



CONSUMER AFFAIRS

B E R M U D A

Promoting Confident Consumers and Responsible Traders

Landlord & Tenant Tenant Guidance Handbook

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1. Overview

When looking for a home to rent you will need to consider a number of things prior to entering into a tenancy agreement. You will also need to think about what questions to ask your prospective landlord. As a tenant there are also things you will need to consider and remain mindful of during your tenancy (e.g. performance obligations for the tenant and the landlord).

Upon expiration of a tenancy there are a number of things you will have to consider and be mindful of to ensure that you are not subjected to liability and costs (e.g. obtaining a professional painter prior to leaving the premises or lose all or a portion of your damage deposit).

The purpose of the following sections are to provide tenants guidance on what to consider at each stage of the tenancy process to ensure that your consumer rights are adequately protected.

2. Entering a Tenancy

If you are considering entering into a tenancy agreement with a landlord, Consumer Affairs advises that you carefully consider the landlord, the terms and conditions contained in the tenancy agreement, and the state of the rental unit prior to signing the tenancy agreement. The following sections discuss things you should consider prior to entering into a tenancy agreement.

2.1 Landlords, Real Estate Agents and Property Managers

Prior to entering a tenancy agreement it is important to consider the pros and cons of renting a residential property from a landlord or from a real estate agent.

If you rent directly from a landlord:

- You might have less to pay before moving in;
- You might not have to give so many references; and
- Your landlord might not insist on doing a credit check

If you rent from a real estate agency acting as a property manager you can:

- Tell the real estate agent acting as Drop property manager when property repairs are needed and they will speak to the landlord and arrange the repairs on your behalf;

- Complain to the real estate agency if you are not happy with the service of the real estate agent acting as the property manager responsible for overseeing your residential unit; and
- Ask real estate agents for advice about the local area

It is important to note that not all real estate agents will be appointed by the landlord to act as their property manager. Often a landlord will seek the services of a real estate agency to list their property and find a tenant for their property for a fee.

In this circumstance the real estate agency will appoint a real estate agent to manage the landlord's property and the landlord will not be responsible for communicating with their tenant once a tenancy agreement has been entered into.

2.2 Looking for a Residential Property

The quickest way to find a property is online through property search websites and real estate agent websites where you can easily search for the exact area you want to live in and arrange viewings. If it is hard for you to look for a property online you could visit local estate agents. It is also worth asking friends and family and checking local noticeboards and newspapers.

After identifying a number of residential units you are interested in renting, Consumer Affairs advises that you take someone with you when visiting properties. By taking someone with you to inspect the property you will be able to conduct a more thorough inspection and it is generally safer not being alone.

If an existing tenant is showing you the property on behalf of the landlord they should give you the landlord's details. Upon completion of the inspection of the property with the existing tenant, you should immediately call the landlord to confirm that the existing tenant had permission to show the property and confirm that the property is available.

When you are looking for a home do not pay any money to the landlord or a real estate without first seeing and thoroughly inspecting the property.

When looking around for a residential unit it is advised that you do not rent or "sublet" a property directly from an existing tenant. The tenant who is seeking to sublet their property might not have the landlord's permission to rent to you.

Prior to entering into a subletting agreement with an existing tenant, Consumer Affairs advises that you first review the terms and conditions of the tenant's existing tenancy agreement to confirm that they have permission to sublet.

Absent formal authority from the landlord, if the landlord discovers that the residential unit has been sublet without their permission the landlord may evict both the tenant and yourself.

2.3 Questions to Ask

To make sure the property you are interested in renting is safe and affordable you should ask the landlord or real estate agent the following questions:

- How much rent you will have to pay and how it should be paid;
- If your rent includes any bills (i.e. electricity, internet, etc.);
- Whether your electricity and water meters will be shared with adjacent tenants;
- How long you can rent for (i.e. one month, 6 months, one year, etc.);
- Whether you will be able to renew your tenancy or end the tenancy agreement early;
- If you need to make payments before you move in (e.g. if need to pay rent in advance or a damage deposit);
- How your damage deposit will be protected

If you share a water and electricity meter with other tenants (i.e. apartment building, condominium complex), Consumer Affairs advises that you ask how the utilities bills will be split across each of the tenants. After speaking with your landlord it is advised that you make sure your lease agreement reflects how the utilities bills will be separated and paid for.

