

Kimball, Tirey & St. John LLP

Clearing up the Confusion: Right of Entry Rules for Owners, Managers and Residents

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One of the most frequent questions we receive in our law offices is "What are my rights in regard to entering my resident's unit?" Under California law, when an owner rents real property to the resident, the resident is entitled to exclusive possession of the premises, even to the exclusion of the owner or property manager of the premises. The California legislature has, however, recognized that there are legitimate reasons for owners and managers to enter the premises and therefore decided to regulate, completely, the rights and obligations of owners and residents in respect to entering the resident's dwelling unit.

In 1975, the California legislature limited the right of entry by a landlord to four categories by enacting California Civil Code Section 1954. Section 1954 was later amended to add two categories – certain actions related to water submeters and deck and balcony inspections – effective January 1, 2018, and January 1, 2019, respectively. The statute states that these are the only reasons a landlord may enter the premises (unless specifically specified within another statute such as smoke alarm and waterbed inspections) and specifies notice requirements for each. Furthermore, the rights and obligations under this statute cannot be waived by the tenant.

Emergencies

The first, in cases of emergency, is only permitted when there is a true emergency which affects the health or safety of the resident or the protection of the premises from damage. It must be impractical to give notice in these situations. Courts are extremely sensitive to the right of privacy of residents and will carefully scrutinize the "emergency" which led to entry by the owner or manager. Entry under this category does not require that a notice of intent to enter be given to the resident prior to entry.

Repairs, services, showing, pre-move out inspections

The second category allows owners or their agents to enter into the premises to: make necessary or agreed repairs, decorations, alterations, improvements; supply necessary or agreed services; show the premises to prospective tenants or purchasers, mortgagees, workmen or contractors; or perform a pre-move out inspection pursuant to Civil Code Section 1950.5. Since the owner is responsible for keeping the premises in a habitable condition, the owner may need access to the interior of the unit to maintain the unit's habitable condition and should be able to make periodic inspections for specific purposes, i.e. to inspect electrical or plumbing fixtures in accordance with industry standards. Entry for "general inspections" is not listed in the categories of permissible reasons to enter.

Abandonment

The third category allows an owner or manager to enter onto the premises "when the tenant has abandoned or surrendered the premises." It is not unusual to experience a resident who either

moved out in the middle of the night or has indicated that he or she was moving but did not give final confirmation of the vacancy.

Abandonment, as defined by Black's Law Dictionary, means that there must be ". . . an absolute relinquishment of the premises by the tenant consisting of act and intention." These are sensitive issues and a look at the total circumstances is warranted before a decision to enter should be made. It is often difficult to determine if the tenant has abandoned the premises without taking a look inside. If there are objective facts which would lead a reasonable person to believe that the tenant had abandoned the premises, then you may enter based upon the belief of abandonment unless, of course, there is any indication that the tenant has not abandoned or surrendered the unit.

Posting a notice of your intention to enter is not legally required if you are entering based upon abandonment or surrender. However, many owners and managers make it their practice to post a twenty-four hour notice of intent to enter based upon abandonment to allow for the slight chance the resident did not intend to abandon the unit and has the opportunity to contact the owner or manager.

When entering, it is always advisable to have at least two people present to check around for any recent signs of living activity, such as unspoiled food or sleeping bags. If there is still a reasonable belief that the tenant has abandoned the unit, photographs or video tape are wonderful ways to document the condition of the unit before taking over possession and removing any personal property.

This method should not be confused with the abandonment of real property procedure set up by the California legislature to protect owners and managers from liability for taking over possession based upon their good faith belief of abandonment. Under this procedure, owners and managers can protect themselves from liability if they reasonably believe the tenant has abandoned the unit in question.

To take advantage of this procedure, only if there is a reasonable belief of abandonment and rent has gone unpaid for a period of 14 days, the owner or manager must send a notice of his or her belief of abandonment of the rental unit pursuant to Civil Code Section 1951.3 and allow the tenant 18 days from the date of the notice to declare that the unit has not been abandoned. If the tenant fails to notify the owner of his claim of possession, the owner may take over possession after the notice time has expired. There is still some liability exposure for the owner, however, if the tenant claims that the owner's belief of abandonment was unreasonable. Photos or videos taken during the entry based on the belief of abandonment may help to dispel any such claim. Each circumstance is different and should be evaluated on a case-by-case basis.

Court Order

The fourth category allows entry by the owner when the entry is pursuant to a court order. This implies that the owner or manager cannot engage in self-help if the resident refuses entry, even in cases where the owner is completely within their rights for the entry. Instead, the owner or manager must seek a court order prior to entry. To enforce the order, the Marshal or Sheriff would meet the owner at the premises to allow safe entry into the dwelling unit.

Unfortunately, a requirement for a court order to enforce entry forces the filing of a lawsuit because the court cannot grant an order out of thin air; it has to be attached to litigation. One way to commence litigation is to use the Three-Day Notice to Perform Conditions and Covenants or Quit. For example, if the owner wanted to show the property to prospective tenants or allow workmen in to make necessary repairs, but the resident refuses, the Notice to Perform Conditions and Covenants or Quit would instruct the resident to give reasonable dates

and times for entry into the unit. If the resident fails to comply with the notice, subject to any just cause eviction requirements applicable to the tenancy, an action for unlawful detainer could be filed. Once the lawsuit is filed, the owner is then able to apply for the court order allowing the entry.

