

Analysis of Quebec Commercial Leases and Sub-Leases

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Commercial Lease Versus Sub-Lease in Quebec: A Comprehensive Analysis

Introduction

Commercial leasing in Quebec is governed by the Civil Code of Québec (CCQ) and shaped by civil law principles distinct from common-law jurisdictions. This report examines **commercial leases** and **sub-leases** under Quebec law, highlighting their definitions, legal framework, and the rights and obligations of landlords, tenants, and sub-tenants. It compares the advantages and disadvantages of leasing vs subleasing from each party's perspective, addresses [financial, tax, and contractual considerations](#), and provides practical scenarios. The report also warns of risks in subleasing without consent and discusses

recent Quebec court decisions and legal developments relevant to commercial leasing and subleasing. All information is grounded in Quebec's legal sources – notably the CCQ and jurisprudence – and is presented in a formal, professional tone suitable for lawyers, property managers, and [business operators](#).

Definitions Under Quebec Law

Commercial Lease: Article 1851 of the CCQ defines a lease as *“a contract by which a person, the [landlord](#), undertakes to provide another person, the tenant, with the enjoyment of a property for a certain time, in return for rent”*(Source: [gowingwlg.com](#)). A [commercial lease](#) is simply a lease of real property for commercial (non-residential) purposes. In Quebec civil law, a lease is considered a personal contractual right, not a real right in the property (Source: [gowingwlg.com](#)). This means the [commercial tenant](#) does not gain ownership interest in the premises but has rights vis-à-vis the landlord to use and occupy the premises as agreed.

Sub-lease: A [sub-lease](#) is a secondary lease agreement wherein the original tenant (lessee) leases out *all or part of the leased premises* to a third party (the sub-tenant) for a term that is equal to or shorter than the remaining term of the head lease (Source: [fasken.com](#))(Source: [oaciq.com](#)). In a sublease, the original lease remains in effect between the landlord and the principal tenant, and the contractual nexus between the landlord and original tenant is **not severed**(Source: [fasken.com](#)). Instead, the sub-tenant undertakes obligations to the original tenant (now acting as a sub-landlord), and the original tenant retains rights and duties under the main lease. Crucially, a sublease **cannot convey more rights than the head tenant possesses** under the main lease (Source: [oaciq.com](#)). For example, the sub-landlord cannot grant a longer term or broader usage rights than those in the primary lease. Subleasing is typically used when the original tenant wants to *temporarily* vacate or share the premises – the original tenant usually intends to return or at least remains ultimately responsible for the lease (Source: [educaloi.qc.ca](#)).

Lease Assignment (contrast): Although the focus is on leases vs subleases, it is helpful to note the distinction from an **assignment of lease**. In an assignment, the original tenant transfers all rights and obligations of the lease to a new tenant (assignee) and *withdraws from the contractual relationship*. The CCQ provides that a commercial lease assignment *“discharges the lessee of all his responsibilities,”* making the assignee the new tenant with full rights (including any renewal rights) and obligations under the lease (Source: [oaciq.com](#)). The original tenant is released from liability **unless** the lease stipulates otherwise (for instance, the lease could stipulate the original tenant remains a guarantor) (Source: [oaciq.com](#))(Source: [gowingwlg.com](#)). By contrast, in a **sub-lease** the original tenant remains bound to the landlord and is not released from the lease obligations (Source: [stikeman.com](#)). This fundamental difference means subleasing creates a tri-partite arrangement (landlord–tenant–subtenant) whereas an assignment creates a direct landlord–new tenant relationship and terminates the old one (Source: [fasken.com](#)).

Legal Framework: Civil Code and Governing Laws

Civil Code of Québec (CCQ): Commercial leases in Quebec are primarily governed by Articles 1851–1891 CCQ (Source: stikeman.com), which outline the general rights and obligations of lessors and lessees. These provisions apply by default to any lease contract **unless the parties validly contract out of them** (Source: stikeman.com). [Quebec's civil law tradition](#) allows a high degree of contractual freedom in commercial matters. Indeed, *"the parties to a commercial lease are subject to the CCQ obligations unless they have expressly waived their application in the lease...or set out other conditions"*, which is a *"fundamental difference between a commercial lease and a residential lease"* (Source: oaciq.com). In residential leasing, many CCQ rules are of *public order* (mandatory law) and cannot be derogated from by agreement (Source: oaciq.com). By contrast, in commercial leases, most CCQ provisions can be modified or excluded by the lease agreement since relatively few are stipulated as public order in this context (Source: gowingwlg.com). **In sum, the CCQ provides the baseline legal framework, but commercial lease contracts commonly override or refine these default rules** as long as minimum legal norms are respected.

Key CCQ provisions governing *assignment and sublease* include: Article 1870 CCQ (tenant's right to sublease or assign, with notice to landlord), Article 1871 CCQ (landlord's right to refuse consent only for a serious reason and the 15-day time limit to reply), Article 1872 CCQ (landlord may only charge reasonable fees for consenting), Article 1873 CCQ (effects of assignment – original tenant released unless otherwise agreed), and Articles 1874–1876 CCQ (effects of sublease – original tenant remains liable; sub-tenant's limited liabilities and direct rights) (Source: gowingwlg.com) (Source: oaciq.com). We will detail these obligations in the next section. It should be noted that while these articles apply by law, a commercial lease can alter many of these rights (for example, a lease can impose stricter conditions on subletting, different notice periods, or even a clause allowing the landlord to terminate the lease if the tenant seeks to transfer it) (Source: oaciq.com). Parties must therefore carefully review the lease document to understand their specific rights and restrictions regarding subleasing or assignment (Source: fasken.com) (Source: fasken.com).

Other Statutes and Jurisdiction: Unlike residential leases (which fall under specialized rules and the jurisdiction of the Tribunal administratif du logement, formerly Régie du logement), commercial leases do not have a separate statutory regime or tribunal. Disputes involving commercial lease agreements are generally handled by Quebec's civil courts (Cour du Québec or Superior Court, depending on the amount or remedy sought). There are no rent control or standard form requirements for commercial leases – the terms are negotiated between the parties, subject to general contract law and the CCQ's default provisions. One provision of public order is that parties **cannot prohibit the registration** of a lease on title (Article 2936 CCQ), meaning a clause forbidding a tenant from registering rights in the land registry would be null (Source: gowingwlg.com). Aside from the CCQ, other laws can occasionally impact

commercial leasing (for instance, municipal zoning bylaws affect permitted use, and insolvency law may affect lease obligations if a tenant goes bankrupt, etc.), but the Civil Code is the primary source of law for lease and sublease relationships in Quebec.

Recent Developments: It's worth noting that Quebec recently amended the CCQ for **residential leases** (Bill 31, in force Feb. 2024) to give landlords more flexibility regarding assignments – specifically, a landlord can refuse a residential lease assignment for *any reason* (not just a serious reason) if they choose to terminate the lease on the proposed assignment date (Source: educaloi.qc.ca). Moreover, tenants can no longer profit from assigning or subletting dwellings (no “key money” or sublet rent above the original rent) (Source: publicationsduquebec.gouv.qc.ca). **These changes do not apply to commercial leases**, but they underscore the continuing distinction: in commercial leases the ability to transfer or sublet is principally governed by the lease contract and the general CCQ rules, rather than by interventionist statutes. The default CCQ rule (serious reason needed to refuse) can be and often is waived or modified in a commercial lease, whereas in residential leases it was mandatory until the recent amendment (Source: educaloi.qc.ca).

Rights, Responsibilities, and Liabilities of Landlords, Tenants, and Sub-Tenants

In any lease arrangement, each party has specific rights and obligations. These become more complex in a sublease scenario, where a third party enters the picture. Below is a detailed comparison of the duties and rights of the landlord, the principal tenant, and the sub-tenant in a Quebec commercial lease context.

Landlord (Lessor): Under the CCQ, the landlord's core obligations in any lease (including commercial) are to deliver the premises in good condition, maintain them, and ensure the tenant's peaceful enjoyment of the property throughout the term (Articles 1854 and 1858 CCQ) (Source: stikeman.com) (Source: gowingwlg.com). The landlord must warrant that the property can be used for its intended commercial purpose and that it remains fit for that purpose (e.g. complies with zoning and is structurally sound) (Source: stikeman.com). The landlord is liable for disturbances of enjoyment caused by anyone lawfully on the property under his control (for example, other tenants or persons allowed access) – if another tenant's actions or a construction project interferes with the lessee's business, the landlord may have to intervene or compensate (Source: stikeman.com) (Source: gowingwlg.com). The landlord also has the right to access the premises at reasonable times to inspect, do necessary repairs, or show the space to prospective buyers/tenants, but must exercise this right in a reasonable manner (Article 1857 CCQ) (Source: gowingwlg.com). In a commercial lease, many of these obligations can be fine-tuned by contract (e.g. leases often make the tenant responsible for certain maintenance or repairs), but the essential duties of providing the agreed-upon space and not disturbing the tenant's lawful use remain, unless explicitly waived by the tenant.

- *Rights of the Landlord:* The landlord has the right to receive rent on the agreed schedule and to enforce all terms of the lease. If the tenant fails to perform obligations (e.g. not paying rent or causing damage), the landlord can, after proper notice, seek remedies such as claiming damages, obtaining an order for specific performance, or applying to the court to terminate the lease if the breach is serious (Art. 1863 CCQ) (Source: stikeman.com) (Source: gowingwlg.com). In the event of non-payment of rent, Quebec law allows the tenant a chance to cure the default even after proceedings begin – paying all arrears with costs before judgment will prevent termination (Art. 1883 CCQ) (Source: stikeman.com). Landlords often contract out of this protection in commercial leases (by a clause wherein the tenant renounces Article 1883) although its enforceability can be debatable (Source: stikeman.com). Upon lease termination or expiry, the landlord is entitled to have the premises returned in the condition they were delivered, less normal wear-and-tear (Art. 1890 CCQ) (Source: stikeman.com).
- *In a Sublease:* The landlord's rights against and obligations to the principal tenant remain unchanged – the original tenant is fully responsible to the landlord despite having sublet the space (Source: oaciq.com). Notably, **the landlord does not contract directly with the sub-tenant**, but Quebec law does establish a limited legal relationship between landlord and sub-tenant. The sub-tenant has a *direct recourse against the head landlord* to enforce the landlord's obligations "*to fulfill his obligations*" under the main lease (Source: oaciq.com). In other words, if the landlord fails to maintain the property or honor the lease terms, the sub-tenant (despite not being in privity of contract with the landlord) can directly demand performance from the landlord (Source: oaciq.com) (CCQ 1876). Conversely, the landlord has certain recourses against the sub-tenant: **if the sub-tenant's conduct seriously prejudices the landlord or other occupants, the landlord may ask a court to terminate the sublease** without necessarily terminating the main lease (CCQ 1875) (Source: oaciq.com). For example, if a sub-tenant is engaging in dangerous activities or chronic disturbance, the landlord can seek cancellation of the sublease to evict that sub-tenant (Source: oaciq.com). The landlord can also require that rent from the sub-tenant be directly applied to the rent owed under the main lease if the principal tenant defaults – by law, "*if rent is not paid, the lessor may turn to the lessee or sublessee*" for payment (Source: oaciq.com). However, as explained below, the sub-tenant's liability to the landlord is limited to the sublease terms (the sub-tenant would only owe the landlord what it agreed to pay in the sublease, not the entire head rent, unless those are the same) (Source: oaciq.com).

