

Seven years ago, a man, his sister, and his cousin became equal owners, as tenants in common, of a house. Until a year ago, the man lived in the house alone. The sister and the cousin are longtime residents of another state.

One year ago, the man moved to an apartment and rented the house to a tenant for three years under a lease that the man and the tenant both signed. The tenant has since paid the rent each month to the man.

Recently, the sister and the cousin learned about the rental. They brought an appropriate action against the tenant to have the lease declared void and to have the tenant evicted. The tenant raised all available defenses.

What will the court likely decide?

- A. The lease is valid, and the tenant is not evicted but must share possession with the sister and the cousin.
- B. The lease is valid, and the tenant retains exclusive occupancy rights for the balance of the term.
- C. The lease is valid, but the tenant is evicted because one-third of the lease term has expired and the man had only a one-third interest to transfer.
- D. The lease is void, and the tenant is evicted.

Explanation:

Consent between cotenants in common

(common examples)

Consent required	Convey entire co-owned property
	Obtain exclusive possession over part of property
	Bind other cotenants' interests in contract with third party
No consent required	Sell, lease, or devise personal ownership interest
	Possess entire co-owned property
	Extract minerals from co-owned property (unless committing waste)

Tenancy in common is concurrent ownership of property where each co-tenant has a separate share of the property but the right to possess and enjoy the entire property (ie, separate but undivided interests). A tenant in common may **lease** or otherwise transfer his/her property interest to a third party **without the other co-tenants' consent**. But the other **co-tenants are entitled** to:

possess and use the entire property with the third party *and* **share expenses and income** (eg, rent) generated by the property in proportion to their property interests.

Here, the man, sister, and cousin share the house as tenants in common. The man leased the house to a tenant, who then paid rent to the man. And though the sister and cousin only recently learned of this lease, it is valid (not void) because the man did not need their consent to lease his property interest. As a result, the court will likely decide that the tenant is not evicted but must share possession with the sister and cousin **(Choices B & D)**.

(Choice C) Although the man (an equal owner) had only a one-third interest in the house, he was entitled to lease his right to possess and enjoy the *entire* house to the tenant. And since two-thirds of the lease term still remain, the tenant should not be evicted.

Educational objective

A tenant in common has the right to lease (or otherwise transfer) his/her separate, undivided property interest to a third party without the other co-tenants' consent. But the other co-tenants have the right to share possession of the property with the third party and receive a share of the rental income in proportion to their property interests.

References

20 Am. Jur. 2d Cotenancy and Joint Ownership § 31 (2018) (defining tenancy in common).

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