

TAKE-1

Early Lease Termination for Servicemembers and Dependents

1. Q. I am an active duty SM and I have signed a lease for quarters in North Carolina for a twelve month period. There are six months left on the lease. Are there any laws that allow me to terminate the lease early and avoid paying rent for the rest of the lease term?

Whether you can get out of the lease early depends on the reason for termination. The Servicemembers' Civil Relief Act (SCRA), a federal law, allows for early termination in three instances:

- The servicemember (SM) entered the lease before active duty service;
- The SM entered the lease while on active duty and then received permanent change of station orders; or
- The SM entered the lease while on active duty and then received orders to deploy in support of a military operation in excess of 90 days.

2. Q. Are there any other laws that protect SM tenants and allow early lease termination?

Yes. In 2005, North Carolina passed an amendment to North Carolina general Statute 42-45. It was amended again in 2012. This statute now allows for early lease termination in the following cases:

- The SM tenant receives permanent change of station orders to depart 50 miles or more from the location of his current dwelling;
- The SM tenant is "prematurely or involuntarily released or discharged from active duty with the United States Armed Forces;
- The SM tenant is deployed for 90 days or more; or
- The SM tenant dies while on active duty. Termination of SM's lease obligations also terminates lease obligations of co-tenants who are immediate family members.

3. Q. These laws sound pretty similar. Which one should I use to terminate my lease?

In some cases, only one of these laws will apply. For example, only the North Carolina law will apply when the SM dies on active duty. On the other hand, only the SCRA will apply to leases entered into prior to military service. However, in many cases, such as when the SM receives

PCS or deployment orders, both laws will apply. In such cases, you should use whichever law is most favorable to you under the facts of your case. You are entitled to the protection of both.

While the SCRA and North Carolina law have a great deal of similarity, there are subtle differences that can significantly affect how much rent you have to pay before you terminate your lease. Generally, if you have been in your lease for less than nine months, the SCRA will be more favorable. How much you have to pay depends on the effective date of lease termination and liquidated damages.

4. Q. When is the effective date of lease termination under the SCRA?

Under the SCRA, lease termination is effective 30 days after the next rental payment is due after the landlord receive notice of intent to terminate. For example, let's say that your monthly rent is due on the fifth day of the month and you deliver proper notice of termination to your landlord on April 28th. Your lease terminates, and your obligation to pay rent terminates, 30 days after May 5th.

5. Q. When is the effective date of lease termination under the North Carolina law?

Under NC Gen Stat 42-45, as amended, your lease terminates 30 days after the next rental payment is due after the landlord receives notice of intent to terminate OR 45 days after that receipt of notice, whichever is shorter. For example, let's say that your rent is due on the 5th day of the month. You provide proper notice to terminate on April 6th. Your lease terminates 30 days after May 5th or 45 days after April 6th, whichever comes first. In this case, 45 days after the April 6th notice is shorter and that is the effective date of lease termination. However, if you terminate under this North Carolina law, you may also be required to pay liquidated damages.

6. Q. What are "liquidated damages"?

"Liquidated damages" means a set dollar amount which is ordinarily an estimate of the dollar value of the harm that will be caused if a party to a contract breached (that is, fails to comply with the promises made in that contract). The parties agree that if such a breach occurs, the breaching party must pay the agreed liquidated damages amount. However, in the case of North Carolina residential leases, the requirement to pay liquidated damages, as well as the amount, is set by statute rather than agreement by the parties. Thus, if you terminate your lease using the North Carolina military lease termination law, you may be required to pay rent through the effective date of lease termination and you may also be required to pay the applicable liquidated damages amount.

7. Q. When would I have to pay liquidated damages?

The answer depends on which statute you use to terminate your lease and how long you have been in your lease prior to termination. If you terminate your lease under the SCRA, you cannot be required to pay any liquidated damages. You must pay rent through the effective date of lease termination but there are no further charges resulting from early termination.

If you terminate your lease under the North Carolina military early lease termination law, you will be required to pay rent through the effective date of lease termination. In addition, you may be required to pay liquidated damages if you have completed less than nine months of the tenancy. If you have completed less than six months of the tenancy, the maximum liquidated damage amount is one month's rent. If you have completed at least six months of your tenancy but less than nine months, the maximum liquidated damages amount is half of a month's rent.

