

Early Lease Termination Requires Timely Notice

With PCS season approaching, many military members will soon be seeking to terminate their residential leases so they can move on to their new assignment.

Fortunately, both federal and state law protects military members under these circumstances. To take full advantage of these protections, however, military members must give proper written notice to your landlord as soon as possible.

The Service Members Civil Relief Act (SCRA) and Virginia law provide that when a military member has to break a residential lease due to their military service they are not subject to the normal penalties for such a breach of contract. This protection is available to service members on active duty, Army Reserve and National Guard. The protection applies to PCS outside the local area or deployment or mobilization for Reserve or Guard members, TDY outside the local area for at least three months, separation or retirement from active duty, or instances where a military member is ordered to move into Government quarters. It is important to note that these protections apply even if there is no "military clause" in the residential lease.

To invoke protections under the SCRA or Virginia law the military member must provide the landlord written notice of the anticipated termination. Prior to the actual date of termination, the military member must also provide the landlord a copy of his or her orders or a letter signed by his or her commanding officer confirming the orders.

The date the military member is permitted to terminate the lease is determined by the effective date of the orders and the date written notice is provided. The military member cannot terminate the lease more than 60 days prior to the date he or she needs to leave the area in order to comply with the orders. Within this 60 day period, the military member is entitled to terminate the lease no sooner than "30 days after the first date on which the next rental payment is due and payable after the date on which written notice is given".

The language of the Virginia statute quoted above governing when a military member can terminate a residential lease is a little confusing. The example below should serve to clear up any confusion and demonstrate why it is so important to provide notice as soon as possible.

Example: Bob and Sarah recently met while waiting to renew their ID cards. As they were waiting (and waiting) they started talking and discovered they live in the same apartment complex and both have orders to report to new duty stations on August 15. They are both somewhat familiar with the rules for terminating a lease due to PCS and realize they cannot terminate their leases earlier than 16 June (60 days before their report date). But they are a little less clear on when they must give the landlord written notice. Sarah wants to give notice as soon as she can. Bob isn't that worried because he "has the law on his side." Sarah gives written notice to the landlord on May 29. Bob waits until June 2 to give his written notice.

In Sarah's case, since she gave written notice on May 29 and her rent is due on the first of each month, her next regular rental due date is June 1. The soonest she can terminate the lease is July 1 (30 days after the first rental due date following her written notice). If she decides to terminate later in the month, but before the next rental due date, she will be responsible for paying rent on a pro-rata or daily basis. Sarah has to provide the landlord a copy of her orders or letter signed by her commander before she moves out.

Bob isn't entitled to terminate his lease as early as Sarah. Since he gave written notice on June 2, his next regular rental due date is July 1. The soonest he can terminate the lease is August 1 (30 days after the first rental due date following his written notice). Bob has to provide the landlord a copy of his orders or letter signed by his commander before he moves out.

It is incredibly important to provide written notice of intent to terminate a residential lease as early as possible. In the example above, the four-day delay in providing written notice could cost Bob an entire month's rent. The landlord might work with Bob and allow him to terminate the lease prior to August 1, but the landlord would be under no obligation to do so.

For questions regarding early termination of a residential lease, contact the Client Services Division at 804 765 1500.