

DEALING WITH WRONGFUL AIRBNB SUBLETTING

Valued at over twenty billion, Airbnb is the UBER of rentals. Through the Airbnb website, people can rent rooms, apartments, and homes. Over a million rentals are listed on Airbnb all over the world. Thousands of Denver rentals, including apartments, are listed on the Airbnb website, and more are being added every day. A quick search of Airbnb revealed that tenants at several of our clients' communities are offering their apartments for rent on Airbnb. If your tenants are renting your units on Airbnb, this is a clear breach of their lease.

Fortunately, dealing with Airbnb related lease violations is not difficult. If you suspect that your tenants are renting their apartment on Airbnb, the first step is to conduct a search of the Airbnb website. Properties are not listed by name, but enough information is provided on the website for you to easily determine whether your units are being sublet. The general location (city or area) of the rental is provided. The location information allows you to quickly determine if you have a problem. If Airbnb units are being offered in your area, you'll need to look at the specific rentals being offered. When you look at an individual rental, multiple pictures of a unit are displayed. Individual Airbnb listings also provide the first name of the Airbnb host (your tenant who is wrongfully subletting your unit). Thus, if pictures of your unit are listed by a host you're renting to, your tenant is wrongfully subleasing your unit on Airbnb.

Most leases provide that a tenant may have guests for a certain number of days before the guest is considered to be an unauthorized occupant. A guest is a person who is invited to visit your home without compensation. Airbnb renters are not guests. Airbnb renters are unauthorized occupants paying rent to your tenant. Thus, despite what your tenant may argue, Airbnb tenants are not allowed under a lease provision that allows your tenant to have guests for a limited number of days. Further, you don't have to wait until an Airbnb tenant has exceeded the number of guest days in your lease before you can take enforcement action against your tenant.

If one of your tenants is wrongfully offering your unit for rent on Airbnb, you can take immediate action. When your tenant offers your unit on Airbnb, the tenant likely has breached several lease covenants. Specifically, the tenant has breached most leases by running a business out of the unit, allowing unauthorized occupants, and certainly by subletting the unit. When a tenant breaches a non-monetary covenant, your remedy is to post the tenant with a Demand for Compliance or Possession, i.e. stop offering the unit for rent on Airbnb, or surrender possession of the unit.

Remember, in a compliance case, you have to prove breach, demand was made, and continued breach after the demand expires. Compliance related evictions such as noise complaints sometimes can be very difficult to prove, and can turn into time draining affairs in court. Fortunately, an Airbnb violation case is the one of the easiest compliance cases to prove, and is almost as easy as a rent case. When you determine that your tenant is wrongfully subletting on Airbnb, simply take a screen shot or print all relevant screens from the Airbnb website. You now have the information you need to prove the initial breach. The second element of proof is service of the Demand for Compliance or Possession, which should be no problem. The third element of proof is that you must establish that the tenant continued to breach (continued to offer the unit on Airbnb after three days, not including the day you served the

notice). Again, no problem. Just take or print additional screen shots after the demand has expired if the tenant continues to list the unit on Airbnb.

If your tenant complies with the Demand for Compliance or Possession within three days, by removing the listing from Airbnb, you cannot move forward. However, you should monitor Airbnb over the next couple of months to see if the tenant relists the unit on Airbnb. If the tenant does put the unit back on Airbnb, you could serve a Notice to Quit for a Repeat Violation.

Finally, you could specifically address the Airbnb issue in your lease (tenant shall not list the unit on Airbnb). This is not necessary if, at a minimum, you have a strong prohibition in your lease against subleasing. If you do have a strong prohibition against subleasing, the potential benefit of a specific lease provision, to not list the unit on Airbnb, would be to avoid the entire Airbnb situation from the beginning. Since tenants obviously do things in violation of lease provisions anyway, to maximize the effect of an Airbnb lease provision, your leasing team should specifically point out the provision when the tenant executes the lease.