

Tenancy Law

Tenancy



法務局

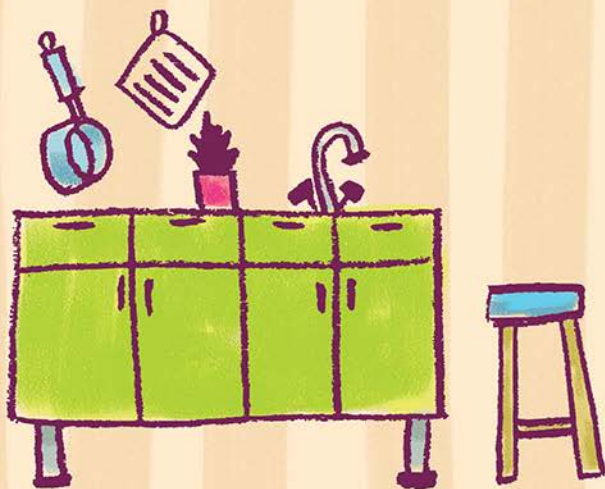
Direcção dos Serviços de
Assuntos de Justiça

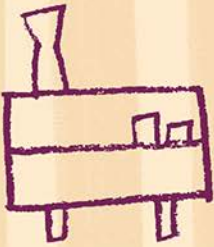
Must an agreement be signed between the two parties of a tenancy?

There should be a written tenancy contract (tenancy agreement) and the signatures of the landlord and the tenant have to be certified. Moreover, pursuant to law, the landlord has to pay for the stamp duty before the signatures can be certified.

What is the minimum of a tenancy period?

The law does not stipulate a minimum period for renting a property, but it stipulates a maximum period of 30 years. When the tenancy period is not spelled out in the agreement, it is then taken to be one year.





Is there a legal base for the amount of rental?

The amount of rental is entirely for the two parties of a tenancy to decide between themselves, as the law does not stipulate. When a tenancy is signed, the amount of rental should be included in the agreement.

Must advance rental and deposit be made?

“Advance rental” means prepayment of rental. In a tenancy relationship, the law requires “pay before stay”, which means payment of rental shall be made on the first day when the tenancy becomes effective or the first day of the period specified in the tenancy. For example, if the tenancy agreement is signed on 1st July or rental is calculated from this date, then the rental for July shall be paid on 1st July. In addition, the “advance rental” can be specified by the two parties of the tenancy, but the amount shall not exceed rental of one term, and can only be asked for payment one term in advance. For the same example, the landlord can also collect the advance rental of August on 1st July.

It is up to the two parties to agree on the payment of a deposit. The two parties may agree on the amount of two terms of rental as a “deposit”.

If a tenancy takes effect from 1st July and the rental is \$5,000 per month, the landlord may collect on 1st July a maximum of \$20,000, namely:

Rental for July	\$5,000
Advance rental or August	\$5,000
+ Deposit equivalent to rental of two terms	\$10,000
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	<u>\$20,000</u>

Can the rental be increased as the landlord likes?

No. The landlord shall be obliged to follow the terms of the tenancy agreement or subsequent mutual agreement to adjust rental. If it does not include any clause on rental increase in the tenancy agreement, the landlord must first obtain consent from the tenant before rental can be increased during the effective period of the tenancy agreement.

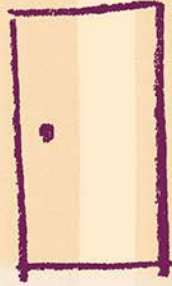
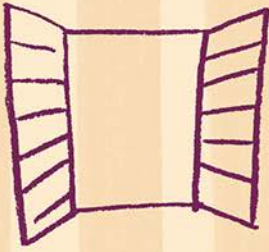
What would be the consequence to the tenant who defers payment of rental?

In case of deferring payment of rental exceeding 8 days, the landlord can require the tenant to pay an extra equal to half of the outstanding rental as compensation. For example, if the tenant delays for 8 days counting from 1st July to make payment of rental of \$5,000 for the current month, then the landlord has the right to collect \$7,500 from the tenant on 10th July, namely:

Rental for July	\$5,000
+ Compensation equal to rental of half month	\$2,500
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	<u>\$7,500</u>

In case of deferring payment of rental exceeding 30 days, the landlord has the right to collect from the tenant double of the outstanding rental.





The landlord may also take the case to court for litigation of dissolving the tenancy on grounds of rental deferment, but compensation mentioned above cannot be imposed at the same time.

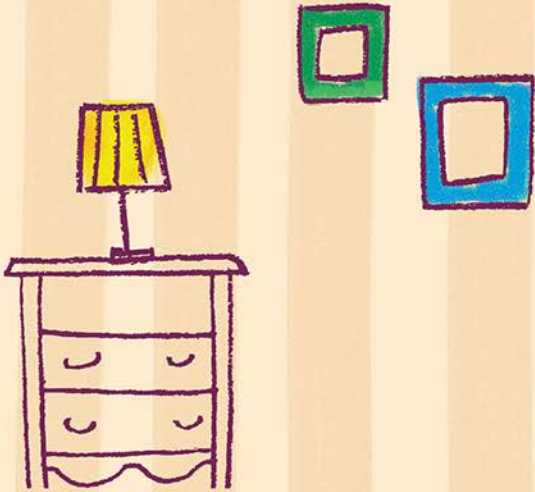
The litigation will be terminated when the tenant pays up the outstanding rental and compensation before pleading, and the tenancy will remain effective. Otherwise, if the tenant does not fully pay up the mentioned amount, the litigation will go on. The court may order dissolution of the tenancy and evacuation. When the tenant refuses to return the property, the landlord may apply to the court for an "Evacuation Order" to carry out the judgment of evacuation by order.



Must a new agreement be signed on expiry of a tenancy?

