

Kimball, Tirey & St. John LLP

What to do When You Receive a Demand Letter

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The dreaded demand letter - A letter that can simultaneously be worryingly serious and frustratingly frivolous. In the area of residential rental real estate, demand letters generally tend to be issued by a disgruntled former or current tenant or by someone who was injured on your property.

This article provides a brief guide to what you should do upon receipt of a demand letter.

1. Read the letter.

This basic step will help you understand the full picture of what the opposing party is alleging and demanding. This is also necessary to determine if the opposing party has set a deadline for response.

2. Assemble documents/preserve evidence (such as video recordings/surveillance), if any.

If you have not done so already, save video footage, incident reports, email communications and any other document, picture or record. It is best to save all the related records in one folder so that if you need to involve counsel or risk management, you have a shareable file ready to go.

3. Build a timeline.

This is a key item for the person (whether it is counsel, insurance, or a staff member) preparing the response. A good timeline will include the date of the incident/work order request(s) and all action taken by the landlord.

Example:

September 1, 2020 – Tenant submitted work order for broken heater.

September 2, 2020 – Landlord responded to tenant to schedule repair.

September 3, 2020 – Work completed; maintenance replaced broken heater part and verified heater was then operational.

The documents, evidence and timeline will help ensure that risk management, counsel and the insurance carrier have information necessary to prepare a response or advise on approach.

4. Do not hand over any evidence/documents to the opposing party.

Other than a copy of the lease agreement and addendum, a landlord is not generally required to provide internal documents or evidence to a tenant or demanding individual (in the absence of a lawsuit and a proper discovery request), and it may not benefit the landlord to do so. Often demand letters and/or evidence preservation notices will include a request for various documents, pictures, and/or surveillance footage. Unless there is a court order or subpoena, do not provide anything without first discussing the matter with counsel or risk management.

5. Do not promise or pay funds without obtaining a release of liability in exchange.

Often landlords will waive some debt owed by the tenant or make some monetary offer in an effort to make the problem go away. This is not a necessarily “bad” approach consider making

any offer of settlement contingent upon the opposing party executing a release of liability. A release of liability is a solid guard against the problem resurfacing and/or the tenant making additional demands. Ask for assistance from an attorney to prepare a release that will provide good legal protections.

6. Loop in risk management/outside counsel/insurance.

It is a good practice to notify risk management of a potential incident or claim earlier rather than later. They can help assess whether outside counsel should be consulted, and whether a claim should be made to insurance carriers.

For additional information or assistance, contact Brittany McClintick at (800) 577-4587 or brittany.mcclintick@kts-law.com.

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