

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

FAIRBNB CANADA

Plaintiff

and

**TORONTO STANDARD CONDOMINIUM CORPORATION No. 2510,
operating as ICE I and ICE II CONDOMINIUMS
and DUKA PROPERTY MANAGEMENT INC.**

Defendant

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local registrar

Address of court office 363 University Avenue
Toronto, Ontario, M5G 1T3

TO: TORONTO STANDARD CONDOMINIUM CORPORATION No. 2510,
operating as ICE I and ICE II CONDOMINIUMS
c/o ICE I and ICE Condominiums
12 & 14 York Street
Toronto, Ontario
M5J OA9

AND TO: DUKA PROPERTY MANAGEMENT INC.
c/o ICE I and ICE Condominiums
12 & 14 York Street
Toronto, Ontario
M5J OA9

I. Relief Claimed

1. The Plaintiff claims jointly and severally against both Defendants on behalf of the class members:
 - (a) General damages in the amount of \$2,000,000.00;
 - (b) Aggravated damages in the amount of \$500,000.00;
 - (c) Punitive and exemplary damages in the amount of 500,000.00;
 - (d) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
 - (e) Costs of this action on a substantial indemnity basis, together with post-judgment interest thereon, pursuant to s. 129 of the *Courts of Justice Act*; and
 - (f) Such further and other relief as this Honourable Court may deem just.

II. Overview

2. Fairbnb was one of the successful parties at recent Local Planning Appeal Tribunal (“LPAT”) hearings which upheld the City of Toronto’s by-laws regulating short term rentals (“STRs”). Those laws are now in force. The Defendants operate a condominium corporation that, with the knowledge and permission of the Defendants, is continuing to permit illegal STRs. The Defendants are permitting illegal STRs to continue during a time of global COVID-19 pandemic. As a result, the Defendants have been and continue to be negligent. As a consequence of their ongoing negligence the Defendants are liable for damages. In addition, the Defendants’ conduct is sufficiently highhanded, callous and vexatious so as to justify awards of aggravated, as well as punitive and exemplary damages.

III. The Parties

3. The Plaintiff, Fairbnb Canada (“Fairbnb”), is a corporation incorporated pursuant to the laws of Canada.

4. The Defendant, Toronto Standard Condominium Corporation No. 2510, is a corporation incorporated pursuant to the laws of Ontario.
5. The Defendant, Duka Property Management Inc., is a corporation incorporated pursuant to the laws of Ontario.

IV. The Class

6. The class members for this action are all those residents of 12 & 14 York Street (a.k.a. ICE I and ICE II) who have been exposed to the risk of COVID-19 as a result of the Defendants' negligence.

V. The Defendants' Negligence

7. Fairbnb participated in hearings before the LPAT during the Fall of 2019.
8. The LPAT dismissed appeals that had attempted to challenge the City of Toronto's by-laws regulating STRs in Toronto (the "By-laws").
9. The By-laws are now in full force and effect. Consequently, STRs that are not in principal residences are illegal.
10. The Defendants are aware that a large number of units in their condominiums are used as STRs. However, the Defendants have expressly failed to indicate that STRs that are not in principal residences are illegal.
11. Instead, they have provided information to owners in their condominiums indicating that the decision to operate such STRs is voluntary. This is wrong in fact and in law. The Defendants' conduct is clearly negligent.
12. The Defendants have continued to provide this information during the global COVID-19 pandemic. As a result, their condominiums continue to be used illegally as STRs. Therefore, the Defendants are clearly liable to the members of the class in negligence.

VI. Damages

13. As a result of the Defendants' negligence, the members of the class claim general damages in the amount of \$2,000,000.00.
14. As a result of the conduct of the Defendants in willfully ignoring the in-force laws of the City of Toronto and the risks of exposure to COVID-19 caused by the Defendants' negligence, the members of the class claim aggravated damages in the amount of \$500,000.00.
15. As a result of the conduct of the Defendants in willfully ignoring the in-force laws of the City of Toronto and the risks of exposure to COVID-19 caused by the Defendants' negligence in a highhanded, callous and vexatious manner, the members of the class claim punitive and exemplary damages in the amount of \$500,000.00.

March 24, 2020

ERIC K. GILLESPIE
PROFESSIONAL CORPORATION
Barristers and Solicitors
10 King Street East, Suite 600
Toronto, Ontario M5C 1C3

Eric K. Gillespie, LSUC No. 37815P
Tel: (416) 703-6362
Fax: (416) 703-9111

Lawyers for the Plaintiff

FAIRBNB CANADA
Plaintiff

v. **TSCC 2510 et al.**

Defendants
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

ERIC K. GILLESPIE
PROFESSIONAL CORPORATION

Barristers and Solicitors
10 King Street East, Suite 600
Toronto, Ontario M5C 1C3

Eric K. Gillespie, LSUC No. 37815P
Tel.: (416) 703-6362; Fax: (416) 907-9147
egillespie@gillespielaw.ca

Lawyers for the Plaintiff