

Letting your flat might not be as easy as you think!

Property

You've chosen to work abroad for the next couple of years. You've decided to rent your flat out whilst you're away. Friends in the same position have done this - apparently it's easy! However, a recent case might make this more of a problem than you expected.

In *Roundlistic Ltd v Jones*, the Upper Tribunal (Land Chamber) considered whether a covenant in a lease prevented a tenant from granting an underlease.

The covenant in question said that the tenants could not *"...use the premises hereby demised or permit the same to be used for any purpose whatsoever other than as a single private dwelling house in the occupation of the Lessee and his family."*

As above, after having decided to work abroad, the tenants sublet the property for twelve months. The landlord declared that the tenants were in breach and issued proceedings in the First-tier Tribunal (Property Chamber). However, the FTT held that the landlord was not entitled to enforce the covenant because:

- the landlord was prevented from doing so by an estoppel by convention and that the covenant would not be enforced;
- that the landlord had waived its right to enforce the covenant; and
- that the covenant amounted to an unfair contract term.

However, the landlord successfully appealed the FTT's decision in the Upper Tribunal and won the case.

IN SHORT

Leases tend to be full of **dos** and **don'ts**, and there is always a provision relating to permitted use.

Your lease may contain a similar restrictive covenant to that outlined in *Roundlistic Ltd v Jones*, and if your freeholder (landlord) sees that your flat is occupied by persons other than yourself or your family, he is likely to tell you that you are in breach of your lease.

RESOLUTION?

This issue could be resolved by varying the terms of your lease and removing/changing those 'awkward' clause(s) preventing you from sub-letting. However, there is usually a price to a pay, as deeds of variation rarely come free of charge, unless you're incredibly lucky!

THE TRICK

Think ahead and save costs. Even if you're not considering renting out your flat, but simply wish to extend the term of your lease, check that you are not restricted from sub-letting and negotiate any 'old fashioned' restrictions from your lease at the same time as your lease is extended.

Key Contact



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