

## Tenancy: 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 occurs where the tenant lets 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 short term 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.

Both head-tenants and sub-tenants should understand the nature of their relationship. The head-tenant assumes all legal obligations as a lessor in relation to the sub-tenant. They are responsible for collecting rent, issuing rent receipts, and depositing bonds. They must also follow rules related to eviction. Sub-tenants should be aware that their head-tenant has rights of legal redress against them. If a sub-tenant 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. This does not prevent the sub-tenant creating a new tenancy agreement with the lessor.

### What is not sub-letting?

Having a guest or visitor stay over at the premises is not sub-letting, provided there is no commercial element.

### What should I do if I want to sub-let?

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 asked to leave immediately.

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

- (a) if a lessor is not satisfied of the proposed sub-tenant's character, including if references provided by the assignee were inadequate;
- (b) if a lessor reasonably apprehends that the prospective sub-tenant may not have financial capacity to meet their obligations under a tenancy agreement;
- (c) if a prospective sub-tenant does not provide a completed and comprehensive application for assignment; or
- (d) if the sub-tenant intends to use the premises for illegal purposes.

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

### What are the consequences of sub-letting without the lessor's consent?

It is a breach of the tenancy for a tenant to sub-let with the lessor's consent, and the lessor may seek to evict the tenant. Furthermore, the sub-tenant has no legal rights to the premises and may be removed by police as a trespasser.