

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

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**1. Question:**

A new tenant signed a six-month lease. Now, he claims he feels unsafe because of an incident at the property and wants to terminate the lease. The tenant claims he has a 72-hour period to rescind the lease after it is executed. Is this true?

**Answer:**

There is no 72-hour right of rescission for residential leases.

**2. Question:**

Is there a law on the length of time a resident must reside in an apartment not to be charged for paint or carpet when they move out? What are the guidelines?

**Answer:**

No, the tenant can always be charged for painting or carpet cleaning and/or replacement that is beyond ordinary wear and tear.

**3. Question:**

I served a three-day notice on my tenants and they paid \$300 of the \$1050 that was due. Do I have to serve another three-day notice to start the eviction? Should I have accepted payment?

**Answer:**

You did not have to accept partial payment but since you did, you must start over with a new notice.

**4. Question:**

We have a one-year lease with a tenant that will expire in four months. If we sell the house now, and the buyer wants to move in, would we be able to break the lease?

**Answer:**

The buyer "steps into the shoes" of the seller and the lease is binding upon the new owner.

**5. Question:**

I allowed a tenant to move-in and pay the security deposit in several payments. They are not able to make the final payment. What can I do?

**Answer:**

You can serve a three-day notice to perform conditions or covenants or quit. If the tenant fails to pay the deposit within three days from legal service of the notice, you can commence the eviction process (unlawful detainer).

**6. Question:**

Is the procedure for evicting a tenant from a garage any different than for a tenant who lives in a residential unit? Is delivering a notice to a post office box legally acceptable?

**Answer:**

The eviction process is the same. The notice should be mailed to the post office box and another copy attached to the door of the garage the same day. Even though it may not be delivered, send another notice via mail, same day to the garage, since the code literally requires mailing and posting to the rented premises.

**7. Question:**

Is there any way to impose a rent increase on tenants with a lease or do you have to wait until the lease is expired? Can you raise rents on specific units and not all units?

**Answer:**

You have to wait until the lease expires unless the lease term contained an automatic rent increase. Many owners increase the rent on the tenants' anniversary dates.

**8. Question:**

I have a tenant who has been late with the rent on a number of occasions. I charge him a late fee and he pays it. When his lease expires, do I have to renew?

**Answer:**

Generally you are not required to show cause to not renew a tenant's fixed term lease and do not need to have or state a reason for non-renewal. This general rule may not apply for subsidized housing, or if the unit is subject to rent-control or if the unit is in a just cause jurisdiction.

**9. Question:**

We want to give notice to vacate to a renter of a garage who has been in occupancy for over one year. Can we give a thirty-day notice or does the sixty-day notice rule apply for garages as well?

**Answer:**

You can give a thirty-day notice. Sixty-day notices are only required for residential property when the tenant has been in possession for one year or longer and the rental agreement is month-to-month.

**10. Question:**

My tenant fixes his motorcycle in the living room of his apartment. I have warned him that he did not have a right to use our apartment as an auto repair shop. He says as long as he leaves the apartment clean, he has the right to work on his motorcycle. What should I do?

**Answer:**

You should review your lease to see if he is breaching any particular condition of promise. If not, and you are on a month-to-month tenancy, you could threaten to serve him with a thirty-day notice to quit, or to change the terms of tenancy. If you are not on a month-to-month tenancy, you must find a breach and serve a three-day notice to comply. If he fails to meet the demands of the notice, the eviction lawsuit may be filed.

**11. Question:**

Are the laws any different between "motels" and "apartments"? Where could I get a booklet or more information on this matter?

**Answer:**

The laws are significantly different between motels and rental housing. For instance if a motel customer fails to pay, the police can be immediately called to remove the customer. In a residential rental dwelling such as an apartment, however, the owner must go through the tenant eviction process to regain possession. You may be able to obtain information from the California Lodging Association and the California Apartment Association.

**12. Question:**

I have been asked by another property manager if a former tenant of mine caused any problems and if I would rent to him again. I suspected that he was a drug dealer or at least a drug user but I cannot prove it. What can I tell her?

**Answer:**

If you are unsure, you should remain silent. From a legal point of view, it is always safest to say nothing. However, if you choose to do so, you should only reveal information, if any, that you know to be true and can be documented. When making a recommendation, you are always running the risk that the person you are referring to believes you are defaming their good name.

Making timely notes of what you said and who you spoke to, will be valuable if you are questioned about the conversation in the future. Discuss only facts that pertain to compliance with your lease or rental agreement.

**13. Question:**

I suspect there are at least five people living in a one-bedroom apartment in one of our units. The lease only allows three persons and they have not paid rent. I want to serve a three-day notice to pay rent or quit, but I do not know all of their names. What should I do?

**Answer:**

If you serve a three-day notice, address it to the occupants for which you have the names and also to "all others in possession." If they pay the rent, however, you may have agreed to the additional people living there. If you do not intend to allow their occupancy, you could also serve a three-day notice to perform conditions and/or covenants or quit requiring that the additional people vacate within three days. If either or both of the notices are not complied with, you can commence with an eviction in court.

**14. Question:**

A tenant of three years recently vacated with only a verbal two-week notice. Can she be charged for unpaid rent? She did not have a lease agreement and never signed anything stating that she would give a thirty-day notice.

**Answer:**

If the rent is paid monthly and there is no term stated in the lease, written or verbal, the law presumes you are under a month-to-month agreement which requires a thirty-day written notice to terminate. If no written notice was given, the former tenant owes rent up to thirty days or until the time you relet the premises (you have to try), whichever occurs first.

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