

RENTING AN APARTMENT OR A HOUSE?

WANT TO LEAVE PERMANENTLY,
BEFORE YOUR LEASE ENDS?

WANT TO LEAVE TEMPORARILY,
BUT RETURN LATER?

Queen's Legal Aid produces this guide to provide very basic information about assigning and subletting. If you have any doubts about your situation, or if you have specific questions about your rights and responsibilities as a tenant, please seek legal advice.

CAUTIONS

- If you are living in a rental unit in Ontario, then the Tenant Protection Act (the TPA) probably applies to you. It defines the rights and responsibilities of most residential landlords and tenants. However, it does not apply at all, or only partially applies, to certain kinds of living situations. **This assigning and subletting guide will not assist you if you live in:**
 - a university residence,
 - social housing,
 - a non-profit housing cooperative, or
 - a rental unit where you must share kitchen or bathroom facilities with the owner or a member of the owner's family.
- **A lease is a contract, whether it written or not.** It imposes certain legal obligations upon you as a tenant. You must live up to those obligations. If you do not, then your landlord can apply obtain money from you, evict you, or both.
- The TPA imposes additional legal obligations on you as a tenant. For example, it sets out the rules for assigning and subletting. **If you try to assign or sublet improperly, your landlord can apply to obtain money from you, evict your replacement tenant, or both.**
- **If you share a rental unit with others, your decision to assign or sublet will be important to them.** It will affect their home environment, because your replacement tenant will be living in the rental unit. It could also affect their rights as tenants as well as your own. Try to reach agreements about assigning or subletting in your rental unit.

DEFINITIONS

Assigning:

If you want to leave your rental unit permanently before your lease ends, then you want to assign your tenancy to another person (an "assignee").

Subletting:

If you want to leave your rental unit temporarily and intend to return at a later date, then you want to sublet your premises to another person (a "subtenant").

ASSIGNING

- Section 17 of the TPA makes it clear that you can assign your tenancy with the consent of your landlord. That section is attached to this guide for your information.
- You can ask your landlord about assigning without naming a specific assignee. Otherwise, as most landlords will insist that you take responsibility for finding your own replacement tenant, you can suggest a specific assignee. In either case, your landlord can consent or refuse.
- Your landlord cannot arbitrarily or unreasonably refuse a specific assignee. You can seek help if you feel your landlord has done this. Look at the section on the Ontario Rental Housing Tribunal, below.
- Furthermore, if your landlord refuses to consent to an assignment, or simply fails to respond to your assignment request within seven days, you can give notice to terminate your tenancy.
- If you give notice to terminate your tenancy, you must do this within 30 days of making your assignment request. In most cases, the date for termination will have to be another 30 days after you gave your notice. Section 48 of the TPA deals with notice requirements and is attached to this guide for your information.
- Consequences of Assigning:
 - When you assign your tenancy you permanently lose the right to occupy your rental unit. You also limit your future obligations to your landlord.
 - Your replacement tenant must pay rent directly to your landlord and meet all the other legal obligations your lease and the TPA imposed upon you.
 - Your landlord can charge you for reasonable out of pocket expenses for consenting an assignment.
 - You are still responsible to your landlord for any breaches of your obligations as a tenant while you occupied the rental unit.
- A lease cannot be inconsistent with the TPA. Therefore, your lease cannot limit your right to request an assignment, and it cannot make you pay your landlord more than reasonable out of pocket expenses for consenting to one.
- If you paid a deposit to your landlord for your last month's rent, you need to make arrangements to deal with it. You can:
 - use the deposit to pay rent for the last month you occupy the rental unit and deal with your landlord about any accumulated interest,

- get the deposit back from your landlord along with any accumulated interest, or
- leave the deposit and any accumulated interest with your landlord and get the same amount of money from your replacement tenant.

