

How to Sublet, Share and Assign: A Fact Sheet for Tenants

The term *sublet* means that the tenant is temporarily leaving the apartment and subletting to someone else. The term *assignment* means that the tenant is permanently leaving the apartment and assigning the lease and the apartment to someone else. The term *sharing* means that the tenant is taking into the apartment one or more unrelated persons who will be the tenant's roommates without establishing an extended family relationship.

The subletting procedure can get very complicated, and there are many loopholes for a landlord to slip through to make it difficult. Before you start the sublet process, make sure in your mind that you don't really want to assign or share.

SUBLETTING

Any tenant in a building of four or more units who wishes to sublease his or her apartment, even though the lease forbids it, still has the right to under the law, and any lease provision restricting this is null and void as a matter of good public policy. The subletting procedures below are set forth in the law and apply generally to a tenant renting an apartment pursuant to an existing lease in a building having four or more residential units. However, subletting provisions do not apply to tenants in public housing, limited profit housing, coop housing, or housing subject to rent control. Rent controlled tenants may, however, sublet if they have a current or prior lease that contains a clause permitting subletting. To sublet, the following procedures must be closely followed:

1. Send a letter to the landlord by certified mail, return receipt requested, requesting permission to sublease. (Copies of this correspondence, as well as all other

correspondence sent to the landlord, should be retained.) This letter must contain the following information:

- The term (starting and ending dates) of the sublet, not to exceed two years. (If you are uncertain about the term, choose the longer period because it is difficult to extend the sublet later. You can always return early.)
- The name of the proposed subtenant. (Choose a subtenant from among acquaintances if possible. Subleasing to strangers is risky and often full of unhappy surprises.)
- The business and permanent home address of the proposed subtenant.
- Your reason for subletting (work transfer, school attendance, family crisis, etc). Your reason must reflect intent to return.
- Your address for the term of the sublet.
- The written consent of any co-tenant or guarantor of your lease.
- A copy of the proposed sublease, to which a copy of your lease is attached, if available.
- A separate letter wherein both you and your proposed subtenant state that the attached sublease is a true copy of such sublease, which statement must be signed and notarized.

2. Within ten days after mailing the initial request, your landlord is allowed to ask for additional information to enable the landlord to determine if rejection of such a request will be unreasonable. Expect a list of inquiries about the proposed sub lessee's resources and rental history.

3. Within thirty days of mailing the initial notice, or of mailing the additional information if requested by the

For more detailed information about your rights, or for assistance in organizing a tenants' association:

METROPOLITAN COUNCIL ON HOUSING

339 Lafayette Street, New York, NY 10012 • www.metcouncil.net

Tenant Hotline: 212-979-0611 (Mondays, Wednesdays and Fridays 1:30-5:00 p.m.)

Free Tenant Clinic: Tuesdays 6:30 p.m., Cooper Square 61 E. 4th Street (between Bowery & 2nd Ave.)

landlord, your landlord must send you a notice of consent to the sublet, or reasons for refusal. Thereafter:

- If your landlord consents, you may sublease but you remain liable for future rents.
- If your landlord reasonably withholds consent, there can be no subletting and you are not released from the lease and can be held liable for future rents.
- If your landlord failed to send such a response within the application time, this shall be deemed consent to the subletting.
- If your landlord unreasonably withholds consent, you may sublet in accordance with the request and may recover the costs of any eviction proceedings commenced by your landlord together with attorney's fees if it is found that your landlord acted in bad faith by withholding consent.

4. If your apartment is subject to rent stabilization, the following additional provisions also apply:

- The rent you charge your subtenant cannot exceed your current rent unless the apartment is furnished during the sublet. In this case, a ten percent surcharge may be added. Additionally, the landlord may temporarily collect a sublet allowance increase during the term of the sublet. It is rolled back when the prime tenant returns. The increase is the sublet allowance, if any, provided in the Rent Guidelines Board Order in effect at the time of the commencement date of the lease.
- You must establish, and should say so in your initial letter to your landlord, that at all times you will maintain the apartment as your primary residence and intend to re-occupy it at the expiration of the sublease. To satisfy primary residence status requirement, it is recommended that during your absence from your apartment you pay New York City resident income tax, listing the apartment as your residence, and that all records of your residence, including driver's license, car registration and voting records, reflect the subject apartment as your home.

