

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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1. Question:

I have a two bedroom apartment rented to two roommates. One roommate always pays the rent on time. The other roommate is habitually late. Can I do an eviction based on a partial payment even though the month is not over?

Answer:

Both tenants are responsible for the entire amount of the rent so long as they are on the same rental agreement/lease. You should serve a three-day notice to pay rent or quit for the balance of the rent and name both roommates. If they do not comply, commence an unlawful detainer action naming both.

2. Question:

How much can I raise the rent legally?

Answer:

Unless you are under rent control or a state or federal subsidy program, there are no limitations on the amount of rent you charge. You cannot unilaterally increase the rent unless your agreement is month-to-month. In that event, you can serve a written 30-day notice (or 60-day if the increase is greater than 10% within the last 12 months) to increase the rent. Otherwise, you must wait until the lease expires.

3. Question:

How can we determine if the roaches in the apartment were the result of bad housekeeping? Is it our responsibility to get rid of the roaches?

Answer:

Ask your pest control professional to give his or her opinion on how the roaches came into the apartment unit. The court will rely heavily on expert testimony in these cases. If you can prove the tenant was responsible for the infestation, they are responsible for the cost of removal.

4. Question:

If our tenant sublets, and the sublessee defaults in the rent, do I give a notice to the tenant or the sublessee?

Answer:

You can serve each one a notice with both of their names on it. They should be evicted in the same action.

5. Question:

What should I do if I suspect drugs are being sold out of one of our apartments?

Answer:

Call the police and report the incident. Ask the police for any further direction. Document all of the calls and what you said, did and observed. Finally, contact an attorney to determine whether or not you have enough evidence to proceed with an eviction.

6. Question:

If a tenant does not give a 30-day notice of intent to vacate, can the full security deposit be kept by the landlord?

Answer:

You can only deduct for any unpaid rent up to 30 days from the date the tenant vacated if the tenancy is month-to-month or until the premises are relet, whichever occurs first.

7. Question:

I have signed a lease for one year with a tenant and now he wants to leave after four months. What is my recourse?

Answer:

The tenant is responsible for the rent up to the date the lease expires or the date that you re-lease the property, whichever occurs first. You must use due diligence in trying to re-lease the premises.

8. Question:

We served a 60-day notice of termination of tenancy on a renter. We have not received a rent payment yet, so we served her a 3-day notice to pay rent or quit. Do you recommend that we start eviction proceedings now or do we wait until the notice expires?

Answer:

You should proceed immediately with the eviction; if they do not have enough money to pay you, they may not have enough to move out voluntarily.

9. Question:

A couple moved into our rental unit one month ago. Since they moved in, we have received eight complaints from the neighbors, who are now at the point of wanting to vacate because of these complaints. What should I do?

Answer:

If the disturbances are major and continuous, the court may grant an eviction based upon a 3-day notice to quit, but the disturbances to the quiet enjoyment of the neighboring property must be severe, and there must be witnesses to prove your case in court if the case is contested.

10. Question:

If you state in the month-to-month contract that rent is due on the 1st of each month, but there is not a late charge until after the 10th, can the resident pay every month on the 10th?

Answer:

The rent is delinquent the day after the rent is due. Provided that the day the rent was due was a business day, a 3-day notice to pay rent or quit can be served the next day, even though the late charge is not yet due.

11. Question:

I have a prospective tenant whose company will pay his rent as a perk to his job. Who must sign the lease?

Answer:

It is our strong advice to have both the company and the individual sign the lease. If the employment is terminated you would have a stranger in your unit without a signed lease.

12. Question:

If a guest causes problems or damages the property, what is my recourse?

Answer:

The tenant is responsible to pay for the repair of any damage caused by their guest's negligence or intentional act. If they fail to pay a 3-day notice to perform conditions and covenants or quit can be served, followed by an eviction.

13. Question:

If someone owes late charges and NSF check charges, do I give them a 3-day notice to pay rent?

Answer:

The 3-day notice to pay rent or quit should only include rent – no late charges. A separate notice to perform covenant for late charges can be served at the same time as the notice to pay rent is served.

14. Question:

How often can I legally raise the rent?

Answer:

Unless you are under rent control or a state or federal subsidy program, there are no restrictions as to the number of times you can increase the rent.

15. Question:

One of our tenants is moving out in three weeks. She has refused to allow any prospective tenants to see the apartment. Is there any way we can force her to let us in since the law says we have the right to show it?

Answer:

You can serve her with a 3-day notice to perform conditions and/or covenants or quit requesting that she give you reasonable dates and times for entry. If she fails to comply, an unlawful detainer action can be filed.

16. Question:

Three roommates signed the lease. If one roommate pays the rent every month from his checking account, does that mean he is responsible for the rent instead of the other three roommates?

Answer:

No, each resident is presumed to be “jointly and severally” liable for the breach of any of the provisions of the lease. This means they are individually, as well as collectively, responsible for all payments, including rent. Most leases state this in the body of the lease so there is no question.

17. Question:

If a rental unit is broken into and there is subsequent damage, who is responsible for the repairs?

Answer:

If the damage is to the rental property as opposed to the tenant’s personal items, the tenant could be held responsible if the landlord could prove the tenant was negligent for instance by leaving their doors or windows unlocked. Otherwise, the landlord would likely be responsible to fix the repair, but would not be responsible for the tenant’s personal items.

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