



Subletting and Assignment

Do you understand the difference between these two terms and know how they can impact on your rental agreement?

Monday, August 11@ 6 pm



Presented by Landlord's Self-Help Centre
www.landlordselfhelp.com



Landlord's Self-Help Centre

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- Incorporated as a non-profit in 1977
- Funded by Legal Aid Ontario as a Specialty Community Legal Clinic
- Assist 10,000 small-scale landlords annually
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Subletting and Assignment

At this Town Hall Meeting we will:

- Learn what subletting and assignment are and the differences between them;
- Discuss how the landlord is impacted in situations involving a sublet or assignment;
- Discuss the rules established under the Residential Tenancies Act:
 - To examine the specific rules for assignment; and
 - To examine the specific rules for subletting
- Discuss how the termination of a tenancy agreement may result from a sublet or assignment situation
- Discuss when an A2 application may be filed.

The Residential Tenancies Act

The Act establishes the rules and framework for managing situations involving sublet and assignment issues.



- Section 95 of the Act sets out the rules relating to the Assignment of a Rental Unit.
- Section 97 of the Act sets out the rules relating to Subletting a rental unit.

Subletting and Assignment

It is important for landlords to clearly understand the meaning of these terms and the rules established by the RTA.

Assignment and subletting situations are often a confusing issue for landlords and tenants:

- Assignment is when a tenant vacates the rental unit and with the consent of the landlord transfers the responsibility for that unit to a new person.
- Subletting is when a tenant allows another person to take over the use of their unit on a temporary basis with the consent of the landlord.

Can any tenant assign or sublet their rental unit?

The provisions for assignment and subletting apply to all tenancies, whether they are,

- periodic
- fixed
- contractual
- statutory



Unless it is a tenant of a superintendent's unit

Common Misconceptions

- When a tenant allows someone to move in with the tenant but continues residing in the unit, this is not considered a sublet or an assignment.
- When there are multiple tenants on a lease and one of the tenants vacates the unit, the outgoing tenant cannot partially assign or sublet his/her portion of the lease.
- The last month's rent (security deposit) should not be applied/used up in an assignment situation, the incoming tenant/assignee usually pays an amount equivalent to the last month's rent to the outgoing tenant.

Assignment



What is an Assignment?

When a tenant assigns a rental unit, he/she vacates the rental unit and transfers all his/her rights and responsibilities with the respect to the rental unit to a new tenant.

- Section 95 of the RTA contains the provisions relating to the assignment of a rental unit.

Example: Where a tenant purchases a property and wants to move out before the end of their rental agreement and requests consent to assign their rental unit.

What happens to the tenancy agreement?

- The tenancy agreement is transferred to the assignee (the new tenant).
- The terms and conditions of the tenancy agreement remain unchanged.
- A new tenancy agreement is not created.
- **The original tenant is no longer responsible for the rental unit.**
- The assignee assumes all the responsibilities of the tenancy agreement.
- The assignee is not liable to the landlord for any breaches of the RTA or of a tenancy agreement that occurred prior to the date of the assignment.

Assigning a Rental Unit

GENERAL CONSENT



Assignment - General Consent

A tenant must obtain the consent of the landlord before assigning a rental unit to another person.

If a tenant asks a landlord for his/her **general consent** to the assignment of a rental unit, the landlord has **7 days** to:

- consent to the assignment of the rental unit
- refuse consent



What happens if the landlord refuses consent to an assignment?

A tenant may end their tenancy by giving 30 days notice to terminate if:

- the landlord **refuses** consent to the assignment; or
- the landlord does not respond within **seven days** after the request to an assignment of the rental unit is made by the tenant.



The tenant must give the landlord this notice no later than 30 days after the request was made.

Assigning a Rental Unit

SPECIFIC CONSENT



Landlord Consents to an Assignment

If a landlord agrees to allow the tenant to assign the rental unit,

- the tenant must still obtain the landlord's further consent to an assignment to a **potential assignee** in order to determine if the potential assignee is an appropriate tenant.

