

ASK THE ADMINISTRATOR

Over the last couple of months, RSA members have reached out to me regarding one singular issue that is on the rise in New York City: Airbnb violations resulting from their tenants illegally renting out their apartments.

The New York City Office of Special Enforcement can impose penalties starting at \$1,000 as a first-time penalty, as well an additional daily penalty of up to \$2,500. These penalties end up being the responsibility of the owners to pay, even where the owners were not aware that their tenants were engaging in short-term rentals of their apartments! The violations usually issued for Airbnb activity are for transient occupancy, which refers to when a residential apartment is rented out to a short-term renter for less than a 30-day period, and for fire safety/fire code violations. The RSA members who have reached out to me have incurred tens of thousands of dollars in fines as a result of their tenants' illegal Airbnb activity.

Unfortunately, once fines are issued, it is usually too late for most owners as they are now on the hook for violations caused by their tenants' activity. Aside from having to pay for any violations issued by the City, Airbnb activity in your building can also be a source of liability should anything go wrong, such as Airbnb renters who end up committing crimes, throwing parties and disturbing the neighbors, or causing all sorts of security or property damage issues for your building and your other tenants. For all of these reasons, it is important that you, as the owner and the person who is ultimately liable, do everything you can to safeguard yourself, your building, and the other tenants.

A good place to start is using your "power of observation," which means knowing and documenting what is going on in your building and asking yourself certain questions so that you can protect yourself from any surprise fines and penalties.

Do you have cameras in the common areas that you regularly check?

An owner is permitted to place cameras in the common areas of the building, either with or without their tenant's knowledge, although the cameras must be placed so that they observe the common areas only and not inside any apartment. I recently spoke with a Private Investigator and retired NYPD detective who informed me that the technology surrounding surveillance cameras has evolved greatly, so much so that it is now possible to install cameras that are motion activated, meaning they turn on and start recording once someone walks

into camera view. These cameras also utilize facial recognition technology. As he pointed out to me, an owner can glean a wealth of information from a regular viewing of camera footage in a building, such as whether people are entering and leaving with luggage, and to which floor or apartment are they going to. This information can demonstrate a pattern of illegal rentals over time. Investing in a surveillance system in your building will not only be helpful to discourage or to prove Airbnb activity, but may also be used to identify who has stolen or damaged property in the common areas and to provide an overall improvement in the security of your building.

Do you have an on-site superintendent or porter who pays attention and reports back to you if they see multiple guests coming in and out of any particular apartment? Perhaps with luggage or with tourist paraphernalia, such as New York City maps and guides?

A building employee has the added benefit of personally knowing tenants who live in the building and being able to quickly identify whether there is suspicious foot traffic of frequent guests on the premises.

Do you notice any key lock boxes outside any apartment doors or outside your building? This is usually a tell-tale sign that someone in your building is renting out to short-term renters.

Once you have this information and it appears someone in your building is engaging in short-term rentals, you must immediately send a notice telling the tenant to cease and desist immediately. It is a good idea to include a prohibition in the lease of any short-term rentals, along with language making the tenant financially liable for any penalties or other damages you incur as a result of their Airbnb activity. If the tenant does not immediately stop the short-term rental activity, then you must start a court action as soon as possible - the potential for daily penalties to accrue once a violation is placed means time is not on your side. ■



Article provided by Howard Stern, Esq., Administrator of the RSA Legal Plan for small property owners, whose is solely responsible for its content.