As a general rule of thumb shared utilities should be divided evenly amongst the total tenants and not the total number of residential units using the shared utilities. It is important to note that a residential unit of two individuals in a living space will likely use less water than a household of four individuals. By dividing the shared utilities by the total number of tenants this will ensure that the utilities are divided proportionately and fairly.

You might have to agree to meet certain conditions or rules when you rent a property (e.g. no pets, no smoking). Consumer Affairs advises that you ask about any conditions you must comply with during the tenancy before you agree to take the property.

2.4 Background Checks

Before you can rent a property you will need to provide information and documents to show that you will be a good tenant. Consumer Affairs advises that, before you provide any personal information and documents, you get the landlord's or real estate agent's name and contact details. Consumer Affairs further advises that you **do not** provide the landlord or real estate agent with your banking information.

As part of the personal information and documentation that will be requested, you will often be asked to provide references to show you can afford the property and will consistently pay rent as it comes due. The references you will often be asked to provide will include:

- Your current landlord and previous landlords;
- Your employer to show you have a job and it will continue to remain in possession of employment.

If you are unable to provide a reference, or enough quality references, you might still be able to rent. Consumer Affairs advises that you explain to the prospective landlord or real estate agent why you are not able to provide the requested references.

Absent personal references, if you have paid rent on time in the past Consumer Affairs advises that you show the prospective landlord or real estate agent your existing tenancy agreement and a copy of redacted personal bank statements as proof of consistent payment (i.e. personal details blacked out).

If you are asked to give your recent bank statements to show your income, Consumer Affairs advises that you make sure you cover your account numbers for security (i.e. use a permanent marker to black out personal details). If you are self-employed you might need to give copies of your trading accounts and an accountant's reference.

The prospective landlord or real estate agent may request your permission to conduct a credit check to see if you have had problems paying bills in the past. It is less common for private landlords to do credit checks because credit checks can make it take longer to rent out a property. If you've got a bad credit history it's best to be honest and explain the situation.

If the landlord wishes to conduct a credit check it is important to note that the landlord has obligations under the Personal Information Protection Act 2016 and may only obtain your credit information with your permission first.

It is advised that if your landlord asks to conduct a credit check that you tell the landlord that you wish to protect your personal information and that you would like to conduct the credit check yourself.

After contacting your bank and asking them to conduct a credit check for you, it is advised that you provide the landlord with credit check documents after you have covered your account numbers for security (i.e. use a permanent marker to black out personal details).

If you fail a credit check, explain why you think this might have happened. If you know you can pay the rent, offer to pay a larger deposit, more rent or ask whether they will accept a guarantor (i.e. someone will pay for your rent arrears in the event you are unable to pay).

2.5 Obtaining Financial Assistance

Before you enter into a tenancy agreement with a landlord or real estate agent, it is important to first assess your personal finances and work out how much you will be able to put towards rent. As part of your financial assessment you will also need to consider the costs of utilities (i.e. electricity, gas, water, etc.).

If you are facing financial hardship you might be able to apply to the Department of Financial Assistance to obtain a housing allowance to help with the cost of renting a residential property.

If you are already receiving a housing allowance from Financial Assistance you might be able to get further assistance if your current housing allowance does not cover all of your rent.

In addition to providing a monthly housing allowance, the Department of Financial Assistance may be able to assist with the costs of providing the landlord a damage deposit (i.e. a damage deposit lending scheme which you will pay back over time).

2.6 Financial Assistance and Discrimination

Some landlords and real estate agents might say they won't let you rent from them if you get a housing benefit or housing costs payments through Financial Assistance.

If you're turned down for a residential property because of any Financial Assistance housing benefits you get, Consumer Affairs advises that you try speaking to the landlord or real estate agent and ask them to:

- Do an affordability check if they haven't already;
- Accept extra references which confirm that your rent was always paid on time;
- Let you use a guarantor who agrees to pay the rent if you don't

If a landlord or real estate agent has their own rule or internal policy dictating that they do not rent residential properties to individuals receiving housing benefits from Financial Assistance, Consumer Affairs advises that you write to the landlord or real estate agent and ask them to change their mind.

If the landlord or real estate agent doesn't change their mind, or they don't reply within 7 days, Consumer Affairs advises that you contact the Superintendent of Real Estate.

However, be mindful that if you cannot afford the property, even with the assistance of housing benefits from Financial Assistance, you could still be turned down by the landlord or real estate agent.

3. During Your Tenancy

If you have entered into a tenancy agreement with a landlord, Consumer Affairs appreciates that there may be instances where you may face issues with your landlord. The following sections discuss common tenancy issues that tenants of residential units experience and are intended to provide guidance on how to navigate these issues.

