



Airbnb ... Your Tenant is Now the Landlord!

by Zachary Lawrence JD

Most residential lease agreements contain a "no sublet" clause. The terms of the lease prohibit tenants from subletting or renting their units without the landlord's express and written consent.

This clause is now the subject of litigation with landlords, tenants, and a company called Airbnb.

Airbnb is a marketplace for property owners and tenants to earn some cash for short or long term leasing of the premises. A property owner has the right to lease his premises to anyone or any entity which complies with housing codes and the terms of the lease.

The problem comes up when a tenant, under contract

A tenant in a rent controlled unit in Los Angeles, paying \$900.00 month rent, agrees to sublet his unit, or even a room inside his unit, for \$1,500.00 month. The tenant is now a "landlord" and is pocketing an extra \$600.00 month. So how does a landlord protect himself from allowing Airbnb tenants on his property?

with his landlord, enters into an agreement with a third par-

ty, such as Airbnb, to sublet the unit. Assuming that the tenant's lease contains the boilerplate "no sublet" clause, the tenant's agreement with any third party, Airbnb or anyone else, is a material breach of the rental agreement.

Think about it. A tenant in a rent controlled unit in Los Angeles, paying \$900.00 month rent, agrees to sublet his unit, or even a room inside his unit, for \$1,500.00 month. The tenant is now a "landlord" and is pocketing an extra \$600.00 month.

But anger has no fury like a landlord scorned. A Denver-based management firm called

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AIMCO, has sued Airbnb in California, alleging Airbnb assists tenants in breaching their lease by subletting their apartments. According to AIMCO, these short term tenants have posed safety and quality of life issues for AIMCO'S full time residents. Complaints about some Airbnb tenants by AIMCO include public Intoxication and nuisance, requiring police intervention.

So how does a landlord protect himself from allowing Airbnb tenants on his property? I discussed this matter with my friend, mentor and eviction expert, Dennis P. Block, on our "Landlord Tenant Radio" podcast of June 8, 2017.

Block: It's not only the tenant on the landlord's lease that's profiting from the Airbnb contract, but Airbnb is also making a profit. Every rental agreement I know of has a "no sublet" clause. Therefore, every tenant who engages Airbnb, without the landlord's express consent, is in material breach of their lease.

It's my understanding that Airbnb requires their clients verify that they are either the owners of the property or that they are permitted to sublease the premises. Apparently, this "requirement" is not being properly enforced.

I can't tell you how this lawsuit will turn out. But I


do believe that Airbnb should shoulder some responsibility for soliciting and encouraging tenants on an existing lease to breach the "no sublet" clause on their rental agreement, and as a result, allowing the tenant and Airbnb to be unjustly enriched."

Airbnb's argument will likely be that they (Airbnb) are not in a contractual relationship with the landlord, thus shielding them from liability. However, when Airbnb contracts with a tenant, (who is now the lessor), an agency has been created, which may or may not expose Airbnb to liability.

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with calls with reports of tenants illegally subletting their unit's to Airbnb tenants. As a result, we have been filing multiple evictions on this issue.

Zac: Are you also pursuing either Airbnb or the tenant to reimburse the landlord for the unjust enrichment?

Block: No. An eviction, or unlawful detainer, is a lawsuit whose focus is on retrieving possession of the premises. Could there be another lawsuit brought to reimburse the owner for this unjust enrichment? Yes, but from a practical standpoint, it may not be cost effective. Possession of the premises is the focal point of this controversy.

Zac: Would you recommend that landlord's fine tune their lease language and specifically mention that the tenant may not engage Airbnb without the express written consent of the landlord?

Block: I think it's a great idea. Leases should mention that any advertising on Airbnb, or similar companies, shall constitute a material breach of the rental agreement and a non-curable breach. This means that if the tenant does engage Airbnb, then his lease is terminated and the landlord may evict.

Closing Comments

If you suspect that your

tenants have subleased their unit to Airbnb, or another firm, and you can prove it, then you may serve the tenant a Three Day Notice to Perform Covenant or Quit. If the Airbnb tenant remains on the premises after the three day period, the landlord may commence an eviction for possession of the premises.

ADA

Zachary Lawrence JD is the owner of Parkside Property Management and Affordable Landlord Consulting. For management or consultation services, Zachary Lawrence can be reached at (310) 636-1200 or park806@aol.com.

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