

Sub-letting

It is unlawful for a tenant to sub-let or assign the premises without the written consent of the lessor. However, the lessor should not unreasonably withhold consent.

What is sub-letting

Sub-letting is when a tenant rents out all or part of the premises to a third party. This includes both long-term arrangements such as agreements to take over from a departed tenant, and also short terms arrangements such as Air B-n-B.

It is important to understand that if a tenant sub-lets to a sub-tenant, this creates a second tenancy agreement and the tenant now functions as a lessor to the sub-tenant. As a lessor, the head-tenant assumes all legal rights and responsibilities of a lessor in relation to the sub-tenant.

It is important that head tenants and subtenants understand the nature of their relationship. The head tenant has the same legal obligations as a landlord, with responsibility for collecting rent, issuing rent receipts, and depositing bonds. They must also follow the rules about eviction. Subtenants should be aware that the head tenant has rights of legal redress against them. This means that if a subtenant breaches their obligations under the tenancy agreement, the head tenant can take legal action against them.

If the head-tenancy ends, the sub-tenancy also ends, as the head-tenant no longer has any interest in the property. If the sub-tenant wants to stay on the property, they would have to enter into a new agreement with the lessor.

What is not subletting

Having a guest or visitor stay over at the premises is not sub-letting, provided the arrangement is not commercial in nature.

What should I do if I want to sublet?

Sub-letting is lawful where the tenant acquires the consent of the lessor. It is very important that the tenant and prospective sub-tenant get the written consent of the lessor. Otherwise, the sub-tenant has no rights to the property and can be required to vacate immediately.

A lessor cannot withhold consent unreasonably. Justifications for withholding consent include:

- Where a lessor is not satisfied of the character of the proposed sub-tenant, including when references provided by the assignee were inadequate.
- Where a lessor reasonably apprehends that the prospective sub-tenant may not have financial capacity to meet their obligations under a tenancy agreement.
- Where a prospective sub-tenant does not provide a completed and comprehensive application for assignment.
- Where the sub-tenant intends to use the premises for a purpose that is not permitted or is illegal.

A determination of the reasonableness of a decision to withhold consent would be made by ACAT.

What are the consequences of sub-letting without consent

If the tenant sublets or assigns the premises without the consent of the lessor, there are two possible consequences. The subtenant may be removed by police as a trespasser with no legal rights. The lessor may also seek to evict the tenant on the grounds of breaching the tenancy agreement.