

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

*Ted Kimball, Esq.
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1. Question: If I gave a resident a thirty-day notice of rent increase which ends on the tenth of the following month, can I charge the resident pro-rated rent for the first nine days at the daily rental value before the rent increase and the other twenty one days at the daily rental value of the increased amount?

Answer: Yes, the rent increase is effective thirty calendar days from the date of service of the increase. The notice has to be for sixty days if the rent increase is more than ten percent from what it was one year before.

2. Question: Is there a “rule of thumb” for carpet depreciation?

Answer: It depends upon the quality of the carpet. You need to find out from the manufacturer the life span of the carpet under “ordinary wear and tear.” If it has to be replaced before that time, it may have been subject to extraordinary wear and tear and then the tenant would be held liable for the loss of use of the carpet.

3. Question: If the contract says no pets, but does not specify fish, can I stop a tenant from keeping a 150-gallon aquarium?

Answer: Fish are considered pets by most judges so they are violating the lease by having a 150-gallon tank. A small goldfish bowl may not constitute a major breach, but a 150-gallon tank most likely does.

4. Question: I have a former tenant who claims, since she had a one-year lease, she is not obligated to give a thirty-day notice.

Answer: There is no statutory requirement that a thirty-day notice of non-renewal be given during a fixed term lease, but if the lease has a valid automatic renewal provision and she fails to give notice of nonrenewal or termination, she is in breach of the lease and can be liable for any losses you suffer as a result.

5. Question: Can an apartment community charge a monthly pet rent to have a pet?

Answer: A lease or rental agreement can provide for pet rent if it does not apply to service animals for the disabled.

6. Question: How does one collect on a judgment against a former resident?

Answer: A judgment can be collected in a variety of ways: wage garnishment, bank levy, seizure of non-exempt personal property and sale are the most common. A judgment debtor examination can also be used to locate assets, and if the debtor fails to appear, a warrant can be issued for their arrest.

7. Question: One of our tenants was recently arrested and is incarcerated. How does this affect his lease? Is it considered abandonment?

Answer: The incarceration of a tenant does not have a legal effect on the tenant’s right under the lease. If the tenant breaches any part of the lease agreement, such as non-payment of rent, the landlord may take legal steps to evict, and can serve notices to the tenant while in jail.

8. Question: One of our residents is a day sleeper and complains about the noisy children next door. They are under school age and I don’t know how or if I should enforce excessive noise.

Answer: Most courts recognize that apartment living is in closer proximity than single family homes and occupants must be more tolerant of disruptions, considering also the time of day or night and the cause of the disruption. If the noise the children make is not excessive for daytime tolerance, it is likely there is no violation of the lease or community rules. Having another witness to the noise would be helpful to see which side you end up on!

9. Question: One of our month-to-month residents gave a thirty-day notice to vacate the unit and now it is the thirtieth day and he refuses to move. What can I do now? Do I have to serve him with my thirty-day notice?

Answer: If the tenant's notice was in writing, the tenant is legally bound to vacate the unit within the thirty-day time frame. Failure to do so allows you to immediately file an action for unlawful detainer (tenant eviction).

10. Question: Our tenants deposit their rent directly into our bank account. This has worked well because we know exactly when the rent has been paid. Now we need to evict for non-payment of rent. Can they still deposit the rent and if so, have I hurt my case?

Answer: Acceptance of rent after an unlawful detainer action (tenant eviction) has been filed is a waiver of the right to evict in most cases. To avoid this possible defense, write your tenant a letter documenting that you are not going to accept any more rent at this time. Periodically check your deposits and if rent was paid, send it back as soon as possible.

11. Question: I am considering leasing to a corporation for use by their relocating personnel and/or short time visitors. Who/what do I name as the tenant(s) to assure that any future legal action can be handled expeditiously?

Answer: List the corporation and all occupants who are 18 or older as tenants on your lease documents. Contact our office to request the article, *Corporate Rentals for California Residential Landlords*.

12. Question: Can tenants change their locks without permission and refuse to provide a key to the property manager?

Answer: Most leases restrict any alterations to the premises without your permission or consent and most leases specifically restrict changing locks without the landlord's permission.

13. Question: If a friend of a tenant appears to be living in the apartment, is there a time limit which allows me to compel the guest to fill out an application to be added to the rental agreement? Can the tenant have guests stay as long as they want?

Answer: If your lease prohibits subletting or assignment of the lease, or if your lease restricts the occupants to those named in the lease, the tenant could be in violation. You would need to prove that the person really moved in and was not just a guest.

14. Question: I do not know how to start the thirty-day notice to terminate. I have given a three-day notice for non-payment of rent, but I do not know what to do next.

Answer: If the tenant has not complied with the three-day notice, there is no reason to serve a thirty-day notice. Instead, you may start the unlawful detainer process in court immediately.

15. Question: What is the difference between ADA and fair housing laws?

Answer: The ADA (Americans with Disabilities Act) applies only to places of public accommodation. Fair housing laws apply to private residential rental housing (and housing sales). Only the areas of your property that are open for the public to come and do business with you are covered by the ADA, such as your rental office and future resident parking. The other areas of your property, such as the rental units, common areas and amenities are covered by fair housing laws. There are some substantial differences between the ADA and fair housing laws, so if you are unsure about which laws apply and what your responsibilities are, you should contact our office.

16. Question: My question concerns residents who deposit their check in the rent drop box after the due date. The lease provides that rent is due on the first and if it is not received by the

fourth it is considered late and a \$25 late fee is imposed. On the morning of the fifth, the rent drop is emptied and any checks received after that time are deemed to be late. Each month there are a few residents who put an earlier date on the rent check and drop it in after the fourth. How should we respond to this situation?

Answer: It makes no difference when the check is dated. If the check is delivered after the fourth, the tenant owes the late charge. By dating the check earlier, it only raises a question of proving when the check was first received. So long as you can demonstrate to the satisfaction of the court that the check was delivered late, you should be able to enforce the late charge.

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