

Leases and Rental Agreements FAQ

by Nolo.com

Why is it important to sign a lease or rental agreement?

The lease or rental agreement is the key document of the tenancy, setting out important issues such as:

- the length of the tenancy
- the amount of rent and deposits the tenant must pay
- the number of people who can live on the rental property
- who pays for utilities
- whether the tenant may have pets
- whether the tenant may sublet the property
- the landlord's access to the rental property, and
- who pays attorney fees if there is a lawsuit.

Leases and rental agreements should always be in writing, even though most states allow them to be oral (spoken). While oral agreements may seem easy and informal, they often lead to disputes. If a tenant and landlord later disagree about key agreements, such as whether or not the tenant can sublet, the end result is all too likely to be a court argument over who said what to whom, when and in what context. This is particularly a problem with long-term leases, so courts in most states will not enforce oral agreements after the passage of one year.

What's the difference between a rental agreement and a lease?

The biggest difference is the period of occupancy. A written rental agreement provides for a tenancy of a short period (often 30 days). The tenancy is automatically renewed at the end of this period unless the tenant or landlord ends it by giving written notice, typically 30 days. For these month-to-month rentals (meaning the rent is paid monthly), the landlord can change the terms of the agreement with proper written notice, subject to any rent control laws. This notice is usually 30 days, but can be shorter in some states if the rent is paid weekly or bi-weekly, or if the landlord and tenant agree.

A written lease, on the other hand, gives a tenant the right to occupy a rental unit for a set term--most often for six months or a year but sometimes longer--if the tenant pays the rent and complies with other lease provisions. Unlike a rental agreement, when a lease expires it does not usually automatically renew itself. A tenant who stays on with the landlord's consent will generally be considered a month-to-month tenant.

In addition, with a fixed-term lease, the landlord cannot raise the rent or change other terms of the tenancy during the lease, unless the changes are specifically provided for in the lease, or the tenant agrees.

What happens if a tenant breaks a long-term lease?

As a general rule, a tenant may not legally break a lease unless the landlord significantly violates its terms--for example, by failing to make necessary repairs, or by failing to comply with an important law concerning health or safety. A few states have laws that allow tenants to break a lease because of health problems or a job relocation require a permanent move.

A tenant who breaks a lease without good cause will be responsible for the remainder of the rent due under the lease term. In most states, however, a landlord has a legal duty to try to find a new tenant as soon as possible--no matter what the tenant's reason for leaving--rather than charge the tenant for the total remaining rent due under the lease.

When can a landlord legally break a lease and end a tenancy?

A landlord may legally break a lease if a tenant significantly violates its terms or the law--for example, by paying the rent late, keeping a dog in violation of a no-pets clause in the lease, substantially damaging the property or participating in illegal activities on or near the premises, such as selling drugs.

A landlord must first send the tenant a notice stating that the tenancy has been terminated. State laws set out very detailed requirements as to how a landlord must write and deliver (serve) a termination notice. Depending on what the tenant has done wrong, the termination notice may state that the tenancy is over and warn the tenant that he or she must vacate the premises or face an eviction lawsuit. Or, the notice may give the tenant a few days to clean up his or her act--for example, pay the rent or find a new home for the dog. If the tenant fixes the problem or leaves as directed, no one goes to court. If a tenant doesn't comply with the termination notice, the landlord can file a lawsuit to evict the tenant.