

Breaking a lease

If you have a fixed-term tenancy agreement, and you want to move out before the end of the fixed term, you may be able to break your agreement 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 any such agreement be put in writing, and that the agreement state 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 is in breach of 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

If the landlord has done any of these things, you can send them a Breach of Duty Notice. This notice tells the landlord they must fix the problem or (if appropriate) pay you compensation within 14 days. If the landlord doesn't do so, you can apply to the Victorian Civil and Administrative Tribunal for a Compliance Order.

If the landlord doesn't comply with the Tribunal order, you can send the landlord a Notice of Intention to Vacate for failing to comply with the Tribunal order.

You should send the notices by certified or registered mail (allow 2 business days for delivery). Keep copies for your records. For copies of these notices or assistance with your application for a Compliance Order,

contact the Tenants Union. Be aware that this process is complex and can take a long time.

Assignment or sub-letting

You may be encouraged to assign your tenancy agreement to another tenant or to sub-let the property. This is not always a straightforward option. It is much easier if you formally end your tenancy agreement and the new tenants enter into a completely new agreement. See the **Assignment and sub-letting** fact sheet for more information.

Hardship

If the continuation of the tenancy agreement will cause you severe hardship, you can apply to the Victorian Civil and Administrative Tribunal for an order that the term of your agreement be reduced. You should ask the Tribunal to hear the case as quickly as possible. You must remain in the property and 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 agreement continues
- > the hardship you will suffer if the agreement is not ended will be greater than the hardship of the landlord if the agreement is ended

The Tribunal can order that you pay compensation to the landlord for any loss caused by the tenancy agreement being ended early. This often makes a hardship application of little practical advantage, as the landlord may recover the same amount in compensation as they would have received if you simply broke the tenancy agreement.

Continued overleaf...

Breaking a tenancy agreement

Breaking a tenancy agreement can be costly. The landlord can claim compensation for all reasonable costs incurred as a result of your ending the tenancy agreement early. The costs you could be liable for include:

- > a reletting fee (usually one or two weeks rent) when the property is let by an agent and the agent charges the landlord a reletting fee for finding new tenants
- > advertising costs
- > rent until new tenants move in or until the end of the fixed term of the agreement (whichever happens first)

➔ 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. This may also apply to advertising costs.

If you want to end your tenancy agreement 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 move out without giving notice, or if the property has not been relet when you move out, **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. You should make sure the landlord or agent is trying to relet the property after you move out, and find out what date new tenants move in. Once the property is relet, you can then pay the landlord reasonable compensation for the lost rent.

Keep in mind that while you will probably have to pay some compensation to the landlord, you are only liable for those costs which are reasonable and which the landlord can show were caused by you breaking the tenancy agreement. For example, if you moved out of the property 9 months into a 12-month tenancy agreement, you should only be liable to pay a small proportion of the reletting and advertising fees, since the landlord would have had to pay them in 3 months time anyway. The landlord also 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 put 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 the landlord is claiming are unreasonable, don't agree to pay. The landlord will then apply to the Tribunal for compensation or to claim against your bond. The landlord must give you notice of their claim and you will have a chance to put 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.