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How to break your lease in the COVID era: A half-dozen options

With unemployment up and many tenants unable to pay their rent, people are moving back home or moving in with roommates.



There are ways to break a lease. Some landlords are willing to negotiate, although tenants likely will have to pay something. And when they won't negotiate, finding someone to take over your apartment can mitigate the damages and get you off the hook. (iStockphoto)

By **JEFF COLLINS** | JeffCollins@scng.com | Orange County Register

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With unemployment quadrupled over the past year and money getting tight, many renters are hoping to weather the COVID pandemic without losing their homes.

But some are taking the opposite approach: They're trying to get out of their lease and move back home with relatives. Or they're doubling up with roommates in hopes of containing mounting debt from an apartment, townhome or house they no longer can afford.

Zillow reported that roughly 2.7 million U.S. adults moved in with a parent or grandparent in March and April as the coronavirus pandemic spread.

But what if you have months left on your lease? Are you still liable for unpaid rent if you move out early?

The answer is yes in most cases.

And unless your contract specifically lists "pandemics" as grounds for terminating your lease, the coronavirus outbreak won't give you a get-out-of-jail-free card.

"There's no good options," said Newport Beach real estate attorney Kyle Janecek. "It's kind of like being asked how do you fight a grizzly bear? The answer is, don't."

"Most leases have this provision, you're liable for everything," added Eileen Kendall, a Torrance real estate attorney who represents property managers.

Don't fret.

Yes, your landlord may be holding all the aces. But there still are some tricks that might, just might, get you out of the lease straightjacket, say attorneys and tenants advocates.

Here are several options to consider.

Stay or go?

The first question is should you give up your apartment, granny flat or rental house or stay put?



State and local eviction moratoriums allow you to defer rent during the pandemic. But the operative word here is “defer,” not “forgive.” Tenants eventually have to repay all that back rent.

If debts are piling up, the argument goes, it may be best to ditch the high-cost rental, move back home and enjoy mom’s cooking.

Not so fast, warned Elena Popp, an attorney and executive director of the Los Angeles-based Eviction Defense Network.

“Too many people thought their friends or parents or aunt would put them up. But guests, like fish, start to smell within a week. So suddenly you’re not welcome there anymore,” Popp said. “Unless you’re sure you have a place to go, there’s no benefit to giving up a unit.”

If you stay put, who knows? Your back rent could get forgiven. You may negotiate a deal with your landlord. You may get your job back.

“The panicking that is happening ... because they’re accruing rent should not be happening,” Popp said.

Tenants, she said, should wait it out unless their landlord gives them a break on unpaid rent or they know they have a place to move to that’s safe, secure and long term.

Popp said you should find an attorney before you make a move — preferably an experienced housing attorney.

There are legal aid services that can help. Or tenants anywhere in California can email the Eviction Defense Network (info@edn.la) “to schedule a paid consultation,” their website says.

Read the lease

Some leases have a provision that allows termination if the tenant agrees to pay a fee.

The fees run the gamut from a \$500 charge to one or two months rent, attorneys said. Often you have to forego your security deposit, which the landlord will apply to rent. Unfortunately, the majority of leases don’t have such a provision.

UCLA Student Legal Services also advises its students to check their rental insurance policy to see if it offers any relief during a pandemic or a state or national emergency.



Negotiate

If none of those options pan out, advisers suggest you try to negotiate with your landlord.

Explain your situation calmly, and explore options the landlord is willing to consider, UCLA advises students. If the landlord won't terminate the lease, you can ask for reduced rent.

"A few landlords are open to some type of negotiation, even if it's not specified in the lease," said Elizabeth Kemper, director of Student Legal Services at UCLA. "You may have to pay something or give up your deposit."

If a deal is reached, everything needs to be put in writing and signed by both parties.

Often landlords are better off reaching a deal if it looks like their tenants might skip out on the rent. Since litigating often is more expensive than the missed rent, they might strike a bargain.

"A lot of my clients are understanding," said Kendall, the Torrance landlord lawyer. "A lot are providing forgiveness, dropping the rent a couple of hundred dollars."

Re-renting

California law requires landlords to "mitigate damages" from an abandoned lease — meaning they must make a reasonable attempt to find a new tenant, Janecek said. If your unit gets re-rented, you are only liable for the unpaid portion of your rent, plus the costs of finding a new tenant, like painting or advertising.

"It's a calculated gamble. You have to hope the landlord finds a new tenant in a reasonable amount of time," Janecek said.

You can help. Advertise the unit yourself. And after you leave, keep tabs on your old place by checking with neighbors to see if anyone moves in.

"If they rent it out right away, you don't have to pay," said Lupe Arreola, executive director Tenants Together, a San Francisco-based tenants-rights group.

A landlord's failure to make reasonable efforts to re-rent the unit also can provide a defense should your property owner sue you, tenants advocates said.



Sublease

Subleasing your space to a third party would replace the rent you're obligated to pay. But most leases either forbid subleasing or require the landlord's written permission to do so, attorneys said.

Assuming you get approval, the process still can be tricky. If you have roommates, you may need their approval. And you remain liable for rent and repairs should your subtenant not pay or they damage the unit.

Some apartments charge sublease fees and require the new tenant to undergo a credit check.

Extreme circumstances

Things like a home becoming unlivable, harassment, domestic violence, elder abuse and stalking can void a lease, attorneys said.

A leaky roof, rodent problems, faulty wiring or bad plumbing, if not addressed by the property owner, can end your obligation to pay rent.

But the landlord first needs to be notified and given a reasonable time to make repairs. For most problems, that's around 30 days, Janecek said. For a broken toilet in the home's only bathroom, that could be less time.

The process starts with written notice and documentation of the issue. Take pictures. Shoot video.

"If there's a situation where the ceiling is falling in because of leaks in the pipes and the landlord lets it persist, that would be enough to allow the tenant to terminate the lease," UCLA's Kemper said.

But she warned against making such "habitability claims" without first consulting an attorney.

As for domestic violence, stalking or domestic violence claims, there are rigorous documentation requirements, including providing copies of a restraining order, a police report and a statement from a counselor, caseworker, therapist, or other licensed medical professional who provided assistance, said Janecek.

Illegal units



If your rental didn't have a certificate of occupancy or is otherwise an unauthorized residence, you can terminate the lease without penalty, attorneys said.

It takes some detective work to document this. Often you have to confirm it with the city.

Just walk away?

Why not just walk away? Slip out the back, Jack. Make a new plan, Stan. Drop off the key, Lee. Ghost your landlord and never pay a dime.

Attorneys said there are some pretty harsh consequences of leaving without legal justification, the least of which would be losing your security deposit.

Abandoning your lease also could harm your credit or result in your landlord hiring a collection agency.

And you could get sued. Some leases include provisions making the tenant liable for the landlord's attorney fees, resulting in a huge judgment against you that can be executed upon for as many as 20 years.

"People should not just move out," Popp said. "You should resolve your issues."

Janecek said the consequences of walking still might be worth it in some cases.

For example, a young college student may not immediately need credit, he said, especially if he or she can still ask parents to act as a guarantor for future leases.

"The age of that young college student means that there is plenty of time to recover from that early credit issue," Janecek said. The impact "fades with time."

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