

Break Lease

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987* (the Act). This fact sheet explains the law in Western Australia about breaking a fixed term agreement early and incorporates the changes made to the Act, which came into effect on 1 July 2013. Please note that while changes were made to the Act effective 1 July 2013, some of the old laws may still apply to you. If, for example, you entered into a lease prior to 1 July 2013, the old laws may still be valid. Accordingly we strongly encourage you to get appropriate legal/tenancy advice from your local tenancy service concerning the application of the new laws.

When you sign a fixed term agreement, you are signing a legal contract under which you agree to rent the place for an agreed minimum period. Leaving your agreement early is usually a breach of the agreement, and you may be liable to pay compensation to the lessor for breach of the contract.

In the Residential Tenancies Act the landlord is referred to as the lessor.

If you have a periodic lease then all you need to do is provide at least **21 days' written notice** to your lessor to terminate the agreement. The notice must be signed, identify the rental premises and specify the day which you will move out. The rest of this fact sheet is about a fixed term tenancy.

WHAT IF THE LESSOR IS BREACHING THE AGREEMENT?

You don't have a right to unilaterally terminate the agreement because the lessor is breaching the agreement. If your lessor is breaching the agreement (by failing to do repairs or attending the property without notice or any other reason) there is a separate procedure for you to follow. The Magistrates Court will consider whether any breach justifies termination, and may consider specific performance orders and compensation orders. For example, you could issue the lessor with a breach notice and apply for a Court order for the lessor to do the maintenance. See our **"Repairs and Maintenance"** fact sheet for more information. If you 'break lease' because of a breach by the lessor you may still be liable to pay compensation for break lease costs.

HARDSHIP?

If staying in the lease will cause you undue hardship, then you can apply to the Court to terminate the lease. "Undue hardship" is a high standard, and the Courts often reserve this for cases of serious medical or safety issues. Where the Court does terminate the tenancy for undue hardship, the Court will usually order some compensation to the lessor for the early termination of the lease. The compensation ordered is often similar to break lease compensation. You can argue for the compensation to the lessor to be reduced if the lessor has not taken all reasonable steps to mitigate their loss (e.g. appropriately advertising the property to find a new tenant).

It is only in very rare cases that the Court will terminate a tenancy for undue hardship without ordering any compensation to the lessor.

If you are experiencing hardship the first step is to negotiate with your lessor to reach an agreement to terminate the tenancy. If you cannot reach agreement, then you can apply to Court using a Form 12: Application for Court Order. If you can't reach any agreement with your lessor, you can also consider terminating the agreement by abandoning the property, see further details below about this option.

CAN YOU FIND SOMEONE ELSE TO MOVE IN AND TAKE OVER THE LEASE?

Your lease may permit you to assign your interest under the lease or sub-let the premises. If it does, then you may find another tenant to move in, and assign your interest under the lease to her.

As the “original” tenant, however, **you may remain liable** for any breach of the lease by the “new” tenant until the end of its term.

If the lease requires the written consent of the lessor, then that consent must not be unreasonably withheld, and the lessor can only charge you reasonable expenses (e.g. tenancy database checks).

If the lease prohibits you from assigning or sub-letting, then you cannot do that. Not surprisingly, because lessors want to retain the right to choose their tenants, this term is most common.

If the lease is silent on the issue, then it is taken to have a term that the lease may only be assigned or sub-let with the consent of the lessor, which shall not be unreasonably withheld¹.

Assigning a tenancy can be risky for both the “new” tenant and the “original” tenant, you should seek further information or advice as the issues are not covered in this fact sheet in detail.

WHAT IF YOU AND THE LESSOR AGREE TO TERMINATE THE AGREEMENT EARLY?

The best option, if you are considering breaking the lease, is to talk to the lessor and try to reach an agreement to terminate with their consent. The lessor may prefer to agree rather than bind you to the agreement, and it is possible that the lessor's circumstances have changed and it now suits them to end the agreement early. An agreement to terminate by consent must be in writing.

The lessor will usually expect you to pay some compensation for the early termination of the agreement. The advantages of this course of action are:

- The uncertainty and stress that accompanies other options can be avoided.
- The matter will be finalised, without the need for court proceedings to determine how much compensation the lessor is entitled to.
- You cannot be listed on a Residential Tenancy Database (see our fact sheet on “**Residential Tenancy Databases**” for more information on this) for breaking the lease².

WHAT IF THE LESSOR REFUSES TO TERMINATE EARLY BY AGREEMENT?

If you can't reach an agreement with the lessor, then you have a couple of other options:

- Move out but continue with the agreement, and all your responsibilities under it, until the lessor relets the property, or the agreement ends, whichever is the earlier; or
- Abandon the premises, at which point the agreement ends, and the lessor becomes entitled to compensation for any loss caused as a result.

¹ A verbal lease is much more likely than a written lease to be silent on the issue.

² You could still be listed on a residential tenancy database if you have otherwise breached the agreement and you owe more than the bond. If you are in this situation you could seek the lessor's agreement not to list you as part of the agreement to end the lease early.

