

CONSUMER AFFAIRS

Breaking a Tenancy Lease Early

When entering into a residential tenancy agreement (frequently referred to as a 'lease') landlords and tenants often agree to do so for a fixed period of time such as 6 or 12 months. If either party wants to terminate the tenancy at the end of the agreed term at least 2 weeks notice, in writing, prior to the end date specified in the agreement must be given.

Whilst fixed term agreements provide security of tenure they can pose some problems if circumstances change and tenants want to break the agreement early ie end the tenancy before the end of the fixed term period. Tenants in this position need to be aware of the potential costs involved and what they can do to minimise these costs.

TENANTS' OPTIONS:

1. Discuss with the landlord or the landlord's agent to see if he or she is willing to terminate the tenancy agreement early without penalty. (Sometimes this may suit the landlord's interests). Ideally the tenant should give the landlord as much notice as possible, preferably in writing, and state the exact date they intend to leave and that they want the landlord to find a new tenant. (A copy of this letter should be kept).
2. If the landlord/agent does not agree to early termination the tenant can:
 - Find another tenant to take over the premises and sign a new lease. It is in the tenant's interest to advertise and do anything else they can to find someone to take over the premises as they are responsible for the loss of rent and the premises until such time as a new tenancy agreement is entered into.
 - Apply to the Local Court under the hardship provisions (section 99) of the Residential Tenancies Act. These provide for a tenancy agreement to be terminated early if a continuation of the tenancy would result in undue hardship due to circumstances (eg loss of employment or illness) that had not arisen before the time of entering into the agreement.

LANDLORDS' RESPONSIBILITIES

If the landlord/agent does not agree to the early termination of the agreement and the tenant abandons the premises, the landlord/agent can continue to hold on trust as much of the security deposit as is necessary to ensure that the deposit will be available for payment as compensation for:

- loss of the rent that the tenant would have been liable to pay if the premises had not been abandoned, and
- loss caused to the landlord in securing new tenants for the premises (eg advertising, reletting fee).

The landlord has a duty to 'mitigate' or minimise his losses in respect of the premises ie he or she must take possession of the premises as soon as possible after the tenant has left and take immediate steps to find another tenant without unreasonably rejecting potential tenants. A landlord cannot impose unreasonable charges on a tenant.

Once the loss caused by the tenant breaching the tenancy agreement has been established (and this may only be possible after a new tenant has moved in to the premises), the landlord must make an application to the Commissioner of Tenancies for compensation. This application must be made as soon as practicable after the loss can be calculated and no later than 3 months from the date the tenant abandoned the premises. This compensation may be greater than the security deposit and if this is the case the tenant will be required to make up the difference.

TENANTS BEWARE

Tenants should be aware that if they do not meet their financial obligations to landlords resulting from the breaking of fixed term agreements, they may be listed on a tenancy default database such as TICA. Such listings can affect a tenant's ability to rent premises in other States and Territories of Australia.

Tenants who find themselves in a position of wanting to break their fixed term tenancy agreement should seek advice before doing so from either a legal practitioner or Consumer Affairs on 1800 019 319.

For further information contact Consumer Affairs

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or

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