

A landlord leased an apartment to a tenant by written lease for two years ending on the last day of a recent month. The lease provided for \$700 in monthly rent. The tenant occupied the apartment and paid the rent for the first 15 months of the lease term, until he moved to another city to take a new job. Without consulting the landlord, the tenant moved a friend into the apartment and signed an informal writing transferring to the friend his "lease rights" for the remaining nine months of the lease. The friend made the next four monthly \$700 rent payments to the landlord. For the final five months of the lease term, no rent was paid by anyone, and the friend moved out with three months left of the lease term. The landlord was on an extended trip abroad, and did not learn of the default and the vacancy until the end of the lease term.

The landlord has sued the tenant and the friend, jointly and severally, for \$3,500 for the last five months' rent.

What is the likely outcome of the lawsuit?

- A. Both the tenant and the friend are liable for the full \$3,500, because the tenant is liable based on privity of contract and the friend is liable based on privity of estate as an assignee.
- B. The friend is liable for \$1,400 based on privity of estate, which lasted only until he vacated, and the tenant is liable for \$2,100 based on privity of contract and estate for the period after the friend vacated.
- C. The tenant is liable for \$3,500 based on privity of contract, and the friend is not liable, because a sublessee does not have personal liability to the original landlord.
- D. The friend is liable for \$3,500 based on privity of estate, and the tenant is not liable, because the landlord's failure to object to the friend's payment of rent relieved the tenant of liability.

Explanation:

A landlord and tenant have a legal relationship based on both:

privity of contract – their shared interest in the lease agreement *and*

privity of estate – their successive right to possess the property (ie, the tenant's current right of possession is immediately followed by the landlord's future right of possession).

Unless the lease states otherwise, either party can freely transfer his/her interest under the lease. **Assignment** is a **complete transfer** of a tenant's interest to a third party (assignee) **for the remainder** of the tenant's lease term (as seen here), so:

the original **tenant retains privity of contract** due to the lease *and*

the **assignee gains privity of estate** since the landlord's right of possession now follows the assignee's.

Because of this privity, the original tenant and the assignee are **jointly and severally liable** for the landlord's **entire harm** arising from a breach of the lease (eg, failure to pay rent). Therefore, the tenant *and* the friend are liable for the landlord's entire harm (\$3,500).

(Choice B) The friend's privity of estate did not terminate when he vacated the property—it lasted until the end of the lease term since that was the friend's assigned interest. And though the tenant lacked privity of estate, he retained privity of contract with the landlord—even after the friend vacated. Therefore, both are liable for the full \$3,500.

(Choice C) A sublease is a partial transfer of a tenant's interest to a third party (sublessee) for less than the remainder of the lease term. A sublessee is not personally liable to the landlord since (1) no lease agreement exists between them (no privity of contract) and (2) the tenant will regain possession before the landlord (no privity of estate). But since the friend was an assignee, he *is* jointly and severally liable to the landlord.

(Choice D) A tenant is relieved of liability following assignment when the landlord *expressly* releases the tenant from the lease (eg, letter stating that tenant has no lease obligations). An *implied* release (eg, the landlord's failure to object to the friend's payment of rent) is insufficient.

Educational objective:

Assignment is a transfer of a tenant's entire interest to a third party (assignee) for the remainder of the lease term. The tenant (through privity of contract) and the assignee (through privity of estate) are jointly and severally liable for the landlord's entire harm arising from a breach of the lease.

References

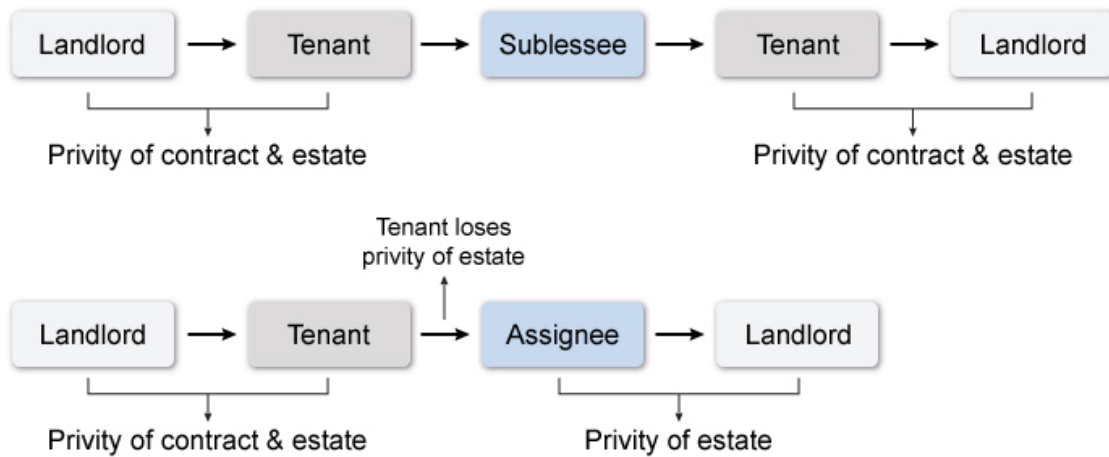
Restatement (Second) of Property: Landlord & Tenant § 15.1 (Am. Law Inst. 1977) (right to transfer lease interest).

Restatement (Second) of Property: Landlord & Tenant § 16.1 (Am. Law Inst. 1977) (joint and several liability based on privity of contract and privity of estate).

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**Privity with landlord
(sublease v. assignment)**



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