3.1 Damages & Dampness

If your residential unit requires repairs your landlord is responsible for most major repairs, including:

- The structure of the property (e.g. the walls, roof, windows and doors);
- Sinks, baths, toilets;
- Pipes and wiring;
- Heating and hot water;
- The safety of gas and electrical appliances

However, as a tenant of a residential unit you may be responsible for minor repairs (e.g. changing fuses and light bulbs) and anything that you or your guests may have damaged. Please note that you cannot be held responsible for repairing damage caused by other people trespassing on the property (e.g. vandalism by unknown persons illegally on the premises).

Appreciating the humid climate of Bermuda, if your home is damp your landlord may be responsible for the damage this may cause. Without the help of a property surveyor or contractor it is not always easy to determine if your landlord is responsible for resolving problems with dampness in your residential unit; unless the cause of the dampness is obvious (e.g. a leaking roof).

There are several types of dampness that residential tenants must be mindful of:

- **Rising dampness:** when moisture travels up from the ground through the foundation of the home to the height of about one metre (e.g. flooding)
- **Penetrating dampness:** when water penetrates into the fabric of a building from outside to inside (e.g. a leaking downpipe)
- **Construction dampness:** where dampness is caused by a problem in how the property was designed
- **Condensation dampness:** when a property can't deal with normal levels of water vapour because of a lack of insulation, ventilation or heating, or a combination of all of these things. This is a common issue in Bermuda given the high levels of humidity and many residential units being close to large bodies of water)

Rising dampness is more common in older properties and generally affects the lower part of the ground floor of a property. In many cases your landlord is responsible for dealing with rising dampness. This is because there is a term implied into your tenancy agreement which says that it is the responsibility of the landlord to keep the exterior and structure of your residential in repair.

Additionally, your landlord might be responsible for the rising dampness if it means your home isn't safe for you to live in (e.g. the rising dampness has made you or your family ill). Your landlord is usually responsible for repairing the problem when they become aware of it. Consumer Affairs advises that you report the problem to your landlord as soon as possible to avoid further damage.

Penetrating dampness can be caused by a number of repair problems, for example:

- A leaking roof;
- A cracked wall;
- Leaking gutters or external pipes;
- A leaking drainage pipe;
- Rotten windows or doors.

In many cases the landlord is responsible for repairing the problems resulting in penetrating dampness as your landlord is responsible for maintaining the exterior and structure of your home as well as installations like basins, sinks, baths, toilets and pipework.

Additionally, your landlord might be responsible for the penetrating dampness if it means your home isn't safe for you to live in (e.g. the penetrating dampness has made you or your family ill). Your landlord is usually responsible for repairing the problem when they become aware of it. Consumer Affairs advises that you report the problem to your landlord as soon as possible to avoid further damage.

In cases of construction dampness, if the design problem does not affect the structure or exterior of your home or cause any damage to the building, your landlord may not have a responsibility under the tenancy agreement to prevent the damp.

However, your landlord is responsible for repairs if a design problem causes damage to the building (e.g. a wall or ceiling plaster). Additionally, your landlord might be responsible for the construction dampness if it means your home isn't safe for you to live in (e.g. the construction dampness has made you or your family ill).

Your landlord is usually responsible for repairing the problem when they become aware of it. Consumer Affairs advises that you report the problem to your landlord as soon as possible to avoid further damage.

Condensation dampness can result in mold growth, damage to furniture and belongings. If your residential unit is subject to condensation dampness your landlord will probably be responsible for dealing with the dampness if:

- Your tenancy agreement says they're responsible
- The dampness was caused by your landlord not making certain repairs to your home (e.g. failing to fix the heating or ventilation)
- The dampness has caused damage to your home or belongings that your landlord has to repair or replace (e.g. clothing in your closet)

If your home has condensation dampness then how you use your home is important. Some day-to-day things that you do could make it difficult to show that your landlord is responsible.

The following things can create extra moisture or reduce ventilation:

- The use of portable gas or paraffin heaters put a lot of moisture into the air ;
- Drying wet clothes on heaters ;
- Using a tumble dryer with no outside vent;
- Blocking ventilation (e.g. covering air vents, closing ventilators and switching off or disabling fans);
- Failure to use an air filtration system specifically design to neutralize humidity and dampness (e.g. dry setting in air conditioning unit).