SUBLETTING

- Section 18 of the TPA makes it clear that you can sublet your rental unit with the consent of your landlord. That section is attached to this guide for your information.
- When you ask your landlord about subletting, you should suggest a specific subtenant. The TPA assumes this and most landlords will insist that you take responsibility for finding your own replacement tenant. Your landlord can consent or refuse.
- Your landlord cannot arbitrarily or unreasonably refuse a specific subtenant. You can seek help if you feel your landlord has done this. Look at the section on the Ontario Rental Housing Tribunal, below.
- Consequences of Subletting:
 - When you sublet your rental unit, you temporarily lose the right to occupy it. However, once the subtenancy has ended you have the absolute right to return.
 - You must make sure that your rent is paid during the subtenancy. In fact, you are still responsible to your landlord for all of your legal obligations as a tenant, whether you occupy the rental unit or not.
 - In addition, if you have contracts in your own name for hydro, cable or telephone services, you must make sure that these bills are paid as well.
 - Your landlord can charge you reasonable out of pocket expenses for consenting to a subtenancy.
- A lease cannot be inconsistent with the TPA. Therefore, your lease cannot limit your right to request a subtenancy, and it cannot make you pay your landlord more than reasonable out of pocket expenses for consenting to one.
- It is probably best to have your subtenant pay rent to you each month, so that you can then pay your landlord. If you do this, you will quickly know if there are any payment problems.
- You can also have your subtenant pay you for hydro, cable and telephone services each month, so that you can then pay the service providers. Otherwise, you can let your subtenant pay the bills directly. However, if you do this you will

want to check to make sure that bills are being paid, especially if the contracts are in your name.

- You can seek help if you are having problems with a subtenant who is occupying your rental unit. For example, you can apply for compensation from and seek to evict a subtenant who fails to pay rent, interferes with other tenants, overcrowds the space, damages property or refuses to leave once the subtenancy has ended. Again, look at the section on the Ontario Rental Housing Tribunal, below.
- You can also seek help if your subtenant is no longer occupying your rental unit but owes you money for rent or services. In this case, you will have to use the Small Claims Court instead of the Ontario Rental Housing Tribunal. Queen's Legal Aid publishes a Small Claims Court guide that might be of assistance to you.

THE ONTARIO RENTAL HOUSING TRIBUNAL

- The Ontario Rental Housing Tribunal (the ORHT) exists to help residential landlords and tenants deal with their disputes in a fairly inexpensive and speedy way. You can represent yourself at the ORHT, or you can seek legal assistance.
- There are special forms to use at the ORHT, and there are small fees to pay as well. Forms, information about fees and guidelines for using the ORHT can be found online at: <http://www.orht.gov.on.ca>.
- You can apply to the ORHT for assistance if your landlord arbitrarily or unreasonably withholds consent to assigning or subletting. In this case, you will use the ORHT forms and rely on sections 32 and 33 of the TPA, which are attached to this guide for your information.
- You can also apply to the ORHT for assistance if you have problems with a subtenant occupying your rental unit. In this case, you will use the ORHT forms and rely on sections 82, 89 and 90 of the TPA, which are also attached to this guide for your information.
- When you read section 90 of the TPA, you will see that the TPA treats you as a landlord when you apply for compensation from and seek to evict a subtenant.

ATTACHMENTS TO THIS GUIDE

The following documents may assist you in assigning or subletting:

✓ **Assignee or Subtenant Information Form**

Complete this document for any potential assignee or subtenant. It will provide information that you and your landlord will need to evaluate a replacement tenant.

It will also help you and your landlord locate and take action against any replacement tenant who fails to pay rent or bills.

If a potential replacement tenant is not willing to provide enough information to satisfy you and your landlord about creditworthiness or trustworthiness, then you should avoid the potential assignment or subtenancy.

Keep a copy of this document for your own records, and give a copy to your landlord along with a completed **Application for Landlord's Consent**. If your landlord consents to the assignment or subtenancy, then give him or her a completed **Agreement to Assign** or **Agreement to Sublet** too.

✓ **Agreement to Assign**

This document is an important one. It is a contract defining your rights and responsibilities (as an outgoing tenant) and those of a potential assignee (as an incoming tenant). Make sure that it is fully and accurately completed, and signed by you and any potential assignee. If absolutely necessary, one assignee can sign as the agent for another.

