

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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- 1. Question:** The non-payment of rent notice I served on the tenant has expired. The tenant is now trying to pay the rent, but I do not want to accept payment and would like to return it. How can I return their payment?

Answer: You can return the tenant's payment by personal delivery or sending it by regular or certified mail, although you are not required to send it by certified mail. It is important to return the payment as soon as possible.
- 2. Question:** I have an ongoing unlawful detainer against one of my tenant's but he is continuing to create a disturbance at the property. Is there any way that the unlawful detainer can be expedited?

Answer: Unfortunately, no. However, a restraining order may be available in extreme cases. If the tenant is engaging in a serious or criminal disturbance, call the police.
- 3. Question:** My tenant was just evicted and the majority of his/her items are still in the unit. Do I need to give him/her another notice to retrieve their belongings?

Answer: If you went through the court eviction process and the Sheriff conducted a lockout, the Sheriff would have notified your tenant of their rights to their personal property.
- 4. Question:** One of my tenants attempted to tape record our conversation explaining that they have a right to do this for legal purposes. Is that true?

Answer: Your tenant has no legal right to tape record you without your express consent in places that you have an expectation of privacy, such as your business office. Further, surreptitious tape recording – tape recordings without your knowledge – is a misdemeanor under California state law. Contact your attorney if you learn that you have been surreptitiously recorded.
- 5. Question:** We have a limited number of parking spots in our apartment community so we decided to limit the parking to residents only. Is this legal?

Answer: Yes, you may restrict parking at your apartment complex to residents only. Make sure you have complied with the requirements of Vehicle Code Section 22658 so that unauthorized vehicles can be towed according to the rules of the code section. Also, be sure that your lease or rules have been appropriately modified so that this policy is enforceable as a condition of tenancy.
- 6. Question:** One of my tenants has notified me that she has filed for bankruptcy. She has not paid her rent this month. Can I proceed with an eviction?

Answer: Once a tenant files for bankruptcy, he or she will be entitled to an automatic "stay" of any legal proceedings against him or her. This includes an unlawful detainer action. You will be

required to file a motion for “relief from stay” before serving any notices or bringing an eviction action.

7. Question: I have an applicant who wants to bring her cat with her to the apartment. Can I require her to de-claw the cat before bringing it onto my rental property?

Answer: No. California law prohibits a landlord from requiring a resident to have a pet de-clawed or de-vocalized as a condition of occupancy.

8. Question: I have had numerous problems with residents who smoke tobacco, including complaints from neighbors, damage to the rental unit, etc... Can I institute a policy that my rental property is smoke-free?

Answer: Yes. California law permits a landlord to designate their property as smoke-free. Be sure to seek legal advice if you want to change smoking rules in a unit for an existing tenant protected by just cause or rent control.

9. Question: May I demand a late charge in a 3-Day Notice to Pay Rent or Quit?

Answer: No. Do not demand any other fees or charges other than the tenant’s past due rent in a 3-Day Notice. For example, do not include utility charges or interest in the notice even if a written lease or rental agreement states you are entitled to these payments. A separate 3-Day Notice for all other fees owed may be served along with the 3-Day Notice to Pay Rent or Quit.

10. Question: Am I entitled to use a deceased tenant’s security deposit?

Answer: You are entitled to use a deceased tenant’s security deposit to cover unpaid rent, pay for damage beyond normal wear and tear, and to perform necessary cleaning to the unit.

11. Question: We evicted one of our tenants and obtained a monetary judgment. Now we find that they have moved to Arizona. Can I collect against them since they moved out of state?

Answer: If you have a judgment against a former tenant and they move out of state, you can have the judgment recognized by that state as a valid judgment which would allow you to proceed to levy against their bank accounts or garnish their wages in the state they now live.

12. Question: Can an owner/property manager require that a tenant secure renters insurance?

Answer: Yes, to protect the property and assets, landlords can require the tenant obtain renters insurance as a covenant and condition of the lease. Be sure to seek attorney advice for subsidized housing, or if changing the terms of a tenant protected by just cause or rent control.

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