- You, as the prime tenant, retain the right to a renewal lease, and the rights and status of a "tenant in occupancy" as they relate to conversion to condominium or cooperative ownership.
- The law limits your sublet to two years, including the term of the proposed sublease, out of the four year period preceding the termination date of the proposed sublease. Your landlord may agree to waive this limitation, but the law allows him to refuse. There is no harm in asking. If he says yes, get it in writing.
- The term of the proposed sublease may extend beyond the term of your lease, and, in such event, the sublease shall be subject to your right to a renewal lease. The landlord is required to offer and accept a renewal lease from you during the sublet period just as if you were in occupancy.
- Should you overcharge your subtenant, the subtenant shall be entitled to damages of three times the overcharge and may also be awarded attorney's fees and interest from the date of the overcharge.

If your landlord rejects a proposed sublease, it is strongly recommended that you consult an attorney or contact Met Council for advice.

SHARING YOUR APARTMENT WITH ROOMMATES

All tenants in New York State have rights under the roommate law, which was enacted in 1983 along with the subletting provisions.

1. If only one tenant has signed the lease (or where there is only one rent controlled tenant of record), that tenant is entitled to one roommate who is not a member of the tenant's immediate family.
2. If two or more tenants have signed the lease (or where there are two or more rent controlled tenants of record) and they all live there, they are not entitled to have any roommates. If one or more of the tenants named on the lease (or one or more of the rent controlled tenants of record) moves out, the departing tenant or tenants can be replaced by the same number of roommates.

3. The named tenants on the lease (or the rent controlled tenants) can always have their immediate family members living with them.
4. A named tenant, a rent controlled tenant, or a roommate is always entitled to have his or her dependent children living with him or her. They do not count in the enumeration of the right to one or more roommates.
5. You must inform the landlord of the name of a new roommate within thirty days after the roommate moves in, or within thirty days after a request by your landlord for the roommate's name. Failure to notify the landlord carries no statutory penalty.
6. Neither your roommate nor your roommate's dependent children acquire any right to remain in the apartment if the named tenant(s) vacate the apartment. Neither your roommate nor your roommate's dependent children acquire any right to purchase the apartment under a cooperative or condominium conversion plan (*unless* you and your landlord give specific permission in writing).
7. Your landlord cannot make you waive your rights under the roommate law, and is not allowed to increase a stabilized tenant's rent because you have a roommate. Sometimes, rent controlled tenants are ordered by the Division of Housing and Community Renewal to pay a rent increase for "increased occupancy," where there is an actual increase in the number of persons living in the unit beyond mere substitution.
8. The rights created under the roommate law do not apply if having roommates violates some other federal, state, or local law. For example, regulations prohibiting overcrowding could still be used by your landlord in certain situations to prohibit sharing arrangements.
9. Certain occupants, including roommates, can have succession rights, the right to take over the apartment when the prime tenant (the tenant named on the lease) moves or dies. Contact Met Council if you would like a copy of our succession rights information sheet.
10. Under the Rent Stabilization Code changes of 12/99, the tenant can only charge a roommate a "proportionate share" of the rent. This share is determined by dividing the legal rent by the number of people on the lease plus the number of roommates. This number does not

include the tenants' spouses, family members, or the roommate's dependent children. Tenants who violate this provision of the code may be subject to eviction.

ASSIGNMENT OF LEASES

A tenant who intends to leave his or her apartments permanently may write to the landlord to propose another specific person to assume the remainder of the current lease. This is called an assignment. The process provides tenants who wish to break a current lease with an opportunity to transfer their responsibilities under the lease to another person. The departing tenant relinquishes all rights to the apartment.

The landlord has the absolute right to deny the tenant's request to assign, and the tenant has no right to appeal the landlord's decision. The tenant may then not assign. However, in certain circumstances, the tenant acquires the right to cancel the remainder of the lease. In response to the tenant's assignment request, the landlord may either (1) not respond, (2) deny your request without giving a reason, (3) deny your request unreasonably ("I only rent to professionals.") or (4) deny your request reasonably ("Your proposed assignee only earns half of what you do and cannot afford the rent."). If the landlord responds as in (1), (2), or (3), the tenant has the right to cancel the lease within thirty days from date the assignment request was given to the landlord. If the landlord under (4) denies the assignment "reasonably," the tenant cannot cancel the lease. In the latter, there is obviously plenty of room for interpretation for what is "reasonable."

The written request to the landlord should both give the landlord notice of your intent to move, and propose assignment to a specific person with detailed information about the proposed assignee. Many landlords are happy to release tenants from their leases because it gives them the opportunity to get a rent increase sooner. If the landlord tells you that you can break your lease, get it in writing.