

Subletting

Subletting is usually where the tenant moves out of the house they're renting and on-rents the house to someone else, such as for a residential tenancy or for a short term holiday purpose.

Subletting can also occur in situations where the tenant parts with possession of part of the rental and gives someone else exclusive use for any period of time.

The important thing to understand is that the tenancy of the tenant who moves out continues. This means that the tenant remains responsible to the landlord, but also becomes the landlord of the people who move into the house.

There may also be times when using part of the property for reasons other than residential purposes may also be seen to be sub-letting. An example of this is when the tenant uses a part of the house for temporary holiday accommodation.

Subletting part of the house

Having a flatmate living at the property is not seen as subletting. This is because a flatmate shares the property and facilities with the tenant.

Before a tenant uses any part of the rental property for anything other than a place to live (such as for business purposes or listing rooms or the property for temporary holiday accommodation) they should speak to their landlord. This may be seen as subletting and may also cause insurance problems for them both.

Tenants should also be aware of any terms in their agreement that restrict the number of persons who may reside at the rental and ensure that the rental is primarily used for residential purposes.

Subletting requires a new tenancy agreement

When a tenant sublets the house they're renting or part of it, they must sign a written residential tenancy agreement with the person they sublet to if that arrangement will be covered by the Residential Tenancies Act. This sub-tenancy agreement between the sub-landlord and sub-tenants is subject to all the same rules as a standard tenancy. Where the arrangement is for holiday purposes the Residential Tenancies Act will not apply to that arrangement and a residential tenancy agreement will not be required, but the tenant would still have to gain the agreement of their landlord to sublet the property.

This means that two tenancy agreements are in place for the property at the same time:

- the original agreement between the tenant and the landlord
- the agreement between the tenant and the person they're subletting to (the sub-tenancy).

The original tenant also becomes a landlord

The tenant on the original tenancy becomes a landlord to the person they sublet to. At the same time, they remain a tenant under their original tenancy agreement, even though they may no longer be living in the house.

That tenant is known as a sub-landlord, and the person they're subletting to is known as the sub-tenant. The tenant (as the sub-landlord) must meet all the obligations of a landlord under the law and the sub-tenant must meet all the obligations of a tenant under the law, unless the accommodation arrangement will be one that is excluded under the Residential Tenancies Act, for example temporary holiday accommodation.

Even though the original tenant may no longer live in the house, they still have to meet all their obligations as a tenant under their tenancy agreement with the landlord. This means they must make sure the rent's paid and the house is looked after and kept reasonably clean and tidy. If the rent's not paid, the landlord will come to the tenant to seek the missed payment.

Your [key rights and responsibilities \(http://www.tenancy.govt.nz/starting-a-tenancy/new-to-tenancy/key-rights-and-responsibilities/\)](http://www.tenancy.govt.nz/starting-a-tenancy/new-to-tenancy/key-rights-and-responsibilities/) explains the obligations of both landlords and tenants.

The tenant must have the landlord's permission to sublet

A tenant is not allowed to sublet the house they're renting if their tenancy agreement has a clause that forbids them from doing so. If the tenancy agreement doesn't forbid them from subletting, the tenant must still have the landlord's written consent to sublet the house, or part of it, to someone else.

The landlord must not unreasonably withhold their consent and must not attach unreasonable conditions to their consent. If they do, the tenant may apply to the Tenancy Tribunal to approve the subletting of the house or to end the tenancy.

A tenant commits an unlawful act if they sublet or otherwise part with possession of the property, or part of the property, without the landlord's written consent and may be liable for a financial penalty of up to \$1,000, and may also be liable to pay compensation to the landlord.

[Breaches of the Act has more about unlawful acts \(http://www.tenancy.govt.nz/disputes/breaches-of-the-residential-tenancies-act/\)](http://www.tenancy.govt.nz/disputes/breaches-of-the-residential-tenancies-act/).

Where a landlord has not consented to a sub-tenancy, upon the original tenancy ending, any sub-tenancy will also come to an end.

When the original tenancy ends

If the landlord gives notice to the tenant to end the original tenancy, the landlord can, at the same time, give the same notice to the sub-tenant to end the sub-tenancy.

If the landlord does not give the sub-tenant notice, the sub-tenancy will continue after the head tenancy ends. Once the head tenancy ends, the tenant will stop being the sub-landlord. The landlord (owner or property manager) will take over as landlord of the sub-tenancy.

Assignment is an alternative to subletting

Assignment is where a tenant finds someone to replace them in the tenancy. The person who replaces the tenant takes over all the tenant's responsibilities under the tenancy agreement.

[Change of tenant has more about assignment \(http://www.tenancy.govt.nz/ending-a-tenancy/change-of-landlord-or-tenant/change-of-tenant/\)](http://www.tenancy.govt.nz/ending-a-tenancy/change-of-landlord-or-tenant/change-of-tenant/).