



LEAVING LEASES EARLY

Information for Tenants

Sometimes things happen in a tenant's life and they are unable to stay in the property for the whole of the lease. It could be due to financial issues, changes in relationships or maybe the property itself is no longer suitable.

In these circumstances both the tenant and the agent/landlord have a "duty to mitigate loss". What this means is that both parties need to keep any financial losses to a minimum.

The Residential Tenancy Act 1997

The Residential Tenancy Act 1997 (RTA) covers the law regarding termination of leases. Under the RTA if a person on a fixed term lease wishes to leave before the end of the lease, then they are responsible for rent until the end of the lease, unless a new person is found to take on a lease for the property, or unless the tenant serves a Notice to Terminate stating breaches of the lease by the landlord. (If you think your landlord/agent has breached the lease and you want to leave, please contact the Tenants' Union).

Under the RTA the landlord must take all reasonable steps to find a new tenant for the property. These reasonable steps should include offering the property for the **same rent**, and for the **same conditions** as the current lease. The tenant is responsible for all of the reasonable costs involved in finding a new tenant.

Agreement to Terminate

You may be able to negotiate to terminate the agreement with the landlord/agent. You should make sure that this agreement is in writing, and should state whether you have any further financial obligation, such as rent or other expenses.

Agents and Advertising Fees

If you rent with an agent they may have procedures to find new tenants – but be aware that the costs may eventually be borne by you. We suggest that you tell the landlord/agent that you are moving out as soon as possible, preferably before you move out, in order to reduce costs.

One thing that agents may not tell you is that you are only responsible for any fees and advertising on a pro-rata basis. This means that if you have 3 months left on a 12 month lease, you should only be charged for a quarter of the fees because you have a quarter of the lease to go.

Please note that an agent or landlord cannot charge a break lease fee – any charges must be clearly itemised costs eg. advertising costs, cost of a new lease etc. A landlord/agent cannot financially profit from break lease costs.

Keep an eye on newspapers and the internet to make sure that the landlord/agent is advertising the property sufficiently, and that they are offering the property for the same rent and with the same conditions as you had with them.

Reducing Costs

One way to reduce the costs of finding a new tenant is to advertise the property yourself. If you take the time to show potential tenants around the property and find out if they are suitable tenants, you will save the landlord more time (and money).

We suggest that if you can find 4 people who are as suitable as you were when you took the place you should take down their contact details, and give them the details of your landlord/agent.

After a week you should phone them back and ask if they contacted the landlord, or agent. If they say that they did, follow this up with the landlord and ask if any of them were accepted, or if not ask for the reasons.

Tenants' Union of Tasmania

The information in this fact sheet is not legal advice. It is intended as a guide only. It applies only to legislation current in the state of Tasmania, Australia as at 1 January 2011. For information regarding a specific tenancy problem, please phone the Tenants' Union on (03) 6223 2641 or 1300 652 641. The Tenants' Union of Tasmania Inc accepts no responsibility for actions based on this information, nor for actions based on electronic translations of this.

Applications to Lease

Be aware that these are not acceptable reasons for a landlord/agent to refuse a tenancy application:

- race;
- gender;
- disability;
- age;
- sexual orientation;
- parental status;
- religion;
- irrelevant criminal record;

If the landlord has not accepted an application for any of the above reasons, or if they will not give you a reason, then they may not be taking reasonable steps to find a new tenant, and you may not be liable for further rent for the premises.

What next?

If the landlord rejects all of the applications that are made, or if you have left it to the landlord/agent to find someone and you have not heard anything for more than 4 weeks, you should call the Tenants' Union for advice.

It is our opinion that in the current rental market, if a property has been advertised properly and is in good condition, then it is reasonable to assume that a new tenant could be found in areas with low vacancy rates within 4 weeks.

Looking For a Tenant to Take Over Your Lease?

Here are some examples questions to ask potential new tenants:

- What is your income?
- Can you afford the rent?
- Do you have bad debts? (the landlord/agent may want to run a credit check).
- How many people would live in the property?
- Do you have pets?
- Do you smoke inside?
- Do you have tenancy references?
- When will you be able to move in?
- When will you be contacting the landlord/agent?

USEFUL CONTACTS

Tenants' Union of Tasmania Inc
166 Macquarie Street Hobart
☎6223 2641 or 1300 652 641
www.tutas.org.au

Private Rental Tenancy Support Service
☎1300 729 400

Residential Tenancy Commissioner
& MyBond
(Consumer Affairs & Fair Trading)
☎1300 654 499

Legal Aid Commission of Tasmania
☎1300 366 611

Anti Discrimination Commission
☎6224 4905 or 1300 305 062

Women's Legal Service
☎1800 682 468

Hobart Community Legal Service
☎6223 2500

Launceston Community Legal Service
☎1800 066 019

North West Community Legal Service
☎6424 8720