Obviously, it is far better to use your power of persuasion to convince the resident to allow entry voluntarily. Keeping a copy of the applicable code and pointing out to the resident the obligations of California law and your lease may persuade a recalcitrant tenant to obey the law. If your rental agreement or lease provides for attorney's fees, the threat of litigation coupled with attorney's fees awards may also convince the resident that it is not in his or her best interest to refuse reasonable entry needs.

Water Submeters

On January 1, 2018, landlords became subject to additional requirements regarding submetered water service in multifamily residential rental units. One such requirement was imposed by Civil Code § 1954.210, which states that if a tenant notifies the landlord, or the landlord otherwise becomes aware of, a leak, a drip, a water fixture that does not shut off properly, a problem with a water-saving device, or other problem with the water system that causes constant or abnormally high water usage, or a submeter reading indicates constant or abnormal high water usage, the landlord must investigate and rectify the issue.

Taking these new requirements into account, the California legislature added Civil Code § 1954.211 and amended Civil Code § 1954 to allow the landlord to enter the dwelling unit for the purpose of installing, repairing, or replacing a submeter; for the purpose of complying with Civil Code § 1954.210; or to read a submeter. If entry is for reading a submeter, an oral agreement is not sufficient and notice of the entry must be given to the tenant in writing.

Balcony Inspections

As of January 1, 2019, Health & Safety Code § 17973 requires landlords to complete inspections, testing and any necessary repair or replacement of exterior elevated elements that include load-bearing and associated waterproofing elements, such as decks and balconies, for buildings with at least three multifamily dwelling units, on or before January 1, 2026, and every six years thereafter. Landlords are also permitted to gain entry to the rental unit for the purpose of complying with Health & Safety Code § 17973.

Waterbeds and Smoke Detectors

Other California statutes also afford two other limited reasons for entry into the resident's dwelling unit: to periodically inspect smoke alarms and to inspect waterbeds for compliance with state law.

For waterbed inspections, the law specifically provides that "... the owner, or the owner's agent, shall have the right to inspect the bedding installation upon completion, and periodically thereafter, to insure its conformity with this section." It is wise to specifically address these issues in the lease and clearly define what rights the owner or manager has in regard to entering the rented unit.

General Inspections Prohibited

The above reasons, methods and procedures are the only ones an owner or manager may use to legally enter the resident's dwelling unit. Many owners and managers believe that they can enter the unit for inspection purposes only. Entry for general inspection purposes is not, however, permitted under current California law. In fact, in the early 1990s, a bill was introduced

in the California legislature to allow owners and managers to enter the inside of the unit for general inspection purposes, but the bill died in committee.

Procedural Requirements

In most cases, a written notice of intent to enter is required. However, there are some exceptions to the written notice requirement, which are as follows:

- 1) In cases of an emergency, when the tenant has abandoned or surrendered the premises, or when the tenant is present and consents to entry at the time of entry, no prior notice is necessary.
- 2) Only if the entry is for agreed repairs or services, the landlord and tenant may agree verbally to the entry if the agreement includes the date and approximate time of entry within one week of the agreement.
- 3) If the purpose of the entry is to exhibit the unit to prospective or actual purchasers of the property, the notice may be given orally, in person or by telephone, if the landlord has notified the tenant in writing within 120 days of the oral notice that the property is for sale and the tenant was informed they may be contacted to allow for a showing. At the time of the entry, the landlord or agent is required to leave written evidence of the entry inside the unit.

Aside from the above-mentioned exceptions, a written Notice of Intent to Enter must first be delivered to the resident giving the resident "reasonable notice" of the date, time, and purpose of the proposed entry. The notice of entry may be either personally delivered to the tenant; left with someone of a suitable age and discretion at the premises; left on, near or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice; or mailed to the tenant. If the notice is left on, near or under the usual entry door of the premises, we recommend posting all four corners of the notice to the main entry way.

California law presumes "reasonable notice" to be twenty-four hours. However, if the notice is only mailed, six days prior to the intended entry is presumed to be reasonable. Although the law presumes that twenty-four hours is reasonable notice, each case should be individually examined to determine what is reasonable under the circumstances. The court would measure the notice period by what a reasonable, prudent property manager or owner would have needed in like circumstances.

The time of entry on the notice and the time of the actual entry must also be made during normal business hours, unless the tenant consents to entry outside of normal business hours at the time of entry. Most judges construe "normal business hours" to mean between 8:00 a.m. and 5:00 p.m., Monday through Friday, although an argument can be made that for leasing agents and property owners and managers, Saturdays and Sundays are "normal business hours."

The reason the legislature heavily regulated the issue of entry is to protect the right of privacy of the resident. Violation of entry rules could lead to litigation and liability for invasion of privacy and trespass among other possible causes of action. It is therefore prudent and responsible to stay clear of the appearance of violating the rules of entry set forth by the California legislature.

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