Each option has advantages and disadvantages.

MOVE OUT BUT CONTINUE WITH THE AGREEMENT UNTIL THE LESSOR RELETS THE PROPERTY OR THE AGREEMENT ENDS

When you tell the lessor that you want to break a fixed term agreement, the lessor may ask you to continue with the agreement until they find a new tenant. If they are renting through a real estate agent, the agent may ask you to sign an agreement to formalise this. You should seek advice from a tenant advocate or lawyer before you sign any such agreement.

Some advantages of this course of action are:

- You do not breach the agreement. In effect you agree to continue with it, on the understanding that the lessor will try to minimise your loss by re-letting as soon as possible.
- The lessor cannot list you on a Residential Tenancy Database for breaking the lease (note that they cannot do this in any event unless you owe more than the security bond as a result of a breach, or a court terminates the lease because of your breach).

Some disadvantages are:

- There is no real incentive for the lessor to re-let the property while you are still paying rent for it.
- The lessor is under no obligation to do anything to reduce your losses; you must rely on the goodwill of the lessor to make every effort to re-let the premises.
- All your responsibilities under the lease continue, including for cleaning and maintenance (which will usually include the garden, if any), in addition to continuing to pay rent as and when it falls due. If you have already moved into a new rental property, you will be paying rent for two properties until the old one is relet.

Note that, if the property is let through a Real Estate Agent, the lessor will usually seek compensation from you for re-letting expenses in addition to paying rent until the property is re-let.

BREAKING THE LEASE BY ABANDONING THE PREMISES

If you stop paying rent, return the keys and leave the premises for good, then the agreement terminates by virtue of s.60 (f) of the Act. If you choose to unilaterally terminate the lease in this way, you should also give the lessor as much advance notice in writing as possible that you are abandoning the premises, and state the date on which you will leave. If you do not, the lessor may not become aware for some time that the premises are vacant, and will not be able to take steps to secure them. If the premises are damaged by third parties as a result, you may be liable for that damage. In addition, the lessor cannot take steps to mitigate loss until they know that you have left, or are intending to.

The lessor cannot refuse the early termination of the lease and cannot continue to claim rent from you after it has terminated. However, if you abandon the tenancy, the lessor is entitled to claim compensation from you for their losses as a result of the early termination, including loss of rent (subject to some limitations – see below). The lessor can apply to court for a compensation order.

Some advantages of abandoning the premises are:

- The lease terminates automatically at the time that you leave the premises for good. No court order is required to end it.
- All your responsibilities under the lease end when it is terminated, so you don't have to keep paying rent, cleaning or maintaining the property (**but the lessor can claim compensation from you for their losses (including loss of rent) as a result of the early termination**).
- The lessor has a real incentive to find a new tenant as soon as possible, in circumstances where they are not receiving any rent for their vacant property.
- The lessor has a legal obligation under the Act (s.78) to take all reasonable steps to reduce its losses as a result of your breaking the lease, and that will usually include re-letting the premises as soon as possible.

Some disadvantages are:

- You risk being listed on a Residential Tenancy Database (blacklist) if, as a result of breaking the lease, you owe more than the security bond (see our Residential Database fact sheet for more details).
- You are still liable to compensate the lessor for their losses which result from breaking the lease (including loss of rent), **so ultimately you are likely to have to pay an amount equal to the rent until the premises is relet, or the end date of the fixed term lease, in addition to compensation for any other losses.**

WHAT ARE THE COSTS OF BREAKING THE LEASE?

Breaking a fixed term lease can be expensive so it is best to only do this if you have compelling reasons and have factored in the possible cost of that decision. It is usually best to have an initial conversation with your lessor before making any decision and just to let them know what you are thinking.

A Residential Tenancy Agreement is a legal contract and the lessor is entitled to ensure that their financial position is no worse off as a result of a tenant breaking their tenancy agreement before it is supposed to end.

Break lease costs may include, but are not necessarily limited to:

- Compensation for loss of rent, **and**
- Advertising costs, and the cost of tenant database checks **and**
- Final vacate (Inspection/PCR) fee , **and**
- Reimbursement of unused portion of the re-letting fee.

These expenses and any loss of rent incurred by the lessor can easily be the equivalent of several months' rent. If you refuse to pay, it would be reasonable to assume that the lessor would seek to recover these costs from you through the Magistrates Court³.

³ The amount of compensation can either be agreed, or can be ordered by the Court. The lessor is not entitled to invoice a tenant for compensation.

LIMITATIONS ON THE COMPENSATION THE LESSOR IS ENTITLED TO

The Act states that, where a tenant abandons the premises, the lessor is entitled to compensation from the tenant for any loss (including loss of rent) caused as a result, but shall take all reasonable steps to mitigate that loss, and shall not be entitled to any loss that could have been avoided by taking all reasonable steps.

