



BRIEF ENCOUNTER

Do we own the rooms next to our flat?

Q I have a basement flat in a house that was bought in 1990. Next to the flat is an area that, until recently, we used as storage and that only had access from our flat. Four years ago we converted the area into bedrooms. However, it now seems that it is not part of our lease or part of the lease of any other flat in the building. Do we own it?

A There are two main ways in which you could have become the owner of the extra space. First, section 62(2) of the Law of Property Act 1925 deems a number of things to be included in a lease even if they are not specifically mentioned. The list includes “cellars areas courts and courtyards”, which were at the date of the lease “reputed to appertain” to the property. The extra area may, therefore, have been originally included in your lease in this way.

Second, even if you cannot show that the basement was included in your lease

at the outset, you can still have become the owner at a later stage by a legal presumption known as “encroachment”.

If a tenant occupies extra land during the currency of a tenancy or lease, the extra piece becomes added to the tenancy. The presumption applies whether or not the new land is immediately adjacent to the property originally let to him, and whether or not it belongs to the landlord or to someone else.

However, at the end of the tenancy the tenant must give the extra land up to the landlord together with the property that was originally let. This is essentially part of the rules of adverse possession (so-called “squatter” rights) except that, instead of becoming the freehold owner of the extra land, it just gets added to your lease.

In any event, it sounds very much as if the extra area with your bedrooms has become yours for the duration of your lease.

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