

A landlord leased a building to a tenant for a 10-year term. Two years after the term began, the tenant subleased the building to a sublessee for a 5-year term. Under the terms of the sublease, the sublessee agreed to make monthly rent payments to the tenant.

Although the sublessee made timely rent payments to the tenant, the tenant did not forward four of those payments to the landlord. The tenant has left the jurisdiction and cannot be found. The landlord has sued the sublessee for the unpaid rent.

There is no applicable statute.

If the court rules that the sublessee is not liable to the landlord for the unpaid rent, what will be the most likely reason?

- A. A sublessee is responsible to the landlord only as a surety for unpaid rent owed by the tenant.
- B. The sublease constitutes a novation of the original lease.
- C. The sublessee is not in privity of estate or contract with the landlord.
- D. The sublessee's rent payments to the tenant fully discharged the sublessee's obligation to pay rent to the landlord.

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 possessory right immediately precedes the landlord's future possessory right).

Either party can freely transfer his/her interest unless the lease prohibits it. For example, a tenant can sublease part of his/her interest to a third party (sublessee) for less than the remainder of the tenant's lease term. Despite that transfer, a **sublessee is not liable** to the landlord for a **breach of the lease** (eg, unpaid rent) because:

no lease agreement exists between the landlord and the sublessee (no privity of contract) *and*

the tenant will regain possession of the property before the landlord does (no privity of estate).

Instead, the **tenant remains liable** to the landlord for any such breach.

(Choice A) A surety is a person who assumes direct liability for another's obligation (eg, debt). Here, the sublessee is not a surety because there is no indication that the sublessee agreed to assume the tenant's contractual liability under the lease. Therefore, the sublessee is not liable for the tenant's failure to pay rent.

(Choice B) A novation is a separate agreement based on an existing contract that (1) substitutes a new party for an original contracting party and (2) excuses the original party from further performance under the original contract. But since a sublease does neither, it is not a novation.

(Choice D) A sublessee has no obligation to pay rent to a landlord.

Educational objective:

Since a sublessee and landlord lack privity of contract and privity of estate, the sublessee is not liable to the landlord for a breach of the tenant's lease (eg, unpaid rent). Instead, the tenant remains liable to the landlord for any such breach.

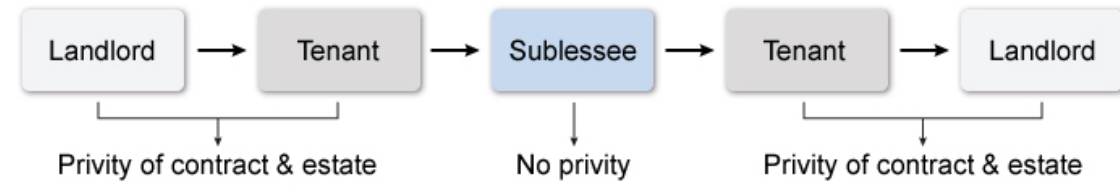
References

49 Am. Jur. 2d Landlord and Tenant § 970 (2018).

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Privity with landlord



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