



Check Your Zoning

Landlords: Zoning Law Contravention Could Invalidate Your Lease

"...it is a general rule that a contract impliedly prohibited by statute is void and unenforceable..."
(extract from judgment below)

Here's yet another warning from our courts of the importance of complying with your local municipal zoning laws, whether you buy property to live in, as a capital investment, or to let out.

One risk for a landlord is finding yourself with an invalid lease and no claim against your tenant. A recent High Court decision illustrates -

The unlawful coffee shop and the invalid lease

- A landlord rented premises to a tenant for use as a coffee shop, home industry and restaurant. The tenant also resided on the premises, but no rental for the residential component was specified in the lease.
- The business use was contrary to zoning provisions indicating that the property could only be used for dwelling purposes as it was zoned "Single Residential 2".
- The landlord, although aware of the zoning restrictions, told the tenant that she could operate her business.
- When the landlord sued for arrear rental and payment of municipal charges the tenant's defence was that the lease was invalid and unenforceable.
- The High Court (hearing an appeal from the Magistrate's Court) held the lease agreement to be illegal, void and unenforceable. The tenant, it said, could not be expected to establish from the municipality, before entering into the lease agreement, whether the premises could be used for her business. She had seen other restaurants in the same street and had no reason to question the landlord's right to allow her to trade as she did.
- As to the applicable law, the Court found that "although it is a general rule that a contract impliedly prohibited by statute is void and unenforceable, this rule is not inflexible or inexorable [inevitable]." The Court's analysis of when this will apply (and when it won't) will be of great interest to property professionals, but for most landlords the important thing is the fact that your lease will normally be invalid when it contravenes local legislation.
- In that event, you will have no claim against your tenant because, as the Court here put it "this court shall not countenance unlawful conduct by allowing the [landlord] from benefiting from an illegal contract."
- Bottom line - **the coffee shop tenant is not liable for rental, nor even for municipal charges relating to her occupation and use of the premises.**

Zoning - what to do when buying or letting out property

The bottom line is that you need to understand all local zoning restrictions **before** buying property or letting it out to a tenant. If as a landlord you are aware of a possible issue in this regard, take professional advice on whether you may be able to word the lease in such a way as to protect you from losing all your claims against the tenant should worst come to worst.

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