Ask The Administrator

City Increases Enforcement on Short-Term Rentals

In 2011, the State Legislature, at the behest of Mayor Bloomberg, enacted legislation targeting owners of Class A apartment buildings, particularly Class A SRO buildings, on the Upper West Side of Manhattan, who rent to tourists and others on a short-term, transient basis. Proponents of the legislation argued that since apartments in Class A buildings are required to be occupied for thirty days or more they should only be used as affordable, rent-stabilized apartments. Subsequently, in October, 2012, the City Council also enacted legislation to address this issue by classifying these conditions as immediately hazardous violations and creating substantial financial penalties. The underlying premise behind these legislative enactments was that owners, not tenants, were the bad actors who were responsible for the short-term rental "problem."

Shortly after the Mayor signed the new legislation into law, the City, to demonstrate that they were serious about this issue, brought litigation against a company called Smart Apartments, LLC, seeking to get them to stop renting short-stay rooms in as many as 50 buildings in Manhattan and Brooklyn. This was only the most publicized of the enforcement actions taken by the City, which has issued numerous violations for short-term rental violations.

These activities by the City are all the more interesting in light of the popularity of the well-known website service, Airbnb, where tenants themselves and not only building owners, solicit tourists and other short-term renters. In recent months, however, questions have begun to arise regarding the enforcement of short-term rental prohibitions in both condominiums and rent stabilized buildings. For example, in May, 2013, the owner of a condominium received a violation and was fined $2,400 (reduced from an initial fine of $7,000) because the tenants who were in possession of the unit then rented the apartment for short-stay purposes.

More recently, another case, involving a rent stabilized tenant, has received a significant amount of media attention. That case was initially brought by the owner because of alterations that had been made to the apartment by the tenant. It was only upon further investigation that the owner realized that the tenant was advertising and providing accommodations to a series of transient occupants through Airbnb. The proceeding was converted into an illegal subletting case and the tenant has been contesting her potential eviction. Despite the tenant's denials, an investigator retained by the owner and posing as a short-stay occupant rented the apartment from her to establish her ongoing short-stay business. The Housing Court case is pending before Judge Sheldon Halprin and the owner is represented by Joseph Burden, Esq., from Belkin, Burden, Wenig & Goldman.

The question for the City and its Office of Special Enforcement, which is responsible for the enforcement of these laws, is whether the law will be enforced as vigilantly against law-breaking tenants as it is against owners. In these cases, and especially in cases involving rent stabilized tenants, it is remarkable that tenants are able to profit by charging tourists and others for daily rentals while property owners must fear prosecution by the City's enforcement agencies for the same activities. It is time for the City to conclude that what's good for the goose is good for the gander and to enforce the housing laws against tenants–and not just owners– in these types of cases. ■

Answer provided by Howard Stern, Esq., Administrator of the RSA Legal Plan, who is solely responsible for its content.