On expiry of a tenancy, it will automatically be extended when neither of the parties asks for termination of the tenancy according to the law (Please see "How to terminate a tenancy?" on the reverse side of this page.).

The renewal term shall be equal to that of the tenancy agreement. For example, if the term of the tenancy is 6 months, then the renewal term shall be 6 month; but if the tenancy term exceeds one year, say 2 years, then the renewal term cannot exceed one year unless it is otherwise agreed.

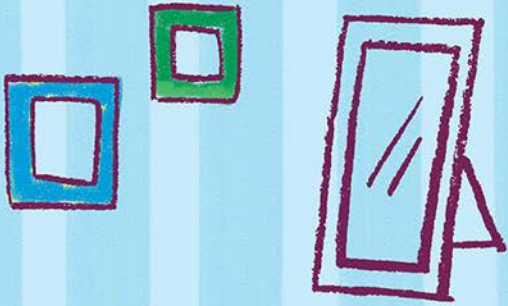


Who is responsible for repair and maintenance of the rented property?

The normal repair and maintenance of the rented property is the responsibility of the landlord. Furthermore, both parties are required to take up the following duties:

1. For his/her own comfort, the tenant may cause mild damage to the property, such as installation of air-conditioner. On returning, the tenant shall repair the property or reinstate the property to its previous conditions.
2. In case there are problems with the property in terms of its quality or its effective use, such as leakage or serious blockage of the sewer, and these defects exist when the landlord releases the property, the landlord shall be responsible for repair, otherwise the tenant has the legal right to terminate the tenancy.

Under emergency situation and the landlord does not carry out the repair immediately, the tenant has the legal right to carry out the repair and require the landlord to pay for the expense. If the landlord does not pay for the expense, the tenant may deduct the repair expense and legal interest from the rental, but the deduction amount shall not exceed 70% of the monthly rental.



How to terminate a tenancy?

The termination of a tenancy shall be made by means of mutual agreement, dissolution by either of the parties, invalidation, unilateral annulment or unilateral termination. The tenancy can be terminated as a consequence of any of the following situations:

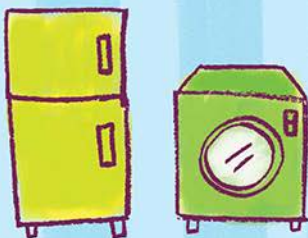
1. Termination by Agreement

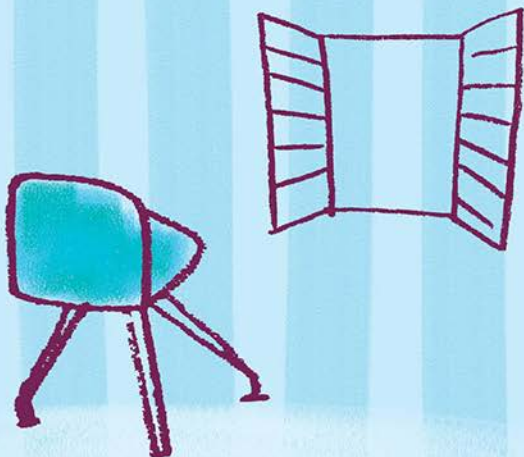
When termination is proposed by one party and there is no objection from the other party, a tenancy may be terminated at any time regardless of the expiry date of the tenancy. The termination agreement can be verbal or written. But if the termination is not executed immediately, or there are compensation clause or other additional clauses included, then it shall be made in writing.

2. Dissolution of Tenancy

(1) The landlord may dissolve a tenancy under these circumstances: the tenant does not pay the rental at the appropriate time and place; the tenant puts the property to illegal use; the tenant carries out alteration work without prior consent of the landlord; the tenant sub-lets or lends the whole or part of the property without prior consent of the landlord; the tenant puts the property to use other than the original use, for example, turning a residence into an office or a workshop.

Dissolution of tenancy initiated by the landlord shall be made in the court and by the order of the court.





- (2) The law provides for various situations under which the tenant may dissolve a tenancy: the original use of the property cannot be enjoyed by the tenant, for example, water leaking from the wall of the property and affecting habitation; the property contains or subsequently contains problem endangering the tenant, for example, a building structural problem arises.

Dissolution of tenancy initiated by the tenant does not require prior notice or compensation to the landlord even when the tenancy does not expire yet.

3. Invalidation of Tenancy

A tenancy may become invalid under the following circumstances: death of the tenant (except for continual occupancy of the property by the tenant's family), the tenant being a legal person* but no longer in existence, and the property to be expropriated for public use, etc.

*Company or society incorporated by law.

4. Unilateral Annulment by Tenant

In the case of a tenancy for residential purposes, the tenant has the right to terminate it before the expiry date but he/she has to give notice in writing to the landlord at least 90 days in advance. If a shorter notice period is provided in the tenancy agreement (for instance, 30 days), termination notice may be made accordingly. Under this circumstance, the landlord has the right to receive one month's rent as compensation.

The two parties can made prior agreement on compensation, but the landlord can only be compensated with the maximum amount equal to 2-month rental.

5. Unilateral Termination

In principle, the landlord does not have the right to propose unilateral termination of the tenancy within 2 years from the start to the expiry of a tenancy or an extension of the tenancy; the tenant is not bound by this 2-year restriction.

When either of the parties does not wish to extend a tenancy after expiry of the agreement, he/she shall notify the other party in writing and in advance no less than the time required by law.

Period of Tenancy or Renewal	Time of Advance Notice by Law
Below 3 months	1/3 of the tenancy period
3 months to less than 1 year	30 days
1 year to less than 6 years	90 days
6 years or above	180 days

Simple terminology is being used in this leaflet for easy understanding. For exact legal terms and details, please refer to relevant laws.



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