



Break Lease

What is 'break lease?'

'Break lease' occurs when a tenant who has signed a fixed term residential tenancy agreement (contract) decides that they no longer want to continue living at the property.

The reasons a tenant might 'break lease' are varied but include offers of employment elsewhere, the need to return home (if from interstate or overseas) to attend to family affairs, a property settlement or a relationship break down.

If a tenant signs a periodic tenancy agreement (agreements that have a start date but no end date) or becomes a periodic tenant because their fixed term tenancy has expired and they have stayed on in the property they can avoid 'breaking lease' by giving the lessor 21 days' notice in writing of their intention to vacate the property.

Please note this notice provision does not apply to fixed term tenancies.

What the law says about 'break lease'

Unlike some other states the West Australian Residential Tenancies Act 1987 (the Act) is silent about 'break lease' situations and so it is difficult to say exactly what a tenant's liability will be in such situations.

Lessors generally are entitled to not be out of pocket when a tenant 'breaks lease.' Usually the tenant 'breaking lease' will be required to pay rent until the property is re-let and to pay any other reasonable costs incurred by the lessor because the tenant is breaking the contract (fixed term tenancy agreement.) These costs may include the cost of re-advertising the property and letting fees if a real estate agent is involved in the management of the property.

Some lessors will ask the tenant to sign an intention to break lease form which often outlines the costs involved.

Depending on the rental market at the time of 'break lease', for example, the vacancy rate, and the lessors' efforts to re-let the property in a timely manner the costs associated with breaking lease can be high as the tenant is generally having to pay rent and/or mortgage repayments on two properties. If the rent the lessor can get for the property is less than the rent the tenant agreed to pay under the lease then the tenant may have to pay the difference between the two amounts for the rest of the period of the lease.

A lessor is required to take reasonable steps to keep any losses to a minimum – this would include trying to find new tenants for the property as quickly as possible.

When a tenant might consider stopping paying rent in a ‘break lease’ situation

If the property is not re-let quickly tenants often have to decide when to stop paying rent for the property they have vacated. As noted above ‘break lease’ is not regulated in Western Australia so it is difficult to say when a tenant can stop paying rent. A tenant might consider ceasing to pay the rent after 4-6 weeks particularly if they believe the lessor is not taking reasonable steps to re-let the property, for example, the lessor is not advertising the property or holding regular ‘home opens’.

It is important to note that stopping the payment of rent while the property has not been re-let may lead to a dispute and the lessor taking the matter to court to claim money owing.

If this happens it is up to the Court to decide what the tenant’s liability was and how much more rent they had to pay the lessor. A defence in such instances might be that the lessor has not taken reasonable steps to mitigate their loss – for example they had plenty of notice that the tenant was breaking lease but had not started advertising until after the tenant moved out.

Other options

In some situations where a tenant needs to ‘break lease’ and finds they can no longer afford to pay rent on two properties they could consider applying to Court to have the lease terminated due to hardship (section 74 of the Act).

A tenant experiencing domestic violence who has moved out a house which they were in a joint tenancy with the perpetrator could also apply to end the lease under this section of the Act. At the hearing the Court would assess the hardship and decide whether the lease should be terminated and what compensation, if any, the tenant had to pay the lessor.

When the lessor asks the tenant to ‘break lease’

If the lessor asks you to ‘break lease’ you do not have to agree and can remain in your home till the end of the lease. If you do decide to move out it is reasonable to expect the lessor to pay you compensation to cover your reasonable costs, for example, the cost of removalists and re-establishing another home.

Help is available

If you are deciding to ‘break lease’ or are already in a ‘break lease’ situation it may be useful to contact the tenant advocate in your area for further advice.

Your nearest tenant advocate can be found here: <http://www.tenancywa.org.au/>

<p>Please note: This information contains general information only and is accurate at May 2015. It does not constitute legal advice.</p>
