

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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- 1. Question:** Can I accept rent after serving a notice for an issue other than payment? For example: after service of an unauthorized occupant notice.

Answer: You should always check with a knowledgeable attorney to determine whether you should accept rent or not if the notice served was for something other than payment. Accepting rent after serving a notice may waive the notice.
- 2. Question:** At what point does my property require an onsite resident manager?

Answer: If your property has 16 units or more, you are required to have an on-site “responsible person.”
- 3. Question:** A resident at my property was taken to the hospital and passed away. Since the lease requires a 30-day notice, what is the law as far as reimbursement of the deposit?

Answer: When a tenant passes, the month-to-month tenancy is terminated 30 days from the date of the decedent’s last rent payment. Therefore, you have 21 days from the termination date to account for the security deposit (assuming that you have regained possession of the unit). If anyone else claims a right to possession, you need to go through the eviction process.
- 4. Question:** I served my resident a 30-Day Notice of Termination of Tenancy on the 15th of the month. My resident says I have to wait until the end of the month to serve the notice, is that correct?

Answer: No. Under California law, either party can serve an appropriate 30-Day Notice of Termination of Tenancy any day of the month. Your notice will expire 30 days from the date you served the notice, so make sure you do not accept rent beyond that point.
- 5. Question:** I served a 60-day notice that expires on the 15th of the month. How much rent should I accept for the month in which the notice expires?

Answer: You can only accept 15 days of rent for that particular month.
- 6. Question:** Per the rental agreement, rent is due on the first day of each month and, if rent is not received by the 5th day, then a late charge will be incurred by the tenant. If my tenant fails to pay rent, do I have to wait until the 5th day of the month before I serve a 3-Day Notice to Pay Rent or Quit?

Answer: No. You can serve a 3-Day Notice to Pay Rent or Quit the following day after the rent is due. Be aware that if the due date falls on a weekend or holiday, you must carry the due date to the following first business day.
- 7. Question:** I recently purchased a triplex, and the escrow will be closing in a couple of days. The tenants are currently on a month-to-month rental agreement. Do I have to wait until the end of the month or can I serve a 30-day notice as soon as I take possession of the property?

Answer: You can serve a 30-day notice at any time during a month-to-month tenancy. You do not need to wait until the end of the month. You are also entitled to rent for the 30-day time period. If all of the tenants in the unit have been a resident for more than one year, a 60-day notice is required.

- 8. Question:** I have heard five different answers from five different people. Please, tell me what I can legally deduct from my tenant's security deposit.

Answer: Rights and obligations regarding a residential tenants' security deposit are governed by California Civil Code Section 1950.5. You can use the deposit at least for cleaning, delinquent rent and damages above ordinary wear and tear. What is considered ordinary "wear and tear" is subject to a variety of opinions by judges. In order to convince a court that the damages were extraordinary, move-in and move-out records of the condition of the apartment, pictures, receipts and opinions from those who did the work make the job of determining ordinary wear and tear easier for the court to decide.

- 9. Question:** I have filed an eviction against one of my resident for failing to pay rent for the last two months. I served the notice on a Saturday and someone said I had to serve it on a business day. Are they right?

Answer: No. A 3-day notice for breach of the lease can be served on any day of the week. The tenant has three full days to comply, and the last day of the notice must end on a business day.

- 10. Question:** I am a manager of a 56-unit complex. One of the tenants informed me that his girlfriend moved in. I gave him an application and told him to have her fill out and then return it to me. It has been ten days and I have not gotten it back.

Answer: If the lease prohibits the assigning or subletting of the premises without your permission, you can serve a 3-Day Notice to Perform Conditions and or Covenants or Quit, detailing the violation. The notice should require that they either turn in the application or she must vacate the property within the 3-day period. If they do not comply with the notice, you could commence eviction procedures.

- 11. Question:** I served one of my tenants with a 3-Day Notice to Pay Rent or Quit. He did not comply so I served a 30-Day Notice to Quit. If the tenant does not move out by the 30th day, should I call the Sheriff to evict him?

Answer: The Sheriff will not evict your resident unless you have gone through the unlawful detainer lawsuit and produced a judgment for possession. You could have filed the unlawful detainer action after the 3-day notice expired; you did not need to give the tenant an additional 30 days.

- 12. Question:** I recently received an application from a young married couple. He is twenty but she is only seventeen. I told her she was too young to sign the rental agreement and he had to qualify on his own even though she was working. She said because she was married, she was qualified to sign. I never heard of this law. Is she right?

Answer: California recognizes an individual's right to enter into binding contracts if they are eighteen years of age or older, in active duty in the military, married, or are emancipated by order of the court. You therefore should treat her the same way as you would any other adult applicant.

- 13. Question:** A couple recently applied for one of our vacant units. They have jobs but do not quite qualify for the unit (they need to make three times the amount of the rent). They said

that his father would be willing to co-sign as a guarantor in order to qualify. How should I work this arrangement on the lease?

Answer: Guaranty agreements are separate and distinct from the lease and may be rendered void if the lease is modified without the knowledge or consent of the co-signor or guarantor. Carefully drafted guaranty agreements can eliminate this risk.

14. Question: One of my two tenants on the lease moved out due to a job transfer. The remaining tenant would like to stay and pay the entire amount. Do I need to write up a new lease or simply prepare an addendum stating the remaining tenant is solely responsible?

Answer: You can amend the lease to remove the vacating tenant, or keep the current lease in place without amendment (in which case the vacating resident may remain rent responsible), or terminate the existing lease and enter into a new lease with the remaining resident.

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