

Subletting a guide for private tenants

- Head landlord – this is the property owner; sometimes call the ‘superior landlord’
- Mesne tenant – this is the tenant who rents from the property owner; sometimes call the ‘head or original tenant’
- Subtenant – this is the tenant who rents from the mesne tenant

Subletting a property you rent from a private landlord

Most tenancy agreements will have a clause that advises you if you are not allowed to sublet a property, or if you wish to sublet the property that they should seek permission from their landlord first.

If your tenancy agreement does not provide provision for subletting you might be able to sublet without the landlord’s permission or knowledge.

There are many reasons why you might want to sublet a property you have rented and it is best advised to approach your landlord first to discuss if this is a possibility.

If your tenancy agreement states that you must seek permission from your landlord before subletting the landlord should not unreasonably withhold consent and you should ensure you receive any consent in writing.

If your landlord refuses you permission to sublet or you sublet without their knowledge you risk losing your property and getting a poor reference.

If the landlord does agree to the sublet they will probably not want to deal with the sub tenant and will expect you to pay the rent directly to them as well as managing repairs and access for inspections. You will remain responsible for the tenancy and the behaviour of any sub tenant.

Subletting a property from another tenant

If you live in a property that is rented from a landlord (head) by another tenant and you pay your rent to that tenant (Mesne) you are likely be a subtenant.

This document was last amended on 31 May 2017 and was considered accurate at that time. Changes to legislation which occurred after this date will not be reflected in the content. This document should not be consider comprehensive, nor should it take the place of legal advice where this is required. Please note the information in this guidance is specifically for tenants renting from a private landlord. If you are renting from a social landlord or local authority subletting can be a criminal offence. Please consult your landlord for more information.

If you sublet the whole property from the Mesne tenant and do not share any part of the property with them you are likely to have an Assured Shorthold tenancy agreement (although you could have an assured tenancy agreement depending on the terms of your agreement and when the tenancy started, if you think you have an assured tenancy you should seek further advice). You will be responsible to pay the rent and behave in a tenant like manner and your landlord has a responsibility to maintain the property and not interfere with your peaceful enjoyment of the property.

If your landlord (Mesne tenant) wants you to leave the property they must serve a notice and follow the correct legal process to get a court order to evict you. This process is the same as if the head landlord wants to end the tenancy with the Mesne tenant.

If you want to leave the tenancy you should give notice to the Mesne tenant, you should not seek to leave the tenancy within the fixed term without a break clause or the Mesne tenant accepting a surrender of tenancy. If the tenancy is periodic you should check your tenancy agreement for the notice period required or give notice equivalent to the rental period.

Most Mesne tenants should have permission from their head landlord to sublet and you should ask your landlord (Mesne tenant) if they have permission to sublet the property to you.

If the Mesne tenant does not have permission to sublet to you this will not affect your rights unless the head landlord evicts the Mesne tenant. If the head landlord evicts the Mesne tenant this will end your tenancy unless you can prove that the head landlord has granted permission for you to be there (i.e. accepting the rent directly). If the head landlord has served notice or applied for a court order to evict the Mesne tenant you should seek advice about how this affects you.

Living with your landlord

If you sublet part of a property and you share the property with your landlord (Mesne tenant) you would be considered an excluded occupier. You would be an excluded occupier where you share a kitchen, bathroom or other living area with the landlord (Mesne tenant) but have exclusive access to the area of the property you rent, i.e. your bedroom, en-suite.

If you do not have exclusive access to any part of the property you are more likely to be a lodger. Lodgers have fewer rights than subtenants and you should seek advice if you think you are a lodger.

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If your landlord (Mesne tenant) has given you a fixed term tenancy agreement you are entitled to stay until the end of this agreement unless the superior landlord takes action to evict the original tenant.

If the head landlord seeks to evict their tenant then your tenancy will also be ended.

If your landlord wants you to leave they must give you notice which does not expire in the fixed term and is equivalent to the rental period. The landlord will not need a court order as after the notice has expired you would be considered a trespasser if you have not left.

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