Tenant (Lessee): The primary tenant in a commercial lease has the obligation to pay the stipulated rent and to use the premises prudently and diligently for the purpose stipulated in the lease (Art. 1855 CCQ) (Source: gowingwlg.com). The tenant must not change the form or intended use of the premises without the landlord's consent (Art. 1856 CCQ) (Source: gowingwlg.com). The tenant also must conduct itself in a manner that does not disturb the normal enjoyment of other tenants in the building – for instance, a commercial tenant should avoid excessive noise or nuisance that disrupts neighbors, or else the landlord may seek termination of the lease for cause (Source: gowingwlg.com). The tenant is responsible for

routine minor maintenance and repairs, except those due to normal aging or force majeure (the landlord handles major repairs by default; Art. 1864 CCQ) (Source: gowlingwlg.com). The tenant must tolerate necessary repairs by the landlord and even temporarily vacate if required for such work, though the tenant may be entitled to rent reduction or compensation in that case (Art. 1865 CCQ) (Source: gowlingwlg.com). The tenant is liable for damage to the property caused by his fault or that of persons he allows on the premises (which would include sub-tenants or invitees) (Art. 1862 CCQ) (Source: gowlingwlg.com). For example, if a fire or flood is caused by the tenant's negligence, the tenant is presumptively responsible for the loss (notably, in case of fire, the CCQ actually reverses the burden onto the landlord to prove the tenant's fault) (Source: gowlingwlg.com). The CCQ also obliges the tenant to inform the landlord of any serious defect or deterioration of the property that the tenant becomes aware of (Art. 1866 CCQ) – failing to do so could make the tenant liable for resulting damages.

- *Rights of the Tenant*: The tenant has the right to quiet enjoyment of the premises – the landlord must not interfere with the tenant's use, and must protect the tenant from legal or de facto disturbance by others (Source: stikeman.com)(Source: gowlingwlg.com). If the landlord fails in obligations (for example, fails to heat the building or perform necessary repairs), the tenant can seek remedies: reduction of rent, specific performance (getting a court order for the landlord to fix an issue), or even termination of the lease if the breach is serious and causes the tenant serious injury (Art. 1863 CCQ) (Source: gowlingwlg.com). The tenant can also claim damages for losses caused by the landlord's breach, unless the landlord proves they acted with prudence and diligence (Art. 1861 CCQ) (Source: gowlingwlg.com). Another important right is *tacit renewal*: if a fixed-term lease expires and the tenant remains for more than 10 days without opposition from the landlord, the lease is automatically **renewed under the same conditions** (usually for one year, or for the original term if it was less than a year) (Art. 1879 CCQ) (Source: stikeman.com). Many commercial leases explicitly override this by stating that holding over after expiry converts the lease to month-to-month at increased rent, to avoid an unintentional year-long renewal (Source: stikeman.com). The tenant in a commercial lease also typically has the freedom (absent a contractual restriction) to sublease or assign the lease, *but must follow the CCQ formalities or any additional lease terms regarding obtaining the landlord's consent*, as discussed next.
- *In a Sublease*: When a tenant enters a sublease, the tenant becomes a **sub-landlord** to the sub-tenant while still remaining **the tenant vis-à-vis the original landlord**. This double role significantly expands the tenant's responsibilities. **To the landlord**, the original tenant remains fully liable for all lease obligations during the sublease term. The CCQ explicitly states that in a sublease, *"the lessee will remain fully responsible to the lessor for all the obligations under the lease"*(Source: oaciq.com). The tenant cannot escape liability by subleasing – if the sub-tenant fails to pay rent or damages the property, the original tenant is answerable to the landlord as if the breach were its own. In fact, the landlord may choose to demand rent directly from the sub-tenant (for the sublet portion) if the main tenant defaults (Source: oaciq.com), but this does not relieve the main tenant from liability. The

original tenant also retains certain rights, like the ability to regain possession at sublease end (since a sublease is often for a shorter term). Notably, **renewal rights** remain with the original tenant – the sub-tenant generally has no automatic right to renew the head lease. If the lease has an option to renew, only the original tenant (still the lessee of record) can exercise it unless the contract permits the sub-tenant to do so.

- **To the sub-tenant**, the original tenant assumes the role of landlord. This means the sub-landlord must fulfill essentially the same obligations that any landlord would owe: providing the sub-tenant undisturbed enjoyment of the premises, ensuring the space is delivered in a good and safe condition, and performing necessary repairs (particularly if the head landlord fails to do so) (Source: educaloi.qc.ca). As Éducaloi explains, *when you sublet, you assume the responsibilities of a landlord toward the sub-tenant. You must leave the premises in good, habitable condition; if repairs are needed and the landlord doesn't do them, the sub-tenant can ask you (the sub-landlord) to do them; you must ensure the sub-tenant can live there peacefully* (Source: educaloi.qc.ca). In other words, the original tenant is effectively the guarantor of the landlord's obligations for the sub-tenant's benefit. The sub-tenant will pay rent to the original tenant (unless otherwise agreed) and can hold the original tenant responsible if, for example, the heating fails or an essential service is not provided (the original tenant in turn would have to enforce the head landlord's duty, but the sub-tenant need not directly battle the head landlord initially). The original tenant also must monitor the sub-tenant's compliance with both the sublease terms and any relevant terms of the head lease. Typically, a well-drafted sublease contract **incorporates the terms of the main lease** and obliges the sub-tenant to honor all applicable covenants (use of premises, insurance, maintenance, etc.) so that the original tenant does not find itself in breach of the head lease due to the sub-tenant's acts. For example, if the head lease prohibits certain hazardous activities or requires the tenant to carry liability insurance, the sublease should impose the same requirements on the sub-tenant. In summary, the original tenant in a sublease situation carries dual liability – *upwards to the head landlord* for the full performance of the lease, and *downwards to the sub-tenant* for the performance of essentially landlord-like duties. This is a delicate position: the tenant remains "sandwiched" between the two other parties.

Sub-Tenant: The sub-tenant enters a contractual relationship with the original tenant (sub-landlord) and obtains the right to occupy the premises (or part of them) for the sublease term. The sub-tenant's rights are granted by the sublease agreement, and as noted, can never exceed the rights of the head tenant under the main lease (Source: oaciq.com). For instance, if the head lease forbids certain uses or has a fixed end date, the sublease cannot override those restrictions. The sub-tenant owes duties to the sub-landlord analogous to any tenant's duties: paying the agreed sub-rent on time, using the space prudently for the permitted purpose, respecting any building regulations, and not causing damage or disturbance. In effect, the sub-tenant must fulfill all obligations in the sublease (which usually mirror the main lease obligations relevant to the space) to both the sub-landlord and indirectly the head landlord.

- *Rights of the Sub-Tenant:* Despite the lack of direct privity with the head landlord, Quebec law grants the sub-tenant certain direct rights. As mentioned, CCQ 1876 allows the sub-tenant to exercise the tenant's rights against the landlord to ensure the landlord's obligations are met (Source: oaciq.com). For example, if the building's heating system (which the landlord must maintain) breaks down and the landlord fails to fix it in a reasonable time, the sub-tenant could potentially apply pressure or legal recourse directly against the landlord, not just against the sub-landlord. The sub-tenant is also protected in that the landlord *cannot unreasonably withhold consent* to the sublease in the first place (assuming the lease or law requires serious reasons – see next section on consent), and if properly consented, the sub-tenant has the right to occupy for the sublease term as long as the main lease remains in effect. Within the sublease term, the sub-tenant has the right to peaceful enjoyment vis-à-vis both the sub-landlord and head landlord. If the sub-landlord (original tenant) were to default on the head lease in some way that isn't the sub-tenant's fault, the sub-tenant could potentially oppose an immediate eviction by asserting its right to the sublease (though practically, if the main lease is terminated, the sublease is extinguished as well – more on that in Risks section). Also, sub-tenants often benefit from getting a space that may be already built out or furnished; any sublease may include use of the original tenant's improvements or chattels (for example, a sublease of an office might come with desks and wiring already in place).
- *Liabilities of the Sub-Tenant:* The sub-tenant is primarily liable to the sub-landlord (original tenant) for all obligations under the sublease contract. If the sub-tenant fails to pay sub-rent or causes damage, the original tenant can take action against the sub-tenant (e.g. sue for rent or evict under the sublease terms). Importantly, the sub-tenant has **limited direct liability to the head landlord**. By law, *"the sublessee will only be responsible for the rent specified in [the sublease] and will only be liable to the lessor for the obligations under the sublease in the event of default by the lessee"* (Source: oaciq.com). This means the landlord could demand the sub-tenant pay it the sub-rent if the main tenant stops paying rent, but cannot hold the sub-tenant accountable for anything beyond the sublease scope. The sub-tenant does **not** become a guarantor of the entire head lease. For instance, if the sub-tenant is only renting half the space at a rent of \$1000/month, and the head rent is \$2000/month, the landlord can at most collect \$1000 from the sub-tenant (the sublease portion) if the original tenant fails to pay – the sub-tenant would not be liable for the other half of the head rent. Similarly, if the sub-tenant complies with all terms of its sublease, the landlord cannot evict the sub-tenant just because the original tenant breached some obligation unrelated to the subleased portion (except insofar as that breach causes termination of the entire lease; again, see later discussion on risk). A sub-tenant must also be mindful that any right it enjoys is contingent on the main lease: if the head lease ends (by time or by termination), the sublease *also ends*. The sub-tenant generally has no right to stay on if the main lease is gone (unlike some jurisdictions where sub-tenants might get a statutory opportunity to attorn to the owner, Quebec has no such statutory scheme for commercial leases). Therefore, the sub-tenant's position is somewhat precarious and heavily dependent on the original tenant's and landlord's actions.

In summary, **the principal tenant in a sublease remains fully liable “upstream” to the landlord and also bears landlord-like duties “downstream” to the sub-tenant**(Source: educaloi.qc.ca)(Source: oaciq.com). The sub-tenant gains rights to use the premises and some legal protections, but lacks the full status of a direct tenant vis-à-vis the property owner. The landlord retains ultimate control over who is allowed to occupy (through the consent requirement) and retains recourse against both the tenant and sub-tenant in different ways. These relationships create a chain of privity: Landlord ↔ Tenant (head lease); Tenant ↔ Sub-Tenant (sublease). No direct contractual link exists between Landlord and Sub-Tenant, but the CCQ bridges that gap with specific provisions (CCQ 1875-1876) to protect each in cases of misconduct.

Landlord Consent and Formalities for Sub-Leasing

Before comparing the pros and cons of leases and subleases, it is crucial to outline the rules on **landlord consent** and related formalities, since these govern *whether* a tenant can even sublease in the first place. Quebec civil law gives tenants the right to sublease or assign, but regulates it to protect the landlord.