If your landlord consents to the potential assignment, have him or her sign this document too. Keep a copy for your records. Your landlord and the assignee will probably want copies too.

Make sure that you give any approved assignee a copy of your written lease (if there is one).

✓ **Agreement to Sublet**

This document is also an important one. It is a contract defining your rights and responsibilities (as a temporarily outgoing tenant) as well as those of a potential subtenant (as a temporarily incoming tenant). Make sure that it is fully and accurately completed, and signed by you and signed by any potential subtenant. If absolutely necessary, one subtenant can sign as the agent for another.

Section 18 of the TPA states that a subtenant has no right to occupy a rental unit after the end of a subtenancy. As a result, this document should clearly specify the dates when the potential subtenancy will begin and end.

If your landlord consents to the potential subtenancy, have him or her sign this document too. Keep a copy for your records. Your landlord and the subtenant will probably want copies too.

Make sure that you give any approved subtenant a copy of your written lease (if there is one).

✓ **Inventory of Items**

Make a list the important items you plan to leave in your rental unit during a subtenancy.

Once your landlord has approved a subtenancy, you should have each subtenant sign this document to show that he or she will be responsible for your important possessions. (Clause 4 of the **Agreement to Sublet** refers to this responsibility too.) If absolutely necessary, one subtenant can sign as agent for another.

✓ **Application for Landlord's Consent**

Give a copy of this document to your landlord, along with signed copies of any **Assignee or Subtenant Information Forms** when you are seeking consent to assign or sublet.

As noted above, once your landlord consents to a potential assignment or subtenancy, he or she should receive signed copies of an **Agreement to Assign** or **Agreement to Sublet** too. After your landlord has signed and returned copies of these documents to you, you are free to leave the rental premises as planned.

ASSIGNEE OR SUBTENANT INFORMATION FORM

NAME OF POTENTIAL ASSIGNEE OR SUBTENANT:

CURRENT ADDRESS:

TELEPHONE:

HOW LONG AT THIS ADDRESS?

CURRENT LANDLORD'S NAME:

CURRENT LANDLORD'S ADDRESS:

CURRENT LANDLORD'S TELEPHONE: Business

Residence

PERMANENT ADDRESS OF POTENTIAL ASSIGNEE OR SUBTENANT:

NAME OF NEAREST RELATIVE TO POTENTIAL ASSIGNEE OR SUBTENANT:

RELATIVE'S ADDRESS:

RELATIVE'S TELEPHONE:

Business

Residence

OCCUPATION OF POTENTIAL ASSIGNEE OR SUBTENANT:

HOW LONG?

EMPLOYER/EDUCATIONAL INSTITUTION OF POTENTIAL ASSIGNEE OR SUBTENANT:

EMPLOYER/EDUCATIONAL INSTITUTION'S ADDRESS:

IF WITH ABOVE EMPLOYER/INSTITUTION LESS THAN TWO YEARS:

PREVIOUS EMPLOYER'S/EDUCATIONAL INSTITUTION'S NAME:

PREVIOUS EMPLOYER'S/EDUCATIONAL INSTITUTION'S ADDRESS:

DATE OF BIRTH OF POTENTIAL ASSIGNEE OR SUBTENANT:

DRIVER'S LICENCE # OF POTENTIAL ASSIGNEE OR SUBTENANT:

PROVINCE OF ISSUE:

AUTOMOBILE (YEAR/MAKE/MODEL) OF POTENTIAL ASSIGNEE OR SUBTENANT:

BANK NAME AND BRANCH ADDRESS FOR POTENTIAL ASSIGNEE OR SUBTENANT:

BANK ACCOUNT NUMBER(S):

I, _____, having inspected the rental unit located at:

hereby offer to (check one):

- take over the lease for the premises
- sublet the premises

for the period of time described in an **Agreement to Assign** or **Agreement to Sublet**, signed by the relevant parties.

I hereby certify that the information provided in this document is accurate and true. I hereby authorize any credit or character inquiries deemed necessary by a landlord in connection with this matter.

DATED this _____ day of _____ 20_____.

