

## D.C. Students seeking to terminate lease after school shut-down

This document is for informational purposes only and does not constitute legal advice. OTA recommends that you seek the advice of an attorney to resolve your dispute with your landlord.

### \* \* \* Question:

I'm a student living in a rental unit in D.C. and attending a school that has suspended on-campus classes as a result of the Coronavirus pandemic. Does the law allow me to end my lease early or do I have to continue paying rent here until my lease expires?

### Response:

D.C. law generally requires you to continue paying rent until your lease expires, unless you and your landlord agree to end your lease early. There is, however, one exception that might relieve you of your responsibility:

a contract law concept called "**frustration of purpose**," which allows your obligation to perform under a contract to be discharged if the purpose for which you entered into the contract no longer exists. The courts set a very high bar for this type of claim to succeed. Nevertheless the concept may apply to you if you (1) moved into a rental unit in the District; (2) in order to physically attend classes at a local school; (3) which has suspended in-person classes; and (4) your ability to attend on-campus classes was a "basic assumption" of your lease. Essentially you would have to show that your landlord understood that you would not have entered into the lease in the first place, "but for" your ability to attend those on-campus classes.

### How Likely am I to win such a claim?

We're not sure, because there is no legal precedent for this exact scenario in the District, although we suspect that this exception will succeed in only the rarest of circumstances, especially since you carry the burden to prove your case. The factors that are likely to determine the outcome of your case include:

1. Your place of residence before and after your attendance at your school:  
If you're a lifelong D.C. resident who just happens to also go to school here, you're not likely to win a frustration of purpose claim. If, on the other hand, you lived in another state (maybe with your family), moved here for the express purpose of attending a D.C. school, and are planning on moving back home after your school is finished, you're more likely to succeed.
2. What your landlord knew about your reason for renting the unit:  
If you signed a lease without telling your landlord that you're a student, it will be almost impossible for you to prove your case. The more your landlord knew (prior to signing your lease) about your reasons for renting the unit, the more likely you are to succeed. It's helpful if you found your landlord through an on-campus advertisement, and the ideal scenario is if you have written communication about your intent to use your unit to attend school, especially if there are references in your lease.
3. How useless your rental unit has become to you:  
From a legal standpoint, the more useless your D.C. rental has become to you, the stronger your case will be. If your school closed and does not offer online courses or the equivalent, you have the strongest case. If you're still able to attend classes online, your landlord may argue that you can still

use your rental unit to study online and complete your semester. Your counter-argument would be that you rented the particular unit to be located close enough to the school to be able to physically attend it – after all if you wanted to take online courses you could have stayed at home and done so. The length of your remaining tenancy may also be considered here. The closer you are to the end of your tenancy, the weaker your case will be, since you have already received a substantial amount of what you bargained for.

### So, what should I do?

You generally have four options in this type of scenario:

1. Continue paying rent until the end of your lease.

Regardless of whether you remain at your rental unit or vacate, paying your rent until the end of your lease period is the safest option and exposes you to the least amount of potential liability. Of course, it may also be the least desirable option and the one that causes you the most economic hardship.

2. File a lawsuit to ask a judge to terminate your lease.

Filing a court action may result in a judge issuing an order to terminate your lease based on your frustration of purpose claim. Unfortunately, it will take months before you're able to be heard on this matter, because D.C. courts are not scheduling non-emergency hearings (as this type of claim would be) until after May 15, 2020 at the earliest. Even then, this option is not likely to end in a satisfactory resolution for you, since you'll have to continue paying your rent without any guarantee of having it refunded to you.

3. Try to work something out with your landlord

This option may be the most advantageous – especially if your landlord is amenable to a compromise. You may end up forfeiting your security deposit or agreeing to pay a portion of the remaining rent due, in exchange for a mutual agreement to end your lease early.

If you choose this option, be sure to have your entire agreement reduced to writing and signed by both parties.

4. Notify your landlord that you plan on vacating the premises and ending your lease early, and then leave – regardless of how your landlord responds.

Clearly this is the riskiest option, as you expose yourself to the liability of being sued for non-payment of rent. Your landlord is likely to withhold your security deposit and may sue you for more if there is more than one month remaining on your lease. While your landlord does have a duty to mitigate his/her damages by attempting to rent the apartment to someone else, given the current social distancing guidelines it may be highly unlikely to find a new tenant anytime soon.

\* \* We do not recommend this option, as it exposes you to the most liability and may result in negative ramifications such as a judgment on your personal / rental history and a negative rental reference. \* \*

### What about my security deposit?

What happens to your security deposit depends on which of the above paths you choose. Generally your landlord must return your security deposit to you within 45 days of you vacating the premises, but may withhold all or part of the security deposit if you cause damage to the property beyond ordinary wear and tear or you violate another obligation of your tenancy (such as paying rent).

If you choose option 1 or 2, your landlord must return your security deposit to you as described above. If you choose option 3, you and your landlord should agree on what happens to your security deposit as part of your overall agreement.

If you choose option 4, your landlord will likely keep your security deposit, and you'll have to sue to recover it.

Will OTA represent me if I go to court?

Due to the large number of tenants affected by the recent school closings, and OTA's limited staff and resources, we cannot guarantee legal representation to any individual litigant.