Notice to Landlord: A tenant who intends to sublease (or assign) must notify the landlord of this intention and provide the name and address of the proposed sub-tenant or assignee (Source: oaciq.com). Article 1870 CCQ states that *“a lessee may sublease all or part of the leased property or assign the lease. In either case, he is bound to give the lessor notice of his intention and the name and address of the intended sublessee or assignee and to obtain the lessor’s consent”*(Source: appq.org). This notice should ideally be in writing (though the law does not strictly require written form, written notice is prudent for evidence) and should be given in advance of the intended sublease start date. In fact, under the CCQ, if the landlord does not reply within a certain time, consequences follow (see below), so giving clear written notice triggers the timeline. The CCQ does not specify an exact notice period in the article text, but by practice and interpretation a **15-day period** is provided for the landlord’s response (Source: gowingwlg.com). Many leases will explicitly reiterate this and sometimes extend it (e.g. some commercial leases require 30 days notice for processing a consent). Educloi suggests a sublease notice should propose a sublet start date at least 15 days out to accommodate this response window (Source: educaloi.qc.ca).

Landlord’s Consent – Cannot be Unreasonably Withheld (by default): Article 1871 CCQ provides that *“The lessor may not refuse to consent to the sublease of the property or the assignment of the lease without a serious reason.”*(Source: ccq.lexum.com) In other words, by default the landlord cannot arbitrarily or capriciously refuse a proposed sublease; the refusal must be based on a legitimate *serious reason (motif sérieux)*(Source: oaciq.com). Additionally, the landlord who refuses must inform the tenant of the reason for refusal *within 15 days* of receiving the notice (Source: gowingwlg.com). If the landlord does not reply within 15 days, the law deems that the landlord has consented to the assignment or

sublease (Source: gowlingwlg.com). These rules aim to balance the tenant's interest in being able to transfer occupancy against the landlord's interest in vetting who is in their property. Serious reasons for refusal typically include concerns such as the proposed sub-tenant's **financial solvency, bad reputation or behavior**, an intended use that would breach exclusivity covenants or zoning, or the fact the original tenant is in breach of the lease (e.g. trying to sublet while owing rent) (Source: oaciq.com). Indeed, common examples of "*serious reason*" cited in jurisprudence are: the new person's inability to pay rent, the presence of a *competing business* or violation of an exclusivity clause, the sublet use being incompatible with the building, or the tenant's past defaults indicating a sublease might be a tactic to evade liabilities (Source: oaciq.com). By contrast, reasons not considered "serious" would be arbitrary preferences or discrimination (e.g. landlord simply preferring to charge a higher rent to someone else, or disliking the subtenant's person for non-objective reasons). In **Ferme Guy Bonin enr. c. Malouin (2000)**, the Quebec Court of Appeal confirmed that the CCQ's serious reason requirement for refusing consent is essentially a recodification of prior law – the landlord's discretion is not unfettered (Source: oaciq.com). Thus, if a tenant meets all formalities and proposes a reasonable sub-tenant, the landlord who refuses consent without valid justification is in breach of the law.

Enforcement of Consent Rules: If a landlord refuses consent *without a serious reason*, the tenant has legal recourse. The CCQ does **not** explicitly say the tenant can go ahead with the sublease anyway; rather, the recourse is to apply to court. In residential cases, the rental tribunal can force the landlord to accept the sublease or assignment if the refusal was not serious (Source: educaloi.qc.ca). In commercial settings, the tenant may ask the court to cancel the lease in extreme cases. Quebec case law illustrates this: in *Succession Di Clementi c. Sghaier (2005)*, a landlord's unjustified refusal led the court to allow the tenant to *terminate the lease* early (Source: oaciq.com)(Source: oaciq.com). Termination might be preferable to a tenant who wanted to assign/sublet to exit a lease – if the landlord stonewalls a reasonable transfer, the court can free the tenant from the lease as a remedy. This prevents landlords from trapping tenants unfairly. However, it's relatively rare for a court to order a full **assignment** or substitution of tenant without the landlord's consent (courts are hesitant to impose a new tenant on an unwilling landlord). More often, the pressure of potential lease termination or damages for unreasonable refusal encourages landlords to behave reasonably in the first place. It should be noted that if the landlord simply ignores the notice, silence for 15 days is deemed **acceptance** by law (Source: oaciq.com). So a landlord must respond in writing with reasons within that delay or lose the ability to object at all.

Contractual Modification: All the above represents the *default law*. In a **commercial lease**, these provisions of Article 1870-1872 CCQ can be (and often are) modified by the lease contract (Source: oaciq.com)(Source: fasken.com). For instance, many commercial leases include a detailed clause on "Assignment and Subletting" that might impose conditions such as: the tenant cannot sublet or assign without *prior written consent of the landlord*, and that consent may be granted or withheld in the landlord's sole discretion (i.e. waiving the CCQ's "serious reason" rule). Such a clause is *legal in a*

commercial context because, unlike in residential leasing, Article 1871 CCQ is not of public order for businesses (Source: oaciq.com). The Quebec Court of Appeal in *Ferme Guy Bonin* noted that nothing in 1871 explicitly made it public order for all leases (Source: studocu.com). Therefore, if a commercial lease clearly states the landlord can refuse for any reason or even without reason, that contractual term will override the default rule (Source: oaciq.com). Likewise, a lease might extend the notice period to, say, 30 days or require additional information (financial statements of the sub-tenant, description of their business, etc.) (Source: oaciq.com). It is also common for commercial leases to contain a **"recapture" clause**: if the tenant seeks consent to assign or sublet, the landlord may elect to terminate the lease as of the proposed transfer date instead of accepting the new party (Source: oaciq.com). This effectively gives the landlord a right of first refusal to take back the space. Such clauses protect landlords from being forced into relationships they don't want; they can choose to repossess the premises and release it on the open market (this is analogous to the new rule in residential allowing termination instead of assignment). Tenants must be aware of any such provisions, as attempting to transfer the lease could result in losing it if the landlord invokes a termination option.

Reasonable Costs and Conditions: Even when consent is given, the CCQ (Art. 1872) stipulates the landlord may only charge *reasonable expenses* related to the sublease/assignment (Source: stikeman.com). For example, a landlord can ask the tenant to reimburse actual administrative or legal costs (credit checks, lease amendment drafting fees) incurred to process the sublease, but cannot demand a random "penalty" or fee profit by default. (By contract, however, some leases fix an admin fee or a percentage of rent as a condition – which if agreed to, may be enforceable as long as not unconscionable). The CCQ default rule prevents profiteering by landlords over consent. In practice, landlords commonly require the outgoing tenant to cover legal fees for reviewing a sublease agreement, etc. Additionally, landlords often impose conditions before approving, such as requiring the sub-tenant to sign an **acknowledgment agreement** (agreeing that the sub-tenant will abide by the head lease terms, and perhaps agreeing that the landlord can enforce certain terms directly if needed). A landlord may also insist that the original tenant cure any current defaults and remain liable even after assignment (if not already provided in lease) (Source: gowingwlg.com)(Source: fasken.com). All these measures are designed to protect the landlord's interests when occupancy of the premises changes.

In sum, **a commercial tenant in Quebec usually has the right to sublease, but it is constrained by the consent requirement.** The CCQ's baseline rule is no unreasonable refusal (Source: gowingwlg.com), 15 days to respond (Source: gowingwlg.com), and only actual expenses to be charged (Source: stikeman.com), but a well-drafted commercial lease often supersedes these with its own process. Landlords and tenants should carefully follow whatever procedure is applicable. From a best-practice perspective, *all consents to sublease or assignment should be documented in writing*, and any sublease should expressly state that it is conditional upon obtaining the landlord's consent (to avoid the sub-tenant

moving in under an invalid arrangement). Proceeding with a sublease without consent when the lease or law requires it is a risky breach – as we address later, it can lead to serious legal consequences including lease termination.

Advantages and Disadvantages: Lease vs Sub-Lease (Perspectives of Landlord, Tenant, Sub-Tenant)

When considering a direct commercial lease versus a sublease arrangement, the stakeholders will weigh different pros and cons. Here we analyze the advantages and disadvantages of subleasing *vis-à-vis* a direct lease, from the point of view of each party involved:

Landlord's Perspective

- **Control Over Premises: *Advantage (Lease)*:** In a direct lease, the landlord has a direct relationship with the occupying tenant and greater control over who is in the space. With a sublease, even though consent is required, the day-to-day occupant is not the original vetted tenant. This can be a *disadvantage* of subleasing for a landlord – there is a new party in the mix that the landlord did not originally contract with and may not know well. The landlord might worry about a sub-tenant's business practices or compatibility with other tenants. That said, one *advantage* of allowing a sublease (instead of forcing a termination) is that the landlord keeps the space occupied and the rent flowing if the original tenant needs relief, rather than possibly ending up with a vacancy. If the sub-tenant is acceptable (and often landlords will vet financials and references), the landlord can benefit from stability – *avoiding having to find a new tenant on short notice* if the original tenant would have defaulted or abandoned without subletting.
- **Financial Security: *Advantage (Sublease)*:** When a sublease is in place, the landlord effectively has an additional party interested in paying for the space. The original tenant remains fully liable, **and** the sub-tenant can be approached to cover at least the sublease rent if the original fails (Source: oaciq.com). This double layer can be seen as added security. For example, if the original tenant hits financial trouble, the sub-tenant might continue paying its portion directly, giving the landlord some income. However, *disadvantage*: the sub-tenant will only pay at most what their sublease requires (Source: oaciq.com), and if the head lease rent is higher, the landlord could still suffer a shortfall. Also, the landlord usually cannot demand any performance from the sub-tenant beyond what the sub-tenant owes the tenant – if the sub-tenant stops paying, the landlord's recourse is still primarily against the original tenant (or to evict the sub-tenant via terminating the sublease). So while two parties are on the hook in theory, in practice the landlord might still have to chase the original tenant. By contrast, with a single responsible tenant (direct lease), there's clarity in accountability but no "backup" if that tenant fails. On balance, many landlords prefer the direct lease unless the original

tenant's covenant is weak – if the original tenant is shaky, having a solid sub-tenant could indeed be a boon (e.g., a struggling retailer sublets part of their space to a stable sub-tenant, helping ensure rent gets paid).

