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## AIRBNB – LEASE OR LICENCE?

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### ***Does an AirBnb arrangement create a lease or licence?***

Due to the advent of online letting platforms such as AirBnb, short-term rentals have become increasingly popular. However, these kinds of arrangements present many legal ramifications. The case of *Swan v Uecker* [2016] VSC 313 is a recent example of how AirBnb can create confusion about whether such arrangements can be classified as a lease or licence.

### **The Facts:**

A landlord leased a two bedroom apartment to a tenant under a lease. The terms of the Lease permitted subleasing but required the consent of the landlord. . However, without consultation with the landlord, the tenant entered into what they classified as “licences” with Airbnb guests. These “licences” allowed AirBnb guests to stay in the apartment for between three and five days and occupy the entire apartment without the tenant being present. As part of the arrangement, all of the bookings were made online, the guests agreed to leave at the end of their stay and the premises were said to be the tenant’s principal place of residence.

### **The Finding:**

Croft J of the Victorian Supreme Court found that the arrangement amounted to a “lease” to the AirBnb guests, rather than a “licence”. Consequently, the tenant had subleased without the landlord’s consent and had thus breached the lease.

The following facts were considered not determinative in deciding whether it was a lease:

- the self-classification of the arrangement as a ‘licence’ by the tenant;
- the fact that the property was the tenant’s principal place of residence;
- that the agreements were for a few days only; and
- the fact that they specified that the occupants were to vacate at checkout time of the last day of their stay.

However, the Supreme Court confined the application of this decision to the facts of the particular case. This case involved a whole-of-premises arrangement; different principles could apply to an arrangement where AirBnb guests merely occupied a bedroom and shared a bathroom with the licensor. In that circumstance, it was noted that the crucial component of ‘exclusive possession’ could be missing, therefore allowing that arrangement to be classified as a license, not a lease.

### **Implications?**

Landlords should take into consideration this case and any legislative requirements when



preparing a lease in order to protect themselves in the circumstance their tenant decides to sub-let the property through an online, short-term rental service.

If you are uncertain about how AirBnb could affect your property, please do not hesitate our **Property Law team at Matthews Folbigg** on **1800 300 308** or email [info@matthewsfolbigg.com.au](mailto:info@matthewsfolbigg.com.au) for more information.

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You can find the full decision [here](#).