

## PUBLICATION

### Condominiums Can Ban Short Term Rentals

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March 2, 2020

The much-anticipated [short-term rental decision](#), *Condominium Corporation No. 042 5177 v. Kuzio*, was released on February 27, 2020. The result is that a Condominium Corporation can, through its Bylaws, stop Owners from engaging in short-term rentals of their Units.

In Alberta the *Condominium Property Act* (“Act”) states that no bylaw can operate to prevent a lease or “other dealing” with a Unit. The question was whether a Condominium Corporation was offside the Act for stopping owners from offering their Units for short-term rental through web-based platforms such as VRBO, HomeAway or AirBnB.

Before the final decision, in October 2019 the Ten Lofts Condominium sought an interim injunction to stop the Owners involved from offering their Units out for short-term rentals. In this earlier decision Justice Renke found that short-term occupants are not tenants, rather they are Customers, and therefore the relationship between the Owner and Occupant was not a lease but instead a licence. Justice Belzil agreed with Justice Renke’s analysis, finding that the right to alienate a Unit is not unrestricted and a Condominium Corporation does have the authority to prohibit short term rentals through its Bylaws.

The Bylaws for The Ten Lofts Condominium prohibited the use of a Unit for any commercial or professional purpose involving the attendance of the public at the Unit, and further required that a Unit be occupied as a “one-family residence”.

In considering the commercial use prohibition, Justice Renke relied on the “hallmarks of commercial enterprise” typically in these short-term rental platforms, namely advertising on websites to general public; having reservation systems, availability calendars, deposit and cancellation policies; accepting credit card payments; and charging service and cleaning fees. Justice Belzil simplified this, noting that the purpose behind occupancy in the absence of a lease is to generate income, which is use for a commercial purpose.

Justice Belzil concluded that short term occupancy in the absence of a lease results in the functional equivalent of a hotel stay, and provided the following:

The short-term rental of units, in the absence of a lease, not only contravenes the Bylaws of the Corporation but would result in a fundamental change to the structure and character of the condominium, without the consent

of the Board and without the consent of the vast majority of unit owners.

It remains to be seen whether this decision will be appealed.

Any decision that relies on the interpretation or application of Bylaws will be fact-specific. It must be determined whether your relevant Bylaws are similar enough that you 'match' as opposed to being distinguished. The Bylaws should be reviewed in detail before any decisions are made.

If you have questions about your condominium property, we can help. Call one of our lawyers in our Condominium Law group — we're here to assist you.