



Local Planning Appeal Tribunal Upholds Toronto's Bylaws Restricting Short-Term Rentals

By Jackie Bartlett and Daniel Litso

Airbnb and other short-term rentals ("STRs") have been a hotly debated topic of discussion in Toronto and other major metropolitan cities, nearly since its inception in 2008. It is argued that the many conveniences offered by STRs, including their often reasonable prices and locations, have come at the expense of other residents in the City of Toronto (the "City"), including those who reside nearby to STR units.



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In particular, it is argued that Airbnb renters often make excessive noise and occupy the STRs with a lack of respect for the property itself and the neighbours surrounding same. Further, and more importantly, cities have seen an increasing number of condo

units purchased for the sole purpose of permanently renting the units out as STRs. This has caused a significant decrease in the number of units available in the already severely limited rental market of Canada's busiest metropolis.

In 2017, the City of Toronto enacted Zoning Bylaw No. 1452-2017 and Zoning Bylaw Amendment No. 1453-2017 (collectively, the "Bylaws") in an effort to monitor the STR market throughout the City. The Bylaws were intended to permit – but regulate – STRs in all residentially zoned areas and the residential component of mixed-use areas of the City. In particular, the Bylaws were intended to stop persons or companies from purchasing or leasing a dwelling unit for the sole purpose of offering STR accommodations year-round. Owners and tenants who reside in a unit as their principal residence may provide STR accommodations under the Bylaws.

Although Toronto City Council approved the Bylaws in December 2017, a lengthy appeals process held up the

implementation of same. A number of STR operators appealed the Bylaws to the Local Planning and Appeal Tribunal (the "Tribunal"), having taken the position that the Bylaws would substantially and unreasonably restrict what owners are permitted to do with their properties.

One of the main issues STR operators have with the Bylaws is how they define what constitutes an STR. The term 'short-term rentals' is defined in the Bylaws as all or part of a dwelling unit that (a) is used to provide sleeping accommodations for any rental period that is *less than 28 days*; and (b) *is the principal residence* of the short-term rental operator.

As a result of this definition, the Bylaws would significantly impede an owner's ability to run STR businesses out of their primary residence. Where the entirety of an individual's primary residence is rented out for periods of less than 28 days at a time, STR operators would be limited to doing so for no more than 180 days of the year. Where an individual rents out unit(s)

which are not designated as his or her primary residence for more than 28 days at a time, they would not be affected by the new Bylaws. A unit rented for a period of 28 days or longer is, by definition, not an STR.

The Tribunal heard the appeal on November 18, 2019, in Toronto. The Tribunal heard from three appellants, various participants who operate STRs, and six expert witnesses, including staff experts from the City. A number of other interested parties appeared at the hearing, including Fairbnb Canada (“Fairbnb”), an organization that works to encourage regulated STRs, provided that the regulations comply with the principles of a fair and collaborative economy.

Dr. David Wachsmuth (“Dr. Wachsmuth”), a leading Canadian academic on STRs, provided evidence at the hearing regarding city planning and urban governance. He noted that 98% of Airbnb reservations are made for a period of less than 28 days. He held that the Bylaws were necessary to prescribe a set number of days to determine what would qualify as an STR.

The Tribunal recognized that there is a serious housing crisis in Canada’s large-

est city. The Tribunal noted that there are approximately 21,000 active STR listings operated by approximately 14,000 hosts in Toronto alone. Further, since 2015, the number of STRs has nearly tripled in Toronto, with the majority of listings being concentrated in the downtown core.

Ultimately, the Tribunal described the regulations as “good planning in the public interest”, dismissed the appeals, and ordered that the Bylaws be upheld. The Tribunal recognized that the City is experiencing a crisis in the availability and affordability of housing, and that the provision of housing as places to live for residents is a provincial and City priority. The Tribunal held that the Bylaws would protect these policies by protecting the housing supply as permanent domiciles for residents, and by responding to the availability and affordability issues – if not by returning units to the rental market, by at least preventing further conversions of dwelling units into dedicated STRs.

By permitting STRs as defined and regulated above, the Bylaws do not prohibit STRs, but permit and regulate them in a manner that does not displace households. The Tribunal adopted Dr. Wachsmuth’s

view that “there is a direct tradeoff between the supply of commercial STRs and the supply of long-term housing since a gain in the former represents a loss in the latter and vice versa”. While this may be true, there is no guarantee that the enactment of the Bylaws will result in any significant number of these STRs returning to the long-term rental market. City residents and STR operators will have to wait and see what, if any, positive impact the Bylaws will have on the affordability and availability of the City’s rental market. ■

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