8. Q. It sounds like I always have to pay more under North Carolina law. Is there any circumstance in which both of the laws apply and I would want to use the North Carolina law rather than the SCRA to terminate my lease?

Yes. The North Carolina law will result in less expensive termination when you have been in your lease for nine months or more and you deliver notice to terminate more than fifteen days before the next rental payment is due.

For example, let's say that you have been in your lease for nine months and the next rental payment is due April 5th. On March 6th you decide to deliver notice of intent to terminate. Under the SCRA, the effective date of lease termination is 30 days after April 5th. You will wind up paying two months' rent. Under the North Carolina law, the termination date is 45 days after delivery of the notice. (Remember, under the NC law, termination is 30 days after the next rental payment is due or 45 days after delivery of the notice, whichever comes first). Since you have been in the lease for at least nine months, there are no liquidated damages. Thus, in this scenario, you wind up paying 45 days rent under the North Carolina law and two months' rent under the SCRA.

9. Q. What if the landlord quickly re-rents my residence to another tenant? What is the effect on liquidated damages?

The landlord is not entitled to liquidated damages when a tenant terminates the lease under the SCRA. Even under North Carolina law, the landlord is not entitled to liquidated damages unless there are actual damages; that is, despite reasonable efforts, the landlord is unable to re-rent the premises. Thus, for example, if the landlord rents the residence two days after you terminate your lease, the liquidated damages to compensate for unpaid rent may not be greater than two days' rent.

10. Q. What kind of notice must I provide to the landlord?

Except in cases of death of the active duty SM, the notice requirements of both statutes are the same. You must provide written notice and a copy of your military orders to the landlord. Or, instead of military orders, you can provide a letter from your commanding officer verifying the reason that you are terminating the lease (e.g., that you received PCS orders, that you have been involuntarily or prematurely released or discharged from active duty, or that you have been ordered to deploy in excess of 90 days.)

If a SM dies on active duty, an immediate family member or the lawful representative of SM's estate (such as the executor or administrator of the estate) can terminate the lease by delivery of written notice of intent to terminate the lease and a copy of the death certificate, official military personnel casualty report, or letter from the commanding officer verifying the SM's death.

11. Q. What about civilian spouses who sign the lease? Are their obligations terminated as well?

The North Carolina statute was passed to assist SMs whose military duties cause them to leave the area. Logically, therefore, termination by the SM terminates the spouse's obligation as well. In the case of a SM's death, the statute specifically says that termination of the deceased's lease obligation also terminates the lease obligations of co-tenant family members. In all other cases, the North Carolina statute does not specifically address the issue of the termination of dependent lease obligations by reason of termination of SM lease obligations.

The SCRA, on the other hand, makes it very clear that termination by the SM-tenant terminates the lease obligations of the spouse and any other military dependent who may have signed the lease as well.

12. Q. What if my spouse signed the lease but I did not? Can my civilian spouse use the SCRA to terminate the lease?

If the spouse signed the lease on behalf of the SM (such as by using a power of attorney), then the lease is covered to the same extent as if the SM signed the lease. However, if the civilian spouse signed the lease in his/ her own capacity and the SM did not, there is no protection under either statute.

13. Q. My lease has a military clause that addresses early lease termination. What effect does that clause have on my ability to terminate early?

Some leases may contain a so-called "military clause." Such a clause states the circumstances under which a SM can terminate a lease prior to the expiration of the lease term. Many of them attempt to explain the law but get it wrong because they fail to take into consideration the SCRA and / or they misstate the state law. In any event, under the law, the lease can give you more lease termination rights than you would otherwise have under these statutes but they cannot give you less. Any lease provision that affords you with less protection than you are given under the SCRA or the North Carolina statute is void.

14. Q. Is there any way that the landlord can make me waive, or give up, my right to early lease termination?

The North Carolina specifically says that its protections cannot be waived or modified by agreement by the parties under any circumstances.

SCRA lease termination rights may be waived, but to be legally effective, the waiver must comply with certain requirements.

- The waiver must be in writing;
- The waiver must be on a document separate from the lease;
- The waiver must be signed by the SM;
- The waiver must specify the legal instrument (e.g., the lease) to which it applies; and
- The waiver must be in at least 12 point font.

