

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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1. Question: If a tenant is evicted, does he forfeit his security deposit?

Answer: Even though a tenant is evicted, he still has a right to an accounting of the use of his security deposit. The deposit can be used for cleaning, repairs and delinquent rent.

2. Question: Does a resident have to stay in his apartment for a certain number of days per month in order for his lease to remain in effect?

Answer: Not unless the lease requires actual possession.

3. Question: Our new residents, who are college kids, are driving the neighbors crazy with their partying, and they are only one month into their one-year lease. What kind of notice do I need to serve?

Answer: If the disturbances are major and continuous, or if the police have to be called, you may be able to serve a three-day notice based upon nuisance and commence the unlawful detainer action if they fail to vacate pursuant to the notice.

4. Question: Can I have the resident pay more security deposit to make up the difference from rent increases?

Answer: You can unilaterally change the terms of a month-to-month agreement by properly serving a thirty-day notice of change of terms of tenancy. This cannot be done with a fixed term lease. You would have to wait until the lease expires and then upon renewal ask for a higher or additional deposit.

5. Question: I rent a house to a married couple. I have found that they now have a third person living with them. Can I raise the rent, tell them they have to sign a new lease if they want an additional person, or can I say they cannot have additional people in the house since only two people signed the lease?

Answer: If your lease restricts the number of occupants and the tenants have exceeded the limit, it is considered a breach of the lease and can be remedied by serving a three-day notice to perform conditions and/or covenants or quit. As an alternative, you can invite the third party to fill out an application, and if qualified add his/her name to the lease.

6. Question: Do we have to take pictures of the apartment before a resident moves in?

Answer: Although there is no legal requirement that you take pictures before a tenant moves in, it is a very smart thing to do, especially when you compare your pictures of what the premises looked like to when the tenant moved out. It makes it easy for a judge to see the damage. Just make sure your pictures are dated, including time of day, and are of good quality.

7. Question: We have posted no smoking signs on our poolside bathrooms and laundry rooms. Is this legal? We have been challenged by several residents.

Answer: Yes, you may provide for no smoking in the common areas of your apartment community since it is a fire and health hazard.

8. Question: We have an excellent single resident in one of our units. She has requested to move a troubled friend with relationship problems in with her for a couple of months. What

legalities do I need to consider and what additional and/or new forms do I need to have filled out and signed?

Answer: You could have the additional occupant qualify as a resident and sign the current lease as a tenant. This would protect you in the event the occupant remains and the resident moves out.

9. Question: Can a three-day notice be served for the cost of damage to the unit caused by a resident? A five-year-old flooded an upstairs carpeted room, resulting in carpet repair and drywall repair of the ceiling downstairs. The standard lease form in effect clearly provides for the tenant to pay in this circumstance.

Answer: So long as your lease does not provide otherwise, you can serve a three-day notice to perform conditions or covenants in writing demanding the resident pay for the repair.

10. Question: Who is responsible for keeping the carpet clean? The tenant or the owner?

Answer: The tenant is responsible for leaving the premises, including the carpet, in the same state of cleanliness that existed at the time they first moved in.

11. Question: I purchased a building in which two of the three tenants do not have a deposit on file. Can I require a deposit for continuing tenancy?

Answer: If their lease agreement is month-to-month as opposed to a fixed term lease, you can serve a thirty-day notice changing the terms of the tenancy to require a deposit. If it is residential, your limit is twice the amount of the monthly rent if the unit is unfurnished.

12. Question: New tenants signed our lease and paid the first month's rent. Now they want to get out of the lease. They did not take possession.

Answer: When the tenant signs a lease, they are bound by the terms whether or not they change their mind later.

13. Question: Our renters signed a one-year lease, but were evicted after two months. They moved out before they were locked out. Are we able to charge rent until the unit is re-rented?

Answer: An eviction doesn't end the tenant's responsibilities. You can charge them up to the time the lease expires or the time the premises are relet, whichever occurs first. However, you do have an obligation to mitigate the losses by attempting to relet the premises.

14. Question: I am renting a single family dwelling to three individuals, each of whom submitted a separate application but want to all be listed on the rental agreement. How do I fill out a month-to-month agreement?

Answer: Have them all sign the same agreement. That way, they would be jointly and severally liable under the lease.

15. Question: Several weeks ago, during a wind storm, a large tree fell on my tenant's car. The tenant thinks I am responsible for the damages, but my insurance company says I am not.

Answer: Unless you were negligent in the way you maintained the tree, you are not liable.

16. Question: Could you please tell me the law on roommates and the return of security deposits when only one vacates the unit.

Answer: Unless you provide otherwise in your lease, you do not release the deposit until after you regain possession of the unit. It is up to the roommates to figure out who gets what as they are "jointly and severally" liable for the performance of the lease.

17. Question: I have several tenants who have damaged their units. What can I charge?

Answer: You can charge for the actual out-of-pocket costs, as well as labor. If you do it yourself, you should charge what the market would charge if you hired someone to do the work. In other words, it must be a reasonable charge.

18. Question: Can I refuse to show the premises to a prospective resident because they are obviously intoxicated?

Answer: Yes, if you are concerned about your safety or just wasting your time, you can refuse to show the premises to an intoxicated applicant. However, make sure the person is really intoxicated and not just under a physical or mental disability. In order to enter in a binding agreement, the parties must not be temporarily incapacitated by intoxication.

19. Question: One of our residents brought in a roommate without my permission or consent. We have a clause in our lease prohibiting assignments or sublets of the lease. How do I prove the tenant is in violation of the lease?

Answer: In many cases it is difficult to prove because many times the claim is that they are just overnight guests. However, if there is enough circumstantial evidence, such as receiving mail at the premises, traveling to and from work, using the laundry and other facilities regularly, you will have enough proof to satisfy most judges.

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