

## End of the (in)Line – Lease Termination Agreements and Why You Need One

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When a lease term ends, whether by expiration, default, or mutual agreement, the tenant is obviously expected to vacate the premises. Commercial leases will almost always contain language regarding the condition in which the premises must be returned to the landlord. For example, the lease may require that the premises be left in substantially the same condition that existed at the commencement of the lease, in good working order and repair, or in broom-clean condition.

However, the lease may not specifically address key terms such as the return of a security deposit, removal of tenant-financed alterations, payment of remaining charges, or liability for any damages caused to the property. Depending on the robustness of the lease, where some of these questions are left unanswered, a lease termination agreement is recommended.

The goal of a lease termination agreement is to provide definitive resolution of all open issues. Lease termination agreements typically include:

- If prior to the expiration of the lease term, any compensation paid to landlord in exchange for early termination;
- Establishment of the date when obligations under the lease will cease and the lease will terminate;
- Establishment of the date tenant will surrender the premises;
- The parties' termination responsibilities, such as cancellation of utilities, cleaning of space, and removal of alterations, antennas, advertising, or signage;
- Itemization of any termination fees;
- Itemization of any unpaid charges, such as prorated rent, maintenance fees, taxes, or utilities (the latter two of which are not usually billed on a monthly basis);
- Conditions to the return of tenant's security deposit;
- Provisions for showing the premises to possible tenants prior to the end of the lease term;
- A mutual release of liability; and
- A process for landlord to assess any damages that may occur during move out (which will typically be deducted from the security deposit).

Depending on the parties' relationship at termination, one or both parties may also wish to include confidentiality and non-disparagement provisions. Such provisions will protect the landlord from disclosure of confidential lease terms to other potential tenants and protect the tenant from any negative comments by the landlord to others.

Drafted correctly, a lease termination agreement helps the landlord and tenant avoid later misunderstandings or disputes. It provides the parties with peace of mind that their relationship is concluded and that they will not have to revisit old issues months or even years after going their separate ways.

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