



AirBnB leaves a tenant AirBnBust

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Landlords who do not want their residential properties used for short-term stays have recently been given the upper hand when the AirBnB ambitions of a couple of unlucky punters were swiftly put on ice in the recent decision of *Swan v Ueker* [2016] VSC 313 from the Supreme Court of Victoria.

The what

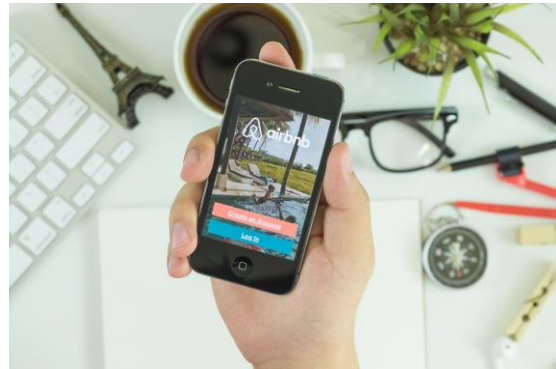
The respondents were the tenants of an apartment in St Kilda in Victoria who, with dreams of eager travellers with fists full of cash, listed the apartment on AirBnB for short-term stays of between three and five nights.

The landlord, clearly unhappy at the sheer ingenuity of her tenants (or perhaps just a Collingwood supporter), promptly sought an order for possession in the Victorian Civil and Administrative Tribunal, arguing a breach of a provision of the lease prohibiting the apartment being sub-let without first obtaining the written consent of the landlord. The tenants, not content to duck for cover, countered with the argument that they were not sub-letting, but merely licensing the leased premises.

The why

In considering the lease -v- licence debate, the Tribunal dismissed the landlord's application, finding that the tenants had only granted the AirBnB guests licences to occupy and not a lease because the guests did not have exclusive possession and therefore had not breached the lease agreement.

Happy days, the footy season is hotting up and the tenants have some urgent AirBnB business to attend to. Well, not so fast sunshine. The landlord took the matter on appeal and won! The Supreme Court of Victoria, in finding for the landlord, granted her order for possession and the tenants were given their marching orders.



Croft J, in delivering judgement, expressly states that “this is not a case on the merits of AirBnB arrangements. Neither is it a case on whether or not AirBnB arrangements might be said to be illegal”.

Whether or not a short-stay arrangement can be said to be a breach of a lease agreement must be decided on the facts relevant to each matter and notably, the decision only relates to short-stay arrangements for the whole of the premises and not only a room.

The what now

The fallout for tenants from this case is that potential short-term stay arrangements like an AirBnB weekend stay are likely to be considered a lease and not a licence to occupy when the whole of the property is occupied. This may result in a breach of the tenant’s lease agreement and may also be contrary to the provisions of the relevant state residential tenancy legislation such as section 238(2)(a) of the *Residential Tenancies and Rooming Accommodation Act 2008* (QLD) which states that a tenant can sublet the premises only if the lessor agrees in writing.

JHK Legal has extensive experience dealing with leasing issues and one of our lawyers would be happy to review your lease and provide you with appropriate advice on your situation.