

## Introduction

Termination and default are important concepts in any lease agreement. In a farm lease, the word termination can refer to two events. One is when the lease has come to its intended end date; it has concluded or expired. The other is when the lease stops before its end date according to terms spelled out in the lease. Default is the failure of a party to abide by or carry out their lease obligations or for violating a provision in the lease. Either party can default, although more common events of default fall on the farmer-tenant.

As explained below, a lease should allow for either party to “remedy” or “cure” the default before actions to terminate are triggered. It should also include a clause on dispute resolution wherein a process is set forth to address a case of default. The parties will be held to that process before going to court.

## Termination, the End of the Lease

**Be clear about the terms for termination.** A lease should have clear language about the tenant’s exit when a lease terminates because it has “run its course”—that is, reached the end of the term (its end date). It should specify at minimum the manner in which the property is to be vacated by the tenant, the condition in which the property is to be left (including what must or may be taken or left behind), and the time period for vacating

the property. A lease will automatically terminate at the end of the lease term unless the parties agree to renew or extend the lease. See [The Term Fact Sheet](#).

The lease should also specify the procedure for notifying the other party. How much lead time is reasonable to let a landlord know the farmer is leaving? What’s a reasonable notice for a tenant to prepare to vacate the leasehold? In any case, the notice should be in writing.

## Default by Either Party

**Understand what constitutes default and how it is handled in the lease.** The parties should be sure of their ability and intention to perform as agreed in order to avoid default. Default is coupled with termination because most leases will specify that if one party defaults, the other party has the right to terminate following a fair process.

It’s critical to specify in the lease what constitutes default. Examples of tenant’s default include failure to: pay the rent; manage the fields as promised; or perform maintenance tasks on rented infrastructure. For the landlord, default might be failure to: provide adequate access to the leased property; abide by the agreed upon inspection/visitation parameters; or perform the agreed-upon capital improvements.

A lease should include provisions for communicating about default and steps to remedy or fix it in order to avoid premature termination of the lease and other



unpleasant consequences. Usually, it is agreed that the “wronged” party will notify the defaulting party in writing of the default and give a stated period of time to remedy or cure the problem. If the defaulting party does not remedy the problem the “wronged” party may terminate the lease. For example, the landlord emails the tenant to inform her that the rent is overdue, and that per the lease, she has 30 days to pay past rent plus specified interest. If the tenant does not respond in that timeframe, the landlord may take action such as eviction.

A good lease will recognize that some circumstances are beyond the tenant’s control and should not necessarily be treated as default. For example, if there’s a hurricane that delays the tenant’s promised repairs to a building.

## Early Termination for Reasons Other than Default

Be clear about how early termination by either party is addressed in the lease. A lease could terminate before the end of the term for several reasons. Neither party can simply terminate the lease early without consequence unless explicitly provided for in the lease. A lease could say that either party may terminate with, for example, a six month written notice to the other party. However, this essentially gives the tenant six months of security, regardless of the actual lease term. (And it gives the landlord only six months to find a new tenant.) This would not be a preferred approach in most cases. Regardless of whether the parties agree to end the lease early, they are still responsible for all actions and breaches that may have occurred before the date of termination.

It may be considered a breach of the lease if one party wants to terminate early. If one party breaches the lease by terminating prematurely, the other party may sue for breach of contract. A court could require the remainder of

the lease be honored, either by performance (completion of the lease), or by financial compensation (payment to the non-breaching party).

