

BREAKING OR ENDING A LEASE EARLY

A tenancy agreement is a legally binding contract that both parties have agreed to fulfill, however individual 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). Abandonment of a premises is treated in the same way.

General lease break provisions

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 some rental losses. A tenant is not required to keep the power on at the premises once they have vacated.

Rental losses - tenancies entered into on or after 2 January 2024

For a tenancy agreement entered into on or after 2 January 2024, losses for which a landlord can seek compensation are capped as follows:

- If a tenant has completed less than half of the term of the tenancy, the maximum compensation that can be claimed as a loss is up to the equivalent of 28 days rent (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 compensation up to a maximum of 28 days rent.

- If a tenant has completed more than half of the term of the tenancy, the maximum compensation amount that can be claimed is 14 days rent.

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

Those caps determine the maximum allowable amount for compensation for loss of rent. Where the premises is

rented out again before either the two or four weeks have passed, the landlord is only entitled to compensation for loss of rent for the actual period during which the property was not rented out.

Further losses

Where a landlord also seeks to recover any other losses or impose any fees as a result of the tenant breaking the lease early, such as advertising costs, they can only claim these costs:

- Where the cap for loss of rent has not been reached
- Up to the cap for compensation
- Where actual loss can be evidenced.

For example:

- Rent is \$500 per week
- Security deposit was \$2,000
- Tenancy agreement is terminated 7 months into a 12-month agreement.
 - ⇒ Possible compensation is capped at two weeks' rent, that being \$1,000.

If:

- Property is rented out again after one week (\$500 loss of rental income), and
- Landlord pays \$200 for re-advertising the property
 - ⇒ Landlord can claim \$700 (\$500 for loss of rent and \$200 for re-advertising costs)

Rental and other losses - tenancies entered into prior to 2 January 2024

For tenancies entered into before 2 January 2024, a landlord may seek to recover all losses for rent and other expenses as a result of the breach of contract.

Requirement for NTCAT application

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 (the Tribunal) for a determination and an order for the distribution of the tenant's security deposit. If a landlord fails to follow this procedural step 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 security deposit through the Tribunal for up to a three year period.

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 it 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. If the notice requirement is met and the tenant gives back possession on the date specified, no rental losses can be claimed.

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.