

20. Illegal Contracts

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This guideline deals with situations where a landlord rents premises in a circumstance where the rental is not permitted under a statute. Most commonly this issue is raised where municipal zoning by-laws do not permit secondary suites and rental of the suite is a breach of the zoning by-law. However municipal by-laws are not statutes for the purposes of determining whether or not a contract is legal, therefore a rental in breach of a municipal by-law does not make the contract illegal.

Other situations may arise where rental of the premises would be in violation of a provincial or federal statute. Previously, a contract made in violation of a statute was void from the beginning, if the making of the contract is expressly or impliedly prohibited by the statute in question. The result was that the contract could not be enforced. This is referred to as statutory illegality.

Breach of a statute which is only incidental to the rental of premises, where the rental would otherwise be legal, does not make the contract illegal and thus void. For example, while failure to have a written tenancy agreement is a breach of the provisions of the Residential Tenancy Regulation and the Manufactured Home Park Tenancy Regulation, it does not make the tenancy agreement itself illegal and thus unenforceable. The landlord may be liable, on conviction, to pay a fine.

Recently the Courts have adopted a more flexible approach to the issue of statutory illegality and enforcement of contracts made in breach of a statute. Before finding a contract made in breach of a statute is void, the following factors will be examined:

- The serious consequences of invalidating the contract
- The social utility of those consequences
- The class of persons for whom the legislation was enacted to determine whether a refusal to enforce the contract would affect other than that group