

## Terminating a Lease in California, and Eviction Protections

**Directions:** This document is for UC Davis students. The information below is general in nature, is not intended as legal advice, and may not apply to non-UC Davis students.

Each student's situation will be different, based on their lease. Please read through the Table of Contents before clicking around to get a general understanding first.

If your questions are not answered by this document, and you are a **currently registered** UC Davis student, you may make a **free and confidential** 30-minute consultation appointment with ASUCD Legal Services through email. **The email address is [hq@asucd.ucdavis.edu](mailto:hq@asucd.ucdavis.edu).** Due to an extremely high demand for appointments, there is currently a lengthy wait time - so please read this entire document carefully.

There is also substantial legal content on the [ASUCD Legal Services](#) Website.

[Legal Services of Northern California](#), Yolo County Office at (530) 662-1065.

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### Can I terminate my lease?

#### Legal Grounds to Terminate a Lease:

- **“Lease Termination” or “Lease Buyout” Option:** Some leases have a provision that allows termination if the tenant agrees to pay an early termination fee. Landlords are required to provide a copy of the lease to tenants pursuant to CA Civil Code section 1962.
    - [How do I know if my lease contains a “lease termination” or “lease buyout” option?](#)
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      - [Sample forms of notice to exercise your option](#)
    - [How to provide notice to the landlord of lease termination](#)
  - **Habitability Claims:** If there is a condition in the apartment that renders it uninhabitable, the landlord has been notified of the condition, and has failed to repair it within a reasonable time, termination for legal cause may be possible under California Civil Code section 1942. **You should consult an attorney before attempting to terminate your lease using this statute, as this legal ground for lease termination is not available for most repair issues.**
  - **“Force majeure” clauses:** A force majeure clause typically excuses one or both parties from performance of the contract following the occurrence of a catastrophic event beyond anyone's control. These are extremely rare in residential leases. They are more commonly found in commercial leases. **You should consult an attorney before attempting to terminate your lease on force majeure grounds.**
- Tenants who have rental insurance should review their policy to see if it offers any relief in circumstances like a pandemic or where a national emergency has been declared.

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#### How Do I Know If My Lease Contains A “Lease Termination” Or “Lease Buyout” Option?

The lease will have a specific provision that says you can pay a fixed fee (usually two months’ rent, but sometimes the fee may be as high as six months’ rent) in exchange for terminating/exiting the lease, without further liability under the contract.

Please note that your lease probably has a section related to “Termination,” **but that doesn’t mean you have the option to pay a fixed fee to be released from further liability:**



- Most of the time, the “Termination” section is a standard lease provision that says if the tenant terminates the lease before the end of the term, the landlord can still seek lost/unpaid rent from the tenant over the remainder of the lease. The section may also refer to California Civil Code Section 1951.2, which provides this remedy to landlords for early lease termination (and requires landlords to make an effort to find replacement tenants after they receive notice of the termination).
- A standard lease termination provision may also refer to a “termination fee” (this could be any amount, from \$200 to \$1,000 to \$2,000) - in a typical lease form, this is an additional fee that the landlord is trying to charge the tenant, in addition to the landlord’s right to seek lost/unpaid rent.
- **These “termination fees” are different from a lease buyout or termination option**, because they are imposed by the landlord above and beyond the remedies provided by Civil Code Section 1951.2, and are not an option exercised by the tenant to exit the lease without further liability.

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### **What If My Lease Has A “Lease Termination” Or “Lease Buyout” Option?**

If your lease specifically provides you with the option to pay a fixed fee to cancel your lease ([see section above](#)), then you can pay the fee to be released from further liability (subject to the terms of the lease).

To notify your landlord that you want to exercise your option to buyout/exit the lease without further obligation, be sure to follow the instructions in the lease for paying that termination option fee, including providing the amount of advance notice described in the lease (which will probably be at least 30 days). In addition to paying the fixed fee for the buyout option, you will be responsible for rent during that 30-day period (or, if your lease hasn’t started yet, for rent during the prorated overlap between that 30-day notice period and the beginning of your lease term).

