

# Letting without hindrance

25 April 2017

## James Gordon warns property owners to take legal advice before letting out their homes

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[Airbnb](#) operates a hugely successful business model that helps many property owners maximise value from their investment ? but what other effects can it have on that value?

Whereas most online accommodation sites enable hotels and private holiday rental businesses to sell their accommodation, Airbnb quickly became the go-to site for those looking to rent out their spare room or their entire property to paying guests. It should be noted that Airbnb is just 1 of the online platforms providing this service, though, so it is important not to single it out ? this article applies equally to other such services.

### What is on offer?

For a host looking to supplement their income or simply enjoy the company of new people in their own homes, the Airbnb-style offering can be particularly attractive. It can be equally appealing to visitors who would prefer to stay in a home from home rather than a soulless and impersonal hotel room.

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A recent search on Airbnb for weekend accommodation for 2 people in London returned in excess of 300 available properties. These ranged from a room in a flat for ?13 per night ? with reviewers commenting that the general cleanliness was appalling, the accommodation was damp and it was not fit for people to stay in ? to a ?2,000-per-night house in Knightsbridge sleeping up to 8 people. The profile of the latter specified that the hosts only rented to responsible guests, and stated that they lived across the street and would call the police immediately if the guests tried to hold a party. They also required details of the guests? ages, professions and backgrounds. However, most hosts may not be quite so discerning.

### Unanswered questions

Many have queried the legality and the neighbourliness of people renting their properties through Airbnb. Questions as to the former are more than likely a result of allegations made about the rented premises by those in the neighbourhood and other tenants in the same building.

There have been several articles in the press concerning complaints from people living in close proximity to an Airbnb property. The recurring themes are:

- parties;
- drugs;
- thefts;
- violence;
- property damage; and
- general antisocial behaviour.

Many complainants have said that they have felt unsafe and deprived of any quiet enjoyment in their own homes. In early 2016, riot police were called to Brixton in south London after more than 150 partygoers descended on a flat that had been rented out through Airbnb. It was not the first time that local residents had complained to the police as similar parties had occurred on previous occasions (see [Brixton residents take Airbnb host to court](#) ).

In response to the Brixton incident, Airbnb launched an online tool enabling neighbours to lodge a nuisance complaint through the site; this can be passed to the host and if problems persist, Airbnb can suspend or remove that host from its site. It is not known whether anyone has yet been banned, or whether suspended hosts can simply re-register under a different identity.

So what effect does this have on the value of properties? The answer is that we just do not know yet. What is clear, however, is that leasehold properties are at greater risk.

## **Effect on property sales**

Most readers will be familiar with the property sales process, and the fact that anyone selling their property must disclose any disputes with neighbours. Any such disputes arising out of short-term Airbnb lets would have to be disclosed, and this could easily affect the saleability and value of a property.

In the same way that many residential property lawyers enquire as to whether any flats in a block are rented out on assured shorthold tenancies rather than owner-occupied, I can see many residential property practitioners adding the question 'Is the seller aware of any properties in the building being let via Airbnb or similar platforms?' to their list of standard enquiries. It is difficult to see a positive response having a good effect on value; even if the answer is 'no', there is no guarantee that a flat in the building will not be listed on Airbnb at some point in the future.

### Case study: letting legalities

The Upper Tribunal (Lands Chamber) case of [Nemcova v Fairfield Rents Ltd \[2016\] UKUT 303 \(LC\)](#) highlights the legal pitfalls of renting your property via Airbnb (see [To be or not to Airbnb](#)). This is particularly relevant in the context of leasehold flats where the lessee is bound by various restrictive covenants and may be breaching those by entering into short-term sublets or using the flat other than as a private residence.

In this particular case, the lease rather unusually contained no material restriction on subletting, but like many residential leases included a restrictive covenant that the flat was only to be used as a private residence. Fairfield sought to challenge the short-term lettings by Ms Nemcova on the basis that they breached this restrictive covenant in her long lease; she advertised her flat on the internet and rented it out on a series of short-term lets, and her neighbours complained to the freeholder.

The Upper Tribunal concluded that neither Nemcova's occasional occupation of the property nor the short-term occupation by each of the subtenants had sufficient permanency for it to amount to use as a private residence. In particular, each of the occupiers would have had their own private residence that, presumably, they left temporarily to occupy Nemcova's property.

Although the Upper Tribunal found in Fairfield's favour, it was clear that its ruling was confined to the particular facts of the case. Given the proclivity of similar restrictions on users and subletting, it is highly likely that other leasehold property owners will be in breach of their lease by subletting their properties in this way; they could face legal action and substantial costs, and ultimately may forfeit their lease.

As well as the possibility that such short-term lettings may be unlawful, there are other questions to ask.

- How can this type of arrangement comply with the terms of either an owner-occupier or buy-to-let mortgage?
- Are lets open to income tax abuse?
- Do the lettings invalidate buildings and contents insurance? This is of particular concern where the insurance covers a whole block of flats.
- Is it morally right for fellow leaseholders to endure the loss of quiet enjoyment, the stress, the uncertainty and the potential financial losses that may arise from the trend for such lettings?

While guests continue to rent and hosts choose to ignore the rules, it is difficult to foresee any material impact on Airbnb's business model. Once legal action is taken against more leaseholders by the freeholder, or against borrowers by lenders, then we may see a significant shift in how these platforms operate.

For now, other than adverse publicity, there is little or no comeback on Airbnb as the host accepts all responsibility under the terms and conditions of the site; Airbnb simply acts as a facilitator.

Some countries and cities are introducing laws prohibiting short-term lets such as these; they are also imposing substantial fines due to the cost and effects they have on their infrastructure and resources, as well as the pressure being put on them by hotel and guesthouse owners.

It is advisable for anyone using their property in this way or considering doing so to seek advice as to whether they are, or could be, breaching the terms of their lease or mortgage. They should also give serious consideration to the impact that any legal action or disputes could have on the capital value or the marketability of their property.

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### Further information

- Related competencies include [Housing aid or advice](#) , [Housing management and policy](#) and [Valuation](#)
- This feature is taken from the RICS *Property journal* (March/April 2017)