- **Liability and Legal Complexity:** *Disadvantage (Sublease):* Subleasing adds complexity. The landlord must deal with the original tenant for rent and enforcement, but also keep an eye on the sub-tenant's conduct. If the sub-tenant breaches building rules or causes damage or disturbance, the landlord may have to involve the original tenant or take direct legal action to terminate the sublease (Source: oaciq.com). This is an extra step compared to a direct tenant breach where the landlord can directly warn or sue the offender. There's also potential for communication issues – for example, the sub-tenant might complain about a maintenance issue directly to the landlord or through the tenant; lines of responsibility can blur. Some landlords may view this as a hassle or risk of things “falling through the cracks.” Legally, the landlord must serve notices (e.g., default notices) to the contractual tenant, not the sub-tenant, which can delay resolution if the sub-tenant is the one misbehaving. *Advantage:* On the flip side, one could argue the landlord has *two* parties to hold accountable. If something is wrong, the landlord can press the original tenant to fix it (who in turn pressures the sub-tenant). The original tenant has an interest in ensuring the sub-tenant behaves, since the original remains liable for any breach (Source: oaciq.com). Thus, the landlord gains an ally in enforcement – the original tenant will typically police the sub-tenant to avoid jeopardizing their lease. In essence, the sub-landlord (tenant) shares the burden of managing the occupant.
- **Flexibility and Re-Leasing:** *Disadvantage (Sublease):* Allowing a sublease might lock the landlord into the remainder of the original term, when the landlord may have preferred the chance to recapture and re-let the space (perhaps at higher rent or to a more strategic tenant). For example, if market rents have risen above the lease rate, an original tenant could sublease at a profit, while the landlord continues to collect the lower rent – the landlord sees none of the upside. Many landlords feel this is a disadvantage unless mitigated by a **profit-sharing clause** (some leases stipulate that if the rent or consideration on a sublease/assignment exceeds the original rent, the excess must be split with or paid to the landlord). Absent such a clause, the tenant could profit from the landlord's property, which landlords generally aim to prevent (Source: oaciq.com). By contrast, if no sublease is allowed and the tenant can't use the space, the landlord might regain possession and then lease it out at current market rates (which could be beneficial). However, if market rents have fallen or it's hard to find new tenants, a sublease ensures the landlord isn't stuck with vacancy. Thus, the calculus can go either way depending on market conditions.
- **Relationship and Reputation:** *Disadvantage:* A landlord might worry that a sub-tenant who was not originally screened could become a source of trouble (for payment or community fit), potentially harming the property or other tenants' businesses. For instance, a landlord of a shopping center carefully curates tenant mix; if a boutique subleases to a cannabis shop without landlord's blessing, that could conflict with the center's image or other tenants' exclusives. Even if consent is required,

once given, the sub-tenant is in place and the landlord must deal with any fallout. Landlords thus have a strong interest in thorough vetting. One *advantage* of subleasing, from a reputational view, is that it can demonstrate flexibility and goodwill – a landlord that reasonably accommodates a tenant’s need to sublet might be seen as a “partner” to help a tenant through a transition (for example, during COVID-19 many landlords saw a spike in sublease requests (Source: [fasken.com](https://asken.com))(Source: [fasken.com](https://asken.com)); working with tenants on these could preserve long-term relationships and avoid defaults).

In summary, **landlords tend to prefer having direct control but will permit subleases when it aligns with their financial interest** (keeping an income stream, avoiding litigation, retaining the original tenant’s liability as backup). The advantages of subleasing to a landlord include dual-liability for rent and continuous occupancy, while disadvantages include reduced direct control and potential loss of upside. Many disadvantages can be managed by careful lease clauses (stringent consent conditions, recapture rights, profit-sharing, requiring personal guarantees from sub-tenants, etc.), which sophisticated landlords incorporate (Source: [fasken.com](https://asken.com))(Source: [fasken.com](https://asken.com)).

Tenant’s Perspective (Original Lessee)

- **Financial Relief and Flexibility: Advantage (Sublease):** The primary reason a tenant seeks to sublease is usually to relieve a financial or space burden. If a business downsizes or relocates before its lease ends, subleasing the premises can offset rent obligations. For example, a tenant with two years left on a lease it no longer needs can sublease to recover all or part of the rent, avoiding a costly double rent situation. This flexibility is a major advantage – it can be a lifeline for a business that would otherwise have to default or pay for empty space. Subleasing can also allow a tenant to *share* space (and costs) with another party (creating a “synergistic” shared workspace, as one scenario suggests (Source: [fasken.com](https://asken.com))). From a financial perspective, if the market rent has increased above the tenant’s rent, a tenant might even sublease at a higher rent and **make a profit** (though in commercial leases this might be subject to restrictions). Even if not profiting, recouping some costs is better than none. *Advantage:* Subleasing also allows a tenant to *retain the possibility of return*. If the tenant’s needs are only temporarily reduced (say a seasonal closure or a short-term project elsewhere), a short sublease keeps the lease intact so the tenant can resume occupancy later – something an assignment would not allow (Source: educaloi.qc.ca).
- **Retention of Leasehold Rights: Advantage:** By subleasing instead of assigning, the tenant keeps certain rights in the lease. Notably, **renewal options or extension rights** remain with the original tenant (unless explicitly transferred). If the location is desirable and the tenant might want to come back in the future, subleasing ensures they don’t give up the location permanently. Also, any value in the lease (e.g. below-market rent, a good location, or built-out improvements) is ultimately still the

tenant's to use or negotiate. The tenant essentially "lends" the space but can reclaim it at sublease end. In an assignment, the tenant forfeits all future claim to the premises. Thus, sublease is advantageous if the tenant is unsure about permanently leaving the space.

- **Remaining Liabilities: Disadvantage:** The biggest drawback for the tenant-sublessor is that **subleasing does not release their liability to the landlord**(Source: stikeman.com). The original tenant remains on the hook for rent and all other obligations. If the sub-tenant fails to pay or causes damage, the landlord will look to the original tenant for remedy (Source: oaciq.com). The tenant effectively **guarantees the sub-tenant's compliance** to the landlord. This can be dangerous: the tenant might believe the sub-tenant is reliable, but if something goes wrong (sub-tenant goes bankrupt, or disappears), the tenant must resume paying full rent or cure the default to avoid losing the lease. In essence, the tenant bears the *credit risk* of the sub-tenant. In contrast, if the tenant had assigned the lease, the tenant would be free of liability (absent a contractual guarantee) (Source: gowlingwlg.com). With a sublease, the tenant faces a scenario of double responsibility – they might be paying rent on a new location while also covering for a defaulting sub-tenant on the old location, which can be a heavy burden.
- **Management Responsibilities: Disadvantage:** As discussed, by subleasing the tenant takes on the role of a landlord to the sub-tenant. Many tenants are not professional landlords and may not anticipate the time and effort required. The tenant has to handle the sub-tenant's requests, maintenance issues (coordinating with the building owner), and ensure the sub-tenant's compliance. If the head landlord fails in some duty (say air conditioning breakdown), the sub-tenant will complain to the original tenant, who must then chase the landlord and possibly arrange repairs to keep the sub-tenant satisfied (Source: educaloi.qc.ca). The tenant also must ensure the sub-tenant respects all rules to avoid jeopardizing the head lease. This middleman role can be challenging, especially if disputes arise. The original tenant could end up embroiled in a three-way dispute – for example, if the sub-tenant withholds rent claiming the landlord isn't fulfilling obligations, the original tenant still owes full rent to the landlord while trying to resolve the sub-tenant's issues. This is a precarious position requiring careful management and good sublease drafting (e.g. requiring sub-tenant to continue paying rent even during disputes, etc.). In short, *becoming a sub-landlord involves legal and practical responsibilities that a tenant may find onerous*.
- **Benefit from Lease Arbitrage: Advantage:** In some cases, a tenant can benefit financially from subleasing beyond just cost relief. If the lease rate is locked in below current market, the tenant might sublease at a higher rate to the sub-tenant. Quebec law does not forbid charging a sub-tenant more in commercial leases (unlike the new rule for dwellings) – any profit would typically belong to the tenant, unless the contract says otherwise. For example, if a tenant pays \$20/sq.ft but the going rate is \$25, the tenant might negotiate \$23 with a sub-tenant and pocket the \$3 difference per sq.ft. This is a potential *advantage*, essentially turning the lease into an asset. However, many commercial

leases include clauses that any such profit (or a significant portion) must be split with the landlord (Source: oaciq.com). Assuming no such clause, subleasing can yield a positive return for the tenant. Even if it doesn't, at minimum the tenant saves money by mitigating losses.

- **Loss of Control and Possession: Disadvantage:** Once a sub-tenant is in place, the original tenant has ceded day-to-day control of the premises. If the sub-tenant doesn't maintain the property well or causes reputational issues (say a sub-tenant business brings negative publicity), the original tenant's interest could be harmed. The original tenant also cannot use the space for the sublease period (unless it's a partial sublease). If the sub-tenant is problematic, evicting them might be difficult – the original tenant would have to follow eviction proceedings as a landlord, which can take time and money. Additionally, if the sub-tenant has invested in the space or built goodwill there, they may resist leaving at end of sublease, putting the original tenant in a potentially awkward situation. Essentially, the original tenant gives up the certainty of their own occupancy and must rely on another to uphold the premises' condition and goodwill.
- **Consent and Transaction Costs: Disadvantage:** The process of obtaining landlord consent and finding a suitable sub-tenant can be costly and time-consuming. The tenant might have to pay the landlord's legal fees (per lease terms or negotiation) (Source: fasken.com), possibly pay a broker commission to find a sub-tenant, and spend managerial time on the arrangement. There is also a risk that the landlord exercises a recapture right (if in lease) and the tenant ends up with no lease – which might be fine if the goal was to exit, but not if the tenant hoped to return later. In some cases, a tenant might prefer to negotiate an amicable early termination with the landlord rather than go through subleasing, especially if the landlord is open to it, to avoid ongoing liability.

In summary, **for tenants, subleasing is a useful tool to manage changing needs and avoid default, but it comes at the cost of retained liability and added responsibilities**(Source: educaloi.qc.ca) (Source: educaloi.qc.ca). The advantages are financial mitigation, flexibility to possibly return, and potential profit if circumstances allow. The disadvantages are the continuing risk (you're not "off the hook"), the effort of managing a sub-tenant, and loss of exclusive use of the space. Whether a tenant opts to sublease or to seek a full assignment or termination depends on how confident they are in the sub-tenant and how important it is to keep a foot in the door of that property.

Sub-Tenant's Perspective

- **Access to Space and Shorter Commitment: Advantage:** A sublease often presents an opportunity for sub-tenants to acquire space that they might not otherwise easily get. For example, prime commercial locations might have no vacancies, but a sublease space becomes available via an existing tenant. The sub-tenant gains access without having to deal with the landlord's long vetting process or long-term commitment. Subleases frequently cover the remaining term of a lease, which might be relatively short (e.g., one or two years). This can be a boon for businesses seeking flexibility

– they can take a sublease for a shorter term rather than sign a brand-new 5+ year lease. *Especially for startups or temporary projects, subleasing space is a way to avoid long commitments.* It's also often faster – the space is already built out by the original tenant, so a sub-tenant can move in with minimal renovation time.

