

Disaster Legal Assistance – Renter’s Rights

Q: Can I get out of my lease if my home is damaged and what happens to prepaid rent and my security deposit?

Yes, if any part of the rental that is necessary for enjoyment and use of the unit is rendered partially or wholly unusable by fire or other casualty (that wasn’t your fault) you may leave (‘quit’) the unit. However, for the lease to in fact end, either you must notify your landlord of your intent to quit, or your landlord must otherwise know of the damage that made all or part of the unit impossible to occupy. (H.R.S. Sect. 521-65)

The statute states you should notify your landlord within one week after you quit. However, it is best to notify the landlord immediately and keep a record of the notification because, you may be held liable for rent up to the date you notify the landlord of your intent to quit.

If part of the unit is made unusable, but the rest is legally habitable, you can also quit the damaged part, and then be liable for rent only for the usable part. But again, you need to notify your landlord.

If the lease is terminated because the property cannot be occupied the landlord shall return to the tenant, not later than fourteen days after the termination, the amount of any advance rent paid and the amount of any security deposit that the landlord is not authorized to retain pursuant the landlord-tenant code.

The following questions apply to properties that were not destroyed/damaged.

Q: Can my landlord cancel my month-to-month lease to re-rent it at a higher price?

No. The Governor's 11th emergency proclamation prohibits landlords from terminating existing rental agreements on the island of Maui. However, there are certain exceptions. A landlord may terminate a lease only if 1) the tenant commits a breach of a material term of the rental lease (other than nonpayment of rent), 2) the home is unfit for occupancy (*see next paragraph), 3) the landlord or their immediate family intend to occupy the property (**see second paragraph, below), or 4) the property has been sold to a bona fide purchaser. This ban against termination is in effect at least until July 2, 2024, but may be further extended.

*"Unfit for occupancy" means that a residential dwelling unit has been damaged to the extent that the appropriate county agency determines that the unit creates a dangerous or unsanitary situation and is dangerous to the occupants or to the neighborhood. (H.R.S. §127A-30(f))

**The 11th Proclamation provides additional protections for tenants when a landlord attempts to terminate a month-to-month rental agreement based on a claim that the landlord or a family member will move into the unit. In this situation, the landlord now must file with the County of Maui, Department of Housing and Human Concerns, an affidavit meeting these requirements:

- a) The affidavit must
 - i) name the family member who will move into the rental unit,
 - ii) state their relation to the landlord,
 - iii) describe in detail the reason the landlord or family member will occupy the unit,
 - iv) affirmatively state that the landlord or family member is not receiving funds from the State, federal government, or private entity to house wildfire survivors in other properties that they own, and
 - v) be signed by the landlord, under penalty of perjury.
- b) The landlord must file the affidavit with the County of Maui on the same day they notify the tenant of the tenancy's termination; and
- c) The affidavit must be on a form provided by the County of Maui, Department of Housing and Human Concerns.

However, the ban against termination of leases does not extend fixed-term leases that expire during this proclamation period, so if a tenant's long-term lease expires the landlord is not required to extend the lease. (HRS Sect. 521-71(e)) If a tenant then stays in the unit beyond the end of the fixed-term lease, the tenant is considered a holdover, and the landlord may seek double rent for the holdover period. The landlord may also, within 60 days, pursue a Summary Possession action in court, to take possession of the rental unit. If the landlord does not file the action within the first 60 days, then the lease changes to a month-to-month tenancy at the same monthly rent as applied under the original lease.

Q: Can my landlord increase my rent?

Probably not. The Proclamation generally prohibits rent increases. However, it also states that the prices on residential dwellings may not exceed the regular prices in effect on August 9, 2023, unless authorized by law or by a Proclamation. Exceptions to this prohibition allow a rent increase only if it falls under one of these exceptions:

1. The rent increase was already written into a lease signed by the tenant prior to August 8, 2023. In this case the landlord may apply the increase written into the lease;
2. If the rental unit is part of an affordable housing project and the increase is allowed under the regulations that control the project; or
3. Additional operating expenses incurred by the landlord, and which can be documented, may be passed on to the tenant.

Q: What if my landlord attempts to raise my rent or terminate my month-to-month tenancy?

There are very strict requirements a landlord must follow if they seek to terminate your month-to-month tenancy. First, they must give you prior notice of such termination. The notice must be in writing and contain the elements outlined above. If you receive a notice of termination, you may call the Legal Aid Society of Hawaii's intake hotline at 1-800-499-4302 to see if you qualify for assistance.

Q: What would happen if I lost my job due to the disaster and can't pay rent?