15. Q. What happens if neither the SCRA nor the North Carolina lease termination statutes applies to my case?

If neither of these military lease termination statutes applies, there still may be some special circumstance addressed by North Carolina law that allows for early termination of your lease. These special circumstances include serious damage to the premises not caused by the tenant, foreclosure on the rented premises, or the tenant being the victim of sexual assault, stalking, or domestic violence.

16. Q. Can I terminate my lease early if the premises are seriously damaged by flood or hurricane or some other event not caused by the tenant?

North Carolina General Statute 42-12 provides that if the rental residence is damaged so badly that it cannot be made reasonably fit, except at a cost in excess of one year's rent, the tenant may terminate the lease without penalty. However, the tenant must pay the landlord rent up to the time of the damage and must notify the landlord of intent to terminate *in writing and within ten days* of the damage. Read the lease carefully. This provision of the law only applies if the lease does not contain some other arrangement concerning destruction of the premises. Many of them do.

17. Q. What are the rules about lease termination of foreclosed property?

The person who owns the rental property - your landlord - probably took out a special kind of loan with a mortgage to buy it. If the landlord fails to make timely monthly payments to the lender, the lender can take legal action to repossess the property. This legal action is called foreclosure. If the tenant lives in property containing less than 15 units that is being foreclosed on, and receives written, legal notice of foreclosure, that tenant can terminate the lease early. To do so, the tenant must provide the landlord with written notice of intent to terminate. The notice must state the intended date of termination and that date must be at least ten days after the date of the notice of sale. The tenant is liable to pay rent up only through the effective date of lease termination. There are no liquidated damages or other penalties imposed on the tenant for lease termination under this statute.

18. Q. What are the rules about lease termination and sexual assault, stalking, and domestic violence?

A tenant who is the victim of domestic violence, sexual assault, or stalking can terminate the lease early, but only by providing the landlord with written notice of intent to terminate the lease. The notice must state the intended date of termination and that date must be at least 30 days after the landlord receives the notice. The tenant is liable to pay rent through the effective date of termination. There are no liquidated damages or other penalties imposed on the tenant for lease termination under this statute. However, there are other documents that the tenant must provide to the landlord to terminate the lease under this statute. The tenant must provide one of the following: (a) a domestic violence protection order issued by a North Carolina court under Chapter 50B or 50C of the North Carolina General Statutes, (b) a criminal order restraining a person from contact with the tenant, or (c) an Address Confidentiality Program card issued under North Carolina General Statute 15C-4. Finally, victims of domestic violence or sexual assault must provide the landlord with a copy of a safety plan provided by a sexual assault / domestic violence program that recommends relocation of the tenant.

19. Q. What if none of the early lease termination laws described above applies?

If none of these lease termination statutes applies, you should review the lease to see if it gives you any special lease termination rights. Since leases are typically written entirely by landlords, chances are the lease won't contain any special protections, but it's worth checking out. Assuming that none of the lease termination statutes applies and there is no special lease termination right provided in the lease, then you are bound by the terms of the lease contract. If you leave early in breach of the lease, the landlord is entitled to damages you caused as a result of the breach. These damages include the loss of rent due to any vacancy of the premises during the lease term. The landlord must take reasonable steps to mitigate the damages, that is, to re-rent the premises. The landlord may withhold the security deposit to satisfy these damages and may also sue you for any additional damages not covered by the security deposit.

20. Q. My landlord claims that I caused physical damage to the residence and is therefore withholding my security deposit and threatening to sue me for the cost of fixing the damage in excess of the security deposit. Is that legal?

This article addresses only a certain kind of damage, loss of rent due to early termination of the lease. A landlord is also entitled to compensation for the tenant's destruction or physical damage to the premises beyond ordinary wear and tear. The rules concerning such physical damage are beyond the scope of this article.

21. Q. What if I have other questions about lease termination or to other rights as a tenant?

Contact a private attorney or your military legal assistance office. In either case, when you meet with a lawyer make sure to bring a copy of you lease, any eviction notice, and any other pertinent documents, photos, or records. These records can help your attorney to advise you.

(Rev 10-29-12; written by Major Michael Archer, USMC-Ret)

The TAKE-1 series of client handouts I a project of the North Carolina State Bar's Standing Committee on Legal Assistance for Military Personnel. For comments or corrections, contact Committee member Mark E. Sullivan at: Mark.Sullivan@ncfamilylaw.com or at 2626 Glenwood Ave. #195, Raleigh, NC 27608 [919-832-8507].