

An entrepreneur owned a ranch. He entered into a written three-year lease of the ranch with a rancher. Among other provisions, the lease prohibited the rancher from "assigning this lease, in whole or in part, and from subletting the ranch, in whole or in part." In addition to a house, a barn, and a one-car garage, the ranch's 30 acres included several fields where first the entrepreneur, and now the rancher, grazed sheep.

During the following months, by a written agreement, the rancher allowed his neighbor, a car enthusiast, exclusive use of the garage for storage, under lock and key, of his antique automobile for two years, charging him \$240. The rancher told his other neighbor, a golfer, that she could use the fields to practice golf as long as she did not disturb his sheep.

Which, if any, of the rancher's actions constituted a violation of the lease?

- A. Only allowing the car enthusiast exclusive use of the garage for storage.
- B. Only allowing the golfer to use the fields to practice her golf.
- C. Both actions.
- D. Neither action.

Explanation:

Unless the lease expressly provides otherwise, a **tenant is free to transfer** his/her interest under the lease **to a third party** through either:

assignment – a transfer of all, or part of, the tenant's interest under the lease to a third party for the **remainder** of the tenant's lease term *or*

subletting – a transfer of all, or part of, the tenant's interest under the lease to a third party for **less than the remainder** of the tenant's lease term.

Here, the entrepreneur leased his ranch to the rancher for three years. The lease expressly prohibited the rancher from assigning or subletting the ranch, in whole or in part. The rancher then entered into a written agreement that gave the car enthusiast exclusive possession of the ranch's garage (part of the rancher's lease interest) for two years (less than the remainder of the rancher's lease term) in exchange for \$240. Therefore, this written agreement was a sublease and violated the entrepreneur and rancher's lease **(Choices B & D)**.

A tenant also is generally **free to grant a license**—a **non-possessory** (and usually non-exclusive) **right to enter and use the property** for a particular purpose—to a third party **unless the lease states otherwise**. Here, the lease only prohibited assigning and subletting. Therefore, the rancher's license to the golfer—granting her a non-exclusive right to enter and use the property to practice golf—did not violate the lease **(Choices B & C)**.

Educational objective:

A tenant generally has the right to (1) transfer his/her interest under a lease for the remainder (assignment) or part (sublease) of the lease term or (2) grant a non-possessory right to use the property for a particular purpose to another (license). However, these rights can be restricted by an express lease provision.

References

Restatement (Second) of Prop.: Landlord & Tenant §§ 15.1–15.2 (Am. Law Inst. 1977) (assignments and subleases).

Restatement of Prop. § 512 (Am. Law Inst. 1944) (licenses).

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