First, it is important to know that the Proclamations state that a landlord may not terminate a lease on Maui because of a tenant's failure to pay all or any portion of the rent or lease, maintenance fees, utility charges, taxes or other fees required by the rental agreement or lease. However, it is also important to note that even if you aren't able to pay your full rent, any portion that is not paid may become a debt to the landlord that the landlord may be able to pursue after the Proclamations are no longer in effect.

You may be able to receive financial assistance through Unemployment benefits or Disaster Unemployment Benefits. Visit huiclaims.hawaii.gov or call 808-984-8400 to apply for unemployment insurance benefits.

Q: Is there a grace period for paying rent?

The prohibition against evictions due to non-payment of rent (or other fees, etc.) works as a grace period, which will last so long as that provision of the Proclamation remains in effect. There is no grace period written into Hawaii's Landlord/Tenant Code. However, many landlords permit a certain number of days beyond the due date to pay rent without penalty and many rental agreements include such a provision. A tenant should read their lease to see if it includes a grace period. If no grace period is stated in the lease, rent is due on the due date.

Q: Can I be evicted for nonpayment of rent?

No. The Governor's emergency Proclamations prohibit evictions for nonpayment of rent, maintenance, utility, or other fees on the island of Maui during the proclamation period. This prohibition is currently in effect through July 2, 2024. If you receive court papers related to an eviction, with a hearing date, for nonpayment of rent or any other reason, you should still attend court on the hearing date and raise the proclamation moratorium as a defense.

A landlord may still terminate a fixed-term lease when it expires or evict tenants for certain breaches of a lease agreement, or for other exceptions discussed above.

Q: How much notice must be given by the landlord or tenant to terminate a tenancy at the expiration of a lease? To increase rent after the expiration of the lease?

No notice is required in either case. A lease is a contract for a set period at a set rate. In order to continue the tenancy beyond the expiration of the lease, new terms would have to be negotiated. However, some leases include language that allow the parties to extend the lease under certain circumstances. You should read your lease carefully to see if it contains such a provision.

It is recommended that well before a lease expires either the landlord or tenant advise the other of their intention to continue or terminate the agreement after its expiration. This will help the parties to avoid misunderstanding and unnecessary problems. This applies equally to changing the amount of rent to be paid.

If the landlord wishes to terminate the tenancy, and the lease does not contain a provision that allows the tenant to extend the lease, the tenant must vacate the unit by the date the lease expires. Unless the lease contains language automatically converting the agreement to a month-to-month tenancy, the tenant will be subject to eviction if they do not vacate by the end of the lease term.

Q: Can my landlord make me move out immediately if I can still live in the home?

No. Before your landlord can evict you (make you move out) they must pursue a Summary Possession action in court. In addition, as long as an emergency proclamation remains in effect from the fires, a landlord's rights to evict you are limited, and if their landlord tries to evict you, you should immediately review those limitations and/or seek legal advice.

If you have a valid lease your landlord must notify you in writing of the reason for any eviction. When an emergency proclamation is not in effect Hawai'i law sets the following timelines for a landlord to provide notice. The following specific number of days are required to give the tenant time to respond:

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| Non-payment of rent: | 5 business days (Does not apply during Proclamation!) |
| Lease violation: | 10 days (See next paragraph) |
| Month-to-month lease: | 45 days |

If you fail to fix the violation stated in a 10-day notice, your landlord can file a complaint for Summary Possession in court to start the eviction process. However, as discussed above, certain lease terminations are prohibited during the emergency proclamation period. These include terminations of month-to-month lease (with limited exceptions) and terminations for nonpayment of rent.

If you are served with a complaint, make sure you do not miss your court date. You want to be able to tell the judge your side of the story. You can represent yourself or call Legal Aid for advice and/or assistance if you qualify.

Q: Can my landlord change the locks or turn off my utilities?

No. It is illegal in Hawai'i for a landlord to use 'self-help' to make a tenant move out. They cannot change the locks, turn off utilities, block access to the rental unit, or otherwise try to evict you except through a court action. Self-help is prohibited in Hawai'i.

Q: What happens to my possessions if I abandon the property?

The landlord may sell the abandoned possessions in a commercially responsible manner, or store the possessions at the tenant's expense, or donate the possessions to a charitable organization.

Before selling or donating the possessions, the landlord must mail a notice of his or her intent to sell or donate the possessions to the tenant at the tenant's forwarding or last known address and allow at least 15 days before the property is disposed of. In addition, after the 15-day notification, and before selling the possessions, the landlord must advertise the sale in a daily paper of general circulation for at least three consecutive days.

The proceeds of the sale of possessions shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for 30 days, after which time the proceeds shall be forfeited to the landlord.