
Subleasing

Subleasing occurs when a tenant permits another party to lease the rental property that the tenant has leased from the landlord. (Note: The lease must allow the original tenant to sublease, and most leases specify that the landlord must approve of the subtenant.) The tenant, then, assumes the position of landlord in relation to his or her subtenant. Subleasing usually occurs because the tenant has signed a fixed-term lease and wants—for whatever reason—to get out of the lease before it expires. Since the original tenant is bound by the terms of the lease, he or she cannot simply leave the property and stop paying rent. To avoid the financial burden of the unexpired portion of the lease, the tenant usually tries to find a subtenant who will assume that burden.

Word of warning: Subleasing is not without its problems—so put it in writing. Under a sublease, the original tenant is still bound by contract to the landlord by the terms of the lease. If the subtenant stops paying rent or causes damage to the rental property, the original tenant—not the subtenant—must answer to the landlord. Of course, the original tenant may have a legal cause of action against the subtenant for a violation of the sublease.

The following are important terms to understand:

■ **Landlord:** The party agreeing to transfer possession and use of the rental property, usually the owner.

■ **Tenant:** The party taking possession and use of the rental property from the landlord under a lease contract.

■ **Subtenant:** A third party who takes possession and use of the rental property from the original tenant, under a sublease contract. The subtenant contracts with the original tenant—not the landlord—but generally with the landlord's permission.

■ **Sublease:** The contract between the original tenant and subtenant, transferring, again, possession and use of the rental property. (See Sample Sublease, page 37.) A written sublease contract provides the best protection. Because a sublease can only transfer what is left of the rights given to the tenant in the original lease, it is important that

the tenant provide the subtenant with a copy of the original lease.

Q1 Does the landlord have to agree to the sublease?

Generally, yes. Most leases specify that subleasing or assigning an interest in the rental property is not allowed without the landlord's consent, OR that subleasing or assigning is not allowed at all. But if the original lease agreement is silent, then the tenant need not seek the landlord's permission before entering into a sublease. First check the terms of the original lease. Then, if permission is required, check with the landlord.

Q2 If the tenant is allowed to sublease, what exactly can be subleased?

The tenant can only sublease the rights he or she has been given in the original lease—no more. For example, if the tenant has only three months left on a one-year lease, the tenant can only sublease up to three months. The same holds true with any restrictions contained in the original lease—they all apply to the subtenant and cannot be waived by the original tenant. On the other hand, the tenant may decide to sublet less than all of the rights he or she has been given in the original lease (e.g., he or she may decide to return to the rental property).

Q3 What duties does the original tenant have when subleasing?

Generally, when a tenant subleases, he or she assumes the position of landlord in relation to his or her subtenant. Accordingly, all of the laws that apply to landlords apply to a tenant who subleases. These duties are explained in other parts of this book. They include the following:

- Complying with the duties to maintain a habitable rental property and to make reasonable repairs, when necessary;
- Complying with the duties to register or license the rental property under local ordinance (check with the local housing office);
- Complying with duties imposed under the security deposit laws and procedures; and

- Complying with the eviction laws and procedures, in the event the original tenant wants to remove the subtenant from the rental property.

Repair and maintenance still remain the ultimate duty of the original landlord. Because the subtenant, in a sublease, has no relationship with the original landlord, repair requests will usually be made by the original tenant. The original tenant makes a repair request to the landlord. This is not always the case; many times, the landlord, in granting the original tenant permission to sublease, will be aware of the subtenant's presence and will respond to his or her requests.

Q4 What about the security deposit?

Because nothing in the original lease agreement changes when a tenant subleases to a subtenant, the original tenant's security deposit will remain with the landlord. The tenant may decide to collect a security deposit from the subtenant to insure against nonpayment of rent or utility charges or damage to the rental property beyond reasonable wear and tear caused by the subtenant. Remember that the original tenant remains responsible to the landlord under the original lease. The original tenant's security deposit could be at stake.

Collecting a security deposit from the subtenant. If the original tenant decides to collect a security deposit from the subtenant, he or she would simply follow all of the normal steps that any landlord would in collecting a security deposit. These include being timely in providing proper notice, placing the security deposit in a financial institution, providing inventory checklists, and providing the itemized list of damages. (*See* The Security Deposit section.)

Q5 What if the subtenant stops paying rent?

Two things may be done to help protect against this:

- (1) Require the subtenant to sign a written sublease agreement that includes the same language as the original lease agreement; and
- (2) Require the subtenant to pay a security deposit to the original tenant.

If the original tenant permits the subtenant to pay rent directly to the landlord, the tenant

runs the risk of not knowing if the subtenant is continuing to meet the rental obligations. When the subtenant is required to pay rent directly to the original tenant—and the tenant pays the usual rent to the landlord—there is much less risk.

If the subtenant stops paying the rent, the landlord can hold the original tenant responsible for missed payments. This amount can be withheld from the original tenant's security deposit, as can charges for unpaid utility bills and damages beyond reasonable wear and tear caused by the subtenant. The landlord's recourse is with the tenant under the original lease, not the subtenant. The tenant's recourse is with the subtenant, under the sublease.

For this reason, it is risky to sublease rental property. Therefore, tenants should take all necessary precautions to ensure that they are subleasing to a financially responsible subtenant (e.g., running a credit check, asking for a reference from a previous landlord).

Q6 Can the original tenant be released from the obligations under the lease?

Sometimes, yes. Subleasing can be a complicated procedure, particularly if the tenant is leaving the area for the period of the sublease. There are two ways that a tenant can be released from the obligations under the lease:

1. **By mutual agreement.** Though it is rare, a landlord sometimes allows a tenant to terminate the lease early. Therefore, it is a good idea to talk to your landlord before looking for someone to sublease. (*Note:* If the landlord does allow the tenant to break the lease, the tenant should be sure to receive from the landlord a signed document describing the agreement.)
2. **By assignment.** Under an assignment, the new tenant is substituted for the original tenant. When this is done, the original tenant is "cut-out" of the entire lease agreement and the new person steps into his or her shoes. Accordingly, the new tenant will be responsible for all obligations under the original lease, including rent, utilities, and damages—the original tenant will be released of all obligations. (*Note:* If the landlord does allow an assignment, the tenant should be sure to receive from the landlord a signed document describing the assignment and the release of obligations.)