

Landlord problems? Change of circumstances?



LEAVING LEASES EARLY

Information for Tenants

There are two reasons a tenant can seek to end a fixed term lease before the end date:

By the choice/circumstance of the tenant =
BREAKING THE LEASE

Through a fault of the landlord/ agent =
TERMINATING THE LEASE

AGREEMENT TO END LEASE

A tenant, leaving a fixed term lease early, may be able to negotiate a no fault termination of the lease with their landlord/agent. Any agreement should be in writing, signed by both parties, stating dates and agreed terms.

A tenant on a non-fixed term lease, must give 14 days notice in writing, in order to end their lease.

BREAKING THE LEASE

When a tenant must break their lease before the end date due to financial, family, relationship, work or other issues, then both the tenant and the landlord/agent have a "duty to mitigate loss". This means that both parties need to keep any financial losses to a minimum.

The landlord/agent should be informed, in writing, of the need to break the lease as soon as possible.

Under the *Act* if a tenant on a fixed term lease wishes to leave before the end of the lease, then they are responsible for the rent until the end of the lease, or until a new person is found to take on a lease for the property.

The landlord/agent must take all reasonable steps to find a new tenant, including offering the property for the **same rent** and the **same conditions** as the current lease. The vacating tenant is responsible for all reasonable costs involved in finding a new tenant.

AGENT AND ADVERTISING FEES

The property should be advertised for the **same rent**, and for the **same conditions** as the current lease. An agent may have certain procedures for finding a new tenant, and the vacating tenant must be aware that they may eventually bear these costs.

It is important to understand that the vacating tenant is responsible for any fees and advertising on a pro-rata basis. This means that if there is 3 months left on a 12 month lease, only a quarter of the fees can be charged, because there is only a quarter of the lease to go.

An agent/landlord **cannot** charge a break lease fee and any charges such as advertising must be clearly itemised. A landlord/agent cannot financially profit from costs involved in breaking a lease.

A tenant may want to check that the property is being advertised sufficiently, and at the same rent and conditions.

REDUCING COSTS by FINDING A NEW TENANT

One way to reduce the landlord's costs of finding a new tenant is for the current tenant to seek prospective tenants using their own networks. This may save the landlord time and money, if done prior to the landlord/agent commencing their own advertising.

We suggest the landlord/agent is provided with the details of four *suitable* potential tenants.

Follow up with the potential tenants and the landlord/agent to find out if anyone has been accepted and if not, why not.

If the landlord has not accepted an application for any inequitable reasons, or if they will not

give a reason, then they may not be taking reasonable steps to find a new tenant, and the vacating tenant may not be liable for further rent for the premises.

If the landlord rejects all of the applications provided by the current tenant, or if there is no news on a new tenant after 6 weeks, then call the Tenants' Union for advice.

FINDING A SUITABLE TENANT

To provide the landlord/agent with a list of suitable prospective tenants, be sure they are asked a range of qualifying questions such as:

- Can they afford the rent and bond?
- Do they have bad debts? (the landlord/agent may want to run a credit check).
- How many people would live in the property?
- Are they able to fulfil all of the specific lease requirements or conditions such as; pet clauses, smoking, gardening, etc.
- Do they have tenancy references?
- When will they be able to move in?

TERMINATING THE LEASE

Tenants can only use a Notice to Terminate to end their lease for the following reasons:

- The landlord/agent has failed to carry out repairs (that are not the tenant's fault) within the time prescribed under the Act or Lease.
- The landlord/agent has breached other provisions of the Residential Tenancy Act or the Lease.

Tenants must give **14 clear days*** notice (except for boarding premises where it is 2 clear days). During this time rent is still due.

In the case of **repairs**, if a landlord/agent fixes the problem during the notice period, the tenant may still terminate the agreement at the end of the notice period.

In all **other breaches**, if the landlord/agent fixes the problem within the notice period, then the Notice to Terminate is of no effect and the lease continues.

When a valid Notice to Terminate is served, the tenant only has to continue paying rent until the notice takes effect, regardless of whether a new tenant is found.

COMPLETING A VALID NOTICE

Often a landlord/agent will dispute a Notice to Terminate. To ensure a notice complies with all regulations contact the Tenant's Union and they can assist tenants to complete a valid notice which will stand up to scrutiny.

A Notice to Terminate must include:

- Date of service of the Notice
- Landlord/Agent name/s
- Tenant name/s
- Premises to which the Notice applies
- Specific Reason/s for the Notice - be detailed in this section, e.g. if the issue is failure to carry out a repair, describe the required repairs and steps taken to have it rectified.
- Date that the Notice takes effect - a minimum of 14 clear days*.

The Tenant's Union [Notice to Terminate](#) pro-forma, can be used. Keep a copy of the notice and any correspondence which follows the notice.

***Clear Days** refers to complete 24 hour periods from Midnight to Midnight. Example, if a notice is served at 11am or 4pm one day, the first 'clear day' of that notice does not begin until Midnight that evening.

USEFUL CONTACTS

Tenants' Union of Tasmania Inc
166 Macquarie Street Hobart
☎6223 2641 or 1300 652 641
www.tutas.org.au

Housing Connect
☎1800 800 588

Residential Tenancy Commissioner
(Consumer Affairs & Fair Trading)
☎1300 654 499

Legal Aid Commission of Tasmania
☎1300 366 611

Anti Discrimination Commission
☎6224 4905 or 1300 305 062

Hobart Community Legal Service
☎6223 2500

Launceston Community Legal Centre
☎1800 066 019

North West Community Legal Centre
☎6424 8720