

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

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1. **Question:** The present rental agreement is for two tenants. One has passed away. Do I need to write a new rental agreement with the remaining tenant?

**Answer:** You are not required to write up a new lease; the current tenant is still responsible for the full rent and other lease terms.

2. **Question:** We rent our detached in-laws quarters in the back yard of our property. Can we specify in the “house rules” that no visitors are allowed on the property? Also, can we specify “no smoking” in or around the unit?

**Answer:** You could prohibit smoking, since it is a health and fire hazard. Prohibiting visitors may violate the tenant’s constitutional rights of freedom of association.

3. **Question:** We have a tenant who gave us verbal notice to vacate the premises. How do we calculate the rent owed?

**Answer:** A verbal notice is of no legal effect. The time begins to run when a written notice is served.

4. **Question:** I have tenants whose lease ends at the end of this month. Can I begin to show prospective tenants the unit while my current tenants are still under a lease?

**Answer:** You can show the property to prospective tenants at any time during the lease or tenancy, after giving notice required by law.

5. **Question:** If one tenant moves from one unit to the other unit within one building, can I deduct the security deposit to cover the damages and fix up for the old unit, then ask them to redeposit the amount of money to make up the security deposit for the new unit?

**Answer:** Yes. In cases of transfer, in addition to leases or rental agreements for both the old and the new units, landlords may want to use a written transfer agreement to address issues that arise in transfers, such as termination of the old lease and the security deposit. As to the security deposit, landlords have two options: (1) transfer the security deposit from the old lease to the new lease (and specifying the tenant’s obligations if a portion of the security deposit needs to be applied to amounts due for the old unit) or (2) requiring the tenant to pay a new security deposit for the new unit.

6. **Question:** I have recently purchased a 20-unit apartment building. Must I have an apartment manager on site 24 hours a day, 7 days a week?

**Answer:** California law requires that you have a manager, janitor, housekeeper or other responsible person reside on the premises representing the ownership when there are 16 units or more. They do not have to work 24/7.

7. **Question:** We had two tenants move out and deduct their security payments as a last month’s rent. We have accrued expenses for damages and cleaning. What can we do?

**Answer:** If you can locate the former tenants, you can sue them in small claims court to get a judgment which is valid for 10 years. As an alternative, you can turn the matter over to a collection law firm or agency that is experienced in collections against former tenants.

8. **Question:** How long does an unlawful detainer judgment stay on the tenant's record?

**Answer:** Judgments are valid for 10 years as far as collection goes. The judgment also accrues interest at 10% per annum, and can be renewed for additional 10 year periods. Credit reporting agencies keep this information on credit reports for seven years.

9. **Question:** I represent an owner of several buildings who has a few tenants that are past due on their rent. Instead of evicting them, he is offering the tenants a payment plan, if they are willing to sign a promissory note detailing the arrangement. If the tenant defaults on the promissory note, will he have to start a new eviction proceeding with a 3-day notice?

**Answer:** If a tenant will remain in possession, instead of a promissory note, the landlord may wish to utilize a well-drafted payment plan agreement that specifies failure to pay will be a breach under the lease or rental agreement, allowing the landlord to pursue any remedies allowed by law, including (but not limited to) possession of the property and a money judgment through an unlawful detainer action.

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