

## Lease Breaking (ORS 90.240)

### If I have a lease, do I have the right to break it? How do I do it?

Most leases permit termination of the lease before the ending date for certain situations. **The lease will state how the tenant and landlord can end the lease early, so make sure to carefully read your lease.**

Whether it is a month-to-month or fixed term lease, a tenant may give his/her move-out notice on any day of the month, not just the first day of the month or when the rent is due.

If a tenant needs to leave before a lease has expired, **the tenant should consult an attorney (the Renters' Rights Hotline can give you referrals, call 503.288.0130)**. The law can be complicated. Even if the landlord does not sue you after you move, the landlord could give you a bad reference and may try to harmfully affect your rental or credit record. It's important to do it right!

Just as a landlord can terminate a lease for cause during the term of the lease, the tenant has the right to break the lease earlier if the landlord violates the terms of the lease and/or law. Good cause for terminating a lease is defined as "material noncompliance with the rental agreement" or noncompliance by the landlord with the landlord's obligation to keep the dwelling in good repair, as defined by Oregon statute (90.360).

The law requires the tenant to give written notice to the landlord. There are specific legal requirements for the notice. It must include:

- Details of exactly what the landlord has done wrong (or failed to do)
- The time that the law allows the landlord to fix the problem. (Time periods vary depending on whether the problem is an essential service as defined in the law.)

If the landlord does not fix the problems before the dates in the notice, the tenant may have a right to move without further obligation. But you must be prepared to prove that you acted lawfully if the landlord sues you. **Documentation is the easiest and most effective way you can protect your rights as a renter: remember to do everything in writing, keep copies for your records and send all mail by certificate of mailing.** You should take all the steps a tenant normally takes to move out, plus be sure to gather all proof of landlord's violations.

### What if I want to break my lease for other reasons?

If a landlord has not violated the law and a tenant wants to move before the lease is up, the tenant is responsible for the rent for the rest of the lease period and any reasonable fees described in the written rental agreement. **A landlord must try to re-rent the dwelling as soon as the landlord has notice that the tenant is moving.** (The legal term for this duty is "mitigation of damages".)

A tenant who moves should:

- Watch the property and keep track of whether the property is promptly prepared for the next tenant
- Keep an eye on whether it is being advertised for rent
- Track when someone moves in. (The neighbors may be able to help the tenant with this information).

Once the landlord re-rents the dwelling, the old tenant's obligation to pay rent ends; you may even want to offer the landlord a new tenant who meets the landlord's eligibility criteria. The tenant should make the offer to the landlord in writing.

### **Lease Breaking Fee**

Sometimes a landlord will include a "lease breaking" fee in the lease. This means that the tenant can pay the "lease breaking" fee and can move out with no other penalties. As of January 1, 2010, a lease break fee may be charged in fixed term tenancies but is limited to **1½ times** the monthly stated rent. **If a lease-breaking fee is assessed, a landlord cannot additionally recover any unpaid rent or recover damages relating to the cost of renting the dwelling unit to a new tenant ORS 90.302(2)(e).**

The tenant needs to give written notice of their intent to move without cause as soon as possible. **Make sure to give your landlord a 30-day move-out notice in writing.** Otherwise there is no documentation as to when your responsibility to pay rent ends. You need to keep a copy of that notice and all other documents regarding the tenancy for at least three years after moving out. Call the Renters' Rights Hotline for more information!