

## Tribunal decision highlights subletting

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Landlords may not be able to prevent tenants using properties for temporary rental accommodation, like Airbnb, unless specified in their tenancy agreements.

This should be in addition to clauses that prohibit subletting, assigning, or the maximum number of occupants in the rental.

[A recent Tenancy Tribunal decision about subletting](#)

<https://forms.justice.govt.nz/search/Documents/TTV2/135906932.pdf> has highlighted when landlords are protected under the Residential Tenancies Act, and that tenants could face large penalties for letting out their rental homes if they don't have the agreement of their landlords.

Wellington tenant Jeff Paterson sublet his rental apartment on Airbnb 54 times in 2017, even though his tenancy agreement specified: "The tenant shall not assign or sublet the tenancy (including Airbnb and other temporary rentals platforms) without the landlord's written consent."

Because the tenancy agreement was explicit about temporary rental platforms such as Airbnb, and the case was very clear, the Tenancy Tribunal ordered the tenant to pay nearly \$11,000 for unpaid rent, Airbnb profits and exemplary damages.

Under the Residential Tenancies Act, the tenancy agreement can include a clause that prohibits the tenant from subletting. If the clause is not in the agreement, then the tenant can sublet the premises only if they have the landlord's prior written consent.

However, whether or not this clause is in a tenancy agreement, if the landlord doesn't want the premises to be used for Airbnb or similar temporary rental accommodation, they should include an additional clause which expressly prohibits use of the property for holiday or other temporary rental agreements.

Subletting is where the tenant lets out all or part of the house they are renting to someone else for their exclusive use. If the tenant vacates the premises and then lets out part or all of the property on Airbnb or a similar platform, this would be considered subletting. If the tenant is still living in the premises when they let out part of the property, such as a room on Airbnb or similar, this is not considered subletting, but may be a breach of the additional clause.

The best way for landlords to ensure they can stop tenants using the rental premises for Airbnb accommodation or similar, is to specify in their rental agreements that use of the premises or any part of it (such as a room) for holiday or other temporary rental accommodation platforms (including Airbnb or similar), is either prohibited or only allowed with the written consent from the landlord.

It is not enough to assume that the Tribunal will treat "subletting" as including situations like Airbnb where the tenant is still living in the property. An additional clause of this type will help the landlord and better inform the tenant.

A tenancy agreement is a legally binding contract between the landlord and tenant, which sets out the rights and responsibilities of both parties. [The Tenancy Services Residential Tenancy Agreement form \[PDF, 337 KB\]](http://www.tenancy.govt.nz/assets/Forms-templates/residential-tenancy-agreement.pdf) (<http://www.tenancy.govt.nz/assets/Forms-templates/residential-tenancy-agreement.pdf>) includes a clause prohibiting subletting, and an additional clause can be added to cover holiday rentals as well.

If a tenant uses the premises for holiday or other temporary accommodation when this is prohibited by the agreement, or where consent is not given, this is a breach of the tenancy agreement and may be an unlawful act if the tenant is subletting. The landlord can issue a notice to remedy immediately to the tenant if they suspect part or all of their property is being advertised and let out through Airbnb or similar. If the situation is not resolved, the landlord may apply to the Tenancy Tribunal to have the matter resolved.

Tenancy Services has a tenancy agreement template and this includes a clause about subletting which can be left in, amended or struck out by the landlord.

[Download our Residential Tenancy Agreement template. \[PDF, 337 KB\] \(http://www.tenancy.govt.nz/assets/Forms-templates/residential-tenancy-agreement.pdf\)](http://www.tenancy.govt.nz/assets/Forms-templates/residential-tenancy-agreement.pdf)