For example, to enable the landlord to screen the potential assignee.



Refusing a Potential Assignee

A landlord who has given **general consent** to an assignment of the rental unit may **subsequently** refuse consent to an assignment of the rental unit to a **specific potential assignee** but shall not arbitrarily or unreasonably refuse consent to a potential assignee.



Request to Assign to a Potential Assignee

If the tenant asks a landlord to **consent** to the assignment of the rental unit to a **potential assignee**, the landlord may:

- consent to the assignment of the rental unit to the **potential assignee**;
- refuse consent to the assignment of the rental unit to the potential assignee; or
- refuse consent to the assignment of the rental unit.

The landlord must respond within seven days after the request for consent is made by the tenant.

Notice to Terminate the Tenancy

A tenant may end their tenancy by giving 30 days notice to terminate if:

- the landlord does not respond within **seven days** after the request to assign the rental unit to a **potential assignee** is made by the tenant.
- The tenant must give the landlord this notice no later than 30 days after the request was made.



Can I charge my tenant a fee for the assignment?

A tenant may only be charged the landlord's reasonable out of pocket expenses incurred in approving the assignment, such as the cost of doing a credit check on the person who may be renting the unit.

However, the landlord cannot charge the tenant more than the landlord's actual costs



Why is it important to understand the RTA rules?

You can see how a tenant can use the assignment provisions to their advantage to break a fixed rental agreement, so ensure that you,

- respond to a request for an assignment within the statutory **seven day** time frame.
- state in your tenancy agreement that any request to assign the rental unit be done in writing.
- keep copies or a record of all requests (verbal or written) together with all the date stamped responses given by the landlord.

Subletting



Subletting a Rental Unit

Subletting occurs when the tenant moves out of the rental unit and allows another person to take over the use of their unit on a temporary basis, but plans to return to live in the unit before the tenancy ends.

For example: A tenant may have to move out for a few months due to a work contract but still wants to return to the unit after his work contract is over.



What are the rules of subletting?

Section 97 of the Residential Tenancies Act sets out the following rules related to subletting a rental unit.

- When subletting, the original tenant continues to be liable to the landlord to perform all of the terms and conditions, including payment of rent, as set out in the tenancy agreement.
- The tenant must obtain the consent of the landlord prior to subletting the rental unit to another person.
- A landlord shall not arbitrarily or unreasonably withhold consent to the sublet of the rental unit to a potential subtenant.
- The landlord can charge the tenant for reasonable out of pocket expenses incurred in giving consent to the sublet.

Rules of subletting

(continued)

- The **tenant** remains entitled to the benefits, and is liable to the landlord for the breaches, of the tenant's obligations under the tenancy agreement or the Residential Tenancies Act during the subtenancy.
- The **subtenant** is entitled to the benefits, and is liable to the tenant for the breaches, of the subtenant's obligations under the subtenancy agreement or the Residential Tenancies Act during the subtenancy.
- The subtenant has the right to occupy the rental unit for a term ending on a specified date before the end of the tenant's term or rental period and giving the tenant the right to resume occupancy on that date.
- A subtenant has no right to occupy the rental unit after the end of the subtenancy.

Important Factors to Consider

- After giving consent to the sublet, the landlord should ensure that the tenant and the subtenant have entered into a written subtenancy agreement. The agreement should specify the date on which the subtenancy is to be terminated and that date should be prior to the end of the term or rental period.
- It is recommended that the landlord reserve the right in the tenancy agreement to refuse to grant consent to a sublet unless the tenant and the subtenant have entered into a **written** subtenancy agreement.
- Landlords should not enter into a new tenancy agreement with the subtenant as the original agreement is still in effect with the original tenant and the landlord continues to receive the rent from the original tenant.

Who is responsible for any damages or disturbances ?

The original tenant continues to be responsible for the tenancy which includes any breaches by the subtenant.

If the subtenant causes damages to the property or causes disturbances to the landlord and/or other tenants, the landlord can serve a notice of early termination of the tenancy to the original tenant and apply to the Board to have the tenancy terminated.

