



Assigning your Lease or Subletting

To the Reader

This leaflet is intended primarily for tenants contemplating assigning their lease or subletting but it will also interest future assignees and sub-tenants as well as landlords, who are all three directly involved in such a step.

" Breaking " the lease... with no Damage Done

Contrary to popular belief, a tenant may not break his lease with a " 3 month notice " at any time during the lease and for any reason.

In fact there are **only 3** specific situations where the lease can be **cancelled during its term** :

- a tenant **is allocated a dwelling in low-rental housing** ;
- a tenant **can no longer occupy his dwelling because of a handicap** ;
- an elderly person **is admitted permanently to a residential and long-term care centre or to a foster home**.

Other reasons : purchase of a house, divorce, disagreements between co-tenants, setting up a new household, the need for a larger dwelling, financial problems, moving for employment reasons, etc. do not allow a tenant to force the landlord to cancel the lease.

The tenant can always try **to come to an agreement with the landlord for the cancellation of the lease, preferably in writing**.

If there is no agreement, the tenant has **2 choices** : **to assign his lease or sublet the dwelling** to another person.

Exceptions

Before going any further you should be aware that you **cannot assign your lease or sublet if** :

- you are a student renting a dwelling in an educational institution ;
- you are a tenant in low-rental housing ;

IMPORTANT

The contents of this leaflet are for information purposes only and do not replace the legislation.

The staff at the Régie du logement can inform you of the recourse available to you for contesting a decision, the applicable procedure before the Régie and the deadlines involved. However, our staff cannot inform you of the procedures applicable before the other tribunals. If you need assistance, contact an attorney or notary.

- you are the tenant of a dwelling which is used as the family residence and you or your spouse (married person only) have notified the landlord of this, unless your spouse has given written consent to the assignment or sublet.

Note : In certain cases (such as joint tenancy) there may be restrictions on the right to assign or sublet. Ask for information at the Régie.

Assignment, Subletting : What's the difference ?

If you are a tenant who wants to leave a dwelling, the first question to ask yourself is whether you may want to return to the dwelling.

If you are leaving temporarily for a trip, studies or a job for a few months and you wish to avoid paying rent for a dwelling that you are not living in, then **subletting** would be a good solution. You **are still the tenant with all of your rights and obligations intact**. If, on the other hand, you are moving into a new house or to a job in another city, you would no doubt prefer to be released from your lease and its obligations. In this case it would be best to **assign your lease** : **you then renounce to your right to return to the dwelling**.

Assignment and Subletting : Similarities

Here are the formalities that are identical in both situations.

- the **assignor** is the tenant who is assigning his lease, i.e., the person who is leaving the dwelling ;
- the **assignee** is the person to whom the tenant assigns his lease, i.e., the one who will live in the dwelling ;
- the **sublessor** is the tenant who sublets, i.e., the person who is leaving the dwelling ;
- the **sub-tenant** is the person to whom the tenant sublets the dwelling, i.e., the one who will be living there.

Notice of Assignment or Sublet

You have found someone who is interested in

your dwelling, as an assignee or a sub-tenant. Sign a written agreement right away (assignment of lease agreement or a sublet lease) which will be conditional on the landlord granting consent. Concluding the agreement will be explained later on.

Next, **advise** the landlord, **in writing**, of the **name** and **address** of the interested person : this information must be given. Needless to say you may also provide the landlord with further information **as long as** you have the consent of your " candidate ".

The notice should also include the projected date for the assignment or the sublet. We suggest that you use the models of these notices, which are available at the Régie.

Make sure that you can prove the date that the landlord received the notice because he has **15 days** from this date to let you know whether he accepts or refuses the person you have proposed. If he **does not reply**, he is presumed to have **accepted**.

If he agrees, the landlord has the right to be reimbursed for reasonable related expenses (for example, the cost of a credit search).

Refusal of Assignment or Sublet

If the landlord refuses the person you have proposed, he must inform you and give you the reasons which must be **serious**.

For example, unacceptable behaviour by the person or his inability to pay could be serious justification for refusal.

So it is a good idea for you to do a complete reference check before proposing your " candidate " !

Recourse in the case of refusal

If the landlord gives reasons which do not seem serious, you can ask the Régie to assess these reasons or to cancel your lease.

If the Régie determines that the landlord's refusal is unjustified, it can declare valid the assignment or the sublet. The landlord may have to pay damages if his refusal has caused you a prejudice.

When you come to the **hearing**, bring along all the documents necessary for your proof. Make sure that the proposed assignee or sub-tenant is present by designating him as a witness : his presence is essential !

