



Leaving your Tenancy

This self-help guide outlines some of the main things to look at when considering whether you can end your tenancy agreement before the expiry of the fixed term.

We recommend reading our guides to looking for a property and our guide to tenancy agreements before you make any commitment. It can be difficult to decide on a property, and often landlords or agencies will tell you that accommodation is getting booked up, putting additional pressure on you to decide.

However, whilst tenancy agreements are very easy to enter in to, it is extremely difficult to end a tenancy agreement once you have signed up for the initial fixed term.

Unlike many commercial contracts they do not legally have to come with a cooling off period, although some agents do offer this.

Once signed, a contract is legally binding, and you are liable for the rent for the entire period of the tenancy unless it can be ended early.

This leaflet looks at the ways in which you may be able to bring the fixed term to an end early.

Covid-19 and tenancy agreements

There have been no special measures put in place by the government to allow those who signed a tenancy, and who cannot move in due to an issue arising from Covid-19, to end the agreement early or before the tenancy has started, or during the fixed term if they have to move out due to Covid related issues.

This can leave tenants in a position where they are liable for the rent on a property that they do not even live in. It does not matter whether you have moved into the property or not, or whether you have picked up or handed back the keys after moving out, you will be liable for the rent.

The National Union of Students (NUS) previously campaigned for students to be released early from tenancy agreements with no penalties, and their work on this continues. However, to date there have not been any special arrangements brought in for students generally, and release from tenancy is still on a case-by-case basis (though some housing providers have responded to the situation by increasing flexibility or, previously, by allowing



tenants who met certain conditions to be released from their contract early). A summary of the NUS's campaign is reported [in this article on their website](#).

Ending a fixed term tenancy

As there are no special measures in place for ending tenancies during the pandemic, the general rules apply, whether you have moved into the property or not.

Generally, a tenant can end a fixed term tenancy by:

- leaving on the last day of the fixed term
- Giving notice (where there is a break clause in the agreement)
- Mutual surrender of the tenancy

The sections below explore some steps you may be able to take to help you bring the fixed term to an end.

Check your terms and conditions and contract/tenancy agreement

Check if anything you have signed with the landlord or agent has a cooling off period. Some agents may insert this into their terms and conditions. There is no legal obligation for them to include such a term. If one is available, please read through the terms carefully, as there may be a cost involved.

You should also check your agreement itself for any "break clause" in it. This may mean it is possible to end the fixed term early.

There is no obligation for a landlord or agent to insert a break clause into an agreement. Generally, if a break clause is in an agreement, it will be a term which states whether the fixed term can be ended early. A break clause cannot favour a landlord alone, otherwise it will be an unfair term in the agreement.

Check what the conditions are for using the break clause, and if you are unsure seek further advice.

Negotiation – surrendering the tenancy

Negotiating to surrender the tenancy is the most likely way you will end your tenancy with the landlord or agent.



A landlord or agent is under no legal obligation to release you from a fixed term agreement once it has been signed.

Negotiation allows both parties to submit their terms for surrender and put across the reasons why it is being requested.

There are two types of surrender, implied and express.

Implied surrender is where an action takes place and it is agreed, usually verbally, that the agreement has come to an end. This generally happens where a new tenant has moved in, or the landlord/agent moves someone in or starts advertising the property for let.

Express surrender is carried out by written deed/agreement with all parties concerned agreeing on the terms to bring the agreement to an end.

Some accommodation providers and agents will have details of the terms they set for cancelling an agreement by mutual surrender.

Where no agreement in writing is obtained it can be common for arrangements to be withdrawn up to the day before the tenancy was due to end. Therefore, we strongly advise to get any agreement in writing (email and text messages may be acceptable if you cannot obtain a letter) as it will be difficult to prove you had an agreement otherwise.

Has your landlord met their legal obligations?

To help you potentially add weight to your request to surrender the tenancy, you should check whether your landlord or agent has met certain legal requirements when granting your tenancy.

