If you can no longer afford your lease, a good option is to move to housing you can afford. This is better than being evicted and being forced under severe time pressure to find another residence. If you move before your lease is up, you may be liable for part or all of the remaining months of rent on the lease, but being able to switch housing on your own schedule may be worth it.

If you instead wait to be evicted, the speed of the eviction process may force you to make unwanted choices, to pay extra expenses, and to accept a less than satisfactory alternative living arrangement. Being evicted may make it harder for you to rent elsewhere in the future, and may impair your credit rating.

The section describes how you can tell how much you will owe if you break your lease and steps you can take to reduce any such charges.

**Read the Lease.** The essential first step to determining your liability if you break your lease is to read your lease:

- If the lease says either party can terminate the lease after a specified notice, you can give that notice, wait the specified number of days, and then leave.
- Determine if you are now in a month-to-month or week-to-week lease. The lease might have always been that or at some point (such as after the first year) the lease become month-to-month or week-to-week. If your lease is now month-to-month or week-to-week, the lease and your state’s law will let you end the lease after providing a short notice to the landlord.
- If a lease is for a longer term (such as a one-year lease) and you leave during the middle of the term, you will have liability. As long as the landlord makes a good faith effort to find a new tenant, you will typically remain obligated to pay rent for the remaining time or until the landlord finds a new tenant during the remaining time on your lease. However, many leases instead contain a “liquidated damages” provision to govern early lease termination, in which you pay a specified amount (such as two months’ rent or a percentage of the remaining rent). These liquidated damages provisions are enforceable so long as they are reasonable.
- You may wish to find someone else to take over the lease from you (often called “assuming the lease”) so that you will no longer be responsible for the remaining months. Your lease may contain rules or procedures for lease assumption. Typically the landlord will screen and must approve the new tenant. It is important to familiarize yourself with these rules and procedures before negotiating a lease assumption with a prospective new tenant.
- Another option is “subletting” your residence. You keep your lease, but you rent out the space to another tenant or tenants. You remain the tenant as far as your landlord is concerned, and you in effect become the landlord to the new tenants. Subletting lets you recover some or all of the rent you need to pay your landlord for the time you are not occupying the unit. But subletting also carries risks. You remain liable for property damage a subtenant may cause, you may need to ensure that repairs are made and take enforcement action if a subtenant violates the lease, and you still remain liable to the landlord even if a subtenant fails to pay rent. Many leases prohibit subletting and such prohibitions are generally enforceable. Be sure to review your lease first if you are considering a sublet.
- If you want to wait until the lease is up, make sure to understand what, if any, notice is required to ensure the lease terminates. Some leases contain automatic renewal clauses or provisions that convert the lease into a month-to-month tenancy unless timely written notice is given.

**Legal Limits on Your Liability.** Although your maximum liability is usually the remaining months’ rent on the lease, there are a number of reasons why what you legally will owe will be different:

- The law in some states limits your maximum liability when you break the lease.
- The lease itself may indicate the maximum amount you are liable.
- You will not owe rent to the extent the landlord finds a new tenant to pay the rent. Thus it is to your advantage to give the landlord as much advance notice as possible so it can find a new tenant. Also make sure the landlord is marketing the unit in good faith, and check a few times to see if there are tenants already moved in.
- In addition to liability based on the remaining months in the lease, you will also be liable for damage to the apartment, which may eat up much if not more than your security deposit. To reduce this cost, clean the premises, leave it in good condition, and even take photos or a video showing if it is in good condition or the limited nature of any damage. Having the apartment “move-in ready” will also speed up when a new tenant can move in, offsetting the rent you owe.
- If you signed a lease first and then become active duty military, you will only owe one more month’s rent after you break your lease if you are given orders for a permanent change of station or to deploy for ninety days or more. Notify the landlord and enclose a copy of your military orders.
You may have also have additional rights to abandon your rental if the residence does not meet local housing, health, fire, and building ordinances, heat or hot water is unavailable, appliances are not safe or in working order, or the unit contains insect or rodent infestation. Although you may be able to move without paying future rent, it is usually best to find attorney representation to press this right. There are significant differences between states as to your rights and how you go about abandoning a rental because of the unit’s condition.

Reducing Your Liability by Talking to the Landlord. It is always worth the effort to talk to your landlord about your options. How far you get will depend on the landlord, the landlord’s view of future rental market conditions, and how many rental units are vacant in the area at the moment. If the landlord is concerned that it will be difficult to find a new tenant for your unit, you may be able to negotiate a reduction or delayed payment of rent, allowing you to stay in the apartment for the remainder of the lease.

On the other hand, if the landlord thinks it can easily find a new tenant for your unit who will pay a higher rent, the landlord might let you break the lease without owing for the remaining months on the lease. You can even try to get the landlord to agree not to charge you for back-rent if you move out by a certain date. Landlords will often do this to get you out of the apartment more quickly and avoid expensive court costs. The landlord also may let you move out early with no liability for the remaining months if you have arranged for responsible tenants to assume the lease. Be sure to get in writing any deal you make with the landlord!

Not all landlords will sue you if you leave without paying all of what you owe for the remainder of the lease. Nevertheless, particularly if the landlord is a larger property management firm, your non-payment may be reported to a “tenant screening agency” that keeps track of tenants’ payments. Then you may find it difficult to find alternative housing in your own name if potential new landlords check with a tenant screening agency and discover the delinquency.

If you are taken to court for breaking the lease, you may have to pay what you owe plus attorney fees, if such fees are allowed by the lease agreement and state law. It is in your best interest to let the landlord know that if you are sued that you don’t have non-exempt assets to pay the court judgment (in other words, you are collection-proof) and the lawsuit may be a futile exercise. Filing bankruptcy may also eliminate what you owe the landlord.

Source: National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at www.nclc.org/library
Source URL: https://library.nclc.org/sd/2002