

# CASE STUDY

## Sub-Leasing Residential Premises



<b>Overview</b>	Sub-Leasing Residential Premises
<b>Issue:</b>	Conduct of a Property Agent
<b>Finding:</b>	The property agent's conduct falls short of the standard of competence and diligence that a reasonable member of the public is entitled to expect from a reasonably competent Property Agent.
<b>Consequences:</b>	The Agent was formally cautioned.
<b>Origin:</b>	Complaint to the Property Agents Board
<b>Relevant Legislation:</b>	<i>Residential Tenancy Act 1997 (RTA)</i> Section 49 <i>Code of Conduct</i> Clause 19(1)(e) <i>Property Agents and Land Transactions Act 2016</i> Section 101(6)(a)

### Background

The complainant rented a room in a shared house under a subletting agreement with a company (referred to here as Company A). The property was owned by a private landlord and managed by a licensed property agent (referred to here as the Agent).

The property was initially leased by Company A under a master tenancy agreement with the landlord, through a real estate agency. Later, the Agent took over management of the property after a change of employment and business ownership within the agency.

When the Agent renewed the lease, Company A continued subletting individual rooms to various occupants, including the complainant, under individual subletting arrangements.

### Nature of the Complaint

A representative from a tenants' advocacy organisation lodged a complaint on behalf of the tenant.

The complaint alleged that Company A's subletting arrangement was invalid under section 49 of the Residential Tenancy Act 1997 (RTA), as Company A did not occupy the premises. The subletting therefore breached the RTA.

It was further alleged that the Agent either:

- Failed to adequately monitor what Company A was doing, that is, subletting rooms in the property
- Knowingly allowed illegal sublets to occur, or

- Lacked sufficient knowledge of the relevant legislation.

The complainant argued that, in any of these scenarios, the Agent's conduct was unsatisfactory and warranted disciplinary action.

### Property Agent's Response

The Property Agent acknowledged that she had taken over management after the original lease had been executed. She said that she believed Company A was providing housing for female professionals or students new to the area and that the arrangement had owner approval.

The Agent admitted she had not recalled that the RTA required a head tenant who sublets to also occupy the property. She described her failure to review the lease terms before renewing it as an "oversight," assuming instead that the existing arrangement complied with the legislation.

She later stated that she now fully understood the subletting provisions and would ensure compliance in the future. The Property Agent expressed regret and accepted responsibility for not being familiar enough with the legislation.

### Investigation

The Property Agents Board sought information from the Property Agent, including:

- Management agreements and lease documents,

# CASE STUDY

## Sub-Leasing Residential Premises



- Correspondence regarding subletting consent, and
- Evidence of inspections and communications with the owner and tenant.

The investigation established that:

- The Property Agent was not involved in establishing the initial lease but did renew it, and at the time of renewal the Property Agent did not undertake due diligence in renewing and confirming the lease arrangements, or determine the legality of the lease.
- There was no written consent from the landlord to permit subletting.
- The renewed lease was signed despite the arrangement breaching the RTA.
- The Property Agent had observed multiple occupants at the property who were not listed on the lease as approved occupants.

The Board found that the Property Agent relied too heavily on previous agreements and failed to verify compliance with the RTA. It also found the landlord was unaware that Company A did not reside at the property.

### Findings

The Board determined that:

- The Property Agent had a professional duty to verify that subletting complied with the RTA before renewing the lease.
- The Property Agent's assumption that the previous lease was compliant demonstrated a lack of due diligence in undertaking her duties whilst preparing the renewing of the lease.
- The Property Agent's oversight showed insufficient attention to legislative detail and a lack of understanding of subletting requirements.

The conduct was found to fall below the standard expected of a reasonably competent Property Agent.

### Decision

The Board concluded that the Property Agent engaged in unsatisfactory professional conduct by renewing a lease in circumstances where subletting occurred contrary to the RTA.

While the conduct was not deliberate, it reflected a "gap in professional understanding" and inadequate management oversight.

Under section 101(6) of the Property Agents and Land Transactions Act, the Board issued a formal caution to the Agent.

### Relevant Legislation Explained

#### ***Residential Tenancy Act 1997***

By not being fully conversant with all of the provisions related to subletting contained within the RTA, and not being aware that Company A was subletting rooms in the Property in a manner that was inconsistent with the provisions of the Residential Tenancy Act 1997, the Property Agent contravened sections 49(1)(b)(i) and 49(1A) of the RTA -

#### *49. Subletting*

*(3) The tenant is not to sublet the residential premises -*

*(a) without the consent of the owner of the premises; and*

*(b) unless the tenant -*

*(i) is also an occupier of the premises; or*

*(ii) sublets the premises to one of his or her employees.*

#### ***Code of Conduct 2022***

By failing to ensure they were familiar with the provisions of the *Residential Tenancy Act 1997* the property agent breach part 5(19)(e) of the *Code of Conduct 2022* -

#### *19. Professionalism in the property agents industry*

*(1) A property agent must at all times -*

# CASE STUDY

## Sub-Leasing Residential Premises



...

*(e) keep up-to-date on relevant codes of conduct, policies and guidelines issued by the Property Agents Board and abide by all relative business and legislative requirements, including but not limited to marketing/advertising and intellectual property;*

### **Property Agents and Land Transactions Act 2016**

The decision of the Board was made pursuant to section 101(6)(a) of the *Property Agents and Land Transactions Act 2016* -

#### *101. Procedure for minor misconduct*

*(6) However, if the Board is satisfied that the evidence substantiates the complaint, it may do either or both of the following:*

*(a) caution or reprimand the property agent;*

---

## **What Could the Property Agent Have Done in This Example?**

### **1. Review the Lease and Property Management Agreements Thoroughly Before Renewal**

The Property Agent should have reviewed all existing lease documents, correspondence, and the nature of occupancy before renewing the lease.

### **2. Verify Compliance with the Residential Tenancy Act (RTA)**

The Property Agents should have been fully conversant with all of the provisions related to subletting contained within the RTA.

She should have confirmed whether the head tenant (Company A) occupied the premises or employed any of the subtenants, as required under section 49 of the RTA.

### **3. Obtain Written Landlord Consent for Subletting**

The Property Agent should have ensured clear, written consent from the owner before allowing subletting arrangements to continue.

### **4. Clarify the Status of the Head Tenant**

The Property Agent should have confirmed whether Company A was acting as an individual or as a corporate entity.

### **5. Communicate Openly with the Owner**

The landlord should have been informed of the actual occupancy situation and any risks associated with the subletting arrangement.

### **6. Maintain Compliance Knowledge**

The Property Agent should have maintained up-to-date knowledge of tenancy legislation and sought guidance before executing a new lease under questionable terms.

### **7. Conduct Proactive Inspections and Reporting**

On identifying unapproved occupants, the Property Agent should have documented and escalated the issue promptly to the landlord for instruction.