

Assignment & sub-letting

Assignment

Assignment is when a tenant transfers their whole interest in a rental property to another person. For example, if a tenant signed a 12-month tenancy agreement (lease) but decided to leave after 6 months, they could get another person to move in and take over their lease. The new tenant would take the place of the original tenant, paying rent directly to the landlord, and having all the rights and responsibilities of the original tenant.

Before assigning your interest in the lease, you **must** get the landlord's consent (see 'Your right to assign or sub-let' on the back of this fact sheet).

Before you move out, ask the landlord or agent to take your name off the tenancy agreement and add the new tenant's name. You should also ask for a property inspection. Your landlord and agent are not obliged to do either of these things but it is worth asking so you cannot be held liable for any damage or financial loss caused by the new tenant. The same advice applies to the new tenant, so you can avoid being held liable for damage or financial loss caused by the original tenant.

Assignment and bond

If you are assigning your interest in a lease and your name is on the bond, both you and the new tenant must notify the Residential Tenancies Bond Authority (RTBA) by completing a Tenant Transfer form (available from the Tenants Union or Consumer Affairs Victoria). See the **Bonds** fact sheet for more information.

➔ Make sure you receive payment of your bond or of your share of the bond from the new tenant before signing and submitting the Tenant Transfer form.

Sub-letting

Sub-letting is when a tenant transfers part (but not all) of their interest under a tenancy agreement to another person. The first tenant is called the head-tenant and the second tenant is called the sub-tenant. The agreement between them is called a sub-lease.

If you want to sub-let a rental property, you must first get the landlord's written consent (see 'Your right to assign or sub-let' on the back of this fact sheet.) If you are thinking of becoming a sub-tenant, you should ask to see written consent from the landlord to the head-tenant.

A sub-let may be for part or the whole of the premises. The period of the sub-tenant's agreement with the head-tenant cannot be longer than the head-tenant's lease with their landlord. The head-tenant may or may not live in the property at the same time as the sub-tenant. If the head-tenant lives at the premises, in order for there to be a valid sub-lease it must be very clear that the sub-tenant has 'exclusive possession' of at least part of the premises (see 'Sub-tenant or licensee?' on the back of this fact sheet).

Examples of a sub-letting situation are:

- > when the head-tenant, who is renting a property from the owner on either a fixed-term or periodic lease, leases out a room or rooms for the 'exclusive possession' of another person
- > when the head-tenant, who has a 12-month lease, leases the property to another person for 2 months while they are on an overseas trip

The head-tenant is considered to have made another tenancy agreement with the sub-tenant, while still keeping their original agreement with the landlord.

The relationship between the head-tenant and the sub-tenant is the same as that between a landlord and tenant, and all the same rights and responsibilities apply. For example, the sub-tenant would tell the head-tenant of any repairs needed to the property, and could make a compensation claim against the head-tenant if those repairs weren't made and the sub-tenant suffered a financial loss as a result.

continued overleaf...

Sub-tenant or licensee?

Legally speaking, to be a tenant you must have 'exclusive possession' of all or part of the rental property. This means that if you move into an existing household, you may be regarded simply as a licensee, with no tenancy rights. If you share a house with the landlord, you are *presumed* to be a licensee.

➡ If you rent a room and the door is lockable, you may be regarded as a tenant, which means that you do have tenancy rights. If the room is self-contained (eg a bungalow, or a room with a separate entrance) you are more likely to be considered a tenant. If there is a dispute you should apply to the Victorian Civil and Administrative Tribunal for a decision on whether you are a tenant or licensee.

Licensees can have their disputes heard under the *Fair Trading Act 1999* in the Civil Claims List at the Tribunal, but should note that they do not have the same rights that tenants have under the *Residential Tenancies Act 1997*.

Your right to assign or sub-let

You cannot assign or sub-let without the landlord's written consent. However, the landlord cannot unreasonably withhold their consent. If they do, you can apply to the Tribunal for an order that the consent of the landlord is not required. Contact the Tenants Union for more information.

A landlord or agent cannot charge a fee for consenting to an assignment or sub-lease. However they can charge a fee for the preparation of a written assignment of a tenancy agreement. For more information contact the Tenants Union.

If you assign or sub-let without consent, the landlord can give you a 14-day Notice to Vacate and apply to the Tribunal to have you evicted. If you receive a Notice to Vacate you should contact the Tenants Union for advice.

➡ In some situations it may be better to end your tenancy rather than assign or sub-let. For more information see the ***Breaking a lease*** or ***When you want to leave*** fact sheets, or contact the Tenants Union for advice.

Sub-tenant or co-tenant?

Just because a person is sharing part of a house or flat with another person, it does not necessarily mean that they have sub-let. There is often confusion about whether a tenant is a sub-tenant or a co-tenant.

Co-tenants are all parties to the one tenancy agreement or lease together, with equal rights and one landlord. On the other hand, circumstances that may indicate a sub-letting situation are:

- > one tenant signed a written tenancy agreement with the landlord and the other did not
- > one tenant moved in before the other and the later tenant paid bond to the first tenant
- > one tenant collects the rent from the other and pays it to the landlord
- > one tenant is responsible for all dealings with the landlord (eg repair requests, giving notices)

None of these circumstances alone will prove that there is a sub-letting arrangement, as the legal situation depends on the facts in each individual case. While it is not always clear when a sub-letting arrangement exists, the difference between a sub-lease and a co-tenancy can be important if a dispute arises between yourself and another tenant.

A dispute between a head-tenant and a sub-tenant can be taken to the Victorian Civil and Administrative Tribunal, and the *Residential Tenancies Act 1997* applies. However, the Tribunal cannot deal with disputes between co-tenants (see below.)

Getting advice about a co-tenancy

The Tenants Union doesn't give advice on co-tenant disputes. However we do provide some information for co-tenants in our ***Shared Households*** and ***Keeping the Mates in Housemates*** fact sheets.

One way of resolving a co-tenant dispute is through the Dispute Settlement Centre on ☎ (03) 9603 8370 or ☎ 1800 658 528 (Freecall), however both parties to the dispute must agree to go to mediation.

If you need legal advice you can contact the Federation of Community Legal Centres on ☎ (03) 9652 1500 and they can refer you to a legal centre in your area. Community Legal Centres provide free legal advice to eligible clients (however not all legal centres are able to advise on tenancy matters).

For more information phone the Tenants Union Advice Line on ☎ (03) 9416 2577.