Furthermore, your landlord might be responsible for the condensation dampness if it means your home isn't safe for you to live in (e.g. the condensation dampness has made you or your family ill). Your landlord is usually responsible for repairing the problem when they become aware of it. Consumer Affairs advises that you report the problem to your landlord as soon as possible to avoid further damage.

3.2 Unfit Living Conditions and Health & Safety Concerns

If your home is not safe to live in (i.e. due to excessive dampness, roof leakage, faulty wiring), it might be considered to be “unfit for human habitation”. In addition to the primary residential unit, being “unfit for human habitation” also includes shared parts of the residential unit like entrance halls and stairs.

Your landlord has an obligation to make sure your home is fit for human habitation. If your landlord does not comply with this obligation Consumer Affairs advises that you contact the Department of Environmental Health to inspect your premises and determine whether your home is “unfit for human habitation”.

Your home might be considered “unfit for human habitation” if:

- The residential unit has a serious problem with dampness or mold;
- The residential unit gets much too hot or cold;
- There are too many people living in the residential unit;
- The residential unit is infested with pests (e.g. mice, rats or cockroaches);
- The residential unit does not have a safe water supply (e.g. landlord has not cleaned the roof or water tank within the last two years or provided the results of a water safety test).

It does not matter if the problem was there at the start of the tenancy or appeared during your tenancy. However, as a tenant you must remain mindful of the fact that your landlord does not have to make sure your home is fit for human habitation if you caused the problem by:

- Not looking after your home properly (e.g. not using the extractor fan after having a shower or using the dry setting in the air conditioning unit to reduce dampness)
- Doing something unreasonable (e.g. leaving candles burning when you go out, leaving a hair straightener on and plugged in)

3.3 Requests for Repairs

If you require your landlord to undertake major repairs to your residential unit (e.g. the structure of the property, the pipes and wiring, appliances, etc.) Consumer Affairs advises that you write to your landlord or real estate agent as soon as you notice the problem.

However, as a tenant you may be responsible for minor repairs (e.g. light bulbs, blown fuses). If your landlord is responsible for the repairs your landlord is responsible to complete the repairs within a “reasonable” amount of time”. What counts as reasonable depends on the problem (e.g. a broken water heater should be fixed sooner than a leaky tap).

If you fail to notify your landlord within a reasonable period of time you could be held responsible for damages if the problem gets worse (i.e. unattended broken water pipe leading to flooding damage).

In addition to informing your landlord, Consumer Affairs advises that you collect evidence of the problem as you might need such evidence later if you have to take further action to get the repairs completed yourself. Such evidence may include:

- Photos of the damage, particularly if the problem gets worse over time;
- Any letters, texts, emails or notes of any conversations between you and your landlord or real estate agent;
- Receipts if you’ve had to replace damaged items (e.g. water faucets) and work performed to correct the problem (e.g. contractor’s invoice);
- Letters from your General Practitioner (i.e. your family doctor) if the problem has made you ill;
- A copy of your tenancy agreement

Unless your problem is an emergency, your landlord should give you at least 24 hours’ written notice if they want to visit and enter your home to see the damage or conduct repairs.

3.4 Landlord Refusal to Repair

If after asking your landlord to repair damages in your residential unit your landlord refuses to, or fails to address the problem, Consumer Affairs advises that you DO NOT withhold rent. If you stop paying rent you will go into rental arrears and your landlord may then try to evict you for breach of your tenancy agreement.

Instead of withholding rent, Consumer Affairs advises that you submit a formal complaint to Consumer Affairs. If after filing a complaint with Consumer Affairs the landlord fails to complete the repairs, Consumer Affairs advises that you consider starting legal proceedings against your landlord.

Before you pursue legal proceedings against your landlord Consumer Affairs advises that you write to your landlord first and give them one last chance to complete the repairs or reimburse you for the costs you have incurred in order to repair the damages.

In your letter to your landlord it is advised that you inform your landlord that they have a specified period of time (e.g. 20 working days) to complete the repairs or reimburse you. Your letter should include full details of the repairs needed or the repairs you have completed at your expense, including:

- What needs repairing or what has been repaired;
- When you reported the problem to them;
 - if you had to report it more than once.
- Any problems you've had because the repairs weren't done (e.g. incurred a health condition like asthma that's gotten worse);
- Any costs incurred due to you having the work completed yourself (e.g. contractor's invoice).

Consumer Affairs advises that you keep a copy of the letter that you send to your landlord and any reply you get back from them. Your landlord might offer to do the repairs or come to a reimbursement agreement; which could be less stressful than going to court. If you cannot reach an agreement with your landlord regarding completing the repairs or reimbursement you can take them to court.