Signature of Current Tenant

Signature of Potential Assignee/Subtenant

AGREEMENT TO ASSIGN

Current Tenant(s) (the Assignor) _____

New Tenant(s) (the Assignee) _____

1. With this document, the Assignor assigns to the Assignee the tenancy established by a lease dated the _____ day of _____, 20_____, between the Landlord _____,

and the Assignor concerning the rental unit located at:

2. The assignment created by this document will be effective from the _____ day of _____, 20_____ onwards.

3. The Assignor releases all rights in respect of this rental unit.

4. The Assignee agrees to be bound by and to honour all terms and conditions of the lease. A copy of the lease is attached. (Cross out the last sentence if necessary.)

5. In particular, the Assignee will pay rent directly to the Landlord, as required by the lease, and will also pay for any other services which the lease requires the Assignor to pay.

6. Further, the Assignee shall be responsible for all the Assignor's liabilities under the lease and under the Tenant Protection Act where such liabilities are attributable to acts or omissions while the Assignee has possession of the rental unit.

7. With this document, the Assignor also assigns to the Assignee the deposit being held by the Landlord, as well as all interest accrued on that deposit. This money is to be applied to rent for the last month of the tenancy covered by the lease. (Cross out this clause if necessary.)
8. The Assignor acknowledges that the Assignee has paid to him or her the sum of \$_____, which is equal to the amount of the deposit held by the Landlord, as well as all accrued interest on that deposit. (Cross out this clause if necessary.)

DATED this _____ day of _____, 20 _____.

SIGNATURES:

Current Tenant(s) (the Assignor) _____

New Tenant(s) (the Assignee) _____

I, _____, the Landlord of the rental unit,
 hereby consent to this assignment.

DATED this _____ day of _____, 20 _____.

Landlord _____

AGREEMENT TO SUBLET

Current Tenant(s)

Temporary Tenant(s) (the Subtenant)

BECAUSE:

1. By a lease dated the _____ day of _____, 20____, the Landlord
_____, leased to the Current Tenant the rental
unit located at:

for a term of _____, commencing the _____ day of _____,
20____ and ending on the _____ day of _____, 20____.

AND BECAUSE:

2. The Current Tenant has agreed with the Subtenant to grant a sublease of the rental unit.

THEREFORE:

3. The Current Tenant hereby subleases the rental unit to the Subtenant beginning on the
_____ day of _____, 20____, and ending on
the _____ day of _____, 20____, at a rent of
\$_____ per month.

This amount will be paid by the Subtenant to the Current Tenant monthly, in advance of the first day of each month during the sublease, in the manner the Current Tenant directs. (Cross out this last sentence if necessary.)

4. The Subtenant promises the Current Tenant as follows:

- (a) to pay rent as set out above;
- (b) to be bound by and honour all the terms and conditions of the lease, EXCEPT FOR the terms and conditions respecting rent, AND to protect the Current Tenant from all actions, expenses, claims and demands in respect of such terms and conditions. A copy of the lease is attached to this document. (Cross out the last sentence if necessary);
- (c) not to permit any person or persons other than the Subtenant to occupy the premises;
- (d) to look after and, when the sublease ends, to leave behind all furniture and other possessions listed in the Inventory of Items, attached, in the condition they are now (reasonable wear and tear excepted), AND not to remove any of these possessions from the rental unit. If, when the sublease ends, any of these possessions are broken, damaged, lost or rendered useless, to pay to the Current Tenant the cost of replacing them or, at the option of the Current Tenant, the cost of repairing them;
- (e) to vacate the premises at the end the sublease, that being the _____ day of _____, 20 _____.

5. The Subtenant agrees that, in addition to the rent specified in paragraph 3, the Subtenant shall pay for the following expenses during the subtenancy, either (check one):

- directly to the appropriate service providers, or
- to the Current Tenant

	YES	NO
Hydro bills	[]	[]
Water bills	[]	[]
Telephone bills	[]	[]
Cable television bills	[]	[]
Other: _____	[]	[]
_____	[]	[]
_____	[]	[]

6. The Subtenant is aware of section 18 of the Tenant Protection Act, which provides:

1. With the consent of the landlord, a tenant may sublet a rental unit to another person, thus giving the other person the right to occupy the rental unit for a term ending on a specified date before the end of the tenant's term or period and giving the tenant the right to resume occupancy on that date.
2. A landlord shall not arbitrarily or unreasonably withhold consent to the sublet of a rental unit to a potential subtenant.
3. A landlord may charge a tenant only for the landlord's reasonable out of pocket expenses incurred in giving consent to a subletting.

