

INDUSTRY SPEAK

SUBLEASE

WHAT ARE MY RIGHTS AS A TENANT?



IF YOU ARE A TENANT OF A COMMERCIAL OR RETAIL PREMISES AND WISH TO SUBLEASE YOUR PREMISES, THERE ARE A NUMBER OF FACTORS THAT MUST BE CONSIDERED.

WHAT IS A SUBLEASE?

A sublease is where the tenant enters into a formal agreement with somebody else (a sub-tenant) to rent part of the premises or the whole premises to the proposed sub-tenant.

AM I ABLE TO SUBLEASE?

In order to sublease the premises, the tenant will usually require the written consent of the landlord.

Leases often provide that the landlord cannot unreasonably withhold its consent to the assignment, but there are circumstances in which a landlord can withhold consent, such as:

- if the maximum number of occupants permitted under the tenancy agreement would be exceeded;
- if the total number of occupants would exceed any council rules and regulations;
- if the person being proposed is listed on a tenancy database; or

- if the landlord reasonably believes it would result in the premises being overcrowded.

The landlord can request information about the prospective sub-tenant such as their name and details of their past rental history.

WHAT HAPPENS IF THE LANDLORD WITHHOLDS CONSENT?

If the landlord withholds consent, the tenant can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order allowing the sublease. The Tribunal will decide if the withholding of the consent was reasonable.

If you wish to sublease the whole premises, approval is at the landlord's discretion and if the landlord says no, you cannot apply to NCAT. If you want to sublease only part of the premises, the landlord cannot unreasonably withhold consent.

The tenant must apply to the Tribunal within 3 months of becoming aware that the landlord has withheld consent.

WHAT ARE THE MAIN ISSUES TO CONSIDER?

1. TENANT'S OBLIGATIONS

The tenant remains liable under the lease with the landlord, and continues to pay rent to the landlord and to otherwise deal directly with the landlord. The sub-tenant pays rent to the tenant and normally has no direct dealings with the landlord.

2. GUARANTEES

Existing personal guarantees and bank guarantees provided by the tenant to the landlord will remain in place following a sublease. However, the tenant can require that the sub-tenant provides a guarantee to secure their obligations under the sublease.

3. ASSIGNMENT OF LEASE

If the new tenant is to occupy the whole of the premise, an assignment is usually the preferred option. Where the new tenant is to take over only part of the premises, this must be done by a sublease rather than an assignment.

4. RETAIL LEASES ACT 1994 (NSW)

If your lease is of retail premises covered by the Retail Leases Act 1994 (NSW), you will have to consider the provisions of that Act in relation to any sublease.

At JHK, we recommend seeking legal advice before sub-leasing your premises and we are able to assist you with the necessary enquiries and negotiations to best protect your interests.



IF YOU HAVE ANY QUESTIONS ABOUT A NEW LEASE, PLEASE DO NOT HESITATE TO CALL US ON **02 8239 9600** OR VISIT **JHKLEGAL.COM.AU**