

# Breaking a lease

If you have a fixed-term tenancy agreement (lease), and you want to move out before the end of the fixed term, you may be able to break your lease in one of the following ways.

## Mutual consent

Any tenancy agreement can be ended by 'mutual agreement' between the landlord and tenant. We strongly advise that you get the agreement in writing, and that it states that you will not be liable for any additional costs because of the termination. You and your landlord or agent should sign the agreement. Make sure you keep a copy.

## When the landlord is in breach

If your landlord or agent are in breach of any of their 'duties' under the *Residential Tenancies Act 1997* you may be able to end your tenancy early. This applies if the landlord:

- > hasn't made sure the property was reasonably clean and vacant when you were supposed to move in
- > interferes with your right to 'quiet enjoyment' of the property
- > doesn't keep the property in good repair
- > doesn't provide locks, or doesn't give you a key when they change a lock
- > doesn't replace a faulty water appliance with an A-rated appliance

There are certain steps you need to take to end your tenancy early for any of the above breaches of duty by the landlord. For more information contact the Tenants Union or see the ***When you want to leave*** and ***Breach of Duty Notice*** fact sheets.

## Assignment

Instead of breaking your lease, it may seem easier to hand over or 'assign' your tenancy agreement to another tenant. This is not always a straightforward option. It is better to give proper notice and end your tenancy agreement, and let the new tenants enter into a new tenancy agreement. See the ***Assignment and sub-letting*** fact sheet for more information.

## Hardship

If it will cause you severe hardship to stay in the property until the end of the fixed term, you can apply to the Victorian Civil and Administrative Tribunal for an order that the term of your tenancy be reduced. You should ask the Tribunal to hear the case as quickly as possible. You must continue to pay rent as usual, until the hearing has taken place.

To claim hardship, you will have to prove to the Tribunal that:

- > there has been an unforeseen change in your circumstances (eg you have lost your job)
- > you will suffer severe hardship if the tenancy continues
- > the hardship you will suffer if the tenancy is not ended will be greater than the hardship of the landlord if the tenancy is ended

The Tribunal can order that you pay compensation to the landlord for any loss caused by the tenancy ending early. This can mean that you may have to pay the same amount in compensation as if you had simply broken the lease.

## Breaking a tenancy agreement

Breaking a fixed-term tenancy agreement can be costly. The landlord can claim compensation for any reasonable costs they have to pay as a result of you breaking the lease.

The costs you could be liable for include:

- > a reletting fee (usually one or two weeks rent). This must be based on the fee that the agent charged the landlord so it is a good idea to ask for a copy of the invoice
- > advertising costs
- > rent until new tenants move in or until the end of the fixed term (whichever happens first)

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➡ What the landlord or agent may not tell you is that you only have to pay the reletting fee on a pro-rata basis, which means you only have to cover the fee for the remaining term of the lease. For example, if you leave 7 months into a 12-month tenancy agreement, there is only about 40% of the fixed term remaining so you only have to pay about 40% of the reletting fee.

If you want to end your tenancy early, you should give as much notice as possible in writing (keep a copy of your letter). It is a good idea to state the exact date you will be leaving and that you want the landlord or agent to find a new tenant. The landlord is required to take all reasonable steps to find a new tenant as quickly as possible. The more you can do to help find a new tenant (such as having the property available for inspection, or advertising the property yourself) the less you are likely to have to pay.

➡ If you are breaking the lease near the end of your fixed term, you may be able to claim that if you gave notice at the end of the fixed term the landlord would be liable for the cost of finding new tenants anyway, and therefore you should not have to pay the reletting fee or advertising costs.

You should only pay rent up until the day that you vacate. The landlord may still be able to claim any lost rent after that date as compensation, but they are more likely to make an effort to find new tenants quickly if they don't have any rent coming in. Once the new tenants move in, you can then pay the landlord compensation for the lost rent.

You should make sure the landlord or agent are trying to relet the property after you give notice, and find out what date new tenants move in. The landlord has a duty to keep their loss to a minimum, so if they do anything to make it harder to find a new tenant (such as putting the rent up), or if they don't make an effort to find a new tenant, you can argue that you should not have to pay.

➡ Check the Properties to Let section in the major newspapers and the Rental Listings available from the agent. If you have internet access, you can also check the agent's website. If the property is not being advertised or is being advertised at a higher rent, keep this as evidence that the landlord has not tried to keep their loss to a minimum and therefore you should not have to pay.

If you think the costs that your landlord is claiming are unreasonable, don't agree to pay. The landlord will then have to make a claim against your bond or apply to the Victorian Civil and Administrative Tribunal for compensation. The landlord must give you notice of their claim and you will have a chance to present your side of the story to the Tribunal. See the ***Defending a compensation claim*** and ***Bonds*** fact sheets for more information.

**For more information, phone the Tenants Union Advice Line on ☎ (03) 9416 2577.**