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If your lease **does not have an option to pay a fixed fee to cancel your lease** - or if the fee is extremely high (such as 6 months' rent) - [see here](#).

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### **How To Provide Notice To The Landlord Of Lease Termination**

*Unless you have a lease buyout option in your lease, sending this notice will not eliminate tenant liability under a lease. The landlord can still seek unpaid rent, which is not considered to be a “penalty.”*

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### **What are my options if I do not have legal grounds to terminate my lease?**

With few exceptions, California law requires a tenant to pay rent through the end of the term of the lease. You have a couple of options if none of the above grounds for termination apply to you:

- **Negotiate an early termination or a reduction in rent:** When you negotiate with your landlord, be respectful and reasonable. Being angry, rude, or belligerent are not winning techniques. Explain your situation calmly and thoroughly, and explore any options that the landlord is willing to consider.
  - ◆ **If the landlord agrees to any changes in the lease terms, you MUST get them in writing.** Technically, they are not enforceable unless they are in a writing signed by all parties to the agreement. An agreement reached via email, text, or social media is a workable alternative if the signed writing is not possible, but be sure to save it in a way that you can access easily if the landlord later backs out of the agreement.
  - ◆ [Can I negotiate a termination of my Davis lease with the landlord?](#)
  - ◆ [Should I negotiate a termination of my Davis lease with the landlord?](#)
  - ◆ [Why Would A Landlord Agree To Reduced Rent Or A “Buyout” Payment For Cancellation Of My Lease?](#)
  - ◆ [If I negotiate an agreement with my landlord to cancel the lease, how do I document it?](#)

→ **Subleasing:** One option is to ask the landlord if you can sublease your apartment. Most leases require tenants to get the landlord’s written consent to sublease. Under California law, landlords should act in good faith when determining whether to consent to the sublease. Some landlords require prospective subtenants to go through the application process and have a credit check.

### **What are the pros and cons of subleasing?**

- It is very important that you have a written sublease to set forth all of the terms of the agreement.
- The biggest advantage of subleasing is that someone else is paying all or part of your rent. But given that many other tenants may be terminating their leases and seeking subtenants, you may need to reduce the amount of rent you will ask your subtenant to pay. You need to consider whether it is better to get some money to defray the cost of your rent or pay it all yourself. But there are risks:



- If you sublease either all or part of your apartment/house, you still remain liable under the terms of your lease with the landlord. So if your subtenant fails to pay rent or damages the unit, **the landlord will expect you to pay the rent or the cost of repairing the damage.** Hence, it's a good idea to ask for a **security deposit** from the subtenant.
  - Because the landlord has no direct contractual relationship with the subtenant, only you (as a master tenant) have the standing to evict a subtenant. Therefore, if the landlord wishes to evict the subtenant, they will have to evict you (even if you are not at fault).
  - Another possible risk is that the subtenant may not leave the apartment when the lease ends. This is particularly problematic if the subtenant has stopped paying rent. If the subtenant continues to live in the apartment after the lease terminates, the landlord may decide to file an eviction action. See the FAQ section below for a discussion of the consequences of an eviction.
  - If some of your roommates are staying in the apartment, there may be an issue if your roommates do not approve of your subtenant. If you have a roommate agreement, either written or oral, then the terms of the agreement would govern what type of permission may be necessary.
- **Assignment/Finding a Replacement Tenant:** This usually takes the form of an “assignment” of the lease, where another tenant (or group of tenants) take the place of the previous tenant(s) under the original lease contract. See these sample forms of lease assignment: [one tenant](#), [multiple tenants](#). Some landlords may use a “tenant replacement” or “roommate replacement” agreement, where the intent is to take tenant(s) off the original lease and replace them with others. The advantage of this arrangement is that the original tenants no longer have contractual liability to the landlord - but in the current environment, it may be difficult to find tenants willing to take over a lease at the same level of rent (since student demand for housing is lower). One option is to offer replacement tenant(s) some amount of money to offset some portion of rent they would be paying if they took over the lease.

