

Goodbye to “Ghost Hotels”: Tribunal Upholds City of Toronto’s Efforts to Regulate Short-Term Rentals

December 16, 2019

By Robert Eisenberg,

Changes are coming to how Airbnb and other short-term accommodation marketplace websites operate in Toronto after a failed challenge by a group of landlords to the City of Toronto’s (the “City”) zoning bylaw amendments with respect to permitting and regulating short-term rentals (the “Regulations”).

On November 18, 2019, the Ontario Land Planning Appeal Tribunal (the “LPAT”) upheld the City’s Regulations as reasonable, concluding that the Regulations balance several policy objectives including ensuring housing is provided to residents, a range of housing types are available (including short-term rentals), and the business and tourism economies are supported. Ultimately, the LPAT determined that the Regulations are meant to address the affordability and availability of rental properties, and to provide oversight to an industry that has operated without regulation up to this point.

The Regulations have been in the works for several years. [We first reported](#) on them in July 2017 shortly after the City’s Municipal Licensing and Standards division announced the proposed changes. City Council then approved the Regulations in December 2017 and January 2018, and the City planned to implement them beginning in June 2018. Despite this plan, the implementation of the Regulations was delayed pending the outcome of the LPAT’s decision in November 2019.

New Limits and Licensing Requirements

One big change produced by the Regulations is that short-term rentals will only be permitted in a person’s principal residence. Both homeowners and tenants can act as hosts, and the property can be a primary residence or a secondary suite (e.g. a basement apartment). However, landlords will no longer be permitted to operate “ghost hotels” also known as “dedicated short-term rentals”. These terms refer to properties that landlords only rent on a short-term basis rather than through long-term tenancy agreements. With Toronto’s vacancy rate at only 1.1%, well below the 3% rate that is considered “healthy”, this rule is intended to ensure that short-term rentals do not exacerbate Toronto’s housing crisis. Roughly 6,300 of the 21,000 Airbnb listings in Toronto are dedicated short-term rentals, but whether these properties will return to the long-term rental market as a result of the Regulations remains to be seen.

The Regulations impose limits on the number of nights that a host can rent their home through a site similar to Airbnb. For starters, a rental is only considered “short-term” if it is for fewer than 28 days. Short-term rental hosts who rent their entire home or apartment can only do so for up to 180 nights per year, but there is no annual limit for homeowners renting three or fewer bedrooms in their residence (as long as each stay is fewer than 28 days).

The new Regulations also impose registration, taxation, reporting and recordkeeping requirements on short-term rental hosts. Those who wish to rent their home on a short-term basis must register with City officials and pay a \$50 per year fee. In addition, hosts must collect and pay a 4% Municipal Accommodation Tax (MAT), although online platforms like Airbnb can make voluntary agreements

with hosts to collect the MAT on their behalf. Hosts must now provide the City with government-issued identification, general contact information and details of their short-term rentals, and must maintain records of their short-term rental activity for the City's review upon request.

The Regulations also impact Airbnb and other short-term rental platforms directly, in that these companies must now be licensed with the City, and are required to pay a one-time \$5,000 license application fee and a \$1 fee for every night booked through their respective platforms. Additionally, short-term rental companies are now responsible for creating a system of oversight and ensuring that all hosts are validly registered with the City. Like hosts, these companies are also required to keep records of short-term rental activity, which must be provided to the City upon request.

Implementing the Regulations

What comes next is far from certain. The LPAT decision was welcomed by the City and by Mayor John Tory, who described it as "good news for Toronto residents and a step in the right direction."^[1] However, a group of landlords have launched an appeal of the LPAT's decision to the divisional court. One of the landlords who previously challenged the Regulations has decided not to participate in the appeal, but is still contemplating asking the LPAT to review the decision.^[2]

In the meantime, the Regulations are not yet in force, but the City is planning to move forward despite the ongoing legal dispute. The City has said that it will provide more information in December 2019 with respect to the implementation and timelines of the licensing, registration and MAT requirements. Once the Regulations are in effect, Toronto will join several other municipalities in regulating online short-term rentals, including Vancouver, Mississauga, Oakville, the Town of the Blue Mountains and Niagara-on-the-Lake.

^[1] Nick Boisvert "Toronto to enforce new Airbnb regulations after tribunal rules in favour of stricter bylaws" CBC News (18 November 2019), online: <https://www.cbc.ca/news/canada/toronto/short-term-rental-regulations-tribunal-1.5363912>.

^[2] Tess Kalinowski "Short-term landlords launch court appeal of Toronto's Airbnb rules" Toronto Star (3 December 2019), online: <https://www.thestar.com/news/gta/2019/12/03/short-term-landlords-launch-court-appeal-of-torontos-airbnb-rules.html>.

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