- **Potential Cost Benefits:** *Advantage:* A sub-tenant might secure a favorable rent, especially if the original tenant is eager to sublease quickly. The original tenant's primary goal may be to cover their costs, not to turn a profit, particularly if the market rent has fallen or the tenant is desperate. There are cases where sub-tenants pay below-market rent or get concessions (like free furniture, or the original tenant's expensive fit-out at a discount) because the original tenant invested in improvements and cannot take them, effectively passing that benefit to the sub-tenant. Additionally, a sublease can sometimes include extras: for instance, the space might come **furnished or with equipment** (if the original tenant left in a hurry or included it to sweeten the deal). This can save a sub-tenant significant upfront costs.
- **Simplified Negotiation:** *Advantage:* Negotiating a sublease may be simpler than a direct lease with a landlord. The head landlord likely already has a comprehensive lease; the sublease agreement mainly needs to reflect those terms and any specific arrangements between sub-landlord and sub-tenant. While still important to get legal review, smaller businesses might find sublease negotiations less intimidating than dealing with a large commercial landlord's leasing team. Moreover, a sublease is often concluded quicker – time is of the essence for the original tenant, and the paperwork might be more standardized (sometimes the original lease itself is appended and incorporated by reference).
- **Lack of Privity with Landlord:** *Disadvantage:* The major downside for sub-tenants is the lack of a direct contractual relationship with the property owner. This means the sub-tenant **does not have the same rights as a direct tenant in some respects**. For example, the sub-tenant typically has *no right to renew* unless the original tenant arranges something. If the sub-tenant wants to stay longer, they are at the mercy of the original tenant's decisions (and the landlord's consent). The sub-tenant cannot, on their own, exercise an option in the head lease or negotiate an extension with the landlord (unless the landlord explicitly agrees, which usually would involve making the sub-tenant sign a new lease or assignment down the road). This impermanence can be problematic if the sub-tenant's business becomes tied to that location. They might have to leave when the head lease expires or if the original tenant or landlord chooses not to continue the arrangement.
- **Risk of Main Lease Termination:** *Disadvantage:* Perhaps the greatest risk is that the sub-tenant's fate is tied to the original tenant's. If the landlord ever validly terminates the head lease (due to the original tenant's default or at natural expiry), the sublease is automatically terminated as a consequence – *the sub-tenant's rights are extinguished with the head lease* (the Latin maxim "accessorium sequitur principale" – the accessory follows the principal – applies). For instance, if the

original tenant goes bankrupt or simply stops paying rent and the landlord ends the lease, the sub-tenant loses its space, even if it was paying the sub-rent faithfully. The sub-tenant could try to negotiate a new lease with the landlord at that point, but the landlord is not obligated to honor the sublease. This is a serious disadvantage: the sub-tenant carries the *credit risk of the original tenant and even the risk of the original tenant's intentions*. Even in non-default scenarios, if the original tenant decides not to renew the lease or the lease term just ends, the sub-tenant must vacate unless they can strike a deal directly with the landlord. A sub-tenant should always be aware of the head lease timeline and perhaps keep communication open with the landlord as the term end approaches (some sub-tenants have managed to take over leases after proving themselves, but it's not guaranteed). Essentially, there is *inherent instability* in being a sub-tenant.

- **Limited Recourse and Dependence:** *Disadvantage:* If something goes wrong, the sub-tenant's recourse can be convoluted. For example, if the landlord fails to heat the building, the sub-tenant must ask the sub-landlord to enforce the lease. Though the sub-tenant can ultimately go to court against the landlord if needed (Source: oaciq.com), this is an extra hurdle – and a practical sub-tenant will usually try to work through the original tenant to avoid legal fights. If the original tenant is uncooperative or insolvent, that process is even harder. Another scenario: if the sub-landlord (original tenant) fails to pay the landlord with the sub-tenant's rent (perhaps using it for other debts), the landlord could terminate the head lease even though the sub-tenant did everything right. The sub-tenant's remedy would be against the original tenant (to recover damages), but that's cold comfort if it loses the location. So sub-tenants carry the risk of both the landlord's and tenant's compliance. This *twofold dependence* is a key disadvantage.
- **No Direct Negotiating Power:** *Disadvantage:* A sub-tenant might have less ability to negotiate changes to the premises or lease terms. For instance, if the sub-tenant wants to undertake renovations or change signage, it likely needs both the sub-landlord's and landlord's approvals (per the head lease terms). Direct tenants can negotiate with landlords for improvements or concessions; a sub-tenant often cannot as easily. The sub-tenant is essentially bound by the terms of the main lease which it did not originally negotiate – any unfavorable terms (like operating cost escalations, hours of operation rules, etc.) will flow down to the sub-tenant. The sub-tenant might also lack a direct line of communication with property management for day-to-day issues (some landlords will only deal with the head tenant for official matters).

Despite these downsides, many sub-tenants find the **short-term, lower-commitment nature of subleases worthwhile**. It allows them to test a location or business model without a long lease liability. They may also benefit from a space that's already configured (e.g., a restaurant subleasing an existing restaurant space, saving on build-out). Subleasing is particularly common in office markets during economic shifts – for example, during the COVID-19 pandemic, many companies put excess office space

on the sublease market, offering fully furnished offices with flexible terms (Source: [fasken.com](https://www.fasken.com)). Sub-tenants in such cases got quality space quickly and often at a discount, which is a significant advantage as long as they remain cognizant of the inherent risks.

Summary of Pros and Cons: In deciding between a direct lease or a sublease, the *landlord* values control and stable income (preferring direct leases unless a sublease is necessary to avoid a worse outcome), the *tenant* values flexibility and cost mitigation (subleasing is a tool to manage obligations but comes with continuing risk), and the *sub-tenant* values opportunity and flexibility (subleasing can be a great short-term solution but lacks the security and long-term rights of a direct lease). Each party must weigh these factors in the context of the specific situation – often the arrangement is a compromise to address a tenant's changed circumstances while trying to keep all parties reasonably satisfied (Source: [fasken.com](https://www.fasken.com)).

Financial, Tax, and Contractual Considerations

Entering a sublease arrangement introduces various financial, tax, and contractual nuances that differ from a standard lease. Here we outline key considerations:

Rent and Financial Arrangements: In a sublease, the financial chain is typically: sub-tenant pays rent to the original tenant (sub-landlord), who in turn pays the landlord the rent under the head lease. The sublease rent may be equal to, less than, or more than the head rent for the portion, depending on negotiations and market conditions. It is common for a sublease of the *entire premises* to have the same rent as the head lease (perhaps with the sub-tenant just taking over payments), but this is not required. If the sublease is for only part of the space, the rent is often allocated proportionally (e.g. if half the area is subleased, sub-tenant pays half the rent, plus perhaps a share of other expenses). The head landlord will usually insist that *its* rent continues to be paid in full by the original tenant regardless of what the sub-tenant pays – so the original tenant must cover any shortfall if they give the sub-tenant a discount. Conversely, if the sub-tenant pays *more* than the head rent (a “profit rent”), many leases stipulate that the landlord gets a share of that surplus (Source: [oaciq.com](https://www.oaciq.com)). For instance, a lease might say the landlord is entitled to 50% of any net profit the tenant earns from an assignment or sublease. In absence of such a clause, the tenant may keep the profit (Source: [oaciq.com](https://www.oaciq.com)), but the landlord's consent might become harder to obtain if it perceives the arrangement as purely speculative by the tenant. Landlords tend to be more amenable if the sublease is simply to mitigate losses, not to let the tenant play landlord for gain.

Deposits and Security: If the original tenant gave a security deposit to the landlord, that deposit typically continues to secure the head lease. The landlord will not release it just because of a sublease. The sub-tenant might also be asked to provide a security deposit to the sub-landlord for the sublease. This means there could be two deposits in the system: one that the landlord holds (from original tenant)

and one the original tenant holds (from sub-tenant). Contractually, the sublease should clarify how the sub-tenant's deposit will be applied – usually it's to cover any damages or default by the sub-tenant and ultimately the original tenant could use it if the sub-tenant fails to pay rent (so that the original can still pay the landlord). It's crucial that the sub-landlord not co-mingle or misuse the sub-tenant's deposit, as it will have to be returned if all is well at end of sublease.

Operating Costs and Taxes: Commercial leases in Quebec are often net leases – tenants pay base rent plus additional rent (for municipal taxes, insurance, common area maintenance, etc.). A sublease should address these in the same way. Commonly, the sub-tenant will pay its proportionate share of such expenses either directly to the sub-landlord or even directly to the landlord if agreed (sometimes, for simplicity, the landlord will agree to bill the sub-tenant for, say, its share of electricity or taxes). However, typically the arrangement is the sub-tenant pays everything to the sub-landlord, and the sub-landlord remains solely responsible to the landlord. From a *tax standpoint*, two kinds of taxes are relevant: **property taxes** (municipal/school taxes) and **sales taxes** (GST/QST on rent). Property taxes are usually passed through as additional rent. The sub-tenant should pay a portion of those based on area or another formula, as specified in sublease. As for **GST and QST (Goods and Services Tax and Quebec Sales Tax)**, commercial rent is a taxable supply. The landlord charges GST/QST on rent to the original tenant; likewise the original tenant, if subleasing, is making a supply of real property to the sub-tenant and must charge GST/QST on the sub-rent (except in certain small-supplier cases or specific exemptions). In practice, if the original tenant is a GST/QST registrant (most businesses are), they will have to add 5% GST and 9.975% QST to the sub-tenant's rent. The original tenant can continue to claim input tax credits on the GST/QST paid to the landlord, while collecting tax from the sub-tenant – essentially tax flows through. It's important for the sublease contract to state whether rents are tax-exclusive or inclusive and who is responsible for remitting (generally each party remits their part). Failure to handle this correctly could expose the sub-landlord to tax liabilities or the sub-tenant to unexpected costs.

Contractual Alignment: A fundamental contractual consideration is to ensure the sublease terms **mirror the head lease requirements** where applicable. The sublease should explicitly state that, except as modified, the terms of the head lease are incorporated, and the sub-tenant agrees not to do anything that would put the head tenant in breach of the head lease. For example, if the head lease forbids using hazardous materials, the sublease must also forbid the sub-tenant from doing so. If the head lease requires the tenant to carry \$5 million liability insurance and name the landlord as insured, the sublease should require the sub-tenant to maintain similar insurance and perhaps name both landlord and original tenant. Many subleases have an attachment of the head lease and a clause like "Sub-tenant shall observe all obligations of Tenant under the Head Lease as if Sub-tenant were the Tenant, except for obligations to pay rent to Landlord," etc. This alignment protects the original tenant – if the sub-tenant violates a head

lease term that wasn't explicitly conveyed, the original tenant would still be liable to the landlord. Therefore, careful drafting is vital. Similarly, any limits in the head lease (e.g. hours of operation, number of parking spaces, signage rules) should be passed on to the sub-tenant.

Duration and Term Coordination: A sublease cannot legally extend beyond the term of the head lease. In fact, if a sublease purported to last longer than the head lease, it would effectively be treated as an assignment of the lease in the excess period. Practically, subleases usually end the day before or same day as the head lease ends (but not after). If the original tenant holds renewal rights, those are not automatically given to the sub-tenant. Parties might enter into an arrangement like: "if original tenant renews the head lease, then sub-tenant may request to extend sublease on mutually agreed terms," but the landlord typically must consent anew to any extension of the sublease (since it is a new term). The sub-tenant may want some assurance if they desire a longer tenancy, but the original tenant will want to keep control of its option. One possible negotiated term is a **covenant to try to obtain landlord's consent to an assignment to sub-tenant at lease end** if everyone is amenable – but this is case-specific. From the original tenant's perspective, they may not want to give up the renewal (maybe they plan to come back or they value the option as an asset). So the timing of the sublease is important. If the sublease is close to the head lease end, all parties should diarize notice dates for renewal or termination to avoid confusion (for example, the original tenant usually must give notice to landlord of intent to renew many months in advance – the sub-tenant should remind or ask the original tenant what their plan is, to plan accordingly).

