



Subletting and Assignment

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What is the difference between subletting and assigning a rental unit?

There is a significant difference between the **assignment** of a rental unit and the **subletting** of a rental unit. It is important for landlords to clearly understand the meaning of these terms and the rules established by the *Residential Tenancies Act* to deal with these issues.

Assignment

When a tenant **assigns** the rental unit, the tenant gives up all rights and responsibilities to the rental agreement and to the rental unit. When a tenancy is **assigned** the tenant transfers their rights and responsibilities to another tenant. It is recommended that the landlord should document the assignment and transfer the responsibilities in an addendum (which is a supplementary document which would be attached to the original lease). Following the assignment of a rental unit, the original tenant no longer occupies the rented premises, is no longer responsible for the rental unit or the payment of rent. The assignee is the new tenant and assumes **all** the responsibilities of the tenancy agreement. The *Residential Tenancies Act* establishes specific rights and responsibilities for landlords and tenants when a tenant requests an assignment.

Sublet

When a tenant **sublets** their rental unit, the tenant gives another person the right to occupy the rental unit for a specific period of time. The sublet agreement must end on a specific date, which must be before the end of the tenant's rental term or period. The original tenant continues to be the person responsible for the tenancy. This includes responsibility for the condition of the rental unit and the payment of rent. The original tenant also retains the right to re-occupy the premises at the end of the sublet agreement. If the sub-tenant does not vacate the rental unit at the end of the sublet period the tenant or landlord may apply to the Landlord and Tenant Board for an eviction. The right to apply for an order evicting a subtenant also extends to the landlord.

Can any tenant sublet their rental unit?

The provisions for subletting a rental unit apply to all tenancies whether they are for a fixed term or not. Subletting is subject to the consent of the landlord, which cannot be unreasonably or arbitrarily withheld. The sublet must end on a date specified before the end of the tenant's term or period.

Can any tenant sublet or assign their rental unit?

The provisions for subletting a rental unit apply to all tenancy agreements whether they are periodic, fixed, contractual or statutory, but **do not** apply to a tenant of superintendent's premises.

What happens if there is a sublet or assignment without the landlord's knowledge or consent?

If a tenant transfers the occupancy of a rental unit in a manner that is not according to the assignment or subletting protocol as established under the *Residential Tenancies Act*, the landlord may apply to the Landlord and Tenant Board for an order evicting the unauthorized occupant within 60 days of discovering the situation.

What are the landlord's rights with respect to subletting?

The landlord's rights related to subletting are limited as the *Residential Tenancies Act* states that "with the consent of the landlord, the tenant may sublet a rental unit to another person..." The landlord's consent cannot be unreasonably or arbitrarily withheld.

Does the landlord have the right to screen candidates for a sublet?

With the sublet, a landlord does not always have a right to screen candidates and give their approval like with an assignment. This is due to the fact that the landlord is not dealing with the person subletting directly, the tenant is still responsible for anything that happens in the rental unit.

What are the landlord's rights with respect to an assignment?

The landlord has several options when the assignment of a rental unit is requested. The provisions for the **assignment** of a rental unit are extensive and include the following:

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

- a) consent to the assignment of the rental unit; or
- b) refuse consent.

If a tenant asks a landlord for his/her **specific consent** for the assignment of a rental unit to a potential assignee, the landlord may:

- a) consent to the assignment of the rental unit to the potential assignee;
- b) refuse consent to the assignment of the potential assignee; or
- c) refuse consent to the assignment of the rental unit.

A tenant may give the landlord a notice of termination within 30 days after the date a request is made if:

- a) the tenant asks the landlord to consent to an assignment of the rental unit and the landlord refuses consent;
- b) the tenant asks the landlord to consent to an assignment of the rental unit and the landlord does not respond within seven days after the request is made;
- c) the tenant asks the landlord to consent to an assignment of the rental unit to a potential assignee and the landlord refuses consent to the assignment of the rental unit;
- d) the tenant asks the landlord to consent to an assignment of the rental unit to a potential assignee and the landlord does not respond within seven days after the request is made.

- The landlord shall not arbitrarily or unreasonably refuse consent to an assignment of a rental unit to a potential assignee.
- A landlord who has given **general consent** to the assignment of the rental unit may **subsequently** refuse consent of the rental unit to a **specific** potential assignee.
- A tenant may only be charged the landlord's reasonable out of pocket expenses incurred in giving consent to an assignment to a potential assignee.

To avoid confusion when calculating the seven day response period, it is advisable to include a provision in the tenancy agreement requiring the tenant to request the assignment in writing.

The **Residential Tenancies Act Fact Sheets** are intended to help landlords learn and understand their rights and responsibilities.

They provide general information not legal advice.