

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 two 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 the tenants want to break the agreement early, i.e. 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 they can to find someone to take over the premises as they are responsible for the loss of rent until such a time as a new tenancy agreement is entered into.
 - Apply to the Northern Territory Civil and Administrative Tribunal (NTCAT) under the hardship provisions set out in section 99 of the *Residential Tenancies Act*. These provide for a tenancy agreement to be terminated early if continuation of the tenancy would result in undue hardship due to circumstances (e.g. loss of employment or illness) that had not arisen before the time of entering into the agreement.
 - An application for hardship must be lodged with NTCAT before tenant gives up vacant possession of the premises.

Landlords' Responsibilities

If the landlord/agent does not agree to the early termination of the agreement and the tenant abandons the premises, the landlord can continue to hold in 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 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 (e.g. advertising, reletting fee).
- Please refer to the *Reletting Fee Formula* attached which will assist in determining a lease break fee.

The tenant is no longer responsible for maintenance or electrical connection to the premises once the landlord is given vacant possession of the premises.

The landlord has a duty to 'mitigate' or minimise his or her losses in respect of the premises i.e. 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 into the premises), the landlord must make an application to NTCAT 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 should be made 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 NT Consumer Affairs on 1800 019 319, a legal practitioner, or The Tenancy Advisory Service.

RELETTING FEE FORMULA

$$\frac{\text{Reletting fee} \times \text{weeks remaining from reletting to end of agreed term}}{\frac{3}{4} \text{ of weeks of total agreed term/s}}$$

Example based on rent of \$200 per week, relet 12 weeks prior to the end of an agreed 52 week term:

$$\frac{\$200 \times 12 \text{ (weeks from relet to the end of the term)}}{39 \text{ (}\frac{3}{4}\text{ of 52 week term)}} = \frac{200 \times 12}{39} = \$61.54$$

3 months lease	13 weeks	$\frac{3}{4} = 9.75$
6 months lease	26 weeks	$\frac{3}{4} = 19.5$
9 months lease	39 weeks	$\frac{3}{4} = 29.25$
12 months lease (1year)	52 weeks	$\frac{3}{4} = 39$
15 months lease	65 weeks	$\frac{3}{4} = 48.75$
18 months lease	78 weeks	$\frac{3}{4} = 58.5$
21 months lease	91 weeks	$\frac{3}{4} = 68.25$
24 months lease (2 years)	104 weeks	$\frac{3}{4} = 78$
36 months lease (3 years)	156 weeks	$\frac{3}{4} = 117$

The formula is:

Rent x number of weeks remaining from when premises was relet, divided by $\frac{3}{4}$

eg: From reletting date

Relet with one week remaining at \$200

$$\frac{200 \times 1}{39} = \$5.10$$

Please note: This formula only takes effect if the tenant has resided in the premises for at least a quarter of the lease term, otherwise the whole cost of the lease break is applied.