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### **Can I Negotiate A Termination Of My Davis Lease With The Landlord?**

If your lease specifically provides you with the option to pay a fixed fee to cancel your lease, then you can pay the fee to be released from further liability (subject to the terms of the lease) - be sure to follow the instructions in the lease for paying that termination option fee, including providing the amount of advance notice described in the lease (which will probably be at least 30 days).

If your lease does not have an option to pay a fixed fee to cancel your lease - or if the fee is extremely high (such as 6 months' rent) - [click here](#).

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## **Should I Negotiate A Termination Of My Davis Lease With The Landlord?**

This will depend on how much time is left on your lease term, and the willingness of your landlord to accept a fixed payment from you to cancel the lease. If you terminate your lease and stop paying rent, the landlord - as long as they are making an effort to find a replacement - still has the right to pursue unpaid/lost rent over the duration of the lease term under state law (California Civil Code Section 1951.2). This could potentially result in a lawsuit or collection action against the tenant(s) - and any guarantors - for unpaid or reduced rent, which could result in a significant liability and damage to your credit record.

Negotiating a termination payment to exit/cancel the lease **can still be the best result for both sides:**

- The tenant can quantify the exact cost of the lease and eliminate any further liability.
- The landlord can avoid pursuing a legal or collection action that will take time and may be difficult or impossible to satisfy if the tenant(s) have no assets or income - and then focus on re-renting the unit.

**Consider these recommendations when deciding whether, or how much, to pay to terminate a lease:**

- Do some research to find out the current market rate for rental units like yours right now. Does it seem likely that the landlord will be able to find a replacement at the same (or similar) rent? It's in the financial and practical interests of the landlord to find a replacement who will live in the unit and pay rent, compared to trying to collect rent (potentially via lawsuit or collection action) from someone who has terminated and isn't occupying the premises.
- Can you and your roommates find replacement tenants yourselves at the same rent? If not, is it possible for you to offer a slightly discounted rent and cover the difference over the term of the lease? Keep in mind that **you may be a better salesperson of your rental unit** than the landlord, who may be trying to rent multiple vacant units and not be particularly focused on yours, despite listing it online as available.
- If you do find replacement candidates, stay in the loop if they apply for your unit so that you can help ensure that, if approved as replacements, they take over responsibility for **your** rental unit (not another one in the landlord's building).
- If you have cosigners/guarantors on your lease, the landlord has more people to pursue for unpaid or lost rent if no replacement tenants are found, so there may be higher risk of liability.

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### **Why Would A Landlord Agree To Reduced Rent Or A “Buyout” Payment For Cancellation Of My Lease?**

There is no particular reason that a landlord would agree to a reduced rent or termination/cancellation payment, because they don't have to once a lease contract is signed.

Some landlords have been doing so simply in an effort to help students cope with the increased challenges of COVID, but many landlords are not.

One possible incentive for a landlord to reduce the rent or negotiate a buyout/cancellation payment is that if a tenant would otherwise not take possession of the premises, and would then refuse to pay rent, the landlord could be better off by working out a compromise with the tenant - rather than trying to pursue a lawsuit or collection action against the tenant, which will take time/money and may not result in any payment for quite a while.

Whether you should terminate your lease depends on many different variables, the most important being your tolerance of the risk that the landlord will pursue some kind of claim to get reimbursed for unpaid or lost rent. Unfortunately, there's no reliable way to predict or quantify this risk. Some landlords are very aggressive in pursuing claims against tenants for unpaid rent, while others are not (and some do not pursue any claims at all).

