

ANOTHER WIN ON ILLEGAL SUBLETTING – AIRBNB

Realty Law Digest

New York Law Journal (Online)

June 17, 2015 Wednesday

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Length: 2380 words

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Rent Stabilization-Tenants "Engaged in Profiteering by Renting Out" Their Apartment "to a Series of Short-Term Transient Tenants" for Commercial Purposes on Airbnb-"Such Brazen and Commercial" Exploitation of a Rent Stabilized Apartment Significantly Undermines the Purpose and Integrity of the Rent Stabilization Law and Code and Is "Incurable"

A landlord commenced a holdover summary proceeding, seeking to recover an apartment, after the expiration of a 10-day notice of termination (notice) and a 10-day notice to cure. The notice to cure alleged that the rent stabilized tenants, "were not primarily residing in the apartment and were illegally subletting the apartment in substantial violation of the terms of their lease." The tenants denied the allegations and asserted that they reside in the apartment.

At trial, the building's property manager testified that "he had visited the apartment on three recent occasions and each time was met by different people other than the respondents or their family members." He had seen, inter alia, different people in the apartment with suitcases, "a bathroom with no toiletries and no food containers or anything dirty in the apartment," and closet doors that were "locked with deadbolts."

On one occasion, the manager had been approached outside the building by several people who asked for access to the building. They all had suitcases and once inside the building, they went to the subject apartment. Those people stated "they were renting the apartment through Airbnb and showed him an Airbnb itinerary for an 11-night stay." The manager photographed the itinerary and the photograph was introduced into evidence. The manager had seen a wall "erected to create a second bedroom" and photographs showed that "each bedroom had a locking door."

The manager had also looked at the Airbnb website himself, looked up the listing and printed out an eight-page listing from Airbnb. The listing described a two bedroom apartment on the same street, with "four beds that can accommodate up to nine guests." While Airbnb did not list the rental rate, it did provide for an additional \$25 fee per person and after the first guest, a \$100 cleaning fee and a \$200 security deposit. Photographs showed two bedrooms, a living room, bathroom and kitchen, "but no personal objects like books, plants, photographs, mail or clothing."

The manager had also "booked a room in the apartment on the Airbnb website and received an email confirmation upon completion of payment." The confirmation specifically identified the address to the building and the apartment and reflected charges of \$44 per night for seven nights, with a \$45 cleaning fee and a \$43 fee for a total of \$398. If the manager had rented both bedrooms of the apartment, he would have paid \$99 per night for one guest.

Additionally, the manager looked up the person listed as a "host" on the Airbnb website. The "host" was identified as "Alexandra D." The tenant's name was Alex Durena. A website search revealed 59 reviews from guests and noted that "Alexandra" had been a member of Airbnb since Dec. 2013.

The tenant husband (tenant) testified that he lived in the apartment since 2003 and he had never seen the landlord's agent visit the apartment. The tenant was allegedly surprised by the allegations and he rejected the accusations. He claimed that he lived in the apartment with his children and that "he occasionally has friends and family over to stay." The tenant introduced his driver's license which listed the apartment as his address and a store receipt which also listed the apartment as his address. He further produced a utility bill for service at the apartment and a wireless telephone bill also addressed to him at the apartment. Respondent "A" is the tenant's "estranged wife" and she had purchased a property elsewhere.

The tenant admitted that a telephone number listed on a wireless service bill was identical to the telephone number on the Airbnb itinerary and on the email reservation confirmation. The tenant simply stated that it was his "son's bill."

The tenant's wife testified that a wireless bill was related to a child's phone and she could not explain how the number on the bill came to be listed on the Airbnb documents. She claimed that she lived in the apartment full time and had never seen any transient renters as alleged by the landlord. The tenant's son testified that he lived in the apartment full time. The son "stated that the cell phone number that matched the Airbnb documents belongs to his friend." He claimed that he got the phone for this friend. However, the son did not know what the friend does with the phone and he had no explanation as to why such number was listed on the Airbnb website.

The court credited the testimony of the manager and the documentary evidence presented by the landlord. The court noted that "[w]here a person other than the tenant of record is shown to be in possession of the premises, the law will presume the existence of an assignment or sublet agreement." The court found, inter alia, that when the manager visited the apartment, neither the tenants nor their children were present and instead, "there were several different people in possession of the apartment." The people in possession of the apartment "were not the respondents' friends or family members and... they were in the apartment for short term stays." The court found such testimony to be "sufficient to create the presumption of a sublet of the apartment in substantial violation of [tenant's] lease without [landlord's] prior consent."

In contrast, the court found the tenant's testimony was "conclusory and self-serving." Moreover, the documentary evidence failed "to adequately support the [tenant's] position that he lives in the apartment."

Thus, the court found that the apartment had been "listed and rented out to travelers through the Airbnb website." Based on the online reviews, the court stated that "it [was] reasonable to infer that the other room in the apartment was rented out at least 16 times and the entire apartment at least four times." The court noted that "not every traveler would write a review and... there may have been many more transactions than those noted in the Airbnb documents." The court concluded that the tenant's testimony was "incredible and not worthy of belief."

Accordingly, the court held that the tenant had "engaged in profiteering by renting out the apartment or allowing his children to rent out the apartment, to a series of short-term transient tenants for commercial purposes on Airbnb." The court explained that "[s]uch brazen and commercial exploitation of a rent-stabilized apartment significantly undermines the purpose and integrity of the Rent Stabilization Law and Code and is therefore incurable." Thus, the court awarded the landlord a final judgment of possession.

Bpark v. Durena , 100145/2014, NYLJ 1202725492875, at *1 (Civ., KI, Decided April 1, 2015), Lau,