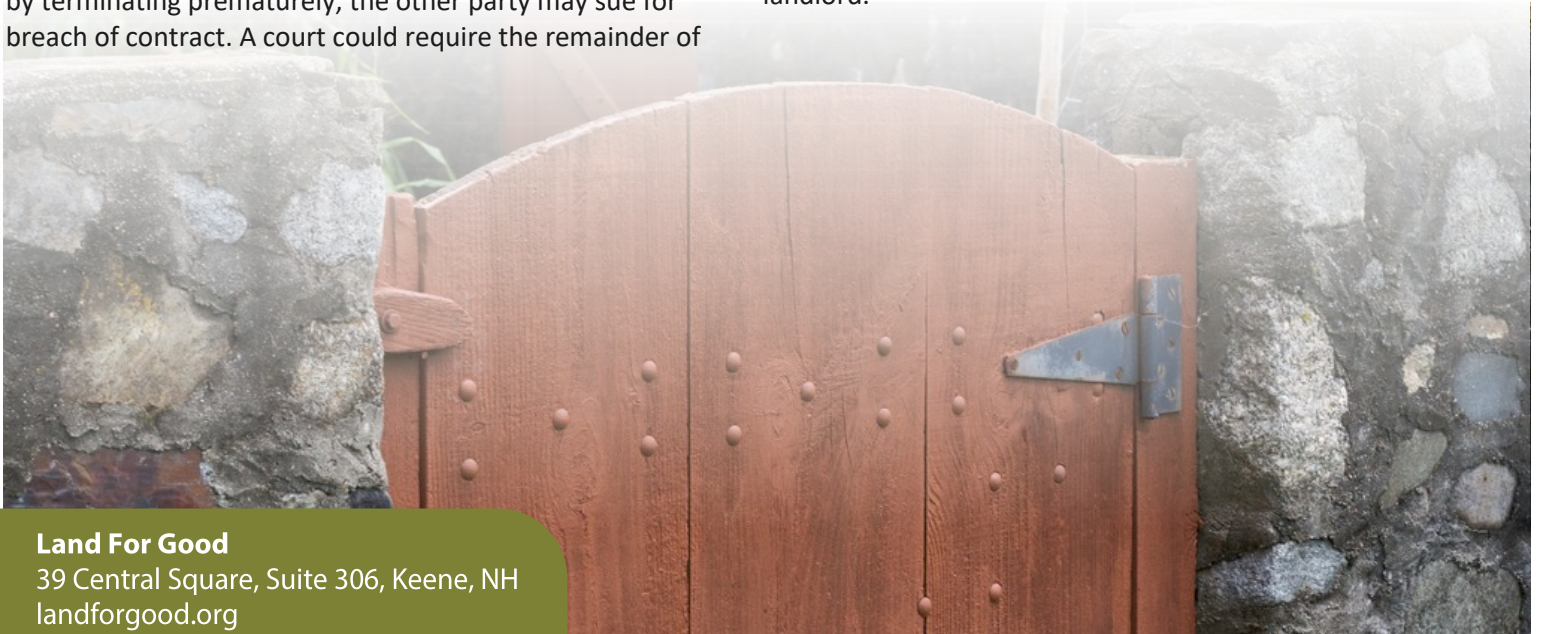
### a. Early termination by the tenant

There are several reasons a tenant might want or need to terminate before the end of the term. A farm lease should be explicit as to what is a “legally protected reason.” It should state the conditions under which a tenant can terminate before the end of the lease term. The tenant may want to terminate early to move to another location or because of a change in careers. If a farmer chooses to terminate a lease early, and the lease does not explicitly allow this without penalty, the farmer may be liable to the landowner for the remainder of the rent owed on the lease. However, the landowner is required to make attempts to reduce his or her losses. In any case, the tenant is still obligated to do whatever the lease says about termination. For example, removing personal property, or planting a cover crop.

Many leases address what happens if the property is rendered totally or partially unusable due to fire or a natural disaster. Often the tenant has the option to terminate under such circumstances. Again, the lease should address this possibility and describe what constitutes “unusable” and how it is determined.

### b. Early termination by the landlord

Suppose the landlord wants to sell the property and prefers not to have farming activities while it is on the market. Or the owner wants to use the property for other purposes. Unless the lease allows the landowner to terminate for any reason, or for these particular reasons (for example), the landowner cannot simply terminate the lease. Some leases will say that default by the tenant is the only acceptable reason for early termination by the landlord.



As stated above, unless explicitly allowed, a landowner's early termination would be considered a breach of contract. If the landowner chooses to terminate the lease early without the agreement of the farmer, he may be liable for the financial losses suffered by the farmer. If the farmer has invested in improvements to the land or has planted crops awaiting harvest, the landowner may be liable for the financial investments and the actual losses suffered by the farmer. At minimum the landlord usually owes the tenant the right to harvest standing crops.

## Crops in the Ground

**What happens when there are crops growing and the lease terminates due to any of the reasons above?** The best way to address this is to make sure the lease allows the farmer "reasonable time" to harvest the crops, including allowing him or her to come back on the property to do so. Reasonable time depends on the crop, weather conditions and opportunity, among other factors. In common law, the "Doctrine of Emblements" guarantees the farmer's right to harvest annual crops.

This doctrine does not equally apply to perennial crops. So it's critical for the lease to specify the rights and obligations around perennial plantings and termination. Will the departing farmer be compensated for remaining perennial trees and plants? Can perennial plantings be removed?

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