If you decide to take your landlord to court for failing to complete the requested repairs, or for failing to reimburse you for the costs to repair the damages, you will need to rely on the evidence that you gathered after first reporting the problem to your landlord (e.g. copy of letters or emails sent to your landlord, photographs of what needs/needed repairing, receipts for work performed, a copy of your tenancy agreement, expert opinions).

You are more likely to win your case if you give the court as much evidence as possible. The judge will look at the evidence you and your landlord provide the courts before making a decision.

In addition to taking your landlord to court for failing to complete the requested repairs, or for failing to reimburse you for costs incurred due to repairing the premises yourself, Consumer Affairs advises that you may also apply to the courts for a “**stay in rent**”. In this instance you may be awarded by the courts to withhold rent until your landlord fixes your premises or reimburses for the costs incurred due to fixing the premises yourself.

If you wish to apply for a “stay in rent” it is advised that you first confirm whether your premises fall under the Landlord and Tenant Act 1974 or the Rent Increases (Domestic Premises) Act 1978 so that your claim is filed correctly. However, Consumer Affairs advises that you remain mindful of the fact that if you are awarded a “stay in rent” the courts will consider whether you are in rental arrears.

After you have submitted your claim form in court you will likely need to send a copy of the claim form, and any paperwork provided by the court, to your landlord. You will also be given a date for the initial hearing. Your landlord might also submit a defence against your claim.

Your landlord is likely to have a lawyer speaking on their behalf when in court. Consumer Affairs advises that you obtain your own lawyer to speak for you in court too. However, remain mindful of the fact that if you obtain your own lawyer you will have to pay for legal fees in addition to court fees.

If you win your case you might get some of your costs back. This depends on your landlord's situation. The court could order your landlord to:

- Complete the requested repairs;
- Pay you compensation (e.g. if your health has been affected because they didn't do the repairs or belongings were damaged due to dampness)
- Pay some or all of your legal costs

If the problem is affecting your health and/or safety, Consumer Affairs advises that you also submit a formal complaint with the Department of Environmental Health. An Environmental Health Officer will look at your home and order your landlord to do repairs if they think it's harmful to your health or safety. Keep records of what they say or any report they write. If your home is found to be unfit to live in, you might need to find a new place to live.

3.5 Requests for Reasonable Adjustments for the Disabled

If you suffer from a physical disability you may request your landlord to make reasonable adjustments to the property (e.g. you have a disability and need the assistance of a handrail to get up and down stairs).

However, the governing landlord and tenant legislative framework does not impose an obligation on a landlord to do anything that would involve removing or altering a physical feature. The landlord also does not have to make any changes to common parts and areas of the property (i.e. shared playgrounds and pools).

4. Ending Your Tenancy

If you want to end your tenancy early you will need to provide your landlord with advance notice in the correct way (i.e. as stated in the tenancy agreement). If you fail to provide advance notice, or do so incorrectly, you might have to pay rent and other bills (i.e. utilities) even after you've moved out.

When and how much notice you give will depend on the type of tenancy you have and what your tenancy agreement says. If you cannot give the right amount of advance notice to your landlord you might be able to agree with your landlord to end your tenancy early. This is called 'surrendering your tenancy'. The following sections discuss things you should consider prior to terminating a tenancy agreement.

4.1 Types of Tenancy and Notice Periods

If you are looking to end your tenancy early you should first review the terms and conditions of your tenancy agreement and confirm the term period of your tenancy. Your tenancy period will either be a "fixed term tenancy" or a "periodic tenancy".

A "fixed term tenancy" is an agreement between a tenant and a landlord where the tenant agrees to rent a residential unit for a certain period of time (i.e. 6 months, 12 months, 2 years, etc.) and the tenancy of the residential unit will end on a certain date. A "periodic tenancy" or "rolling tenancy" is an agreement between a tenant and a landlord where the tenant agrees to rent a residential unit on a monthly or weekly basis.

Consumer Affairs advises tenants to familiarize themselves with the terms and conditions in their tenancy agreement and confirm the type of tenancy that you have. The type of tenancy you have will dictate the steps you will need to take to end the tenancy early.