Even if a landlord pursues a credit/collection action or lawsuit against a tenant, there are usually multiple opportunities along the way to discuss a negotiated settlement of the lawsuit or collection action. The reason for this is the same as noted above - the landlord may prefer the certainty of accepting a lower payment compared to the time involved with pursuing a lawsuit or collections, and the possibility of never getting any money (if, for example, the tenant declares bankruptcy). The risk for a landlord pursuing a claim tends to be higher when a lease has cosigners/guarantors (such as parents). This is because cosigners/guarantors are much more likely than students to have income and assets, which makes it more likely the landlord will eventually be paid if pursuing legal/collection action.

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### **If I Negotiate An Agreement With My Landlord To Cancel The Lease, How Do I Document It?**

Please see this [sample form for an Agreement to Terminate and Cancel Lease](#). If you are paying a negotiated fee to terminate the lease, include that where indicated in the Agreement.

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### **What are the consequences of not paying my rent?**

- **Eviction consequences/outcomes:** If you fail to pay your rent in full, your landlord could decide to file an eviction action, which is referred to as an "unlawful detainer" (UD). The landlord can file a UD even if most of the rent has been paid. There are several negative consequences of having a UD filed against you. A court order could give your landlord the right to regain possession of your apartment and evict you.
  
- **Financial consequences/outcomes:**



- ◆ **UD Appears on Public Records:** Although the UD filing is “masked” from the public record for the first 60 days after filing, it will appear in the public record if the landlord wins in the UD proceeding within those 60 days. If this happens, your future landlords, employers, etc. will be able to see the UD if they conduct a background check.
  - ◆ **Credit Report:** The UD will appear in your credit report if the landlord gets a judgment against you.
  - ◆ **Advertising Costs:** The court may order you to pay any costs the landlord incurs in trying to find a replacement tenant. This could be the cost of advertising in the newspaper or online, having signs printed, etc.
  - ◆ **Attorney’s Fees:** If your lease has an “attorney’s fees” provision (and most do), the court can order you to pay the landlord’s attorney’s fees, up to any limit noted in the lease, and court costs.
  - ◆ **Rent:** The judge may order that you pay rent through the end of the lease or until the landlord finds a replacement tenant.
  - ◆ **Collection Agencies:** Some landlords send accounts where the rent has not been paid in full to collection agencies. The collection agencies can report you to the credit reporting agencies and can potentially sue you for the alleged amounts owed. **The unpaid debt item on your credit history will negatively affect your credit score.**
- **You and Your Roommates are ALL Responsible:** If one of your roommates fails to pay rent, the landlord can look to any or all of the other tenants (or guarantors) to pay that person’s share of the rent. This is because you, all of your roommates, **and any co-signers/guarantors** who are on the lease are jointly and severally liable. That means that each of you is individually liable for the full amount of the rent, and the full amount of any damage to the apartment.
- ◆ Joint and several liability also means that the landlord would name all of the tenants and their guarantors in any lawsuit for nonpayment of rent or damage to the apartment or for eviction.
  - ◆ Another consequence of joint and several liability is that one tenant cannot terminate the lease if other tenants are staying in the apartment. All tenants who signed the lease are considered to be one collective unit. Read more [here](#).

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### **What If There Is More Than One Tenant On The Lease, And Not All Of Us Want To Terminate The Lease?**

It's very important to communicate with your roommates/cotenants to decide whether to terminate your lease. **If at least one of the cotenants on a lease decides to stay, all of the tenants on the lease will remain jointly and severally responsible** to the landlord for the full rent - so one tenant **cannot** individually exit a lease and be free of further obligation. If a replacement is found for any outgoing tenant(s), and the landlord substitutes the replacement tenant into the lease agreement for the outgoing tenant(s), then the outgoing tenants who were replaced would not have further liability under the lease. Until such a substitution/replacement is approved by the landlord and documented in writing, all of the original tenants who were not replaced in this way would remain liable under the lease.





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