

19. Assignment and Sublet

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

Assignment

Assignment is the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. In a manufactured home site tenancy, an assignment usually coincides with the sale of the manufactured home.

The assignee takes on the obligations of the original tenant commencing at the time of the assignment, and is not responsible for actions or failure of the assignor to act prior to the assignment. Unless the landlord agrees otherwise, the original tenant may retain some residual liability, in the event of a failure of the assignee to carry out the terms of the tenancy agreement or lease.

Subletting

A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve the last day or some period of time at the end of the sublease, the agreement amounts in law to, and will be treated as, an assignment of the tenancy.

Death or Bankruptcy of a Tenant or Lessee

Where a tenant or lessee dies, the executor or administrator of the estate becomes the assignee of the tenancy in law and, as such, is responsible for any rights and obligations under the original tenancy as a representative of the original tenant. The tenancy may subsequently be ended in accordance with the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* (the Legislation), or may pass to a person who has a right to the tenancy in accordance with the appropriate statute. Such an assignment does not require the agreement of the landlord. If, in winding up an estate, an executor or administrator wishes to assign the tenancy to a third party who is not named or entitled under the estate, then the agreement of the landlord must be request, in accordance with the Legislation.

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When a tenant or lessee becomes bankrupt, rights of action for breach of contract pass to the trustee in bankruptcy. Where the trustee wishes to assign the tenancy to a third party, the agreement of the landlord must be requested, in accordance with the Legislation.

Statutory Provisions

A tenant may assign or sublet his or her interest in a tenancy agreement or lease with the consent of the landlord. If a tenant assigns or sublets a tenancy agreement without obtaining the landlord's consent, the landlord may serve a one month notice to end the tenancy under the Legislation¹ - the tenant has purported to assign or sublet the residential premises without the written consent of the landlord.

It is up to the original tenant to seek the landlord's consent – the proposed new tenant is not a party to the tenancy agreement until such time as the landlord has agreed to assignment or sublet, and the formal transfer is made. A landlord is not required to give consent if not asked to do so. Once the request is made, the landlord's consent cannot be unreasonably or arbitrarily withheld if the tenancy agreement:

- has a fixed term of 6 months or more, or
- is in respect of a manufactured home site where the manufactured home and the site are not rented from the same landlord (although a landlord may require the request to be in the form set out in the Manufactured Home Park Tenancy Regulation).

A landlord is not required to give consent to an assignment or sublet other than those specified.

It is not reasonable to withhold consent and require a new tenancy agreement in order to increase the rent. It may be reasonable to withhold consent if reference or credit checks indicate that a prospective tenant is unlikely to adhere to the terms of the tenancy agreement.

If a landlord arbitrarily or unreasonably withholds consent to assign or sublet the tenant's interest in a tenancy agreement, contrary to the provisions of the Legislation, the tenant may apply to an arbitrator for an order that the tenancy agreement is assigned or sublet. In hearing such an application, the arbitrator would consider whether the request had been given in writing, whether the landlord has properly responded to the request, and whether the reasons given for refusing the request were reasonable. If the request is concerning a manufactured home site, the arbitrator will consider whether the provisions of the Manufactured Home Park Tenancy Regulation have been followed.

Damages

Monetary damages can be awarded where they result from a landlord's breach of contract in refusing to agree to an assignment, contrary to a term of the tenancy agreement or to the provisions of the Legislation (which are deemed to be a term of every tenancy agreement).

¹ *Residential Tenancy Act*, ss. 47(1)(i), *Manufactured Home Park Tenancy Act*, ss. 40(1)(h).