If you have a **fixed term tenancy** you have to pay your rent until at least the end of your fixed term. You might need to pay rent after your fixed term if you:

- Stay in the property after the fixed term has ended and have not agreed to a tenancy agreement with the landlord; or
- Don't give the landlord adequate notice that you wish end the fixed term tenancy

With a fixed term tenancy you can only end your fixed term tenancy early if your tenancy agreement says you can or by getting your landlord to agree to end your tenancy. If your agreement says you can end your fixed term tenancy early, this means you have a 'break clause' or a "termination clause".

If your agreement says you can end your fixed term tenancy agreement early your tenancy agreement will tell you when the break clause can be applied (e.g. the break clause might state you can end your tenancy 6 months after it starts so long as you give 1 months notice).

Some break clauses might have other conditions that you may also have to meet (e.g. the notice to terminate must be in writing and hand delivered to the landlord, or the break clause might say you cannot have rent in arrears at the time of giving notice). It's important that you read and understand your break clause so you know how and when you can end your tenancy.

If you have a **periodic tenancy** you can end your tenancy at any time by giving your landlord notice. You will have to pay your rent to the end of your notice period. Unless explicitly specified in your tenancy agreement, a periodic tenancy may exist if:

- You have never had a fixed term and you have a rolling tenancy (e.g. your tenancy runs from month to month or week to week); or
- Your fixed term tenancy has ended and your tenancy has continued to roll on absent a formal tenancy agreement with a new fixed term period.

Alternatively, a **fixed term joint tenancy** may exist where you share a residential unit with other tenants who are also listed on the tenancy agreement. If you end a fixed term joint tenancy the tenancy will **end for everyone**.

If your fixed term joint tenancy has a break clause, and you wish to exit the tenancy, you will have to get all the tenants listed in the tenancy agreement to agree to end the tenancy; unless your agreement says otherwise.

If your fixed term tenancy does not have a break clause, you will have to have to get permission from the landlord to terminate the fixed term joint tenancy and have the other tenants agree to the termination of the fixed term joint tenancy agreement.

If you have a **periodic joint tenancy** you can give notice to end your tenancy without the agreement of the other tenants; unless your tenancy agreement says otherwise. However, if you end your tenancy it ends for everyone.

Fixed Term Tenancy / Fixed Term Joint Tenancy	
Existence of Break Clause	Amount of notice specified in the "break clause" in the terms and conditions of the tenancy agreement
No Break Clause	<p>You cannot give notice to leave before the end of your fixed term tenancy</p> <p>You don't usually need to give notice to leave on the last day of your fixed term</p> <p>If you stay after the fixed term expires, and your landlord has not asked you to leave, you will enter a periodic tenancy. Check what notice you have to provide when you have entered a periodic tenancy</p>
Periodic Tenancy	
Don't Live With Landlord	<p>4 weeks' notice if your periodic tenancy runs from week to week</p> <p>1 months' notice if your periodic tenancy runs from month to month</p>

	If your periodic tenancy runs for longer than a month, as a tenant you will need to give the same amount of notice as your rental period (i.e. if you pay rent every 3 months, you will need to give your landlord 3 months' notice)
Live With Landlord	<p>As a tenant who shares a residential unit with your landlord you do not have to give a set amount of notice (unless your periodic tenancy agreement states otherwise).</p> <p>As a tenant you can informally agree with your landlord as to when you will end your tenancy (unless your periodic tenancy agreement states otherwise).</p>

4.2 Giving Notice to Terminate a Tenancy

You can usually give notice at any time; unless you have a break clause or a tenancy agreement that says otherwise. Typically the notice you give your landlord has to state that you wish for your tenancy to end on the first or last day of your tenancy period.

For example, if your tenancy period runs from the 4th of each month to the 3rd of the next month (i.e. 3rd January to 4th February) your notice to your landlord would have to specify that you wish your tenancy to either end on the tenancy on the 3rd of January or the 4th of February.

Check your tenancy agreement to see if it says anything about how you should give notice. If your tenancy agreement does not say anything about how you should give notice and in what form (i.e. physical letter vs e-mail), Consumer Affairs advises that you give notice by writing a physical letter to your landlord. You can send your letter by email if your tenancy agreement says you can.

You can find your landlord's address on your tenancy agreement. Ask your landlord for their details if you can't find them. If you rent from a real estate or property manager, Consumer Affairs advises that you ask them to give you your landlord details if you can't find them.

After you have provided your landlord with notice it is a good idea to ask your landlord to confirm in writing they've received your notice. You could ask them to sign a note or letter that says they've received it.

Make sure your notice letter clearly states the date you intend to move out. Consumer Affairs advises that you keep a copy of your notice letter and get a proof of postage certificate from the post office in case you need to prove when you posted it.