Assigning and Subletting : Differences

Assignment and its effects

On the assigning tenant

You hand over all your rights, including the right to maintain occupancy, to the assignee. You are freed from all obligations as of the date of the assignment. Therefore, you do not have to send a notice of non-renewal of the lease.

On the assignee

The assignee is not a new tenant in the eyes of the law. Therefore, he does not have the right to ask the Régie to set the rent. However, on becoming a tenant, he acquires all the rights and obligations of the lease. As he is bound by all of the conditions of the assigned lease he should obtain a copy of it from the assigning tenant.

On the landlord

Once the assignment takes effect, the landlord is bound to the assignee. It is to the assignee that all notices concerning the lease must be given and from him that the rent must be collected. The landlord **does not sign a new lease** with the assignee.

The assignee takes the dwelling in the condition in which he finds it or that it was in when he visited it.

Subletting and its effects

On the tenant (sublessor)

As the tenant who sublets the dwelling, you remain **entirely responsible** for all the obligations of the lease.

Before the sublease is concluded you must give the sub-tenant a copy of the building regulations, where applicable. The sublease must indicate all the main obligations that you have toward the landlord (e.g., snow removal) or refer to the obligations.

In this last case you must give the sub-tenant a copy of the main lease.

As a sublessor, you are obliged to :

- deliver the dwelling in good habitable and clean condition, and in good state of maintenance and repair in all respects ;
- ensure the peaceful enjoyment of the premises.

For example : if necessary repairs are not completed, the sub-tenant could take recourse against you, the sublessor. You would then have to oblige the landlord to respect his obligations toward you.

ATTENTION : You are still responsible for the lease. To avoid its renewal you must give the landlord a notice of non-renewal within the appropriate time frame.

However, if the dwelling has been sublet for more than 12 months (whether consecutive or not), the landlord may put an end to the sublet. Ask the Régie for further information.

On the sub-tenant

The sub-tenant is bound by the terms of the lease he signed with you but he does not have the right of occupancy since you maintain the right to reclaim the dwelling at the end of the sublet.

You also retain the right to end **your** lease in the manner and time period set out in the law.

If you do not renew the lease and if the sub-tenant wishes to remain in the dwelling, he should try to sign a new lease with the landlord.

NOTE : The sub-tenant is not obliged to leave the premises unless he has received a **10 day** notice to vacate from the tenant or the landlord. *Ask the Régie for information on this subject.*

In addition, as a new tenant in relation to you, the sublessor, the sub-tenant has the right to ask the Régie to fix the rent if the rent he is paying is higher than either the lowest rent paid during the 12 months before the sublet or the rent fixed by the Régie.

Therefore, according to the law, you must give him the " Notice to new tenant " at the conclusion of the lease.

On the other hand, if the landlord does not carry out his obligations, the sub-tenant can exercise the rights and recourses of the tenant to force the landlord to take action.

On the landlord

The landlord retains all of his rights and obligations toward the tenant who has sublet.

If the sub-tenant, by neglecting his obligations causes serious prejudice to the landlord, other tenants or occupants, the landlord can ask for

the cancellation of the tenant's lease or of the sublet since this recourse is specified in the law.

Concluding a lease agreement : Here's how

The Régie du logement recommends that you use the very simple conditional agreement model which it supplies entitled **Assignment of lease agreement** and that you complete it before sending the notice of assignment to the landlord.

Before signing the agreement, give the assignee all the relevant information in your possession and let him know if you have received a notice from the landlord such as a notice of rent increase.

Concluding a sublet lease : Here's how

First obtain the **mandatory lease form of the Régie du logement**. In the box for identifying the parties cross off the words " tenant " and " landlord " and replace them with " sub-tenant " and " sub-landlord " respectively. Of course the contract is conditional on the landlord's acceptance of the sublet.

Certain conditions of the sublease may be different from those of the main lease but they must not come into contradiction with the main lease so as to give the sub-tenant more rights than the tenant already has. For instance, if it is forbidden in the tenant's lease to keep an animal, the sub-tenant cannot keep one. On the other hand, if an animal is allowed according to the main lease, the sublease can forbid it. It would be the same for a parking space and so forth.

WEB SITE OF THE RÉGIE
<http://www.rdl.gouv.qc.ca>

HOW TO REACH US BY TELEPHONE

From Monday to Friday
Between 8:30 a.m. and 4: 30 p.m.

Montréal, Laval and Longueuil areas :
(514) 873-2245 *
Elsewhere in Quebec :
1-800-683-2245 *

*** An automated information service is available around the clock.**

Please have on hand all necessary documents before making your call.

The Régie du logement is answerable to the Minister of Municipal Affairs and Regions.

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Régie
du logement

Québec

