

GCNKAA - ENQUIRER ARTICLE

Leases with Early Termination Clauses

One option you should consider when looking for an apartment is whether or not your apartment community offers an early termination or buy-out clause in its lease. These clauses are especially useful if you may be transferring jobs, in the military, or just in a new roommate situation where you are not certain that all the roommates will get along for the entire term of the Lease. Remember, a lease is a binding contract, there is no three day right to change your mind and cancel the lease after you sign it, nor is there a guaranteed release if you and your roommates can not get along, or you transfer jobs out of the city. There is some limited relief for members of the military who may be called to active duty, but other than that, most landlords expect tenants to honor their lease. The concern, however, is that once you sign a lease, you are bound to pay the landlord rent for the full term whether or not you live there or want to continue to live in the apartment.

If you must break your lease, a landlord has a duty to mitigate its damages. That means the landlord must do everything reasonable to try to get the apartment re-rented and occupied (with appropriate candidates who meet credit screening, criminal screening and other rental criteria) to minimize the damages that the landlord would have against the former tenant.

Many landlords offer a different solution to this problem for tenants by adding in an early termination clause to their leases. These clauses differ by landlord, but generally, they require the tenant to have lived in the apartment for some percentage of the lease (ex. 50% of the lease), give some sort of advance notice, normally thirty days, and pay some type of termination fee. While the factors vary, the end result is the same. If you comply, to the letter, with the terms and conditions of the lease's early termination clause, you can be released from the balance of your obligations under the lease.

For example, if you have six months left on your lease at \$500.00 per month, and you accept a job in another state and you have an early termination clause in your lease, you may, as an example, with 30 days notice and perhaps a \$1,000.00 payment in advance to your landlord, be released from your lease and not be responsible for the balance of your lease, whether or not the apartment re-rents, and thus you do not face the threat of a collection lawsuit by your former landlord.

It should be understood that a lease termination fee is a bit like gambling. A landlord can only hold you accountable for the actual damages they suffer. Therefore, if you were to move out of your apartment and the landlord were to be able to re-rent it five days after you move out, you would not be responsible for the rest of the lease, only the five days damages suffered (with some exceptions), in which case the early termination opinion would have been a bad decision for you because you overpaid the landlord in exchange for the release, unfortunately you will not know if exercising the termination clause was a good deal until you move out, but the clause offers great peace of mind. Exercising your lease termination clause is a new contract; it does not result in a refund to you if the landlord re-lets the apartment.

When should you consider exercising your lease termination option if you have one? Consider the following: First, how much time do you have left on your lease? Second, how full is your complex? Third, how popular is the model you occupy? Finally, when are you moving? Are you moving in what are considered typically the dead months for apartment rentals, which begins around November 1 and ends April 1? Apartments rent much less frequently during this time of the year as families are less apt to move their children during school and during the holiday seasons. If you are moving with lots of time on your lease, from an unpopular model or during the “dead months”, it would be advisable to consider exercising the option to break your lease through the lease termination clause and paying the termination fee. While you run a small risk that you might “over pay”, you are also avoiding the possibility that you could be held liable for the entire balance of the lease if the landlord is unable to successfully re-rent your apartment.

While generally lease termination fees are not negotiable, sometimes the timing of the payment of these fees, or spreading out payment of the fee during to the landlord is possible, so do not be afraid to ask your landlord if there is any flexibility in negotiating the terms of payment if you wish to exercise a lease termination fee.

The law does not require landlords to provide a lease termination option in the lease. To the contrary, as stated above, a lease is a contract for the full term and there are generally no exceptions to get you out of the lease once it has been executed. Some landlords opt, as a tenant convenience or reassurance, to offer lease termination fees, so please make sure to check your lease and understand the landlord’s policy on lease termination completely before you sign a lease agreement, regardless of whether or not you intend to use the option at the time you sign the lease. Conditions change and sometimes unplanned events occur and you may need to exercise that right. Therefore, you should know if you have it, and if you have it, how to exercise it.

Remember, it is best to review any rental agreement and/or your lease termination options under the rental agreement with an attorney to insure your full understanding of the terms and conditions of the clause and that you are protected in the event you exercise a lease termination option properly with your landlord.

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