Alternatively, if you provide notice through an e-mail you may also format your e-mail to provide you with a read receipt which will confirm when your landlord received and read your notice e-mail.

4.3 No “Break Clause” and Landlord Permission to Leave

If you wish to end your tenancy early, and there is not a “break clause” in your lease agreement, Consumer Affairs advises that you ask your landlord for permission to end the tenancy early and explain why you are seeking to terminate your tenancy early (e.g. your work location might have changed, you might need to move to look after a relative, or you are expecting a child and need a larger residential unit).

Based on observed industry practices, many landlords are now electing to remove “break clauses” from their lease agreements. In this circumstance tenants are often faced with having to incur fees for breaking the lease agreement or face the possibility of having to pay rent until the lease agreement ends.

Although you may ask for permission to end your tenancy early, your landlord does not have to agree. If they do not agree to end the tenancy early you may have to pay rent until your tenancy ends; even if you leave the property.

If you have a **fixed term tenancy** you can try to reach an agreement with your landlord to end your tenancy if:

- You have a break clause but want to leave before it says you can or you’ve missed the deadline to use the break clause (i.e. the “break clause” may state you cannot end the tenancy within 6 months of entering the tenancy agreement)
- You don’t have a break clause and you want to leave before the end of your fixed term

If you have a fixed term tenancy you could try to persuade your landlord to agree to the early termination of the tenancy if you can get another tenant to move in. This would mean your landlord wouldn’t be losing any rent.

If your landlord agrees to let you get a new tenant, Consumer Affairs advises that you make sure you get your landlord’s agreement in writing. The agreement must clearly say that your tenancy has ended and a new tenancy has been created for the new tenant.

If your landlord won’t let you get a new tenant you might still be able to end your tenancy early. You could propose that if you can terminate the tenancy early you will pay part of the rent the rent was expected to be paid prior to early termination (e.g. if you have 3 months left on your fixed term agreement, your landlord might agree to let you pay just 2 months’ rent instead).

If your landlord agrees to such a financial arrangement, Consumer Affairs advises that you make sure you get what you agreed to in writing; in case you need evidence later. If you have a periodic tenancy, your landlord might agree to let you give just part of your notice (e.g. if you have to give 1 months’ notice, the landlord may agree to let you give 2 weeks’ notice instead).

If your landlord agrees to have the tenancy end early, your tenancy will usually end on the last day of your fixed term or at the end of your notice period when you gave notice. Upon leaving the residential unit you will also need to give the keys back to the landlord by the end of your notice period.

If you reach an agreement with your landlord to end your tenancy early, your landlord or real estate agent acting as a property manager can charge for an “early termination” fee to cover any reasonable costs (e.g. costs to find a new tenant).

4.4 Leaving Without Giving Notice and Associated Issues

If you are looking to exit a tenancy agreement early Consumer Affairs advises that you do not leave your home without giving notice and/or getting your landlord’s agreement to leave.

If you have not provided adequate notice and/or obtained permission from your landlord, your tenancy will be considered to still be in existence and you will still have to pay your rent until the end of your tenancy period as stated in the tenancy agreement.

In such a circumstance your landlord can get a court order to make you pay the rent you owe, in addition to legal costs. Leaving without giving the correct notice could also make it harder for you to find a new home because:

- You may not be able to get a reference from your landlord;
- You won’t usually get your tenancy deposit back;
- You could build up rent arrears if your landlord continues to charge you rent.

If you are leaving your residential unit when your fixed term tenancy ends you do not need to give your landlord notice to say you will be leaving on the last day of your fixed term; unless your tenancy agreement says you have to.

Consumer Affairs advises that you review the terms and conditions in your tenancy agreement and confirm whether there is an “automatic renewal” clause which may stipulate that failure to provide adequate notice will result in the tenancy agreement being renewed for another fixed term.

Whether you intend to leave the residential unit early or at the end of a fixed tenancy period, it is best practice to give your landlord notice to avoid problems. Giving notice might help you get a reference or your deposit back quicker.

4.5 Landlord Breach and Tenancy Termination

If you are considering terminating your tenancy early due to your landlord acting in breach of your tenancy agreement, Consumer Affairs advises that you speak to your landlord first.

If you have asked your landlord to conduct repairs to the residential unit and they have failed to do so, Consumer Affairs recommends that you follow-up with your landlord prior to providing advance notice of termination.

As a tenant you have the right to rent a safe home and to be treated fairly and in accordance with the terms and conditions outlined in the tenancy agreement. .