You may be able to use any breaches of their obligations to strengthen your position to end your agreement. Breaches by the landlord of contractual or legal obligations do not automatically invalidate your tenancy or contract, but they may give you a negotiation tool to use.

See below for the obligations a landlord is required to undertake, that you could use to negotiate the end of your fixed term.



Has your landlord protected your deposit properly?

- For most private tenancies when a tenancy deposit is taken the landlord must protect it in a government approved scheme and send you the details with 30 days of you making the payment. A tenancy deposit is different from a holding deposit. If you are unsure what you have paid, please contact us at the Student Advice Centre.
- If a tenancy deposit is not protected the landlord is breaking the law and you can make a claim for compensation. This can be up to 3 times the value of the deposit plus the deposit back. Please see our self-help guide on deposits for more information. You can also visit the Shelter website:
http://england.shelter.org.uk/housing_advice/tenancy_deposits

Breach of the Tenant Fees Act 2019

Recent changes to legislation mean that certain fees previously charged by landlords and agents are now unlawful.

A landlord cannot charge a tenant a fee unless it is expressly permitted by the Act. The permitted payments are:

- Rent - although there are restrictions on landlords charging higher payments early in the agreement – if you feel this has happened, please contact us at the advice centre.
- tenancy deposit - up to maximum of five- or six-weeks' rent depending on your annual rental costs
- holding deposit up to maximum of one week's rent
- a fee in the event of a 'default'
- damages for breach of the agreement
- in connection with a tenant's request for a variation, assignment, or surrender of a tenancy
- in respect of council tax, utilities, communication services and TV licence.

There are a range of sanctions available against a landlord/agent who has charged a prohibited payment. This includes:

- civil payments of up to £5,000 for an initial breach
- civil payment of up to £30,000 or prosecution for a subsequent breach



- restriction on the service of a section 21 notice
- application by the tenant to recover unlawfully charged fees.

For further information please see our leaflet on Tenant Fees, and the restricted payments.

Breaches of the act could also be used by a tenant as a negotiation tool when requesting to end a fixed term tenancy early.

Is the property in a state of disrepair?

Landlords have certain legal obligations to maintain the property and to ensure it is fit for habitation. If they do not, there is the potential to make a compensation claim or for the council to act against them.

If the property is in such a poor state that the landlord has to be served notice by the council to remedy any problems, or that it has been deemed unfit for human habitation from the outset, this would be a strong negotiating tool to use to bring the agreement to an end early.

For more information on repairs and fitness for human habitation, please see our leaflets on these subjects.

Is your property licensed when it should be?

Some landlords of homes in multiple occupation require a licence to run them. The licence also requires extra safety provisions from the landlord.

If these provisions have not been met, or the property is not licensed when it should be, the landlord can be ordered to pay up to 12 months' rent back and be fined.

For more information on homes in multiple occupation please see the Shelter website:
https://england.shelter.org.uk/housing_advice/private_renting/houses_in_multiple_occupation_hmo

Fire, electrical and gas safety

As with the sections above, failure to meet their safety obligations could be used as a negotiation tool with your landlord. However, it is critical that you get safety requirements attended to as a matter of urgency – by contacting the council if needed. Do not put off



getting them sorted out because you hope to use them as a way of leaving your tenancy early. Failing to meet their obligations may still be able to be used as an argument with your landlord – but it is important that you get the issues sorted out as well.

If you have a private landlord, they must:

- From 1 July 2020, make sure that all electrical installations are inspected and tested by a registered electrician (see the link below for guidance on this depending on when your tenancy started)
- Repair problems with the gas or electricity supply
- Make sure furniture and appliances they provide are safe and don't pose a fire risk
- Ensure there is a smoke alarm on each storey of a property which contains a room being used, wholly or partly, as 'living accommodation'
- Ensure there is a carbon monoxide alarm in any room being used as 'living accommodation' in which solid fuel is used.
- Ensure that the gas supply and appliances they have provided are:
 - in a safe condition
 - fitted or repaired by a Gas Safe registered engineer
 - checked every 12 months by a Gas Safe registered engineer

There are separate regulations and safety requirements for social landlords, student halls of residence and homes in multiple occupation.

