



A lease is a legal contract, and if one party breaks the lease, they could be liable to pay compensation to the other



If you are considering leaving during a fixed term lease check the terms of your lease very carefully



Your lease may have a break fee provision, which provides a penalty of 4 – 6 weeks rent for breaking early



## Breaking your lease early – tenants beware!

When you want to leave your tenancy there are different periods of notice needed.

If you are on a periodic (continuing) agreement you give a minimum of 21 days written notice.

If you are coming towards the end of a Fixed Term agreement that you don't wish to continue, you need to give 14 days written notice before the end of the fixed term. The notice period must end after the end of the fixed term. [see end table]

**Tenants who want to leave during a fixed term can face financial penalties of many thousands of dollars. If you are in this situation it is most important that you get detailed advice and find out which penalties you could face BEFORE you act.**

This factsheet will tell you the basics of breaking your lease early, but it is not intended to be a substitute for legal advice. It should also be read in conjunction with the Tenants' Union's factsheet no. 16 'Ending tenancy early' and other EATS fact sheets.

### Things you need to consider:

1. whether you are on a fixed term or periodic agreement
2. why you want to leave;
3. how you give notice and how much notice you need to give; and

4. what costs you could incur

### Breaking a fixed term – penalties

Leaving during a fixed term can be very expensive for tenants. If you go during a fixed term without a legally valid reason it is called 'abandonment' and will incur a compensation payment to the landlord.

Some leases include a "break fee", a penalty of four or six weeks rent for breaking the agreement [clause 41 of the standard tenancy agreement]. Where this clause is not included, the tenants are liable to pay rent to the landlord until a new tenant is found, plus a reletting fee [usually 1 or 2 weeks' rent] and advertising costs. The landlord has to take all reasonable steps to minimise their loss (see separate fact sheet). Check your agreement to find your liability.

Tenants may leave during a fixed term and avoid a financial penalty, if:

- The landlord has agreed in writing that they may do so 'without penalty'; OR,
- The tenant can prove that 1) the landlord has broken the agreement, and 2) the landlord's breach was so serious that it warrants the lease being terminated. This can be risky for tenants. It should only be pursued in NCAT and only

◆  
A tenant can give 14 days notice during a fixed term if the landlord puts the property on the market warning the tenant at the start of the lease that they would be doing so

◆  
Many tenants who leave during the fixed term of their lease end up having to pay the landlord compensation

◆  
If you are considering breaking your lease during a fixed term, ALWAYS talk to a tenants advice service before you act



after considering potential costs and getting expert tenancy advice.

- Something has happened to the property that has made the property “uninhabitable” and which is the fault of neither the landlord nor the tenant, (immediate termination, without notice). See factsheet 1C, “breaking your lease because the agreement is frustrated”.
- The tenant can show that they would suffer exceptional and unforeseen hardship if they stayed at the property. This requires an application to the NCAT, which could order the tenant pay some compensation to the landlord. See
- When a tenant is offered a place in social housing or an aged care or nursing home facility
- If the landlord advises that they are selling the premises and did not tell the tenant when the agreement was signed (14 days written notice required).
- If a co-tenant or occupant of the premises is prohibited from accessing the premises because of a **final** apprehended violence order;

If your reason relies on a breach of the landlord, uninhabitability, or hardship, the matter will need to be decided by the NSW Civil and Administrative Tribunal if you want to avoid the risk of a financial penalty.

In all cases both the landlord and the tenant has a duty to mitigate their own losses, even if those losses are caused by the other party. For example, if a tenant is leaving early because of repair issues the landlord should be given reasonable opportunity to conduct the repairs. Or, if a tenant has to compensate the landlord by paying rent until a new tenant is found, the landlord must make reasonable efforts to find new tenants as soon as possible. In legal terms this is called “mitigating their loss”.

**WARNING:** If you want to break your agreement on any of these grounds, contact your local Tenants’ Advice and Advocacy Service (TAAS) to discuss the types of evidence you can rely on to successfully (and painlessly!) end your tenancy.

### Notice Periods

When you end a lease you need to give the landlord notice of your intention to leave. How much notice you need to give depends on the reason that you are breaking the lease. The notice periods for the different grounds are provided in the table below:

Type of agreement / circumstances	Minimum written notice you have to give
End of Fixed Term Agreement	14 days
Continuing agreement, no grounds	21 days
If there is a serious breach of the agreement by the landlord, either fixed term or periodic agreement	14 days
If the agreement is frustrated, fixed term or continuing lease	Immediate notice
If you obtain social housing or move into an aged care facility	14 days
If the landlord puts the premises on the market for sale, without telling you at the start of the agreement that s/he would do so	14 days
If there is undue hardship, fixed term or continuing lease	go through NCAT
If there is a final order apprehended violence order	14 days