



NEED TO GET OUT OF YOUR LEASE AGREEMENT? WHAT YOU NEED TO KNOW

A lease is a legally binding contract. To cancel the contract completely (break the lease), a tenant would need to prove that the landlord breached the lease agreement (and to break the lease, the breach must be a “total” breach which would be serious or significant failures). Examples of total breach on behalf of a landlord would be cut off an essential service such as water or electric, lock out of the tenant from the unit or the unit becomes completely uninhabitable (fire or water damage).

The lease contract should be reviewed carefully because the contract controls the legal agreement. While you cannot add or take away anything from the contract, neither can the landlord. The landlord cannot add in charges or limitations that are not specifically set out in the lease. If a landlord threatens to do so, you should put it in writing that you dispute the landlord’s attempt to re-write the lease and that you will hold the landlord to the strict terms of the lease. You should always inspect the apartment and the neighborhood prior to signing a lease because you take the unit and the neighborhood as is. Sometimes the lease may provide for early termination but more often, a lease can provide for additional damages if the tenant tries to end the lease early.

It is very important that the written lease be carefully reviewed to ensure that it is terminated at the end of a lease term because some leases may provide for automatic renewal unless you put the landlord on notice a certain number of days prior to the lease end date of your intention to terminate the lease.

You should always get any agreement to terminate the lease early in writing and signed by the landlord. Keep your copy for your records in the event the landlord tries to sue you later for unpaid rent or deduct the rent from your security deposit.

Even if you break the lease, the landlord has limited options in trying to collect damages from you. The landlord would have to file a lawsuit within three years of the date of the breach and serve you with those papers. You should know that collecting on a judgment (should the landlord win) is also difficult because judgments attach to real property in the County and the judgment is only good in the state of South Carolina and would have to go through a separate proceeding to be valid in another state. South Carolina does not have wage garnishment for regular consumer debt (which such a judgment would be). Also, you cannot be arrested for not paying debts or judgments in South Carolina.

While the present pandemic is an exceptional circumstance, whether it would be considered sufficient to relieve a tenant of the obligations under a lease would be determined on a case by case basis in the Magistrate Court. A Magistrate will likely require some showing that the virus was found to be in the building, preventing your return. The landlord would have to sue you and you could raise this exceptional circumstance as a defense. If you get served with any legal papers, you should consult an attorney as soon as possible. For cases where the landlord is suing for damages due to breach of the lease, you would have thirty (30) days to file an Answer or otherwise respond. Failure to timely respond would result in you giving up any defenses you may have in that case and the landlord could get a default judgement.