

Kimball, Tirey & St. John LLP

Commercial Landlord/Tenant Questions & Answers

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1. Question: I served a rent notice for my commercial tenant. The notice expires in 3 days. He just called me and asked if I would accept a partial payment. Should I accept the partial payment?

Answer: With a commercial tenant, California law permits you to accept a partial payment and proceed with an eviction if the notice contains language specified under California Code of Civil Procedure §1161.1(b). Your 3 day notice must specify that although you may accept a partial payment, you can still proceed with the eviction. If you do accept partial payment, inform the tenant you will continue with the eviction, so they do not claim otherwise. Keep in mind that if you accept partial payment, a court may be more likely to grant a tenant's motion for relief from forfeiture, ultimately allowing the tenant to remain in possession by paying all rent due.

2. Question: I filed an unlawful detainer against my commercial tenant and they just sent me proof of a bankruptcy filing. Can I continue with my eviction?

Answer: No. You need to file a motion for relief from the stay in the bankruptcy court. Once you get relief, you can proceed with the eviction for possession only. You will not be entitled to a money judgment, unless the bankruptcy court permits it. An article with more information about tenant bankruptcies is available at http://clientportal.kts-law.com/resource_library/docs/Articles/WhenYourTenantFilesforBankruptcy.pdf.

3. Question: I am preparing a commercial lease for my client who owns the property. The landlord is concerned about her privacy and wants me to name the management company as the landlord. Should I do this?

Answer: No. The owner of the property should be listed as the landlord. However, the property manager may sign the lease as an authorized agent of the landlord. An article with more information is available at http://clientportal.kts-law.com/resource_library/breg/documents/LandlordNameinLease.pdf.

4. Question: I own a commercial property and one of the tenants has complained about the noise coming from an adjacent suite. Do I need to concern myself with this?

Answer: Yes. As the landlord, you need to ensure that all of your tenants have the right to quiet enjoyment. It is a balancing act, but, you should ensure that the tenant being complained about isn't making excessive noise. If so, it may be necessary to serve the appropriate notice. An article with more information is available at http://clientportal.kts-law.com/resource_library/breg/documents/QuietEnjoyment.pdf.

5. Question: My commercial tenant just moved out at the expiration of its lease. How much time do I have to inspect the property and send a security deposit disposition form?

Answer: In commercial leases, the landlord is not required to send a security deposit disposition form, unless required in the Lease.

Commercial security deposits are governed by California Civil Code §1950.7.

- If the only amount due from the tenant is unpaid rent, then the landlord has 30 days to return the unused portion, with the exception that if the security deposit is in excess of one

month's rent, the portion of the deposit in excess of an amount equal to one month's rent must be returned to the tenant within two weeks after the tenant vacates, with the remainder to be returned or accounted for within 30 days from the date the landlord receives possession of the premises.

- If the amount due to the landlord includes costs to clean or repair, the landlord must return the unused portion within 30 days.

These time frames may be modified in a commercial lease.

An article with more information about commercial security deposits is available at http://clientportal.kts-law.com/resource_library/breg/documents/CommercialSecurityDeposit07-15-09.pdf

6. Question: My commercial tenant moved out and left a lot of personal property. What should I do?

Answer: You are required to post and send a Notice of Right to Reclaim Personal Property to the tenant. After 18 days, if the tenant hasn't contacted you, you can dispose of the property if you reasonably believe the value is less than \$750 or \$1 per square foot of the premises. If it is valued above \$750, you should hire an auctioneer to conduct an auction.

An article with information about abandoned personal property for commercial landlords is available at http://clientportal.kts-law.com/resource_library/docs/Articles/AbandonedPersonalPropertyCommercial031510.pdf.

7. Question: My commercial tenant is withholding rent because he is complaining that the plants outside his store are dead. Can he withhold rent for this reason?

Answer: No. The covenant to pay rent is independent of the other covenants in the lease. You can legally serve a rent notice for the tenant's failure to pay his rent. The tenant may sue for damages, but can't withhold rent.

8. Question: My tenant signed a lease but never moved in. Should I file an eviction or serve a Notice of Abandonment of Real Property?

Answer: The conservative approach is to file the eviction in order to obtain a judgment and have a sheriff lockout conducted. If you do not believe the tenant will return and rent is unpaid for at least two weeks, you may serve a Notice of Abandonment of Real Property, wait 18 days and then take possession. However, if the tenant returns, he will likely be permitted to re-enter the property as you do not have a judgment that specifies otherwise.

9. Question: My tenant was evicted but still has 5 more years on his lease. Can I sue for the remaining term?

Answer: Yes. You can file a complaint for breach of lease for the remaining term of the lease but you have a duty to mitigate your damages by attempting to re-let the space. An article, *Commercial Breach of Lease – To Pursue or Not to Pursue*, is available at http://clientportal.kts-law.com/resource_library/breg/documents/CommercialBreachofLease-ToPursueorNottoPursue.pdf. *Commercial Breach of Lease FAQs* are available at http://clientportal.kts-law.com/resource_library/breg/documents/CommercialBreachofLeaseFAQs.pdf.

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10. Question: The tenant and I agreed to increase the rent verbally. Do I need to put that in writing?

Answer: Yes, any changes to the lease should be in writing and signed by both the landlord and tenant. Contact Kimball, Tirey & St. John LLP if you would like an attorney to draft a lease amendment for you.

11. Question: I filed the eviction against my tenant but want to work out a payment plan. How do I do that?

Answer: Your attorney can prepare a stipulation enforced by the court with the terms of your payment plan. If the tenant defaults, you do not have to start the eviction over but your attorney can file court paperwork for a judgment and sheriff lockout.

12. Question: I am serving a commercial rent notice, someone told me that I need to name a person who can accept the rent payment on the notice and not just the management company. Is that true?

Answer: Some courts interpret the language in California Code of Civil Procedure §1161 that says the notice must state “the amount which is due, the name, telephone number, and address of the person to whom the rent shall be made...” to require an individual name and not a company name. Therefore, the wiser course of action is to include at least one individual’s name along with the management company name on the rent notice, specifically indicating that person may accept rent from the tenant.

13. Question: Am I required to print my name by my signature when I sign a rent notice?

Answer: It is good practice for the signor to print their name by their signature as many courts require the name of the signor to be clearly printed out near the signature.

14. Question: Can I require my commercial tenants to pay a portion of the property taxes, utility bills and upkeep for common areas?

Answer: That depends on the terms of your Lease Agreement. California law permits commercial landlords and tenants to agree to such charges when negotiating the Lease. Typically, NNN Lease terms specify the prorated percentage of expenses for each tenant based on leased square footage (if there are multiple tenants) and tenants pay their estimated portion of expenses monthly. An annual reconciliation of all common area expenses should be provided to all tenants. This is called a triple net lease. A lease that does not contain these terms is referred to as “gross” lease.

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