

Leases and Short Lets With Airbnb



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In the UK, the short-term letting business really came to the fore with the London Olympics in 2012. Many property owners took advantage of Airbnb, the easy-to-use property "dating" agency. So successful has the model been, there are an increasing number of competitors coming to that market.

While the sites are easy to use, the legal issues are not so straightforward.

Airbnb recently announced that it will be launching a feature which bans landlords from renting out homes for more than a three-month a year period, given widespread concerns that the site is fuelling London's housing crisis. Planning rules allow homes to be used for short term lets (anything up to 90 days) for a total of 90 days in any calendar year without obtaining any new 90 day month limit to be exceeded. People renting out their homes for short term lets for more than 90 days per year are therefore carrying out an unlawful use which Councils can take enforcement action against. If an enforcement notice is served and not complied with, a criminal offence is committed and prosecution can ensue with the ability for the Council to utilise Proceeds of Crime Act legislation to recover the income obtained from the unlawful use. Given enforcement notices must be served by a Council on the landlord as well as all tenants, it is not uncommon for landlords to start applying pressure to their tenants when such an enforcement notice is threatened.

It is not surprising that Airbnb felt compelled to do something; not only is Airbnb at the forefront of criticism of worsening London's housing crisis, but there are also regular complaints by owner/occupiers that short-letters have mis-used the property, have caused far too much noise, or have compromised the

security of the building by leaving communal doors unlocked.

Many of the properties available on the short-letting accommodation sites are flats. Most flats are owned under a lease which sets out the rules by which the relationship of landlord and tenant is defined. Often leases prohibit sub-letting a flat without prior consent. Some prevent taking a lodger. Frequently leases contain provisions about how owners and occupiers are to use the flat or the building, to control

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disturbance and damage. Sometimes the words used in a lease can restrict short-letting activity even though that might not be immediately obvious to the casual reader. That issue was highlighted in the case of *Nemcova v Fairfield Rents Limited* (2016). In that case, the lease said that the owner of the flat was "Not to use the premises ... for any purpose whatsoever other than as a private residence". On the face of it, one might think that using a property site like Airbnb would not contravene that clause. The tribunal decided otherwise. It took the view the phrase required a degree of permanence of residential occupation.

Flat owners regularly overlook the terms of their leases. More and more, landlords are taking enforcement action. In such cases, the flat owners are regularly threatened with repossession of their valuable flat.

Sites like Airbnb make it clear in their terms and conditions that owners should

make sure they only offer their property if they comply with the local city and landlord and tenant laws and the regulations that apply to their buildings. It seems the provisions are frequently ignored. In truth, by the time a landlord or managing agent comes to take enforcement action, the letting has come to an end. But some owners are habitually using the sites to rent their property. In those cases, enforcement is more likely. Indeed, habitual lettings may amount to a change of planning use, which could lead to a different type of enforcement by local Councils.

London is a busy, successful and multi-cultural city. It needs to be able to provide accommodation of all types to its visitors. That is why some short-lets planning restrictions were eased. Notwithstanding the headaches they can cause or perhaps the loss of business to letting agents or hotels, it seemed unlikely short-lets would be prohibited as a matter of policy. However the Mayor of London, Sadiq Khan, has recently entered the fray. He has written to MPs raising concerns that short-term lets like Airbnb could be reducing the availability of long-term rentals in London and that legislation might be required. The Mayor's spokesman recently said "Sadiq welcomes dialogue between London Boroughs and Airbnb about how existing legislation could better be enforced in the capital, and whether the legislation needs to be revisited." It is too early to say when and how that dialogue might come about and what, if anything, might flow from it.

With increased concern about them, one might anticipate more frequent lease and planning law enforcement, and perhaps new leases will contain more explicit controls. Indeed, some developers are doing just that.

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