

Sub-letting requests from your tenant

Information for landlords

A tenant may ask permission to sub-let or transfer part of the premises or the whole tenancy. This cannot be done without consent. You should give careful consideration to such requests.

The different arrangements

There can be a number of different arrangements in place where tenants are sharing a home.

Sub-letting

Is where the tenant enters into a formal agreement with somebody else to rent part of the premises (eg. the garage or granny flat) or the whole premises to them. In effect, they are taking on the role of landlord for the sub-tenant. However, they remain your tenant and continue to be responsible for paying the whole of the rent to you. There is no contractual arrangement between you and the sub-tenant. For example, the sub-tenant would pay their rent to your tenant not to you. Your tenant would be responsible for the actions of the sub-tenant. If, for instance, the sub-tenant caused damage to the premises your tenant would need to fix it or pay for the cost of the repairs. They may be able to recover the cost by taking action against the sub-tenant.

Transferring or assigning the lease

This is different to sub-letting and involves the tenant's rights and obligations under the tenancy agreement being transferred to another person. Your tenant may wish to transfer the whole tenancy to a new tenant or only part of the tenancy (ie. by taking in a new co-tenant). The new tenant is either jointly responsible to you (in the case of a new co-tenant) or wholly responsible to you if the whole tenancy is transferred. The existing tenancy agreement, including any remaining fixed term period and the rent payable, is transferred to the new tenant or co-tenant. There is no need to sign a new agreement, although it is best to put the arrangement in writing to avoid any disputes later on.

Additional occupants

This arrangement falls outside the sub-letting and transferring rules. This is where the tenant wishes to have somebody stay with them in the premises on an informal basis. This could be a family member, friend or stranger and it may be a temporary or longer term arrangement. Exclusive use or possession of part of the premises is not granted. All areas of the premises are simply shared. The new person is just an additional occupant, not a tenant, even though they may be paying money to the tenant. The tenant is responsible for the actions of any occupants or guests they allow in the premises.

Consent of the landlord

Your tenant must first seek your written consent before they sub-let or transfer any part of the premises. If they do this without your consent they are breaching the terms of the tenancy agreement. You can take action through the NSW Civil and Administrative Tribunal for an order that they comply with the agreement.

If the tenant wants to sub-let or transfer the whole premises, approval is completely at your discretion. If you say no the tenant cannot apply to the Tribunal.

However, if the tenant wants to sub-let only part of the premises or take in a new co-tenant, you cannot unreasonably say no. You can ask for information about the prospective sub-tenant or co-tenant such as their name and details of their past rental history. You can ask that an application for tenancy form be filled out if you have one. You could also meet and interview the person, as you would do with a new tenant.

If the tenant just wants to have an additional occupant living with them they do not need to tell you who they are or get your consent, as long as they do not exceed the maximum number of permitted occupants stated on the tenancy agreement.

Reasonable refusal

As mentioned above, you cannot unreasonably say no to a request from the tenant to sub-let part of the premises or take in a new co-tenant. The law gives some examples of when it would be reasonable to say no. These are:

- if the maximum number of occupants permitted under the tenancy agreement would be exceeded
- if the total number of occupants would exceed any local council rules and regulations
- if the person being proposed is listed on a tenancy database
- if you reasonably believe it would result in the premises being overcrowded.

This is not an exhaustive list. There may be other situations where it would be reasonable to decline the tenant's request. You should let the tenant know what the reason is if you say no. It is best to do this in writing. Be aware that if the tenant thinks you are not being reasonable they can apply to the Tribunal.

Costs of sub-letting

You cannot charge the tenant for giving consent to a transfer or sub-letting, other than any reasonable expenses incurred. In most situations there is unlikely to be any expense involved.

While the new sub-tenant or co-tenant may mean there is extra income in the household it does not mean that you can automatically increase the rent. The same rules for putting the rent up still apply.

Changing bond records

Where a bond has been paid and co-tenants subsequently change, co-tenants can pass bond money between themselves from the incoming to the outgoing person. A Change of Shared Tenancy Arrangement form will need to be signed and lodged with NSW Fair Trading so that the names on the bond record can be updated.

Social housing providers

The need to be reasonable when considering requests to add a co-tenant or sub-let part of the premises does not apply to social housing providers, such as Housing NSW. Who can live in the premises is determined by the social housing provider's own policies and procedures.