

Is it possible to terminate a lease agreement without recourse?

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There are a number of possible reasons that could arise that lead to a tenant wanting to terminate their lease agreement before it has run its course, however, it is possible for them to get out of a lease agreement without being in breach of the contract?



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The answer to the question will depend on the cancellation clause within the lease agreement. Unless there are grounds for cancellation of the agreement, which are stipulated in the cancellation clause, it can be rather difficult to get out of a lease agreement without any recourse. Even if the lease agreement doesn't contain a cancellation clause, the tenant can still be considered to be in breach of the agreement if they decide to terminate the contract prematurely. If the tenant has breached the contract, the landlord is within their rights to demand that the tenant pays the rental amount due to them for the remainder of the agreed upon tenancy period.

Mutual agreement

If a landlord has met all the conditions of the lease, the tenant cannot simply terminate the lease agreement. They will have to discuss the matter with the landlord and possibly come to a mutual agreement, such as another tenant taking over the current lease agreement or subletting the property for the remainder of the lease period. It is imperative that any agreement made between the two parties is put in writing to avoid any confusion or backlash further down the line.

The Consumer Protection Act (CPA) allows tenants to provide the landlord with 20 days' notice if they choose to cancel their lease before it expires, however, this does not completely absolve the tenant of any responsibility. While a tenant has the right to move, if the landlord has met the requirements of the lease, they are within their rights to recoup reasonable costs that they may incur during the search for a replacement tenant. In certain cases, the tenant might be required to pay for the loss of rental income, advertising the property and letting agents commission. While the CPA does not stipulate what would be considered a reasonable figure, the landlord cannot make up exorbitant figures and charge the tenant what they feel like. It is also illegal for the landlord to withhold paying the tenant their deposit unless there are substantial damages to the property which were caused by the tenant.

Breach of the contract

In the instance where the landlord has not met their end of the bargain and is therefore in material breach of the lease agreement, the tenant will be able to cancel the lease agreement early without them breaching the contract agreement and paying the penalties. Examples of this are if the property has become inhabitable or the landlord has failed to maintain aspects of the property that they have stipulated in the lease agreement that they would - the tenant is within their right to cancel the agreement. However, in this situation, the onus is on the tenant to prove that the landlord is in breach of the contract and has failed to uphold their side of the deal.

Tenants who have reached the end of their lease agreement and are planning to move should check their contract to see whether it contains a renewal clause, which will stipulate the amount of notice time the landlord requires. If the lease agreement has expired and the tenant is still living in the property, through their actions they have effectively already entered into a new lease agreement and will need to follow the right procedures to cancel the contract. If the original lease agreement does not include either a cancellation clause or a renewal clause, the tenant must give the landlord one month's written notice before its expiration.

ABOUT ADRIAN GOSLETT

Adrian Goslett is CEO and regional director of RE/MAX Southern Africa. He joined RE/MAX Southern Africa in 2005 as a franchise development consultant, supporting various regions and offices. Throughout his career at RE/MAX he has held various positions. In 2010, after successfully leading 160 offices and over 1500 agents in six countries through the worst years real estate has ever seen in South Africa in 30 years, Goslett was appointed as CEO of RE/MAX Southern Africa.
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