Landlord and Tenant Board



Tenant's Application to the Board

Subsection 98(1) of the **RTA** allows a tenant or former tenant to apply to the Landlord and Tenant Board for an order that the landlord has arbitrarily or unreasonably withheld consent to the assignment or sublet of a rental unit to a potential assignee or subtenant.

- This application can be filed up to one year from the day that the landlord withheld consent to the assignment or sublet.



Determination by the Board

The Board will hold a hearing and if the Board determines that the landlord did arbitrarily or unreasonably withhold consent to the assignment or sublet of a rental unit to a potential assignee or subtenant.

The Board could issue an order for one or more of the following:

- that the assignment or sublet is authorized;
- authorize an alternative assignment or sublet proposed by the tenant;
- terminate the tenancy; and/or
- grant an abatement of the tenant's or former tenant's rent.

Unauthorized Occupancy



What happens if the tenant assigns or sublets the rental unit without consent?

If the tenant assigns or sublets the unit without consent the landlord has two options:

1. File an application with the LTB based on unauthorized occupancy; or
2. Negotiate a new rental agreement with the subtenant or assignee.

A2 Application About a Sublet or an Assignment

- Subsection 100 (1) of the **RTA** states that *“if a tenant transfers the occupancy of a rental unit to a person in a manner other than by an assignment authorized under section 95 or a sublet authorized under section 97, the landlord may apply to the Board for an order terminating the tenancy and evicting the tenant and the person to whom occupancy of the rental unit was transferred.”*
- The landlord must file the A2 Application no later than 60 days after the landlord discovers the unauthorized occupancy.

Negotiate a New Rental Agreement

- Section 104 of the RTA allows the landlord to negotiate a new tenancy agreement with the person if the person occupies a rental unit as a result of an assignment of the unit without the consent of the landlord.
- Pursuant to subsection 104 (2) of the RTA the landlord has the option of negotiating a new tenancy agreement with the subtenant if the subtenant continues to occupy the rental unit after the subtenancy agreement and the original tenant has abandoned the rental unit.
- The new tenancy agreement must be entered into no later than 60 days after the landlord discovers the unauthorized occupancy.

What happens after the 60 days?

The occupant becomes a tenant pursuant to the same terms and conditions of the old rental agreement if the landlord does not,

- negotiate a new tenancy agreement with the person no later than 60 days after the landlord discovers the unauthorized occupancy; or
- apply to the Board for an order to terminate the tenancy and evict the unauthorized occupant within 60 days of discovering the unauthorized occupancy.

Subletting and Assignment

To review, at this Town Hall Meeting we have:

- ✓ Learned what subletting and assignment is and the difference between them;
- ✓ Discussed how the landlord is impacted in situations involving a sublet or assignment;
- ✓ Discussed the rules established under the Residential Tenancies Act for subletting and assignment:
 - ✓ Examined the specific rules for assignment; and
 - ✓ Examined the specific rules for subletting
- ✓ Discussed how the termination of a tenancy agreement may result from a sublet or assignment situation.
- ✓ Discussed when an A2 Application may be filed.

Questions



Resources

Subletting and Assignment

Landlord's Self-Help Centre

- LSHC FAQs - Index of Q and A's
http://www.landlordselfhelp.com/education/forum_subcategories.asp?cat_id=1
- LSHC RTA Fact Sheets: Subletting and Assignment
- http://www.landlordselfhelp.com/facts/2007_sublet_assignment.pdf

Landlord and Tenant Board

- A Guide to the Residential Tenancies Act -
http://www.ltb.gov.on.ca/en/Key_Information/STEL02_111677.html
- Guide to the RTA in Multiple Languages -
http://www.ltb.gov.on.ca/en/Key_Information/157371.html
- Interpretation Guideline #21 – Landlords, Tenants, Occupants and Resident Tenancies-
http://www.ltb.gov.on.ca/en/Law/STDPROD_092361.html
- e-laws
- Search Residential Tenancies Act, 2006 - www.e-laws.on.ca