4. If a tenant has sublet a rental unit to another person,
 1. the tenant remains entitled to the benefits, and is liable to the landlord for the breaches, of the tenant's obligations under the tenancy agreement and this Act during the subtenancy; and
 2. the subtenant is entitled to the benefits, and is liable to the tenant for the breaches, of the subtenant's obligations under the subletting agreement or this Act during the subtenancy.
 5. A subtenant has no right to occupy the rental unit after the end of the subtenancy.
 6. This section applies with respect to all tenants, regardless of whether their tenancies are periodic, fixed, contractual or statutory, but does not apply with respect to a tenant of superintendent's premises.
7. The Subtenant therefore acknowledges that, when the subtenancy terminates on the _____ day of _____, 20 _____, he or she will have no further right to occupy the rental unit.

DATED this _____ day of _____, 20_____.

SIGNATURES:

Current Tenant(s)

Temporary Tenant(s) (the Subtenant)

I, _____, the Landlord of the rental unit, hereby consent to this subtenancy.

DATED this _____ day of _____, 20 _____.

Landlord

INVENTORY OF ITEMS

The following items belonging to the Current Tenant and will remain in the rental unit during the subtenancy. They will be subject to Clause 4 (d) of the Agreement to Sublet, attached:

DATED this _____ day of _____ 20_____.

SIGNATURES:

Current Tenant(s) _____

Temporary Tenant(s) (the Subtenant) _____

APPLICATION FOR LANDLORD'S CONSENT

According to the Tenant Protection Act, I/we

Current Tenant(s) _____

hereby request consent from you to (check one):

- assign my/our tenancy, or
- sublet my/our premises

for the rental unit located at:

to the person or persons described in the attached (check one):

- Agreement to Assign, or
- Agreement to Sublet

DATED this _____ day of _____, 20_____.

SIGNATURES:

Current Tenant(s) _____

Section 17 of the TPA

Assignment of tenancy

- (1) Subject to subsection (2), (3) and (6), and with the consent of the landlord, a tenant may assign a rental unit to another person.

Landlord's options, general request

- (2) If a tenant asks a landlord to consent to an assignment of a rental unit, the landlord may,
 - (a) consent to the assignment of the rental unit; or
 - (b) refuse consent to the assignment of the rental unit.

Landlord's options, specific request

- (3) If a tenant asks a landlord to consent to the assignment of the rental unit to a potential assignee, the landlord may,
 - (a) consent to the assignment of the rental unit to the potential assignee;
 - (b) refuse consent to the assignment of the rental unit to the potential assignee; or
 - (c) refuse consent to the assignment of the rental unit.

Refusal or non-response

- (4) A tenant may give the landlord a notice of termination under section 48 within 30 days after the date a request is made if,
 - (a) the tenant asks the landlord to consent to an assignment of the rental unit and the landlord refuses consent;
 - (b) the tenant asks the landlord to consent to an assignment of the rental unit and the landlord does not respond within seven days after the request is made;
 - (c) the tenant asks the landlord to consent to an assignment of the rental unit to a potential assignee and the landlord refuses consent to the assignment under clause (3)(c); or
 - (d) the tenant asks the landlord to consent to an assignment of the rental unit to a potential assignee and the landlord does not respond within seven days after the request is made.

Same

- (5) A landlord shall not arbitrarily or unreasonably refuse consent to an assignment of a rental unit to a potential assignee under clause (3)(b).

Same

- (6) Subject to subsection (5), a landlord who has given consent to an assignment of a rental unit under clause (2)(a) may subsequently refuse consent to an assignment of the rental unit to a potential assignee under clause (3)(b).

