Early termination fees  
What does it mean for you?

We all know about the Tenant Fees Act (the Act) and supporting Guidance which tells us what fees we can charge tenants and what fees are not permitted, in any circumstances.

This guide looks at the approach we should all take when a tenant wants to leave the property before the end of the fixed term, or without the landlords’ permission. What should you think about when looking to charge early termination fees? Can you support these charges with evidence and are they reasonable? In the event of a formal dispute, an adjudicator will decide if all these steps below have been followed and the claim for costs is reasonable.

In every situation, where a tenant asks to leave the property before the end of the fixed term, remind them, in writing, of their contractual responsibilities and what the consequences are of breaking the contract before the end date.

TIP: point out the tenancy agreement clause

The key to applying early termination fees is to consider the different relationships involved; namely between landlord/agent and landlord/tenant, before looking at the evidence requirements to prove:

1. The agent's reasonable costs to re-let the property, on behalf of the landlord
2. The landlord's financial losses, as a result of the tenant leaving early

What is good evidence to support reasonable re-letting costs?

To support a claim, you should expect to provide evidence that the tenant:

a. asked to end the tenancy early, and was reminded of their contractual responsibility for costs as listed in the tenancy agreement
b. was given clear information of what costs they would be responsible for, in the event they chose to still move out before the tenancy end date

TIP: providing a calculation leaves no questions unanswered

c. has caused the agent to spend time and money for things such as remarketing, advertising, referencing and inspection reports. Invoices will be necessary to prove the expense

Can early termination fees apply if the tenant doesn’t move in?

A tenant who signs the tenancy agreement should be aware that it is usually binding and there is no ‘cooling off’ period if they then decide not to move in. The tenant will still need to ask to end the tenancy early and could be responsible for reasonable re-letting costs. The agent/landlord will still have to provide the same supporting evidence, listed above.
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What is good evidence to support a landlord’s financial losses?

Where the tenancy has started and a tenant chooses to leave early, it is likely that the landlord will incur costs for setting up the second tenancy, including commission for finding the second tenant, and look to recover these from the departing tenant’s deposit.

TIP: Any claim must only be for the actual loss, and no more. Any loss should not exceed the rent payable for the remainder of the fixed term or any notice period, taking into account any break clause.

Commission may have been paid by the landlord for the tenant who has left and then again for finding a replacement tenant. In the case of commission claims, the loss will only occur at the point the second commission is paid, at which point the remaining portion of the first tenancy can be calculated. In these cases expect to provide evidence of the:

a. tenant’s written request to end the tenancy early, before the fixed end date which either:
   a. the landlord agreed to, and provided the tenant with a working example of how the outstanding commission would be calculated OR
   b. that the tenant did not wait for agent/landlord to accept the request
b. tenancy agreement showing the relevant clause
c. commission paid by the landlord to the agent for the first tenancy
d. commission paid by the landlord to the agent in relation to the incoming tenant, which will show that the landlord has, in effect, paid twice during the same tenancy
e. invoice showing at least the first months’ commission was paid or deducted, and evidence of the agreement in place between the agent and landlord, where the landlord is paying commission monthly, or it is being taken from the tenant’s rent payments

This guidance document has been produced jointly with Tenancy Deposit Scheme and MyDeposits.