

## HOW TO BREAK YOUR LEASE

Typically, you are legally bound to pay rent for the full lease term (typically a year) whether or not you continue to live in the rental unit, but certain exceptions apply:

### **1. Terminating your lease because of entry onto active duty, change of duty stations, and deployment**

Under the Servicemembers Civil Relief Act (SCRA), you and your dependents may terminate a lease/rental agreement if:

- (a) The lease was signed before you entered active duty, or
- (b) The lease was signed before you received orders for a permanent change of station (PCS), deployment, or to support a military operation for at least 90 days.

You may terminate the lease at any time after your entry into military service or the date of your military orders. To terminate the lease, you must deliver written notice of the termination (oral termination is not sufficient), and a copy of your military orders to your landlord after entry on active duty or receipt of orders for active duty. Delivery may be accomplished by hand delivery, private business carrier, or deposit in the United States mail with sufficient postage and return receipt requested.

The effective date of termination is determined as follows:

- (a) For monthly rentals, termination becomes effective on the next rental cycle, 30 days after notice is received. (For example: if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September; thirty days after that date would be 1 October, the effective date of termination).
- (b) For all other leases, termination becomes effective on the last day of the next month after notice is received. (For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August).

The SCRA does not extinguish liability from unpaid rent or charges accrued prior to the effective date of termination. Your landlord may not charge an early termination fee, but (s)he can charge for things such as unpaid rent and taxes. Conversely, if you have paid your rent in advance, the landlord must refund the unearned portion and your security deposit within 30 days of the effective date of the termination of the lease. (Cal. Mil. & Vet. Code § 409)

### **2. Terminating your lease for other reasons**

You may also break your lease in California without accruing penalties or additional rent if:

#### **a. You or a family member are a victim of domestic violence, sexual assault, stalking, or elder/dependent adult abuse.**

California Civil Code § 1946.7 was created to protect survivors of domestic violence, sexual assault, human trafficking, stalking, and elder/dependent adult abuse. To terminate a lease, you must notify the landlord in writing that you or a family member was a victim and that you want to end the rental agreement. You must also attach a restraining order, copy of a police report, or other documentation from a qualified third party (such as a caseworker, psychologist, or physician) verifying that you were the victim of domestic violence, sexual assault, human

trafficking, stalking, or elder/dependent adult abuse. The restraining order or police report must have been issued no more than 180 days before the request to end the rental agreement.

The effective date of termination is 14 days after giving notice, which means you still have to pay rent for the next 14 days, unless the landlord gets a new tenant who moves in before the 14 day period.

**b. Your rental unit is unsafe or violates California Health or Safety Codes.**

Every living unit has an implied warranty of habitability, which means it must meet certain living conditions. If your landlord does not provide habitable housing under local and state housing codes, a court could conclude that you have been “constructively evicted” so you have no further obligation to pay rent. The law is very specific about what makes a unit uninhabitable and there are specific requirements and procedure you must follow before moving out due to uninhabitability. A rental unit may be considered uninhabitable if it is a structural hazard, has inadequate sanitation, or is a nuisance that endangers the health, life, safety, property, or welfare of the occupants or the public.

In California the landlord must provide: waterproofing and weather protection of roof and walls (including windows and doors), working plumbing, hot and cold running water, heat, electricity, garbage and rodent free buildings and grounds, trash cans, deadbolt locks on main exterior doors, window locks, smoke detectors, telephone jacks, and well maintained floors, stairs, and railings. Furthermore, your landlord may have agreed to additional responsibilities in your lease.

If your dwelling lacks any of the above or is otherwise uninhabitable, you should notify your landlord of these defects and ask him to fix it right away. If he fails to make repairs in a reasonable amount of time (usually 30 days) depending on the issue, it is recommended that you take the following steps prior to vacating in case your landlord continues to pursue you for rent:

- (1) Write a letter saying you’re leaving under Cal. Civil Code 1942 due to the listed conditions.
- (2) Request an immediate final walkthrough regarding your security deposit refund.
- (3) Take pictures of every defect and room, making note of all the defects.

For more information, visit: <http://www.dca.ca.gov/publications/landlordbook/problems.shtml>

**c. You landlord harasses you or violates your privacy rights.**

In addition to the implied warranty of habitability, every lease has a covenant of quiet enjoyment, which means your landlord cannot violate your privacy rights or unduly harass you. In California, your landlord must give you 24 hours’ notice to enter your rental unit. If your landlord repeatedly violates your right to privacy, or does things such as removing your windows or doors, change your locks, turn of your utilities, he is said to have violated the covenant of quiet enjoyment, which may be grounds for breaking your lease. If your landlord unduly harasses you, you should notify him of the issue and ask him to stop in writing. You should document every encounter and unwelcome harassment. If he fails to stop, it is recommended that you write a letter saying that you are leaving under Cal. Civil Code §1954 and request an immediate final walkthrough regarding your security deposit refund.

**3. Landlord’s duty to find a new tenant**

Even if none of the above apply, you may still be off the hook from paying all the rent due for the remaining lease term. Under California law (Cal. Civ. Code § 1951.2), your landlord must make reasonable efforts to mitigate damages; which means no matter the reason you are leaving, your landlord must make reasonable effort to re-rent your unit, rather than charge you for the total remaining rent under the lease. Essentially, you only need to pay the amount of rent the landlord loses because you moved out early, so if your lease ends in December, but you move out in August and your landlord finds a new tenant who moves in October, you will only be obligated to pay August and September rent.

Your landlord must make a good faith effort to re-rent the property, but he does not have to relax standards for acceptable tenants, rent for less than market value, or disregard other business to immediately turn his attention to finding a new tenant. Your landlord can also charge you for legitimate expenses, such as advertising.

The bad news is, if your landlord is not able to find a new tenant, you are obligated to continuing paying rent until he finds a new tenant or until the end of your lease term.

If you want to leave early and do not have a legal justification to do so, your landlord has the duty to find a new tenant and mitigate damages, but you should avoid just moving out and hoping your landlord gets a new tenant quickly. You can help the situation and limit the amount of money you need to pay, while maintaining a good relationship with the landlord (in case you need a reference when you are looking for your next place), simply by providing as much notice as possible and writing a sincere letter explaining why you need to leave early. Ideally you can even provide your landlord with a qualified replacement tenant to sign a new lease with him.

#### **FURTHER HELP IS AVAILABLE**

If you have questions, please contact the Legal Assistance Branch of the Office of the Staff Judge Advocate located at Building 275, Plummer Street, Defense Language Institute, Presidio of Monterey (831-242-5084 or DSN 768-5084).