

Airbnb? Leaseholders beware!

Whilst all leases contain different variations of restrictions on the properties use, if you have been considering letting your property in this way it would be wise to first seek legal advice to check the exact wording of your lease before doing so; if you do not you could be exposing yourself to a number of risks.

You will commonly find that most residential leases prohibit Airbnb and other short term and holiday lettings and contain a number of covenants (a promise between the leaseholder and landlord) that could prevent a leaseholder from letting the property on a short term let.

These covenants could include:

- Not to use the property for carrying out trade or business
- Not to use the property for any other purpose than a private dwelling or private residence
- Not to sublet the whole or part (i.e. individual rooms) of the property absolutely or without the landlord's consent
- Not to cause nuisance to other leaseholders/occupiers

If you are considering leasing your property on a short term let via Airbnb the consequences of breaching any of these covenants can be quite serious and could ultimately lead to your landlord seeking legal remedies against you. This could include damages for any financial loss they have suffered due to the letting of the property e.g. damage to the property or building, an injunction against the leaseholder to prevent them from letting the property in this way. Or, at worst - forfeiture, if proven, this allows a landlord to bring the lease to an end due to a default under the obligations of the lease; this could ultimately lead to a leaseholder losing their property.



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The Casework...

Both the County Court and Upper Tribunal have considered whether the use of a flat for Airbnb guests will amount to a breach of covenant against using the property other than for residential purposes and came to the conclusion in both the cases of *Bermondsey Exchange Freeholders v Conway* [2018] in the County Court and *Nemcova v Fairfield Rents Ltd* [2016] in the Upper Tribunal that this did in fact amount to a breach.

It was decided that where a person occupies the property for days and then leaves, that it is unlikely that the occupier would consider the property their private residence. As a result, in both matters an injunction was granted against the leaseholders.

These types of cases are a stark reminder of the importance for leaseholders to always seek legal advice before offering their property on a short term let as the consequences of a breach could be very serious.

More cases like these will certainly continue to be brought before the County Court and Upper Tribunal in light of the demand for short term lets and the financial benefits that they attract; together with the want of landlords and even neighbouring leaseholders to prevent leaseholders from offering their property for let in this manner.

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