

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

*Ted Kimball, Esq.*

### October 2021

**1. Question:** A tenant gave a 30-day notice of move out on the 10<sup>th</sup> of the month and turned in his keys to the owner 5 days later on the 15th. Is he still liable for the balance of the rent owed?

**Answer:** Yes, the tenant still owes for the 30-day notice period, minus amounts that can be collected from a replacement tenant. The landlord has to make a diligent effort to relet.

**2. Question:** Our tenants were supposed to move out in two weeks. However, the house they were moving into is not completed and they need to stay for another fifteen days. I have no problem with this, but my question to you is what if they do not vacate on time?

**Answer:** You should have them sign an agreement to vacate on a specific date so if they fail to vacate you can immediately proceed with an action for unlawful detainer.

**3. Question:** When you return a security deposit disposition to the vacating tenant, what is the statute of limitations if they do not agree with the deductions and wish to sue in small claims court?

**Answer:** If your rental or lease agreement was in writing, the statute of limitations is four years. If the agreement was verbal, it is two years. The time starts to run from the date of the alleged breach.

**4. Question:** My renter was walking down the stairs carrying bags of groceries and fell and broke her wrist. Can I be sued and a judgment obtained against me?

**Answer:** You would only be liable if you were negligent in the way you maintained the stairs and your negligence caused the injury.

**5. Question:** Our window was broken by a ball hit by the tenant of a neighboring property. They admitted they owed me for a new window but moved away before I could collect on it. Is the owner of the property responsible because it was their tenant?

**Answer:** The owner of rental property is not normally responsible for the unforeseeable acts of their tenant. In order for the owner to be liable, you would have to prove that the owner knew or should have known his tenant would have caused physical damage to your property, and the owner failed to take reasonable steps to protect your property from harm.

**6. Question:** I have a resident who was just put in a detoxification clinic. Her sister wants me to allow her inside to remove all of her personal possessions and move her out because she says the resident is not planning on returning. What can I do to protect myself from being sued by the resident because someone took her belongings and management re-rented the unit?

**Answer:** Under California law, the sister has the legal right to access the unit only if your tenant or a court grants that right to the sister. Therefore, any family member who wants inside should provide written authorization from the resident, or power of attorney allowing them to enter the unit, or a court order. Make sure the signatures match or require a notarized statement and check identification. Likewise, if the resident is intending to vacate the unit that should also clearly be stated in writing by the resident.

**7. Question:** I am an on-site manager and I am upset because I was tape-recorded without my knowledge or permission by someone who was "shopping" the apartment community. Is this legal?

**Answer:** California Penal Code §632 prohibits electronically recording “confidential” conversations without the consent of all parties to the conversation. A conversation is “confidential” when a party to the conversation reasonably expects that the conversation is solely between the conversing parties, and they will not be overheard or recorded. However, there is no violation in cases where the expectation of privacy does not exist, such as telephone answering devices. Violation of this law may result in criminal fines and/or jail time. In addition, the recorded party may bring suit against the violator for the greater of \$5,000 or three times the actual damages suffered, for each violation.

**8. Question:** My understanding is that unlawful detainer actions remove the tenant from a specific rental unit. My contention is that the tenant is also not allowed anywhere on the premises of the common areas of the premises after an eviction. Frequently the evicted tenant hangs around the premises and causes additional problems out of spite. What can be done and what are my legal rights as owner?

**Answer:** If an evicted tenant returns to the common area of the rental property without invitation by any of the current residents, or without your permission or consent, he or she is trespassing. The common area of the apartment community is under the direct control of the owner and manager, and anyone present without authority or consent is guilty of trespass.

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