Subordination and Recognition: In some cases, sub-tenants seek a degree of recognition from the landlord. While the landlord is not obligated to recognize the sub-tenant, occasionally a **recognition agreement** or **attornment agreement** is signed, especially in large commercial deals. This might stipulate that if the head lease is terminated, the landlord agrees to offer the sub-tenant a direct lease on similar terms, to avoid losing an occupant. Landlords do this only if it benefits them (for instance, the sub-tenant is a desirable business they'd be happy to have directly). It's not common for small subleases, but it is a consideration in high-stakes subleases (like an anchor tenant subletting to another major company – all parties might sign a three-way agreement clarifying rights if things change).

Legal Costs and Documentation: The sublease agreement itself should be drafted or reviewed by legal counsel. It must dovetail with the head lease. As mentioned, many head leases require that any sublease or assignment documents be submitted to the landlord for review or approval as well (not to unreasonably refuse). Landlords may have specific requirements (e.g. no terms that conflict with the head lease, or the sublease must state that it terminates upon termination of head lease, etc.). Some large landlords even have standard consent forms or sublease templates. All these steps can incur legal fees. Typically, the original tenant covers the landlord's reasonable legal fees for reviewing a sublease (by default only "reasonable expenses" can be charged (Source: stikeman.com), but many leases explicitly put that burden on the tenant). The tenant may in turn try to recoup some of that from the sub-tenant as

part of negotiation (especially if it's the sub-tenant who approached wanting the space). There may also be brokerage commissions if brokers were involved in finding the sub-tenant – usually the original tenant pays those, though in some cases a motivated landlord might chip in if it resolves a potential default.

Accounting Treatment: (For completeness in a professional context) – The original tenant should account for sublease income and lease expense appropriately on financial statements. If the sublease rent is lower, the tenant might have to book a provision for the loss (onerous contract) under accounting standards. If higher, it might defer the gain over the period. While this is not legal advice, it's a factor for corporate tenants to consider in planning.

Taxes on Lease Transfers: Quebec does not impose a transfer tax on assignment or sublease of a lease per se (transfer taxes are for property ownership transfers). However, if the lease itself was registered on title and then assigned, there may be nominal publication fees to update the registration, but no land transfer duties. One must also be mindful of income tax implications: any lump-sum paid for an assignment or sublease (like if a sub-tenant paid the original tenant to take over the lease) could be considered income for the original tenant or possibly a capital transaction. In subleases, usually rent is just income to the sub-landlord and deductible expense for the sub-tenant, as normal.

In summary, **the parties should structure the sublease such that financial obligations are clearly defined and aligned with the head lease**, taxes are properly handled, and the contract guards against inconsistencies with the main lease. Landlords, when consenting, will often demand to see the sublease draft to ensure these aspects are in order – e.g., the sublease should not omit critical obligations (insurance, indemnity, uses) that the head lease requires, because any gap could expose the landlord. A professionally drafted sublease and consent agreement will address these considerations, providing clarity and protection for all sides.

Common Scenarios and Case Studies in Quebec

To illustrate how commercial lease and sub-lease arrangements play out in practice, here are a few common real-world scenarios in Quebec, along with insights into how the law and typical contracts apply:

- **1. Early Exit and Assignment vs Sublease – Business Sale:** A Montreal restaurant owner decides to sell the restaurant business after 3 years into a 10-year lease. The buyer of the business wants to take over the premises. In this scenario, the cleanest approach is a **lease assignment**: the tenant would seek the landlord's consent to assign the lease to the buyer (the buyer assumes all lease obligations) (Source: oaciq.com). If the landlord consents (possibly after checking the buyer's financials and seeing that restaurant use remains the same), the original tenant is released from the lease (unless the lease requires them to remain guarantor) (Source: oaciq.com)(Source: gowlingwlg.com). This is ideal for the seller who wants to be free of future liabilities. Now consider if

the lease or landlord is not amenable to an assignment – perhaps the lease forbid assignment to another restaurant due to an exclusivity in the mall, or the landlord just prefers not to add a new tenant mid-term. The parties might then opt for a **sublease**: the original owner subleases the premises to the buyer for the remaining term. The buyer runs the restaurant and pays rent to the seller, who in turn pays the landlord. The original tenant still holds the lease and remains liable to the landlord, but in practice the buyer (sub-tenant) is operating the business and paying for everything. This scenario happened often with small businesses: the *Succession Di Clementi c. Sghaier* case (2005) involved a tenant who wanted to transfer the lease (in a mixed commercial context) and the landlord unreasonably refused, leading the court to terminate the lease (Source: oaciq.com). The lesson is that where a business sale is involved, a well-advised tenant will, if possible, negotiate terms in the lease in advance to permit assignment to a purchaser of the business (landlords often accept this with conditions). A sublease as a workaround can be viable but less secure for both seller and buyer: the seller retains liability, and the buyer lacks direct rights, which can complicate the business transfer. In practice, many business sale agreements in Quebec will be conditional on getting the landlord's consent to a lease assignment – because buyers prefer to become the direct tenant.

- **2. Downsizing Office Space – Sublease of Part of Premises:** A tech company in Québec City leased 20,000 sq ft of office space for 5 years, but after 2 years they only need half due to shift to remote work. They decide to **sublease 10,000 sq ft** to another company for the remaining 3 years. This is a classic scenario in commercial real estate. During the COVID-19 pandemic, such subleases increased markedly as companies sought to reduce rent burdens (Source: fasken.com). The tech company finds a smaller startup to take the extra space. They obtain landlord consent, which is likely because the sub-tenant is another office user and not causing issues. They structure the sublease so that the sub-tenant pays 50% of the rent and 50% of operating costs, proportionate to area. They also share some facilities like reception and kitchen according to a separate understanding (sometimes subleases can be very detailed when sharing space – essentially a co-working arrangement – but often it's straightforward if spaces are demised). For the tech company, the advantage is cutting costs while keeping the ability to expand later if needed (they subleased for 3 years, co-terminus with their lease end, meaning they'll decide later whether to renew or not). For the sub-tenant, it's a great opportunity: a furnished modern office for 3 years with no long-term commitment. If at the end of 3 years the sub-tenant wants to stay, they might negotiate directly with the landlord if the original tenant leaves. One risk highlighted by this scenario: what if the original tenant's business falters and they stop paying rent to the landlord, even though the sub-tenant paid them? The sub-tenant could find the landlord knocking with a default notice. To guard against this, some sub-tenants in such arrangements will insist on an agreement that they can pay their portion directly to the landlord if the tenant fails to (sometimes called a **bypass agreement**). Landlords may agree because they want to ensure at least partial rent continues. Another issue: if the original tenant wanted to try to assign the whole lease instead (maybe exit completely), the landlord might then

exercise a recapture clause and take back the space, potentially leaving that prospective sub-tenant with nothing – but since they achieved a sublease here, all parties benefit. This scenario is very common and the legal framework of CCQ Articles 1870-1876 facilitates it as long as procedures are followed (notice, consent, etc.) (Source: gowlingwlg.com)(Source: oaciq.com).

- **3. Pop-Up or Temporary Use – Short-Term Sublease:** Consider a retail landlord in downtown Montreal with a clothing store tenant. The tenant plans to renovate or close for the slow winter season, and proposes to **sublet the store for 3 months** to another retailer (a “pop-up shop” scenario). Many landlords might consent because an active store is better than a dark store, and the sublease is very short term. The sublease in this case would be for only 3 months, and likely at the same rent (or whatever the parties agree, perhaps the pop-up pays a higher rate just for seasonal benefit). The original tenant gets a break or even some extra income; the sub-tenant (pop-up) gets a prime location for a limited time without a long lease. The landlord gets continued foot traffic and perhaps a cut if the lease requires sharing any excess rent. A practical consideration here: short subleases still technically require landlord consent under CCQ 1870, but in practice some tenants might do it informally if the lease isn’t clear – which is risky. Even a short occupation by someone else is a sublease or license that could violate the lease if not approved. There have been disputes where tenants allowed third parties in (for example, sharing space with a partner or letting a friend use it) and landlords objected. Under the law, any time part of the premises are turned over to a third party for a period, it’s either a sublease or an assignment (if entire premises and entire remaining term) – thus requiring notice/consent. In pop-up friendly environments, landlords might pre-authorize such use or expedite consent. Quebec’s leasing law doesn’t explicitly differentiate short subleases, but the *serious reason* test would likely frown on a landlord who arbitrarily refuses a reasonable short sublet that has no downside.
- **4. Unauthorized Subletting – Airbnb in a Commercial Condo:** An example drawn from actual problems: A tenant rents a condo unit for use as a professional office. Without permission, they start **subletting it as tourist accommodation (Airbnb)** on weekends. This is a sublease for short durations, clearly against typical lease terms (using an office for lodging) and done without consent. According to a Montreal law firm’s commentary, if a tenant conducts Airbnb subleasing in violation of the lease or without consent, the landlord can go to the Tribunal (Rental Board for residential, or court for commercial) to get an **order to cease** the activity, and if the tenant persists, the landlord can seek cancellation of the lease (Source: schneiderlegal.com). Indeed, Article 1973 CCQ (applicable more in residential) allows rescission for serious breaches such as illegal or unauthorized subletting (Source: schneiderlegal.com). In a commercial context, such behavior would likely be considered a grave breach of the lease’s use clause and the consent requirement, giving the landlord grounds to terminate in court for breach causing serious injury (Art. 1863 CCQ) (Source: gowlingwlg.com). A real case: *Schneider Legal* cited that landlords must be cautious with short-term sublets because they might incur fines themselves (for example, municipal regulations against illegal

tourist rentals can penalize owners) (Source: schneiderlegal.com). In this scenario, the tenant might be one of the “10% of landlords” (or rather leases) found to have illegal sublets according to a CORPIQ survey (Source: corpiq.com). The outcome is usually eviction of the offending tenant. The sub-tenants (Airbnb guests) have no rights – they are transient and once the lease is terminated, they’re gone. This scenario underscores: **subleasing without consent is a legal pitfall** and when discovered, can swiftly lead to loss of the lease and other penalties.

- **5. Anchor Tenant Subletting to Complementary User:** In a shopping center in Quebec, suppose a large anchor store (like a department store) is not using all its floor space. They might sublease a section to a third-party operator – for example, a coffee shop inside the department store, or a small boutique. This can be beneficial: the anchor gets rent from the sub-occupant and offers more services to customers; the sub-tenant gets exposure inside a major store. Landlord consent is critical here because it introduces a new retail operator. Typically, a landlord would consent if the sub-tenant is a known brand that adds value and doesn’t violate any exclusives (e.g., not selling something another tenant has exclusive rights to). The sublease agreement might be three-party or at least acknowledged by the landlord due to the intricacies (common area usage, hours, etc.). A Quebec case from years ago, *Provigo* (though about assignment and dark store, not sublease), demonstrates how seriously courts view the balance of rights in commercial leases – an unreasonable refusal or an odd arrangement can lead to complex litigation. In that case, Provigo had assigned a lease but kept paying rent to prevent a competitor from leasing (the famous “dark store” scenario) – it wasn’t a sublease, but it shows how contractual lease rights can be exploited in ways landlords might not foresee, hence they draft strict clauses. In an anchor subletting part of premises scenario, the landlord might impose conditions: the sub-tenant must abide by mall rules, contribute to marketing fund, etc., just like other tenants. Often the anchor’s lease already allowed certain concessions (like ability to license departments within the store), which in civil law is effectively a form of subletting with pre-approval.

