

# Breaking a lease?

What are the implications of a tenant or landlord wanting to break a fixed-term residential tenancy agreement early?

A tenant and landlord can always come to a mutual decision to end a residential tenancy agreement early. If mutual agreement can't be reached, a fixed term agreement can't be unilaterally terminated early by either party giving a specific period of notice. If a tenant wants to end their tenancy agreement early they should, however, give as much notice as possible.

The outgoing tenant has an obligation to pay rent until a new tenant is secured or until the existing agreement runs out (whichever happens first). If the new tenant pays a lower rent, the outgoing tenant may still be liable to pay the landlord the difference between the original rent under the agreement and the new (lower) rent.

In addition to this, the tenant may also be liable for the costs incurred by the landlord in the re-letting process (including advertising costs and letting fees). It is important to note, however, that the closer you are to the end of the fixed term agreement, the less likely the landlord will be able to recover the full advertising and letting costs. The Consumer, Trader and Tenancy Tribunal (CTTT) takes the view that the property would have to be re-advertised at the end of the fixed term anyway, so the amounts claimed by the landlord are often reduced.

There is also a requirement upon the landlord to mitigate (minimise) the loss incurred when a tenant abandons the property. If a landlord can take steps to mitigate his loss and doesn't, he may not be able to recover that loss from the tenant. It is also important to understand that the duty on a landlord to mitigate loss commences from the date of abandonment of the property by the tenant, not the date upon which the tenant first gives notice that they are intending to leave.

For a landlord without a tenant's agreement, trying to terminate a fixed term agreement before the expiry of the fixed term is difficult and they would ordinarily have to seek an order through the CTTT.

In the absence of any breach of the agreement by the tenant, the CTTT would probably only make an order terminating the agreement if it was satisfied that the landlord would otherwise suffer undue hardship if the agreement was not terminated. The CTTT may also make orders that the landlord pay the tenant compensation for the tenant's loss of the tenancy.

A tenant is also able to argue undue hardship and can, in certain circumstances, also seek to have a fixed term agreement terminated early.

It is unwise for a landlord to finalise any new residential tenancy agreement with a new tenant until vacant possession by the outgoing tenant is assured. If the outgoing tenant does not abandon the premises, or delays departure, the landlord can find himself liable to pay compensation to an incoming tenant due to the fact that the landlord is unable to give vacant possession of the premises.

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