

Clearing the Air(bnb) - More Guidance on Airbnb Lettings

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The question of whether a leaseholder can rent their property on Airbnb or similar platforms has been considered again, this time by the Upper Tribunal. The lease contained a covenant:

"Not at any time to carry on or permit to be carried on upon the Property any trade or business whatsoever nor to use or permit the same to be used for any purpose other than as a private dwelling house for occupation by one family at a time"

In *Triplerose Limited v Richard Beattie* and another, the lessees let their flat on short lets, whilst still using it for themselves twice a week. Despite a long line of authorities considering the meaning of user or occupation as a 'private dwelling house' or as a 'private residence', the lessee had been successful in the First Tier Tribunal in arguing that their use of the flat in this way was not a breach of the relevant covenant. The landlord appealed and the Upper Tribunal has held, at least in relation to this issue, in favour of the landlord.

The Tribunal noted that the word "dwelling house" connotes "settled occupation" and "habitual residence". The relevant clause has to be read as containing two prohibitions on the use of the flat (that is, not to carry out a business on the Property or to use it other than a private dwelling house). It was wrong to read the second prohibition as permitting uses that would not usually be described as use as a private dwelling house provided that they did not involve conducting a business from the premises. In reaching its decision, the Tribunal also analysed the interplay of other clauses in the lease (specifically the alienation covenants) that the FTT had relied upon in reaching its findings.

Interestingly, however, the Tribunal agreed with the FTT that no business was being carried out 'on' or 'upon' the premises. The lessees had used an agent to conduct the lettings and services such as provision of laundry services, leaving out breakfast and handling check-in and check-out (which did not take place at the flat) did not change the position. If landlords wish to ensure such activities are caught by a restriction not to trade from the premises, careful consideration needs to be given to drafting.

However tempting it may be to make some easy money, lessees remain at risk of legal action if they use Airbnb and suchlike companies in breach of similar worded covenants.