

# Month to Month Lease Cancellations - Is One Month's Notice a Calendar Month or 30 Days?

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## INTRODUCTION

When looking at section 5(5) of the Rental Housing Act, the interpretation of "one months' notice" often leads to confusion when terminating a periodic lease (a month to month lease).

Does "one month" mean 30 days from the date of notice, or is a full calendar month required?

This article explores how this confusion was addressed, by analyzing the applicable legislation. The recent case of *Luanga v Perthpark Properties Ltd* confirmed the legal position regarding the termination of periodic lease agreements, and a firm understanding of this issue is important when giving notice to terminate a month to month lease agreement, for both the lessor and lessee.

## THE RENTAL HOUSING ACT 50 OF 1999

Section 5(5) of the Act reads as follows:

*"If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease."*

It is clear that, after entering into a month-to-month lease, the Act specifically states that one month's written notice is required, which would override any provisions in the Lease Agreement between the parties.

This is important to take note of when wishing to terminate a lease, although to further comply with the provisions in the Act, one needs to understand what "one month" means in this context.

## LUANGA V PERTHPARK PROPERTIES LTD

The court in this judgement asserted that the wording in section 5(5) of the Rental Housing Act of "one month's notice", must be interpreted to mean one calendar month, running from the first day of the month and expiring on the last day of the month.

This means that a full months' notice is needed and not just 30 days.

It was further specified that the purpose of a notice of termination in terms of s5(5) is to establish when the rights and obligations under the lease come to an end, and this is not possible if the notice provides a termination date that is not in compliance with this section.

## CONCLUSION

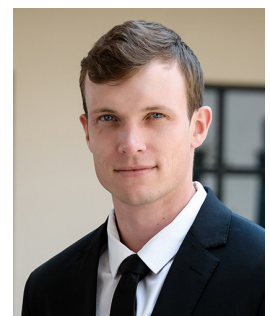
Therefore, when giving notice to terminate a month to month lease, it is important to comply with section 5(5) of the Rental Housing Act, by giving notice before the last day of the month preceding the month in which you wish to terminate the agreement.

### Example:

If you wish to terminate the agreement on the 31st of October, notice must be given on or before the 30th of September. If notice is given on the 1st of October, you will only be able to terminate the lease on the 30th of November.



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