

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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1. Question: If a tenant is evicted, does he forfeit his security deposit?

Answer: Even though a tenant is evicted, he still has a right to an accounting of the use of his security deposit. The deposit can be used for cleaning, repairs and delinquent rent.

2. Question: Does a resident have to stay in his apartment for a certain number of days per month in order for his lease to remain in effect?

Answer: Not unless the lease requires actual possession.

3. Question: Our new residents, who are college kids, are driving the neighbors crazy with their partying, and they are only one month into their one-year lease. What kind of notice do I need to serve?

Answer: If the disturbances are major and continuous, or if the police have to be called, you may be able to serve a three-day notice based upon nuisance and commence the unlawful detainer action if they fail to vacate pursuant to the notice.

4. Question: Can I have the resident pay more security deposit to make up the difference from rent increases?

Answer: You can unilaterally change the terms of a month-to-month agreement by properly serving a thirty-day notice of change of terms of tenancy. This cannot be done with a fixed term lease. You would have to wait until the lease expires and then upon renewal (or when the tenancy goes month to month) ask for an addition to the deposit.

5. Question: I rent a house to a married couple. I have found that they now have a third person living with them. Can I raise the rent, tell them they have to sign a new lease if they want an additional person, or can I say they cannot have additional people in the house since only two people signed the lease?

Answer: If your lease restricts the number of occupants and the tenants have exceeded the limit, it is considered a breach of the lease and can be remedied by serving a three-day notice to perform conditions and/or covenants or quit. As an alternative, you can invite the third party to fill out an application, if qualified, and add his/her name to the lease.

6. Question: Do we have to take pictures of the apartment before a resident moves in?

Answer: Although there is no legal requirement that you take pictures before a tenant moves in, it is a very smart thing to do, especially when you compare your pictures of what the premises looked like to when the tenant moved out. It makes it easy for a judge to see the damage. Just make sure your pictures are dated, including time of day, and are of good quality. Many landlords also prepare a written statement of condition of the unit.

7. Question: We have posted no smoking signs on our poolside bathrooms and laundry rooms. Is this legal? We have been challenged by several residents.

Answer: Yes, you may restrict smoking in the common areas of your apartment community. In addition to posting no smoking signs, you may also want to add lease provisions or a lease addendum to control smoking.

8. Question: We have an excellent single resident in one of our units. She has requested to move a troubled friend with relationship problems in with her for a couple of months. What legalities do I need to consider and what additional and/or new forms do I need to have filled out and signed?

Answer: You could have the additional occupant qualify as a resident and sign the current lease as a tenant. This would protect you if the occupant remains and the resident moves out.

9. Question: Can a three-day notice be served for the cost of damage to the unit caused by a resident? A five-year-old flooded an upstairs carpeted room, resulting in carpet repair and drywall repair of the ceiling downstairs. The standard lease form in effect clearly provides for the tenant to pay in this circumstance.

Answer: So long as your lease does not provide otherwise, you can serve a three-day notice to perform conditions or covenants demanding the resident pay for the repair.

10. Question: Who is responsible for keeping the carpet clean? The tenant or the owner?

Answer: The tenant is responsible for leaving the premises, including the carpet, in the same state of cleanliness that existed at the time they first moved in.

11. Question: I purchased a building in which two of the three tenants do not have a deposit on file. Can I require a deposit for continuing tenancy?

Answer: If their lease agreement is month-to-month (as opposed to a fixed term lease), you can serve a thirty-day notice changing the terms of the tenancy to require a deposit.

12. Question: New tenants signed our lease and paid the first month's rent. Now they want to get out of the lease. They did not take possession.

Answer: When the tenant signs a lease, they are bound by the terms even if they change their mind later. The landlord must make reasonable efforts to try to find a replacement tenant, and if this effort is successful, the amount paid by the replacement tenant will reduce the original tenants' liability.

13. Question: Our renters signed a one-year lease, but were evicted after two months. They moved out before they were locked out. Are we able to charge rent until the unit is rerented?

Answer: An eviction doesn't end the tenant's responsibilities. You can charge them rent through the end of the lease term. . However, you must make reasonable efforts to try to find a replacement tenant, and if this effort is successful, the amount paid by the replacement tenant will reduce the evicted tenants' liability.

14. Question: I am renting a single family dwelling to three individuals, each of whom submitted a separate application but want to all be listed on the rental agreement. How do I fill out a month-to-month agreement?

Answer: Have them all sign the same rental agreement, listing all three individuals as tenant, so that they will all be jointly and severally liable.

15. Question: Several weeks ago, during a wind storm, a large tree fell on my tenant's car. The tenant thinks I am responsible for the damages, but my insurance company says I am not.

Answer: Unless you were negligent in the way you maintained the tree, you are not liable.

16. Question: An attorney representing a former tenant states, "The Department of Consumer Affairs suggests that a landlord should not charge tenants for painting after a two-year tenancy." Is there any standard on this?

Answer: The Department of Consumer Affairs' has stated this, but a judge may or may not agree with that position. The life expectancy of paint may depend on the type of paint. (For example, it may be reasonable for a landlord to expect a high quality gloss paint to last more than 2 years). Tenants are responsible for damage beyond normal wear and tear.

17. Question: Could you please tell me the law on roommates and the return of security deposits when only one vacates the unit.

Answer: Unless you provide otherwise in your lease, do not release the security deposit until after you regain possession of the unit from all occupants.

18. Question: I have several tenants who have damaged their units. What can I charge?

Answer: You can charge for the actual out-of-pocket costs. If you do it yourself, you should charge what the market would charge if you hired someone to do the work. In other words, it must be a reasonable charge.

19. Question: One of our residents brought in a roommate without my permission or consent. We have a clause in our lease prohibiting assignments or sublets of the lease. How do I prove the tenant is in violation of the lease?

Answer: In many cases it is difficult to prove because many times tenants claim that the person is a temporary guest. However, if there is enough circumstantial evidence, such as receiving mail at the premises, traveling to and from work, using the laundry and other facilities regularly, you will have enough proof to satisfy most judges.

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