

Subletting

In the ACT, the rules on subletting are covered by the Residential Tenancies Act and within the ACT Standard Tenancy Agreement.

The Standard Tenancy Agreement provides that a tenant must not assign or sublet the premises without the written consent of the lessor. The lessor's consent may be given, or withheld, at any time.

What is 'subletting'?

'Subletting' occurs when a tenant in a residential tenancy agreement leases the whole or part of the premises to another person with the written consent of the landlord.

'Head-tenants' and 'Sub-tenants'

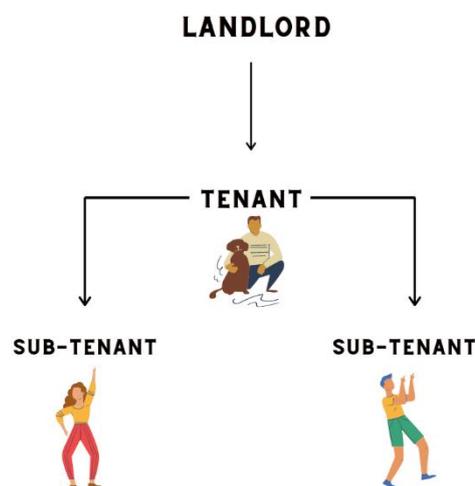
It is important that head-tenants and sub-tenants understand the nature of their relationship.

A 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.

A sub-tenant is a person who has signed a residential tenancy agreement with a head-tenant. The residential tenancy agreement signed by the sub-tenant is only enforceable if the head-tenant has obtained the express written consent of the landlord.

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 landlord to the sub-tenant.

Sub-tenants should be aware that the head-tenant has rights of legal redress against them. This means that if a sub-tenant breaches their obligations under the tenancy agreement, the head tenant can take legal action against them.



Are my flatmates sub-tenants?

If your flatmates are listed as the tenants in the residential tenancy agreement with your landlord, then they are tenants.

If they do not appear in that agreement with your landlord, then they *may* be sub-tenants.

End of tenancy

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 need to enter into a new agreement with the landlord of the property.

What is not subletting

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

Subletting includes both long-term arrangements such as agreements to take over from a departed

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tenant, and also short term arrangements such as Air B-n-B.

What should I do if I want to sublet?

Subletting is lawful where the tenant acquires the express written consent of the landlord. When attempting to sublet, it is very important that the tenant and prospective sub-tenant get the written consent of the landlord. Otherwise, the sub-tenant has no rights to the property and can be required to vacate immediately.

Can the landlord refuse to consent?

A landlord can refuse to consent to the subletting of a residential premises. A landlord is under no obligation to justify their decision to refuse consent.

What are the consequences of subletting without consent?

If the tenant sublets or assigns the premises without the consent of the landlord, they jeopardise the rights of both themselves and the sub-tenant.

A tenant who sublets the property without the landlord's written consent will be in breach of the Standard Residential Tenancy Terms and the *Residential Tenancies Act 1997* ('the Act').

A landlord can serve a termination notice on the basis of this breach. Furthermore, on application by the landlord, the ACT Civil and Administrative Tribunal ('ACAT') has the power to order a termination and possession order of a residential tenancy agreement if a tenant subleases the property without the landlord's written consent.

More information for consequences of breaching a tenancy agreement can be found in our **'Eviction'** Factsheet.

If a landlord is granted a termination and possession order by the ACAT, both the tenant and sub-tenants must vacate the property.

The rights of sub-tenants who stay on a property without a landlord's consent are very limited and sub-tenants in these situations are taken to reside on the property as 'bare licensees'. This means that the landlords can ask them to vacate immediately and the sub-tenants cannot rely on the protections offered under the Act.

How to best protect your legal rights before subletting

If you are going to be subletting a property, take the following steps to ensure that you are legally entitled to stay on the property:

1. Before signing in or moving into a property, confirm with the head-tenant that the landlord has consented to subletting the property.
2. Ask for a copy of the written confirmation from the landlord in relation to this.
3. Ensure you enter into a tenancy agreement with the head-tenant by signing a residential tenancy agreement.
4. Keep copies of the written consent and the signed tenancy agreement between yourself and the head-tenant.

For more information on starting a tenancy, see our **'Tenancy: Starting a Tenancy'** Factsheet.