

Owners Can Have Success Against Illegal Transient Occupancies

By Todd Nahins, Esq.

There has been much publicity pertaining to tenants' use of websites such as Airbnb to advertise their apartments for illegal "short-term stays." Specifically, the recent decisions in *42nd and 10th Associates, LLC v. Ikezi* and *Brookford, LLC v. Penraat* have garnered attention as the courts have now taken the position that this type of activity violates rent-regulatory laws, as well as zoning, fire, and health codes.

This is of particular importance to owners as the City of New York has commenced litigation for the assessment of fines and penalties against owners of buildings where tenants are illegally using their apartments as transient hotels. Many of these cases are commenced against owners who were unaware that their tenants were renting their apartments for short-term use, making it clear that owners need a method to combat these tenants and provide a defense against actions brought by the government.

The *Ikezi* and *Penraat* decisions, one from the NYC Housing Court and the other from the State Supreme Court, made it clear that tenants (especially those in rent-regulated units) cannot rent their apartments for transient use, nor can they profiteer in such a manner. These decisions set forth the law and facts needed to proceed against tenants who treat their apartment as a hotel, placing the building, permanent tenants, and the owner at risk.

In October 2014, the NYS Attorney General issued a 38-page pamphlet pertaining to its investigation of Airbnb, which is the largest online tourist website and middleman for short-term stays in class "A" multiple dwellings. In a nutshell, the pamphlet states that a short-term stay is a violation of the law because "it changes the use, occupancy or egress of the building." Unfortunately, it also serves as the basis by which the City commences the aforementioned proceedings against owners for fines and penalties as the City places the responsibility upon the owner to ensure that the use of the premises is in compliance with the law.

It is now vital that owners and their employees stay alert to clues that suggest short-term stays are occurring in a building. Owners can start by tracking their buildings on websites such as Airbnb, Craigslist, and Vacation.com. When an owner discovers that a tenant is illegally utilizing the premises for short-term use, as with any other case, the owner must be prepared to bring a complaint. To be successful, the owner must be armed with the facts and leave little doubt of the tenant's illegal activity.

Owners should ascertain whether a tenant is actually residing in the premises, or as in the *Ikezi* case, is an operator utilizing the apartment strictly as a hotel. Have building staff, whether a doorman, concierge, or superintendent, keep a record of who is entering and leaving the apartment. Owners may even want to employ video surveillance, while being mindful of privacy and harassment concerns. If possible, have an employee politely engage the "guest" in conversation as to their identity, how long they intend to stay, how much they are being charged, and how they came to rent the apartment. In some instances, these guests are from foreign countries and do not know that this is illegal in New York City, so they may provide information to building personnel.

As has been noted in previous newspaper and magazine articles, both owner and tenant groups do not approve of the use of apartments, especially rent-regulated apartments, as hotels. Hopefully, the courts have now caught up and will continue to issue decisions that reflect the illegality of short-term stays.

Todd I. Nahins is a senior partner at the law firm of Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., where he heads the firm's residential and commercial non-payment and holdover division relating to Manhattan cases. For nearly 40 years, Borah Goldstein has provided advice and solutions to the complex real estate issues owners and property managers face in the New York metropolitan area, including Nassau, Suffolk, and Westchester counties. For more information, visit www.borahgoldstein.com or contact Mr. Nahins directly at TNahins@borahgoldstein.com or at 212-431-1300, ext. 706. ♦