4.6 Moving Out

When moving out Consumer Affairs advises that you review the terms and conditions of your tenancy agreement as there may be performance obligations that you must comply with (i.e. professional cleaners, Often there are obligations where you must make sure the residential unit is cleaned and left in the same condition as when you moved in.

There may also be obligations that the residential unit must be cleaned by a professional cleaner and the residential painted by a professional painter with a specific paint color palette.

You will need to ensure that you satisfy these obligations otherwise you may not be able to get your damage deposit back at the end of your tenancy. Upon moving out and satisfying the moving out obligations, Consumer Affairs that you take photos of the condition of the property, including doorways, walls, sinks, cabinets, appliance and fixtures and fittings.

Consumer Affairs further advises tenants to make sure you pay all your household bills before moving out (e.g. gas, electricity, and residential internet) and provide your service providers with your new residential address and the date you will be leaving your current address. It is important to do this so you're not charged for services after you've left and so that your service provider can send your bills to your new address.

5. Subletting

A sub-tenancy is created when an existing tenant (i.e. primary tenant) lets some or all of their home to another tenant (i.e. the subtenant). In most cases the primary tenant needs their landlord's permission before they can sublet their home. The information on this page explains more on subletting and the issues often faced by sub-letters.

5.1 What is Subletting?

Subletting happens when an existing tenant lets some or all of their rented residential unit to another tenant who becomes the subtenant. In this situation the property owner is known as the head landlord and the original tenant is called the 'mesne' landlord or primary tenant. Mesne means intermediate and is pronounced as 'mean'.

The primary tenant who rents their home to the subtenant creates a sub-tenancy and the subtenant has exclusive use of the residential unit. This means that the primary tenant can only enter the accommodation with the subtenant's permission.

5.2 Unauthorized Subletting

If you are a sub-tenant and don't share any accommodation with the primary tenant, how the primary tenant or 'mesne' landlord went about subletting their home can impact you as a sub-tenant.

If the primary tenant was not, or is not, allowed to sublet because their tenancy agreement with the head landlord restricts them from entering into such agreements, or if they did not get the head landlord's permission, this means that the subletting of the residential unit was done so without adequate authorization and is unlawful.

However, appreciating the position of the head landlord and the potential illegality of the relationship, as a sub-tenant you may be able to occupy the property under the sub-tenancy until:

- The head landlord decides to end the tenancy agreement with the primary tenant; or
- Your landlord's tenancy comes to an end.

If the primary tenant was not allowed to sublet their home, but did so anyway, they have broken their tenancy agreement with the head landlord. If the head landlord takes possession proceedings against the primary tenant because they have broken their tenancy agreement, and the primary tenant is evicted, this will affect your right as a subtenant to stay in the residential unit as a sub-tenant.

If the head landlord seeks possession of the property due to the primary tenant's breach of tenancy agreement, the sub-tenancy also ends and the head landlord is entitled to possession of the residential unit (i.e. surrender of the property). When a tenancy is surrendered, the head landlord takes back the property subject to any rights and tenancies or licences created by the outgoing tenant.

In some circumstances, as a subtenant you may be able to get the head landlord to agree to letting you stay on as their tenant. If this happens you will be asked by the head landlord to sign a new tenancy agreement. The head landlord would then become your immediate landlord and you would become the primary tenant.

You may also be able to show that the head landlord has indirectly agreed to your sub-tenancy because they've accepted rent directly from you before. By accepting rent from you acting as a subtenant the head landlord accepts that you have the right to occupy the property.

Another way that a head landlord can indirectly agree to a sub-tenancy is if they become aware that unlawful subletting is taking place but they don't do anything about it (e.g. they continue to accept the rent). However, Consumer Affairs cautions consumers from relying on the head landlord being knowledgeable of the sub-tenancy as it may not always be easy to prove that a landlord knew about the subletting.

If you are looking to sublet a residential unit from an existing tenant of a residential unit, Consumer Affairs advises that you confirm with the primary tenant and head landlord to verify whether the primary tenant(i.e. mesne landlord) has permission to sublet their residential unit.

5.3 Evictions of Sub-letters when Tenancy Ends

If you are a subtenant and the primary tenant's tenancy agreement ends, the head landlord has the right to evict you. In these circumstances you are considered a trespasser and the head landlord doesn't need a possession order to evict you, but they can get one if they choose.



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Published by the Ministry of Legal Affairs and Constitutional Reform
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