Ontario Court Decision on Short-Term Rentals in Condominiums

In a recent case, OCSCC No. 961 v. Menzies, the Ontario Superior Court of Justice concluded that the short-term leasing of a condominium unit was in essence the operation of a hotel and thus constituted a breach of the single-family provisions in the condominium declaration and also a breach of the condominium rule that prohibited leases with terms of less than 4 months.

The Facts

The unit owners, Mr. Menzies and his wife, leased their unit to DGM Management Corp. ("**DGM**"), a corporation that was controlled by them. DGM then listed the unit on nine different websites, such as Airbnb and hotels.com. The units were rented many times for periods as short as one night to complete strangers. The short-term renters were given access to the condominium amenities – parking, exercise room, swimming pool and meeting rooms. The Airbnb listing requested that the renters "be discreet about mentioning Airbnb to anyone in the building."

As we reported in a previous blog post, short-term rentals have negative ramifications for resident owners and are a concern for many condominium boards.

The condominium declaration in this case provided that the units could only be used "*for the purpose of a single-family dwelling, which includes a home office . . . and for no other purpose*." The declaration did not contain any provision which specified a minimum lease term for any rented units.

Therefore, the condominium board of directors adopted a rule that prohibited tenancies of less than four months. As required by section 58 of the Condominium Act, 1998 (the "**Act**"), the new rule was circulated to all owners, along with a statement that the owners had the right within 30 days to requisition a meeting. If a meeting was requisitioned, then the rule would need to be approved at the meeting by the owners of a majority of the units.

Instead of requisitioning a meeting, the owners in this case wrote to the condominium corporation indicating that the Board's actions were illegal and then, along with DGM, commenced legal proceedings seeking an injunction to restrain the condominium corporation from interfering with their short-term rental activities.

As no owner requisitioned a meeting, the rule prohibiting rentals of less than 4 months became effective 30 days after notice of the rule had been given to all the unit owners. Despite this, DGM continued its short-term rental activities. The condominium corporation then applied to the Court for an order pursuant to section 134 of the Act enforcing compliance with the condominium declaration and rules by DGM and the unit owners.

The Decision

Relying on previous court decisions that defined a 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", the Judge in this case had no problem concluding that DGM's hoteling activities breached the single-family provision contained in the declaration:

"*Based on the evidence before me, there is no doubt that the Respondents [DGM and the owners of the unit], who have leased their unit, on a repeated short-term basis in a hotel-like operation, are in breach of the Declaration.*

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."

The Judge also concluded that the rule requiring lease terms of at least 4 months was a valid and enforceable rule that prohibited hoteling of units.

Having determined that both the declaration and the rules validly prohibited the short- term rental activities of DGM and the unit owners, the Judge issued an order directing them to comply with the declaration and the rule.

In defending the condominium corporation's compliance application, the unit owners and DGM advanced several arguments, all of which failed:

- After confirming that DGM was both a tenant and the occupier of the unit, the Court rejected the claim that DGM was not a proper party to the legal proceedings.
- In response to the unit owners' position that the application should be stayed because there had been no mediation or arbitration as required under subsection 134(2) of the Act, the Court concluded that the unit owners had waived the provisions of that subsection by commencing legal proceedings against the condominium corporation. In addition, mediation was not required as the dispute in this case involved a tenant and the mandatory mediation provision in the Act is not applicable to disputes with tenants.
- The unit owners claimed that notice of the condominium corporation's application should have been sent to all of the condominium owners so that they could make submissions if they wished. As the condominium corporation was seeking to enforce compliance with the declaration and rules against a specific non-complying unit owner and tenant, there was no need to give notice of the application to all of the other unit owners.

The Impact of this Case

Corporations that want to stop short-term rentals in their condominium should be checking their condominium declaration to see if it has a single-family use provision. Those that do have such a provision are now in a stronger position to ban short-term rentals/hoteling.

Condominiums that do not have a single-family restriction in their declaration should be taking steps to enact a rule which specifies a minimum lease term. However, even if a condominium board enacts such a rule, it is possible that those owners who engage in hoteling activities will requisition a meeting, in which case the rule will need the approval of the owners of a majority of the units before the rule becomes effective.