

Kimball, Tirey & St. John LLP

How to Change the Terms of a California Residential Tenancy

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A landlord's ability to change the terms of a tenancy depends on the tenant's cooperation level, tenancy type, the terms of the tenant's lease or rental agreement, and the nature of the change.

- Month to Month Tenants. Generally, a landlord can change a the terms of a month-to-month tenancy by giving a written 30 day notice of change of terms of tenancy.
 - o If the change is a rent increase, 60 days' notice is required to increase rent if the current increase plus all previous increases within the last year are cumulatively more than 10%.
 - o If specified in the rental agreement, the time period can be reduced to as little as seven days under Civil Code §827.
- Periodic Tenancies. Tenancies which are of a periodic term of less than month-to-month (such as a week to week tenancy) require notice equivalent to the term itself.
 - o If specified in the rental agreement or lease, the time period can be reduced to as little as seven days under Civil Code §827.
- Term Tenants.
 - o If the Lease Authorizes the Change. A landlord can make a change with notice if the lease has a provision allowing the change, and if the provision is enforceable. The most common change of this type involves rules and regulations, which can be changed with advance written notice if that right is reserved in the lease.
 - o If the Lease Doesn't Specifically Authorize the Change.
 - With Tenant Consent. If the tenant and landlord both agree to the change, the parties can either (1) execute a new lease or rental agreement that includes the new clause, or (2) amend the existing lease or rental agreement.
 - Without Tenant Consent. If the tenant will not agree to the change, the landlord cannot change the lease during a fixed term. However, when the fixed term lease ends, the landlord can make the change, either through a new/renewal lease, or if the tenant is to continue on a month-to-month basis, with a 30 day notice of change of terms of tenancy. If the change is a rent increase of more than 10% (when combined with all other rent increases in the last year), a 60 day notice of change of terms of tenancy is required.

The rules above apply to residential tenancies generally. Different rules apply to mobilehome tenancies and floating home marina tenancies.

Subsidized Housing, Rent Control and Just Cause Jurisdictions. There may be additional requirements or restrictions for subsidized housing, tax credit properties, housing subject to rent control or housing subject to just cause ordinances. For further advice, contact Kimball, Tirey & St. John LLP.

Consider All Effects of a Change Before Giving Notice. Before implementing a change, a landlord should weigh both benefits and negative ramifications. For example, changing the terms of tenancy to change a pet-friendly property to a property that prohibits pets may have a number of benefits, but may also result in a higher vacancy rate or negative public relations response.

If a Tenant Fails to Comply with a Notice. If the landlord serves a notice of change of terms of tenancy and the tenant fails to comply after expiration of the notice period, a landlord may serve an appropriate notice (either a notice to pay rent or quit or a notice to perform covenant or quit). If the tenant fails to comply with the notice, the next step is eviction.

Notice of Change in Property Owner or Manager:

Tenants must be notified within 15 days of a change in ownership or management. Civil Code §1962. The notice should include the name, street address or telephone number of either the (1) property owner or (2) the person who is authorized to manage the premises and accept service of notices, demands and service of process on behalf of the landlord. The notice should include updated payment instructions (e.g. name, address, phone number, days of the week and hours payments will be accepted) if that information has changed.

How to Serve a Notice on a Residential Tenant. For information about how to serve notices, see Kimball, Tirey & St. John LLP's article, *How to Serve a Notice on a Residential Tenant*.

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