

Illegal Basement Apartments

By Brian Madigan



So, you would like to have someone help you with your mortgage payments? Who wouldn't! That seems reasonable. But, be aware of the risky proposition of renting out an illegal basement apartment.

There are literally thousands of houses available in the area right now with basement apartments, so finding one should not be that difficult. Right? No, absolutely wrong! In fact, most are illegal, so your chances of finding a legal unit is just like finding the proverbial needle in a haystack.

What difference does it make? If you rent an illegal apartment to a tenant and the municipality requires you to close it down, you will have some problems. You have to terminate the tenancy. This is your fault, and you will be liable for the Tenant's moving costs, out-of-pocket expenses and the difference between what they paid to rent your unit, and what it will cost them to rent another (this time, legal) apartment. You may be charged by the municipality under the by-law and be obligated to defend yourself in Court. You will be ordered by the Court to complete the necessary repairs in order to convert the property back to a single-family dwelling.

Why does the municipality care? In an area where the municipality has expected 5,000 residents to live, there will be an infrastructure to accommodate 5,000 residents of various ages, including roads, schools, parks, and parking spaces on the street. If suddenly, that neighbourhood grows in size to 9,000 residents through a proliferation of basement apartments there will be a serious impact upon the community.

Just what is a basement apartment? The necessary features include 1) a distinct and separate, self-contained living unit, 2) a kitchen, or a place to prepare meals, 3) a bedroom or sleeping accommodation, and 4) a bathroom. Certainly, if it has all four features, then it is an accessory apartment. However, in many circumstances these features may be combined, and it will still be caught by the accessory apartment rules.

Why all the confusion with basement apartments and what makes them legal? In 1994, the NDP Government, then in power, passed legislation to

provide that additional units (called accessory apartments) in houses were permitted as a matter of right. As a result, anyone anywhere in Ontario could create a second unit in their house. It didn't matter what the local by-laws said; this legislation prevailed. About two years later, this Act was repealed by the Conservative government. Municipalities were again given the right to decide where these accessory apartments could be located. However, one of the most important provisions stated that all apartments that were created under the old legislation were still legal as long as they met the requirements of the Fire Code. And later, there was another change in the law to the effect that the second unit was legal only if it complied with the appropriate zoning by-law. So, the laws concerning this matter are quite complex. The application to particular circumstances is difficult, and it is almost next to impossible to determine the legal status of a second unit at the appropriate times.

Certain municipalities have introduced or plan to introduce a registration system which will record the legal status of all accessory apartments. Obviously, you should check the status if a registration system exists.

Nevertheless, you should beware of purchasing a house with an accessory apartment. Be particularly cautious when you see the words "owner does not warrant retrofit status". This probably means that it is simply illegal. If it were legal, they would say so!

*Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty Inc. 905-796-8888
BRMadigan@Rogers.com or visit www.OntarioRealEstateSource.com.*