

Airbnb + Extra space = additional income. Simple. Or is it?

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Are you a tenant?

If you're a tenant under a lease, then you need to consider the following.

Your lease will more than likely have tenant covenants restricting sub-letting and requiring you to use the property as a dwelling house only (i.e. not for trade or business). Letting space out through Airbnb is likely to put you in breach of these covenants.

In the 2016 case of [Nemcova v Fairfield Rents Ltd](#), the lease contained a tenant covenant not to use the flat other than as "a private residence".

The tenant granted a series of short-term lettings of days and weeks and the Upper Tribunal held that the user covenant had been breached.

There needed to be a degree of permanence for the use to be considered as an occupier's private residence, and that could not be demonstrated by an occupier residing for just a weekend or a few nights during the week.

The Upper Tribunal made it clear that the interpretation of each case will depend on the individual facts and covenants.

There is likely to be a tenant covenant not to cause any nuisance. Frequent different occupiers coming in late at night, making noise and in the case of secured blocks, having access to common areas and creating security concerns, could well put you in breach.

Breach of these covenants could result in your landlord seeking forfeiture of your lease. However, it would seem unlikely that a Court would not grant relief from forfeiture if you ended the Airbnb rentals, although you may end up with a large legal bill as a result.

Are you mortgaged?

If your property is mortgaged, the likelihood is your mortgage will have a condition requiring lender's consent if you want to let out part or whole. There may also be a condition requiring you to occupy the property as your only principal home to qualify for the interest rate you are paying (failing which you should be paying a higher rate).

Be aware that breach of the mortgage conditions could result in your lender seeking repayment of the loan and possession of your home.

Do you have adequate buildings and contents insurance?

If damage occurs when the property is let out through Airbnb and you haven't disclosed what you're doing, or obtained insurer's consent, the likelihood is your insurer will resist paying out.

Have you considered Planning?

Restrictions have been relaxed for properties in London. Letting out space through Airbnb could be considered a material change of use, however the [Deregulation Act 2015](#) contains provision allowing a property to be let as temporary sleeping accommodation for up to 90 days each year (although you should check that your London Borough has not dis-applied this provision).

Airbnb, in fact, now won't allow you to let out for more than 90 days a year unless you confirm you have obtained consent from your London Borough.

Do you need to inform the Tax Man?

You should check with [HMRC](#) the relevant thresholds that apply to you. You may not be required to declare or pay

tax in respect of a certain amount of property-related income and beyond that, may be entitled to a certain amount of income tax relief.

Gas safety certificate?

You must obtain one annually.

For further advice please contact [Michael Goodman](#).

Michael Goodman
020 7299 6923
michael.goodman@riaabg.com
www.riabarkergillette.com



Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