These scenarios exemplify the flexibility of subleasing but also its potential complications. Quebec law’s overarching principle of good faith (Art. 6, 7 CCQ) also plays a role in all these situations – parties must exercise their rights (like the landlord’s right to refuse consent, or the tenant’s right to sublet) in good faith (Source: apq.org). For instance, a landlord might refuse a sublease claiming a serious reason, but if that reason is a mere pretext, it could be challenged as a bad-faith exercise of rights (Source: apq.org). Courts have indeed looked at whether refusals were made on valid grounds or if the landlord had an ulterior motive (e.g., wanting to negotiate a higher rent for themselves) (Source: apq.org). Likewise, a tenant must sublease in good faith – doing it surreptitiously or in violation of clear prohibitions will not be looked at kindly.

In practice, most subleasing is resolved through negotiation rather than litigation, because it’s often in everyone’s interest to find a workable solution: the tenant avoids default, the landlord avoids vacancy, and the sub-tenant gains space. The case studies above show different motivations: exiting a business,

cutting costs, temporary use, etc. Quebec's legal framework, with its mix of codified rules and contractual freedom, accommodates these use-cases, provided the proper steps (notice, consent, written agreements) are followed and parties act reasonably.

Risks and Pitfalls of Sub-Leasing Without Consent

Sub-leasing without the landlord's consent (when required) is a breach of the lease and carries significant legal risks. Tenants might be tempted to "sous louer en cachette" (sublet on the sly) perhaps to avoid a likely refusal or simply out of ignorance of the rules, but this is dangerous. Key pitfalls include:

- **Lease Termination and Eviction:** An unauthorized sublease is ground for the landlord to seek termination (resiliation) of the lease. Under CCQ Article 1863, any serious breach by the tenant that causes injury to the landlord or other occupants can justify terminating the lease (Source: gowlingwlg.com). Housing law explicitly lists unauthorized subletting as a cause for termination in some cases (Source: corpiq.com), but even in commercial leases, courts would likely consider a deliberate violation of the assignment/sublease clause as serious. The landlord can apply to court for an eviction of both the tenant and the sub-tenant. Notably, the landlord isn't required to recognize or deal with the unauthorized sub-tenant at all – legally that person is akin to an occupant without title. In one anecdotal instance, about **10% of Quebec landlords reported discovering an illegal sublet in a two-year period**(Source: corpiq.com). When discovered, the typical reaction is a formal notice to cure (i.e., to cease the unapproved sub-occupation) followed by eviction proceedings if not remedied (Source: corpiq.com). Courts may show some leniency if the sub-tenant is innocuous and the only issue is lack of paperwork (especially in residential cases TAL tends to require proof of prejudice (Source: corpiq.com)), but in commercial context a landlord has more freedom to enforce strict compliance. For instance, if a tenant covertly sublets part of a warehouse contrary to a "no sublet without consent" clause, the landlord can declare the tenant in default. If the tenant doesn't remove the sub-tenant promptly, the landlord can terminate the lease via court order, effectively evicting both the tenant and sub-tenant. The tenant will then be liable for damages (lost rent, legal fees, etc.) for breach of contract. The sub-tenant will lose whatever investment they made (equipment, improvements) and have no claim against the landlord (their recourse would be against the tenant who misled them).
- **Legal Actions and Orders:** Even before termination, a landlord can seek an injunction or tribunal order to halt an unauthorized sublease. In the context of illegal short-term rentals, Quebec's Rental Board (TAL) has issued orders to cease such activity (Source: schneiderlegal.com). In commercial cases, a landlord could seek an interlocutory injunction from the Superior Court to prevent the tenant from allowing occupancy by an unauthorized party (especially if that party's presence causes harm, e.g., a breach of exclusive rights or insurance problems). Additionally, municipalities have begun

cracking down on unauthorized tourist accommodations. If a commercial tenant is subletting to short-term guests against zoning or bylaws, both the tenant and landlord could face fines (e.g., Montreal's rules on Airbnbs put responsibility on owners too). As Schneider Legal notes, *"fines and penalties may be imposed on the landlord of the immovable, even if they did not know of such activity"* (Source: schneiderlegal.com). Thus, a tenant who exposes their landlord to such liability is almost certainly engaging in a "serious reason" for eviction.

- **Loss of Recourse / Protections:** A tenant who sublets without consent also forfeits some protections the law might afford. For instance, by CCQ 1870 a tenant has the *right* to sublease with consent – if they ignore that and get caught, they cannot later demand the landlord adhere to the 15-day response rule or the serious reason standard. They are in wrongdoing. Similarly, the sub-tenant in an unauthorized scenario has very precarious rights. Because no consent was given, the sub-tenant cannot even claim the landlord's silence as deemed consent (since the landlord was never properly approached). The sub-tenant may invest money or rely on that space only to be summarily evicted when discovered. They typically can only go after the original tenant for restitution. This risk is especially high in cases where tenants try to sublet to multiple small sub-tenants (like carving a space into small units) without approval – if discovered, all those subtenants could be put out, causing disruption to their businesses.
- **Contractual Penalties:** Some commercial leases contain specific penalties for unauthorized transfer (e.g., an increase in rent, or a right for landlord to charge retroactively an assignment fee, or to immediately terminate without notice). While the enforceability of some penalties might be tested, the presence of such clauses underscores how seriously landlords view unauthorized subleasing. At the very least, a tenant in breach will likely lose any goodwill with the landlord and face strict enforcement thereafter.
- **No Tacit Approval:** Tenants should note that accepting rent from an unauthorized sub-tenant does not necessarily mean the landlord consents. There have been cases where a landlord, not immediately realizing a different person was paying the rent or occupying, later objected. The tenant might argue "laches" or tacit consent, but unless the landlord's conduct was very unequivocal and prolonged, the landlord can still assert breach when they formally recognize the situation. The CCQ does have provisions about performance by third parties – a landlord taking a cheque from a different entity doesn't automatically create a lease with that entity. So the tenant can't rely on "maybe the landlord won't notice or won't mind."
- **Damage to Landlord-Tenant Relationship:** Beyond legal sanctions, sneaky subleasing can severely damage the trust between landlord and tenant. This can have knock-on effects: the landlord may become much less flexible or cooperative on other matters (like future requests, minor defaults, etc.), or may decide to oppose renewal (in cases where they might have otherwise been amenable). In residential, as CORPIQ mentions, if a tenant sublet more than 12 months total, the landlord gets a

right to refuse lease renewal at end (Source: corpiq.com). In commercial, the landlord can simply choose not to renew or negotiate a renewal on tougher terms if they feel the tenant was playing games.

- **Third-Party Liabilities:** If the sub-tenant does something on the property (e.g., someone is injured due to sub-tenant's activities), and it was unauthorized, the situation of liability could become complicated. The landlord will say the person wasn't a lawful occupant, perhaps affecting insurance coverage. The tenant might face full liability if insurance denies coverage for an unapproved occupier or use. In essence, unauthorized subletting could void insurance or at least make claims contentious, especially if the sub-tenant's activities weren't disclosed (many leases require tenant to list all uses and get insurer approval for changes).

Given these risks, it is strongly advisable for tenants to **always seek consent in writing** before subleasing, as required either by law or by the lease. If a landlord is being unreasonable, the tenant's remedy is to go to court or TAL (for dwellings) to challenge the refusal (Source: educaloi.qc.ca) – not to proceed anyway. The consequences of "self-help" subletting are often worse than the original problem of needing to transfer the lease. For sub-tenants, a tip is to *demand proof that the landlord has consented*. A prudent sub-tenant will ask to see either a letter of consent or a clause in the sublease document signed by the landlord. Without it, they know they run the risk of sudden eviction. Many sophisticated sub-tenants won't finalize a sublease deal until landlord consent is obtained, precisely to avoid being caught in a lease violation.

In summary, **subleasing without the landlord's consent in Quebec is a legal breach that can result in termination of the lease, eviction of both tenant and sub-tenant, and potential financial penalties or liabilities** (Source: schneiderlegal.com). Both tenants and sub-tenants should avoid any clandestine arrangements. The proper legal process (notice and consent) exists to protect all parties – circumventing it removes those protections and exposes the parties to avoidable dangers.

Recent Court Cases and Rulings

Quebec jurisprudence provides several instructive rulings on issues surrounding commercial leases and subleases. Below are some notable cases and legal developments:

- **Ferme Guy Bonin enr. c. Malouin, 2000 CanLII 6582 (QC CA):** This Quebec Court of Appeal decision confirmed the principles now codified in Article 1871 CCQ regarding a landlord's refusal of consent. In that case, the Court of Appeal treated the rule that a landlord cannot refuse without a serious reason as essentially equivalent to the pre-1994 law (Article 1661 C.C.L.C.), indicating continuity (Source: fr.wikipedia.org). Importantly, even though Article 1871 CCQ does not explicitly label itself as public order, the Court did not allow contractual clauses that completely negated the tenant's right to assign/sublet. The case famously struck down a lease clause that required any lease

transfer to be made in favor of the landlord (essentially forcing the tenant to surrender the lease to the landlord if they wanted to assign). The Court held such a clause to be “illegal” as it defeated the tenant’s right to assign (Source: tal.gouv.qc.ca). This is a nuanced point: while parties can vary consent procedures, they likely cannot impose a condition that any assignment involves the landlord taking back the lease (at least not in residential – in commercial one could argue freedom of contract, but this case suggests some limits). *Ferme Guy Bonin* stands for the proposition that **the landlord’s privilege to refuse a new tenant is not absolute** – it must be exercised legitimately, and lease clauses can’t completely circumvent the rule requiring serious reasons (Source: oaciq.com). The case is often cited when discussing what constitutes a serious reason. For example, a landlord’s generalized fear or desire to get higher rent was not good enough; concrete issues with the proposed party are needed.