Charges

- (7) A landlord may charge a tenant only for the landlord's reasonable out of pocket expenses incurred in giving consent to an assignment to a potential assignee.

Consequences of assignment

- (8) If a tenant has assigned a rental unit to another person, the tenancy agreement continues to apply on the same terms and conditions and,

- (a) the assignee is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period after the assignment, whether or not the breach or obligation also related to a period before the assignment;
- (b) the former tenant is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period before the assignment;
- (c) if the former tenant has started a proceeding under this Act before the assignment and the benefits or obligations of the new tenant may be affected, the new tenant may join in or continue the proceeding.

Application of section

- (9) This section applies with respect to all tenants, regardless of whether their tenancies are periodic, fixed, contractual or statutory, but does not apply with respect to a tenant of superintendent's premises.

Section 18 of the TPA

Subletting rental unit

- (1) A tenant may sublet a rental unit to another person with the consent of the landlord.

Same

- (2) A landlord shall not arbitrarily or unreasonably withhold consent to the sublet of a rental unit to a potential subtenant.

Charges

- (3) A landlord may charge a tenant only for the landlord's reasonable out of pocket expenses incurred in giving consent to a subletting.

Consequences of subletting

- (4) If a tenant has sublet a rental unit to another person,
 - (a) the tenant remains entitled to the benefits, and is liable to the landlord for the breaches, of the tenant's obligations under the tenancy agreement and this Act during the subtenancy; and
 - (b) the subtenant is entitled to the benefits, and is liable to the tenant for the breaches, of the subtenant's obligations under the subletting agreement or this Act during the subtenancy.

Overholding subtenant

- (5) A subtenant has no right to occupy the rental unit after the end of the subtenancy.

Application of section

- (6) This section applies with respect to all tenants, regardless of whether their tenancies are periodic, fixed, contractual or statutory, but does not apply with respect to a tenant of superintendent's premises.

Section 32 of the TPA (excerpt)

Tenant applications

- (1) A tenant or former tenant of a rental unit may apply to the Tribunal for any of the following orders:
 1. An order determining that the landlord has arbitrarily or unreasonably withheld consent to the assignment or sublet of a rental unit to a potential assignee or subtenant

Time limitation

- (2) No application may be made under subsection (1) more than one year after the day of the alleged conduct giving rise to the application occurred.

Section 33 of the TPA (excerpt)

Order re assignment, sublet

- (1) If the Tribunal determines that a landlord has unlawfully withheld consent to an assignment or sublet in an application under paragraph 1 of subsection 32(1), the Tribunal may do one or more of the following:
 1. Order that the assignment or sublet is authorized.
 2. Where appropriate, by order authorize another assignment or sublet proposed by the tenant.
 3. Order that the tenancy be terminated.
 4. Order an abatement of the tenant's or former tenant's rent.

Same

- (2) The Tribunal may establish terms and conditions of the assignment or sublet.

Same

- (3) If an order is made under paragraph 1 or 2 of subsection (1), the assignment or sublet shall have the same legal effect as if the landlord had consented to it.

Section 48 of the TPA

Notice by tenant

- (1) A tenant may give notice of termination of a tenancy if the circumstances set out in section 17(4) apply.

Same

- (2) The date for termination specified in the notice shall be at least a number of days after the date of the notice that is the lesser of the notice period otherwise required under this Act and 30 days.

Section 82 of the TPA

Overholding tenant

- (1) If a subtenant continues to occupy a rental unit after the end of a subtenancy, the landlord or the tenant may apply to the tribunal for an order evicting the subtenant.

Time limitation

- (2) An application under this section must be made within 60 days after the end of the subtenancy.

Section 89 of the TPA

Compensation, overholding subtenant

A tenant may apply to the Tribunal for an order for compensation for use and occupation by an overholding subtenant after the end of the subtenancy if the overholding subtenant is in possession of the rental unit at the time of the application.

Section 90 of the TPA

Tenant's notice, application re subtenant

Sections 61 to 67, 69, 86, 87 and 99 apply with necessary modifications with respect to a tenant who has sublet a rental unit as if the tenant were the landlord and the subtenant were the tenant.