals;
- Enhancing the condominium’s cleaning measures of the common elements (in light of the increased turnover of residents);
- Ensuring that tenants are adequately documented and confirming that they are not travelling from high risk zones;



- Ensuring that landlord owners advise their tenants of the condominium's guidelines and/or policies with respect to the COVID-19 virus;
- Ensuring that all residents and tenants are engaging in social distancing; and
- Ensuring that the condominium's common element amenities and/or recreational/non-essential facilities are closed.

When making the decision to either prohibit all short-term tenancies or to implement restrictions on short term tenancies, the Board may want to consider the following factors:

1. The nature of the condominium property [*i.e.* some condominiums may have more common elements (such as an elevator, lobby or hallways) that are exposed to more people traffic than others];
2. The nature of the condominium community [*i.e.* some communities may be older (and therefore more susceptible to the virus), more populous, etc.];
3. The nature of the short-term tenancies currently permitted at the condominium (*i.e.* daily, weekly, monthly);
4. The condominium's ability to reasonably manage the risk of virus transmission on the property; and
5. The ability of each owner-landlord to reasonably minimize the risk of virus transmission in the unit.

The decision to temporarily prohibit or to place restrictions on short-term tenancies is ultimately for the board to decide based on what it feels is the best interests of the condominium community.

In summary, a condominium corporation might be able to prohibit short term tenancies or implement restrictions on short term tenancies by way of board resolution and notice to owners (even if there is not yet a rule stating as such). This said, like so many other things faced by condominiums these days, this is an entirely new issue (untested in the Courts), and the authority of a condominium corporation to take such steps in light of the COVID 19 crisis is therefore not entirely clear. But in our view, given the current world circumstances, such steps are reasonable and appropriate.

Having said the foregoing, we acknowledge that there is also a risk of objection (and possible claims for lost rent money or otherwise) from landlord owners who disagree with the condominium corporation's decisions respecting short term tenancies.

However, as noted above, condominium corporations are statutorily obligated to ensure the safety and security of its residents, which includes implementing reasonable measures



during the COVID-19 crisis that the board ultimately deems necessary. As a result, it is our view that condominium corporations that decide to take steps to address the safety concerns associated with short term rentals in light of the COVID-19 crisis are well justified in doing so.

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