

subletting - the ins and outs



Subletting in residential tenancies has been reported in the media in the last couple of months, particularly as a result of a few cases brought before the Tenancy Tribunal involving tenants subletting their rental properties through temporary accommodation services like Airbnb.

Subletting usually occurs when the Tenant moves out of the property they are renting and on-rents the house to someone else. There can be some confusion around differentiating the terms 'subletting' and having a 'flatmate' or a "boarder". The latter is when the Tenant named on the Tenancy Agreement is still living in the property and has others living with them.

In New Zealand, subletting is only permitted if the Landlord has given their written consent to do so. If the Landlord permits subletting, the Tenant will sign a Tenancy Agreement with the person they are 'on-renting' to. This results in two Tenancy Agreements for the one property at the same time, as well as 'sub-Landlords' and 'sub-Tenants'. The original Tenant becomes a sub-Landlord and has the responsibilities of both the Tenant and the Landlord.

A Tenant cannot sublet if the Tenancy Agreement prohibits it. Doing so is an unlawful act, which can cost the Tenant up to \$1,000. Our Tenancy Agreement very clearly prohibits subletting all, or part of the premises, or using any temporary accommodation providers. We do this to protect both the Tenant and the Landlord. With subletting, not only does a Landlord lose control over who is living in their property, but things could get rather messy with sub-Landlords and sub-Tenants. Every Landlord should have a clause included on their Tenancy Agreement which prevents subletting.

As a Landlord, if you find your Tenant is subletting without your written consent, you can serve them with a 14-day breach of tenancy notice. If they do not remedy this, then you can apply to the Tenancy Tribunal to ask for compensation and to have their tenancy terminated.

Recently, a tenant was taken to Tenancy Tribunal for subletting through Airbnb. I believe they had made quite a healthy profit! The Tenancy Tribunal ruled in favour of the Landlord and was awarded the Tenant's subletting profits, which totalled around \$11,000!

I do understand that circumstances change for people, and sometimes they can't reside at the property until the end of their fixed-term tenancy. If a Tenant needs to move out of the property during the tenancy there are usually three reasons:

1. There is an unexpected change in their circumstances, and they can seek an Order from the Tenancy Tribunal ending their tenancy;
2. They are a sole Tenant and they just want to move before the tenancy expires. Here they complete a break tenancy process where we assist them to find new tenants to take over the tenancy. Those who apply have to go through the same application process, and we then create a new tenancy with the new Tenant..
3. Where there is a group of tenants and only one of them wants to move out. If they find someone else to take over their 'spot' we can complete a change of tenant process, but the new person must be approved by us before they move in, and they will have to go through the same application process. This is an amendment to the current Agreement.

While researching this topic, I found subletting was not common in New Zealand. However, it appears that it is rather common in the United States, with a lot of articles providing tips on how to be a sub-Landlord and a sub-Tenant. I feel that to ensure you know who resides in your property, and have some comfort that person will take care of your property and pay their rent, every Tenancy Agreement should include a clause that prohibits subletting. For more peace of mind, you should also specify a maximum number of Tenants permitted to reside in the premises.