

Subletting as a tenant right

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TL;DR: New laws mean estate agents can no longer deny tenants the right to sublet. Hurray for Sharing Economy and Generation Rent!

**Subletting as a
tenant right**

Conventional wisdom is that “subletting is illegal”. This statement is accepted at face value by tenants, and perpetuated by landlords and estate agents themselves.

Tenants of course continue to sublet under the cover of darkness, but when they do so, they do it secretly with sweating palms and nervous side glances.

Looking beyond the prejudice and into the laws themselves, a totally different picture starts to emerge around subletting.

As long ago as 1927, **the Landlord and Tenant Act** explicitly stated that while a fixed-term contract requires the landlord’s consent to sublet, “the landlord may not withhold consent

unreasonably.” This means that subletting is a **tenant right** that has been enshrined in common law since 1927!



Maybe the Great Depression of 1930s or the rise of fascism in Europe meant that this groundbreaking piece of legislation failed to receive the newspaper coverage it deserved.

For whatever reason, the written law slipped from public consciousness and was replaced by a “convenient truth”. Landlords and estate agents continued to deny subletting rights to

their tenants by either including blanket bans on subletting in tenancy contracts, or by turning down requests to sublet as soon as they received them. Tenants were led to believe that the landlord could keep their deposit or even automatically evict them for subletting. Both of these threats are hugely misleading but few tenants know their rights so it proved an effective deterrent. The government attempted to re-assert subletting rights most notably in [the 1988 Housing Act](#), but generally speaking landlords and estate agents have ignored government efforts and continued to do the same thing they have always done.

Why is it easier to sublet today?

Following an independent review into the Sharing Economy in 2014, the government finally recognized the need for stricter regulation of landlords.

In February 2016 it introduced a new model **Shorthold tenancy agreement template** . The changes read as follows:

The tenant can request to sublet part of the property for either the whole or part of the duration of the tenancy

and

the landlord cannot exercise a blanket ban on subletting and should not turn a request down without good reason

Estate agents have

always found it a little *too* easy to find a “good reason” (if you get my drift) however times are a changin’ and the burden of proof to show why subletting should *not* be permitted now lies entirely with the landlord.



This means that, tenants can in fact sublet as long as they are following the guidelines on subletting. Namely, tenants need to make sure that if they rent out their place, the property won't become overcrowded or violate the landlord's Multiple Occupancy License. Tenants should also bear

in mind that if they use the property for short-term holiday rentals and charge guests in excess of what they are paying in rent, their landlord's insurance policy *may* be invalidated (because the property is no longer just used for residential purposes).

If the tenant satisfies all the necessary conditions and the landlord either withholds permission or doesn't respond within a reasonable time-frame, the tenant is legally able to sue for damages!

In light of recent changes, it isn't uncommon for estate agents to set prohibitive terms on the tenant for the sole purpose of deterring them from subletting (deposit guarantees,

additional tenant checks etc.).

However the **Office of Fair Trading** (superseded by the Competition and Markets Authority), which is a government body responsible for protecting consumers from unfair contracts, has weighed on this point:

we have... objections to terms that allow [subletting] only if the tenant accepts unreasonable conditions, such as giving over-extensive guarantees.

Unlease allows subletting to take place within a secure framework that protects both the tenant and sub-tenant, and removes grounds for landlords to deny permission in the first place.

You've already signed a contract agreeing not to sublet?

Regardless of the document that you signed with your estate agent or landlord, there are external laws that overrule contract law, and these laws determine parts of your contract that are legally enforceable.



So, for example even if your contract said that the landlord is contractually allowed to evict you with 30 days

notice, it would still be illegal for them to do so (in fact if they removed you without following very strict procedures they could be criminally prosecuted).

Similarly, although your contract is likely to say that you can't sublet under any conditions, because the Office for Fair Trading now deems the anti-subletting clause as legally "unfair", those anti-subletting clauses are not in any way "enforceable". In fact, both blanket bans on subletting and unreasonable withholding of permission to sublet are grounds for the tenant to sue their landlord for "loss of income", as several more savvy tenants have done over the last few years.

Why is the government encouraging subletting?

There are two very obvious reasons for the government to encourage subletting. First of all, it's no secret that the UK is suffering from a housing crisis. Subletting is not only a great way for tenants to save money, but also opens up desperately needed accommodation that would otherwise stand empty. This helps to lower rents and is all round good news for everybody.



Secondly, more and more tenants need to sublet. If “Generation Rent” is going to be renting into the late 30s but is at the same time is becoming more mobile and international, we can’t continue being locked into 12-month contracts. The rental market hasn’t caught up with the needs of renters and subletting is one of the many ways that it is starting to adapt. The Office of Fair Trading affirms that while “Landlords have a legitimate interest in preventing their property from passing into the hands of unsuitable tenants...in fixed term tenancies, this does not justify an arbitrary right to withhold consent... to subletting. Where tenants are committed to pay rent for a period

of months or years, they too have a legitimate interest at stake”.

With the government’s blessing, tenants should view the right to sublet as a fundamental and they should not accept arbitrary restrictions. After all tenants are probably the ones paying off their landlord’s mortgage!

The sources for this article were taken exclusively from government documents including the Landlord and Tenant Act 1926, Housing Act 1988, Independent Review into the Sharing Economy 2014, the Office of Fair Trading. Additional information was taken from www.homelet.co.uk

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