If your landlord is not meeting these obligations, you can ask your local council's environmental health department for help. They can inspect the property and take action against your landlord if your home is unsafe.

For more information please see the Shelter website:

https://england.shelter.org.uk/housing_advice/repairs/fire_safety_advice_for_tenants

https://england.shelter.org.uk/housing_advice/repairs/electrical_safety_in_rented_homes

https://england.shelter.org.uk/housing_advice/repairs/gas_safety_in_rented_homes

Has your tenancy been mis-sold?

If you think you have grounds to argue that your tenancy has been mis-sold to you, then as well as requesting that your tenancy agreement is cancelled, it can sometimes be requested that you are also repaid any money you have paid in advance, and any rent payments made up until the agreement being cancelled. This is known as unwinding a contract.



Consumer protection regulations prohibit unfair trading practices. The prohibited practices are:

- giving misleading information (a 'misleading action')
- withholding necessary information (a 'misleading omission')
- using coercion, harassment or undue influence ('aggressive practice')
- failing to follow accepted trading practice (lack of 'professional diligence').

In some cases where it is proven the above has taken place, it can be requested that the agent or landlord unwinds the tenancy agreement. This means that all terms and liabilities are cancelled out, and in some cases any money paid in respect to the property is returned in full.

This is a little known but potentially powerful tool to use. However, the burden of proof can be high as it may require court action to be taken. Unwinding a contract can only be done within the first 90 days of an assured shorthold tenancy. If the 90-day time limit has expired, you may still be able to claim a discount or damages.

If you feel you have been mis-sold your accommodation, please contact the Students' Union Advice Centre for further advice and assistance.

Offering a one-off payment to leave early

In some cases, a landlord or agent may be more willing to agree to a surrender if you are able to offer part payment of the rent and/or if you accept for them to keep your deposit too. In some cases, this may be a term of the surrender from the agent.

Finalising a surrender

Surrender occurs where all parties to the tenancy agree that it can end and on the terms under which it ends.

If you have a **joint tenancy** with other tenants, they will also need to agree to the surrender too – otherwise, the agreement will continue and you may be held liable for the rent by the landlord, or pursued by the other tenants who have had to pay in your absence.

If your landlord does agree any surrender then you should get this in writing, and if possible, witnessed.



Replacement tenants

Some landlords will agree to find a replacement tenant as it is in their best interests to do so – or some landlords/agents will advertise on your behalf. However, it is your responsibility to find a replacement.

To find a replacement, put as many adverts up for the room as you can. You could put them in:

- Post offices
- Newsagents
- Local newspapers or advertisement circulars
- Shop windows
- Accommodation Services
- Any relevant web forums

Choosing not to move in / moving out without negotiating a surrender

It is very risky if you take this action, as you will be in breach of your contract and you will remain liable to pay your rent until the end of your contract. If you intend on taking this action, please seek further advice first as you could become liable for two tenancies if you move somewhere else!

Rent arrears

If you do not end your agreement correctly, you will remain liable for the rent, and this could accrue arrears. As part of the Tenant Fees Act landlords and agents are entitled to charge interest on arrears. This is capped at 3% over the Bank of England base rate, after the arrears have been owing for 14 days or more.

When a tenancy has come to an end, if there are arrears owing, they will be treated as a debt. The landlord would be able to pursue the tenant, and any guarantor, for the money claimed in the county court for a money judgement.

Housing

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Student Advice Centre

The Student Advice Centre can advise in individual circumstances, but please be aware that we may not be able to negotiate a release from your tenancy, and you should speak to your landlord about your position in the first instance. If you contact us, please provide an outline of what steps you have taken to date, and any correspondence with your landlord, as well as an explanation of why you wish to leave your tenancy.

The information in this guide and on our web pages is given in good faith and has been carefully checked. However, the Student Advice Centre cannot accept responsibility for any action that you take on the basis of the information provided.

**If you require the information in a different format, please contact us at:
advicecentre@shu.ac.uk**

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