- **Succession Di Clementi c. Sghaier, 2005 CanLII 40602 (QC Court of Québec):** In this case, a tenant had sublet or attempted to assign, and the landlord refused without valid cause. The Court (Court of Québec, which handles smaller civil matters up to a monetary limit) decided to **terminate the lease at the tenant’s request** due to the landlord’s unjustified refusal (Source: oaciq.com). This outcome highlights a key remedy: rather than forcing the landlord to accept an unwelcome sub-tenant, the court may simply allow the tenant to walk away from the lease. This can be advantageous for a tenant who wanted to leave anyway. It’s a somewhat nuclear option – the tenant loses the space (which they intended, though). The case underlines that landlords who unreasonably block transfers can end up with an empty premises and possibly liable for damages. It puts pressure on landlords to be reasonable if the tenant is genuinely trying to mitigate losses by finding a replacement. While this case was at a lower court, it aligns with general principles of good faith in contract exercise (Article 1375 CCQ) – a landlord cannot abuse its right of refusal to trap a tenant unfairly.
- **Provigo Distribution Inc. c. Crête (1997 QCCA) and related cases:** Although not directly about sublease vs lease, the *Provigo* line of cases from the 1990s dealt with an anchor tenant (Provigo supermarket) that assigned its lease to a lessee (a shoe retailer) but continued to pay rent to keep the space dark and prevent competition. The Court of Appeal eventually found this violated the spirit of the lease and the duty of good faith, because the lease implied an obligation of continuous operation in a shopping center context. The reason this is relevant is that it shows **courts inferring obligations and preventing abuse of lease technicalities**. By analogy, if a tenant tried to do something like a de facto assignment via sublease to circumvent a clause, or keep a sub-tenant without consent by claiming it’s a “license” or some other ruse, a court would likely pierce through and treat it as an unauthorized sublease. *Provigo* teaches that the *exercise of rights under a lease (like remaining the tenant of record while someone else uses the space) is subject to the requirement of good faith and contractual loyalty* (Source: apq.org).

- **COVID-19 Rent Relief Cases (2020-21):** The pandemic gave rise to litigation over commercial rent obligations during government-mandated shutdowns. In Quebec, a notable decision was from the Superior Court in *HBC v. Oxford Properties* (2021, unreported in CanLII but widely discussed) where Hudson's Bay Company argued it could withhold rent because landlords failed to provide full enjoyment (stores were closed due to lockdown). The court initially issued an injunction forcing HBC to pay rent, emphasizing the sanctity of lease contracts (Source: canliiconnects.org). In other Quebec cases, some tenants succeeded in getting rent reductions for the lockdown period under the theory of force majeure or landlord's warranty of peaceable enjoyment (since the tenant couldn't operate at no fault of their own) (Source: pfdavocats.com). For example, a Quebec court held that a gym tenant didn't owe rent for the months it was forced closed by decree (Source: pfdavocats.com). These cases don't directly involve subleasing, but they do influence the landscape in which subleasing occurs: many tenants sought subtenants due to financial strain of the pandemic (Source: fasken.com). If a tenant had subleased and then the pandemic hit, the sub-tenant might invoke similar arguments to avoid rent – and the original tenant would still owe the head landlord unless relief was granted. The crisis thus highlighted the chain of liability in subleases: if rent abatement wasn't negotiated with the landlord, the head tenant could be stuck paying full rent while possibly having promised the sub-tenant a break (or vice versa). It's a reminder that subleasing doesn't shield parties from wider events and that careful drafting (force majeure clauses etc.) should extend to subleases.
- **Bill 31 (2023-2024) – Amendment to CCQ for residential assignments:** As mentioned earlier, a very recent legal change (though in the residential sector) is that Quebec amended the Civil Code to allow landlords to refuse an assignment of a dwelling lease without serious reason, provided they terminate the lease on the date the assignment would have taken effect (Source: educaloi.qc.ca). This was assented in 2023 and effective 2024 largely in response to a trend of tenants "selling" their leases or finding assignees due to low rents vs high market rents. The amendment also barred charging a premium for subleases/assignments of dwellings (Source: publicationsduquebec.gouv.qc.ca). While this doesn't affect commercial leases directly, it shows a legislative recognition of issues around lease transfers. It draws a sharper line between residential (heavily regulated) and commercial (freedom of contract). In commercial real estate, it's still mostly up to the lease terms. However, one could speculate if commercial landlords push for a similar legal right – currently they rely on contract to have recapture clauses, whereas now residential landlords have a statutory recapture (with termination). This is something professionals may watch in case of any future proposals affecting commercial leases (none are on the table yet).
- **Case of Sublease Surviving Head Lease Termination:** A quirky common law concept is that under certain conditions a sublease can become a direct lease if the head lease is terminated by merger or surrender (not by breach). In Quebec civil law, because of the personal contract notion, if the head lease ends consensually, the sublease also ends because the sub-lessor no longer has a right to

grant. However, there was an interesting Ontario case (*Avis Rent-a-Car v. Royal Bank*, 1990s) where an agreement by a head landlord and head tenant to prematurely terminate was deemed in bad faith vis-à-vis the subtenant and the subtenant was allowed to remain. In Quebec, good faith might similarly prevent a collusive termination meant to oust a subtenant illegitimately. For example, if a landlord and tenant conspired to cancel a lease just to get rid of a lawful sub-tenant (maybe to sign that sub-tenant to a direct lease at higher rent or to put someone else in), a court might scrutinize that under abuse of rights. While no specific famous case comes to mind on that point in Quebec, it flows from general civil law principles. So far, we haven't seen a high-profile case where a subtenant fought to stay after head lease ended, likely because subtenants in commercial contexts know their subordinate position. But it's a situation to be mindful of: always consider an arrangement if you're a subtenant to possibly take over the head lease if the head tenant wants out.

In conclusion, Quebec case law reinforces the importance of acting in good faith and respecting the code's provisions on leases and subleases. Landlords have been reminded not to withhold consent without valid reasons (Source: oaciq.com), and tenants have been reminded that sneaky tactics can backfire. The recent jurisprudence generally upholds the CCQ rules: courts will enforce the serious reason standard, and will grant remedies (like lease termination or damages) when one party breaches those norms. Commercial leasing lawyers in Quebec will typically cite these cases when negotiating or litigating disputes over subleasing. For example, when a landlord refuses a proposed sub-tenant citing flimsy reasons, a tenant's lawyer might reference *Ferme Guy Bonin* to threaten that a court challenge could succeed and even end the lease, leaving the landlord worse off (Source: oaciq.com). Or if a tenant sublets without asking, a landlord's lawyer might cite cases where leases were canceled for that behavior. Thus, jurisprudence provides both guidance and cautionary tales that inform how prudent parties handle commercial subleases today.

Conclusion: Commercial leases and subleases in Quebec form a complex area of real estate law where the Civil Code sets the stage, but the specific lease contract and factual circumstances play starring roles. Understanding the legal definitions, the default rules, and the leeway for contractual freedom is essential for anyone navigating these arrangements. While subleasing offers flexibility and solutions for tenants, it also introduces a web of relationships that must be managed carefully to protect each party's interests. From a landlord's duty to act reasonably when consenting, to a tenant's continued liability when subletting, to a sub-tenant's need for protection and awareness, the rights and responsibilities are interdependent (Source: oaciq.com)(Source: oaciq.com). Financial and tax considerations cannot be overlooked, as they often determine whether a sublease is economically viable. Real-world scenarios in Quebec demonstrate both the utility and the potential pitfalls of subleasing – success stories where everyone benefits, and cautionary tales where things go awry due to lack of consent or bad faith. Lastly, Quebec's legal developments and court rulings have continually shaped this domain, reinforcing fair conduct (good faith) and adjusting the balance between flexibility and security in lease transfers (Source: apq.org).

For professionals dealing with commercial leases, it is advisable to **draft clear lease clauses** regarding assignment and subletting (addressing consent, conditions, and consequences) and to **follow the legal procedures diligently** when a transfer is desired. By doing so, landlords can maintain control and property value, tenants can adapt to changing needs with minimal risk, and sub-tenants can confidently invest in a space knowing their rights have been acknowledged. With thorough due diligence and respect for the Civil Code's framework, subleasing can be a highly effective tool in Quebec commercial real estate – but when mismanaged, it can lead to significant legal entanglements. As always, consulting legal counsel for specific situations and keeping abreast of current jurisprudence is recommended to navigate the nuances of commercial lease versus sub-lease in Quebec.

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- Case law: *Ferme Guy Bonin enr. c. Malouin* (QCCA 2000) (Source: oaciq.com); *Succession Di Clementi c. Sghaier* (CanLII 2005) (Source: oaciq.com); *Provigo c. Crête* (QCCA 1996) and related; various 2020–21 cases on pandemic rent (e.g., **PFD Avocats summary**(Source: pfdavocats.com)).

Tags: quebec law, civil code of quebec, commercial lease, sub-lease, property law

About 2727 Coworking

2727 Coworking is a vibrant and thoughtfully designed workspace ideally situated along the picturesque Lachine Canal in Montreal's trendy Griffintown neighborhood. Just steps away from the renowned Atwater Market, members can enjoy scenic canal views and relaxing green-space walks during their breaks.

Accessibility is excellent, boasting an impressive 88 Walk Score, 83 Transit Score, and a perfect 96 Bike Score, making it a "Biker's Paradise". The location is further enhanced by being just 100 meters from the Charlevoix metro station, ensuring a quick, convenient, and weather-proof commute for members and their clients.

The workspace is designed with flexibility and productivity in mind, offering 24/7 secure access—perfect for global teams and night owls. Connectivity is top-tier, with gigabit fibre internet providing fast, low-latency connections ideal for developers, streamers, and virtual meetings. Members can choose from a versatile workspace menu tailored to various budgets, ranging from hot-desks at \$300 to dedicated desks at \$450 and private offices accommodating 1–10 people priced from \$600 to \$3,000+. Day passes are competitively priced at \$40.

2727 Coworking goes beyond standard offerings by including access to a fully-equipped, 9-seat conference room at no additional charge. Privacy needs are met with dedicated phone booths, while ergonomically designed offices featuring floor-to-ceiling windows, natural wood accents, and abundant greenery foster wellness and productivity.

Amenities abound, including a fully-stocked kitchen with unlimited specialty coffee, tea, and filtered water. Cyclists, runners, and fitness enthusiasts benefit from on-site showers and bike racks, encouraging an eco-conscious commute and active lifestyle. The pet-friendly policy warmly welcomes furry companions, adding to the inclusive and vibrant community atmosphere.

Members enjoy additional perks like outdoor terraces and easy access to canal parks, ideal for mindfulness breaks or casual meetings. Dedicated lockers, mailbox services, comprehensive printing and scanning facilities, and a variety of office supplies and AV gear ensure convenience and efficiency. Safety and security are prioritized through barrier-free access, CCTV surveillance, alarm systems, regular disinfection protocols, and after-hours security.

The workspace boasts exceptional customer satisfaction, reflected in its stellar ratings—5.0/5 on Coworker, 4.9/5 on Google, and 4.7/5 on LiquidSpace—alongside glowing testimonials praising its calm environment, immaculate cleanliness, ergonomic furniture, and attentive staff. The bilingual environment further complements Montreal's cosmopolitan business landscape.

Networking is organically encouraged through an open-concept design, regular community events, and informal networking opportunities in shared spaces and a sun-drenched lounge area facing the canal. Additionally, the building hosts a retail café and provides convenient proximity to gourmet eats at Atwater Market and recreational activities such as kayaking along the stunning canal boardwalk.

Flexible month-to-month terms and transparent online booking streamline scalability for growing startups, with suites available for up to 12 desks to accommodate future expansion effortlessly. Recognized as one of Montreal's



top coworking spaces, 2727 Coworking enjoys broad visibility across major platforms including Coworker, LiquidSpace, CoworkingCafe, and Office Hub, underscoring its credibility and popularity in the market.

Overall, 2727 Coworking combines convenience, luxury, productivity, community, and flexibility, creating an ideal workspace tailored to modern professionals and innovative teams.

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