The fixed costs (advertising, re-letting fee, final inspection and PCR) should be calculated pro-rata based on how long is left on the lease when the new tenant commences their agreement. For example, if you were in a 12 month fixed term agreement and the property is re-let 9 months into the agreement, you are only liable for 25% of the fixed costs. That is because those are not new costs, but costs that the lessor would have incurred at the end of the lease in any event, which have merely been brought forward as a result of the break lease.

The lessor is only entitled to compensation for losses that are caused by the early termination. If, for example, the lessor re-lets the premises without advertising, you will not be liable for advertising costs. Similarly, if the lessor decides not to re-let the premises, the lessor is not entitled to compensation for advertising, the letting fee, or a tenant database check.

REASONABLE STEPS TO MITIGATE LOSS

Reasonable steps to mitigate loss might include:

- Lessor advertising property as soon as intention to vacate is given
- Advertising the property at a reasonable market rate
- Conducting regular inspections/home opens
- Not unreasonably rejecting applications

Keep an eye on how the lessor is advertising, how many inspections are being done, how many applications are being accepted.

NOTE: If the lessor is required to re-let the property at a lower rent because of a change in the rental market, you may be liable for the difference between the rent you were paying and the new rent. So long as the lower rent is reasonable this is mitigation of loss by the lessor.

For example: you rented the property for \$500 per week, the rental vacancy rate has increased so it is difficult to find new tenants so the lessor drops the rent to \$450. In this case, you may be liable for the \$50 difference for the remainder of the agreement.

REDUCING LOSS FROM BREAKING THE LEASE

To reduce the cost of breaking your agreement early you could:

- Give the lessor as much notice as possible of the proposed date of vacation,
- Co-operate with the lessor in the reletting of the premises – make yourself available to show people through the property, keep the property tidy, introduce prospective tenants to your lessor,
- Advertise the property yourself
- Negotiate a written mutual termination agreement with your lessor, or
- Apply to the Magistrate for a termination order.

Keep an eye on what the lessor is doing:

- Check whether the lessor is genuinely attempting to re-let the property. Have they advertised and how? Are they offering it to prospective tenants? Are they listing it for realistic rent?
- Keep a record of any interest shown in the property you are aware of
- Are reasonable offers being considered? Have prospective tenants been discouraged or refused on unacceptable grounds, e.g. unlawful discrimination, requests for higher rent?
- Check if the lessor is using the opportunity to do renovations, seek advice in this situation

The best way to protect yourself is to give notice in writing. If you leave without giving notice you will usually have to pay more compensation than if you had given notice.

FURTHER INFORMATION ABOUT BREAKING THE LEASE

You must notify the lessor in writing of your new address or forwarding address.

You can be fined up to \$5000 if you do not do so. If the lessor applies to Court, and you have not left your new address, the Court may deal with an application in your absence. This means your bond may be given to the lessor without you knowing about it, and the Court may order that you pay compensation to the lessor, without hearing from you.

It may help to read our **“Disposal of the Bond”** factsheet.

RELEVANT FORMS

Form 12: [Application for Court Order](#)

FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Tenancy WA provides state wide telephone advice services and referrals. Metro:

(08) 9221 0088 • Country: 1800 621 888 (free call) • www.tenancywa.org.au

Department of Commerce 1300 304 054

METROPOLITAN COMMUNITY LEGAL CENTRES	REGIONAL COMMUNITY LEGAL CENTRES
<p>Fremantle CLC (Western Suburbs) 9432 9790 www.fremantle.wa.gov.au</p> <p>Gosnells CLC (South Eastern Suburbs) 9398 1455 www.gosclc.com.au</p> <p>MIDLAS (Eastern Suburbs) 9250 2123 www.midlas.org.au</p> <p>Northern Suburbs CLC (Northern Suburbs) 9440 1663 www.nslc.org.au</p> <p>SCALES (South Western Suburbs) 9550 0400 www.law.murdoch.edu.au/scales</p> <p>Sussex Street CLS (South Central Suburbs) 6253 9500 www.sscls.asn.au</p> <p>Welfare Rights & Advocacy Service (North Central Suburbs) 9328 1751 www.wraswa.org.au</p>	<p>Albany CLC (Great Southern) 9842 8566 www.albanyclc.com.au</p> <p>AccordWest (South West) 9729 9000 www.accordwest.com.au</p> <p>Geraldton Resource Centre (Mid-West/Gascoyne) 9938 0600 www.grc.asn.au</p> <p>Goldfields CLC (Goldfields) 9021 1888 www.gclc.com.au</p> <p>Kimberley CLS (Kimberley) 9169 3100</p> <p>Peel CLS (Peel) 9581 4511 www.peelcls.com.au</p> <p>Pilbara CLC (Pilbara) Karratha - 9185 5899 Newman - 9175 0148 Roebourne - 9182 1169 South Hedland - 9140 1613 www.pcls.net.au</p> <p>Wheatbelt CLC (Wheatbelt) 9622 5200 www.wheatbeltclc.com.au</p>

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