

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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1. Question: Are email communications between tenant and landlord admissible in court?

Answer: Yes, emails can be admitted into evidence, but should not be used to serve notices (other than as specifically allowed by law).

2. Question: I want to serve a Three Day Notice to Pay Rent or Quit to a tenant who is very late on his rent. The rental amount listed on the lease is \$875.00 plus an additional \$25.00 for parking. The tenant has paid the \$900.00 for the past 24 months. Which amount should be placed on the notice?

Answer: It is safer to serve a separate Three Day Notice to Pay Rent or Quit, as well as a Three Day to Perform Conditions and Covenants or Quit for the parking charge at the same time.

3. Question: When a month-to-month resident decides to vacate after being served a Three Day Notice to Pay or Quit, do the owners have the right to charge for thirty days after the move-out to comply with their month-to-month agreement?

Answer: Yes, you can charge up to the time the premises are relet or thirty days from the date of their departure, whichever occurs first, so long as you make diligent attempts to relet the property.

4. Question: Our tenant gave a Thirty Day Notice of Termination, intending to move out on the 10th of the next month. Since the rent was due on the first of the month, can we require the tenant to have given thirty days' notice on the first of the month?

Answer: Once you are on a month-to-month tenancy, either party can terminate it by serving a Thirty Day Notice at any time. They are, however, responsible for the rent up to the date the Thirty Day Notice expires, so they would owe pro rata rent for the following month.

5. Question: I served a tenant a Three Day Notice to Pay Rent or Quit. The tenant wrote a personal check that bounced. Do I have to give another Three Day Notice?

Answer: No, you do not have to serve a new Three Day Notice. You can proceed directly to the next step by filing an unlawful detainer action.

6. Question: I had to go through an eviction to regain possession of one of my rentals. I also received a judgment for the rent, court costs and my attorneys' fees. How can I collect this judgment? Do I have to go back to court?

Answer: The law provides for a variety of ways to collect the judgment. Wage garnishments, bank levies, attachment of personal property and judgment debtor examinations are formal ways to collect monetary judgments. Of those listed, a bank levy is the most effective way to collect a judgment. Receiving accurate information on the rental application allows optimal opportunity to collect.

7. Question: One of my tenants vacated the property and left his roommate behind. Both signed the rental agreement and now the tenant who vacated is demanding his share of the security deposit be returned to him. Is he right? What should I do?

Answer: You are not required to return or account for the use of the security deposit until you regain possession of the property after all of the tenants have vacated. California requires the

deposit be accounted for in writing and sent to the last known address of the tenants no later than 21 days following the return of possession unless the lease requires an earlier time frame. The tenant who vacated early should work out an arrangement with his former roommate. You are under no obligation to account for the deposit at this time.

8. Question: A tenant has delivered a payment but the Three Day Notice has already expired. I don't want the money at this point. I do want possession of my unit back. Should I return the payment?

Answer: If you do not return and reject the payment, an argument could be made that the payment has been accepted and the Three Day Notice has been waived. You should therefore return and reject the payment.

9. Question: A tenant has left a lot of personal property after vacating. How do I know if the value of the items left behind amounts to \$700.00?

Answer: You can call a third party appraiser. Alternatively, you can research what comparable items sell for in the community. Research the replacement value, not the cost of purchasing a new item. Accordingly, online resources such as Craigslist can be used to help substantiate a value assigned to an item.

10. Question: My company policy is to have the computer system print notices to pay rent or quit that just state who is to receive payment, but there is no blue ink signature. Does this make them invalid?

Answer: California law requires that a person be named as agent for receiving payment in person on the notice, the address, telephone number, and hours/days of availability of this person be provided, but there is no requirement that this person sign the notice. However, it is a good idea that the notice be signed to give it the personal touch and show the tenant that the information has been reviewed and is accurate.

11. Question: I served a Sixty Day Notice to Terminate Tenancy, but they have failed to pay their rent. Can I now serve a Three Day Notice to Pay Rent or Quit or with that invalidate the Sixty Day?

Answer: As long as the Notice to Pay Rent or Quit does not demand rent for a period of time after the expiration of the Sixty Day Notice, the Three Day Notice does not override the Sixty Day Notice, and you can file the eviction as soon as the Three Day Notice expires.

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