

BREAKING OR ENDING A LEASE EARLY

A tenancy agreement is a legally binding contract that both parties have agreed to fulfill, however individuals circumstances can change throughout the duration of a tenancy agreement which may necessitate early termination of an agreement. In some instances, tenants may lease break without incurring costs. The information below sets out the rights and obligations of both landlords and tenants when a lease break occurs and for other situations where a tenancy may be terminated early (excluding for other breaches of the tenancy agreement).

General lease break provisions

If a tenant wishes to lease break and their situation does not fall into one of the other categories listed on this fact sheet, a landlord may seek to recover all losses for rent and other expenses* as a result of the breach of contract, such as advertising to re-let the premises. Abandonment of a premises is treated in the same way.

A tenant should always notify their landlord that they intend to break lease as soon as possible and preferably in writing. Both parties have an obligation to mitigate losses when a breach of contract has occurred. If a tenant wishes to remain in the premises while a new tenant is being found they can, but should continue to pay rent during that time and allow reasonable and lawful access to the premises in order for the landlord to show the premises to prospective tenants.

If a tenant opts to hand back vacant possession of a premises instead, they are not responsible for the upkeep of the premises and can cease to pay rent from that date however are still liable for the total loss of rent until such time as a new tenant has been found. A tenant is not required to keep the power on at the premises once they have vacated.

If a landlord withholds *any* of the tenant's security deposit for loss of rent or other expenses relating to a lease break, they must apply to the Northern Territory Civil and Administrative Tribunal for a determination and an order for the distribution of the tenant's security deposit. If a landlord fails to do or to make an application for further compensation (if applicable) within **three months** from the date the tenant gave up or abandoned the premises, they then cease to be entitled to claim all or part of the losses associated with the lease break.

A tenant may dispute the retention of their bond through the Tribunal for up to a three year period.

** Please note – For tenancies entered into on and from the **2 January 2024**, the total amount that may be claimed for rental losses in a lease break situation, is capped at a certain number of weeks. Please see over for details.*

Important changes affecting leases entered into on and from 2 January 2024

For leases entered into on and from the 2 January 2024, a landlord will only be able to seek a fixed amount for loss of rent but may still seek other genuine losses for a lease break. The amount depends on the length of time the tenant has remained in their tenancy.

If a tenant has completed less than half of the term of the tenancy, the maximum rental amount that can be claimed as a loss is 28 days (not necessarily the whole 28 days as the landlord should be attempting to mitigate losses by trying to get a new tenant in sooner).

For example where a tenant has completed 5 months out of a 12 month tenancy, a landlord may seek losses for rent up to a maximum of 28 days.

If a tenant has completed more than half of the term of the tenancy, the maximum rental amount that can be claimed as a loss is 14 days.

For example where a tenant has completed 8 months out of a 12 month tenancy, a landlord may seek losses for rent up to a maximum of 14 days.

What if a landlord wants to end a lease early?

A landlord cannot end a tenancy agreement earlier than the fixed term period just because they want to, however a landlord and a tenant can mutually agree to early termination if they wish. Sometimes this may benefit both parties. It is important that there is a written record of this arrangement to protect both parties and should stipulate the termination date and that there are no penalties involved.

Generally, the sale of a premises does not affect a fixed term tenancy agreement.

Hardship

If the continuation of a tenancy agreement would cause undue hardship to either a landlord or a tenant, and the situation had not arisen before entering into the tenancy agreement, either party may apply to the Tribunal to terminate the tenancy. Hardship includes financial hardship and risk to physical, psychological or mental health or to safety.

Employment related tenancy agreements

A landlord may terminate a tenancy agreement early if it was entered into as a condition or benefit of employment and the employment has been terminated. Two days' notice is required if employment is terminated due to a breach of the employment contract. If employment is terminated for any other reason, the notice period to

terminate the tenancy agreement is as stated in the employment contract or if no period is stated, a minimum of 14 days' notice is required.

Offer of Public Housing

If a tenant made an application for public housing prior to entering into a tenancy agreement and they notified the landlord of this before signing their tenancy agreement, they may terminate the tenancy agreement early with 14 days' notice if they are offered public housing and have accepted the offer.

Experienced Domestic Violence

If a tenant (or another occupant) of a rental premises has experienced domestic violence, they may terminate their interest in the tenancy at any time. In order to do so, a tenant must provide written notice specifying the termination date, to the landlord and any co-tenants in the approved form along with a document establishing experience of domestic violence. Any one of the following documents may be provided and conclusively establish experienced domestic violence;

- a court DVO as defined in section 4 of the *Domestic and Family Violence Act 2007*
- an injunction under section 68B(1)(a) or (b) or 114(1)(a) of the *Family Law Act 1975* (Cth)
- a certificate in the approved form provided by a person with an occupation prescribed by regulation.

The tenancy remains in place for the co-tenants, however if *all* remaining co-tenants would rather terminate the existing agreement, they may do so by giving written notice to the landlord in the approved form within 7 days of the date that the tenant or other occupant that has experienced domestic violence has specified in their notice as their termination date.

The Tribunal may upon application by the landlord or co-tenants, determine the rights and liabilities between the co-tenants that accrued prior to the date that the tenant or other occupant that has experienced domestic violence has specified in their notice as their termination date.

If you have any questions relating to lease breaks or early termination of a tenancy agreement, please call our office on 1800 019 319 or email us at consumer@nt.gov.au.