

Questions and answers about leases (ORS 90.240)

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What is the difference between a month-to-month tenancy and a lease agreement?

In Oregon the law assumes that the rental of a house or an apartment is on a month-to-month basis unless there is written documentation that has a different time period for the tenancy. In order to have an enforceable lease for a longer term (for example, six months or a year) the agreement must be in writing. In order to have a week-to-week tenancy, Oregon requires that the agreement be in writing.

Under a month-to-month agreement, both the landlord and the tenant have the right to give the other a 30-day written notice when they wish to end the tenancy.

Leases commonly offer protections beyond those in the law. The landlord gets assurance that a tenant will be staying for a longer period of time and doesn't have to worry about re-renting the unit frequently. The tenant gets the assurance that they can only be evicted **"for cause"** and that the landlord will have to prove that cause in court. Tenants must carefully read the lease before signing it to make sure that the tenant will have this protection under the particular lease offered by the landlord.

Traditionally the other important protection for the tenant in a lease is the prohibition on **rent increases** during the time of the lease. Tenants need to check the written agreement carefully before signing, as some landlords are now reserving the right to raise the rent during the term of the lease.

If I have a lease, do I have the right to break it? How do I do it?

If a tenant needs to leave before a lease has expired, **the tenant should consult an attorney (the Renters' Right Hotline can give you referrals)**. The law is very complicated. Even if the landlord does not sue you after you move, the landlord could give you a bad reference and may try to adversely affect your rental or credit record. It's important to do it right!

Just as a landlord can terminate a lease for cause during the term of the lease, the tenant has the legal right to terminate a lease because of a breach of the contract by the landlord. Good cause for terminating a lease is defined as "material noncompliance with the rental agreement" or noncompliance by the landlord with the landlord's obligation to keep the dwelling in good repair, as defined by Oregon statute (90.360)

The law requires the tenant to give written notice to the landlord. There are specific legal requirements for the notice. These include details in the notice

of exactly what the landlord has done wrong (or failed to do) and the time that the landlord allows to fix the problem. (The time periods vary depending on whether the problem is an essential service as defined in the law.)

If the landlord does not fix the problems before the dates in the notice, the tenant has a right to move without further obligation. But you must be prepared to prove that you acted lawfully if the landlord sues you. You should take all the steps a tenant normally takes on moving plus be sure to gather all proof of landlord's violations.

Once you move, you will have no access to the dwelling to gather more evidence. Even if you are allowed access because of a court action, the evidence is likely to be gone.

The tenant will need to document the landlord's violation so that it can be proven in trial if necessary. You should consider using photos and videotape as well as witnesses. Witnesses can be friends or family, but you should also consider building or health inspectors (call the Renters' Rights Hotline at (503) 288-0130 for more information). A tenant may want to hire a person who has some relevant training and experience to do an inspection of the problems and write a report.

What if I want to break my lease for other reasons?

If a landlord has not violated the law and a tenant wants to move before the lease is up, the tenant is responsible for the rent for the rest of the lease period and any reasonable fees described in the written rental agreement. But this one of the times where the low vacancy rates in Portland and other places will help tenants! **A landlord must try to re-rent the dwelling as soon as the landlord has notice that the tenant is moving.** (The legal term for this duty is "mitigation of damages".) A tenant who moves should watch the property and keep track of whether the property is promptly prepared for the next tenant, whether it is being advertised for rent and when someone moves in. (The neighbors may be able to help the tenant with this information.) Once the landlord re-rents the dwelling, the old tenant's obligation to pay rent ends. You may even want to offer the landlord a new tenant who meets the landlord's eligibility criteria. The tenant should make the offer to the landlord in writing.

The tenant needs to give written notice of their intent to move without cause as soon as possible. You need to keep a copy of that notice and all other documents regarding the tenancy for at least three years after they move. Call the Renters' Rights Hotline for more information!