

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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1. Question: Can residents sit outside their front door and drink beer or smoke cigarettes? Other residents are complaining.

Answer: If the outside portion where they are drinking beer or smoking is part of the common area of the premises, you can restrict that activity as long as it is restricted for all residents. If it is part of their rented space, you cannot, unless they are causing unreasonable disturbances to other residents.

2. Question: I purchased a rental property two years ago and the security deposits need to be increased. Most of the deposits are \$1000.00 and need to be increased to \$1800.00. What is the best way to do this?

Answer: If they are on a month-to-month agreement, you can serve a thirty-day notice changing the terms of the tenancy to increase the deposit amount. You can charge up to twice the amount of the monthly rent if the unit is unfurnished. If the tenant is a member of the military the limit is one month for an unfurnished unit. Be cautious of rent control jurisdictions that may have other limits on the deposits.

3. Question: Who is responsible for the expense of carpet cleaning and painting when a tenant vacates a unit? Is it lawful to pass on this expense to the departing tenant?

Answer: Under California law, the carpet must be left in the same clean condition it was when the tenant first moved in. Any necessary cleaning is the tenant's responsibility, and the cost may be deducted from their security deposit. Painting may also be charged to the departing tenant if the need to paint arose out of extraordinary wear and tear while the tenant occupied the apartment.

4. Question: We rented to three roommates who all moved in at the same time. One moved out a couple of months ago and the other two moved out last month. All three were on the rental agreement and one is demanding that we give the entire deposit refund to him because he was the one who paid it. What should we do?

Answer: Either require the roommate to produce a written, notarized statement from the other two roommates granting their permission and consent, or give him a check with all three names as the payee.

5. Question: I served a three-day notice to pay rent or quit to one of our tenants. I received a partial payment within the three-day period. Do I have to serve another notice for the remainder of the rent or is the notice still good?

Answer: Under California law, a residential landlord who accepts partial payment of rent demanded on a three-day notice is required to serve a new notice for the balance owed. If you wish to proceed with eviction, you should not accept a partial payment.

6. Question: How do we get rid of tenants who have filthy units? They always pay on time.

Answer: If the condition of a residential tenant's apartment unit is creating a health or fire hazard, the landlord should take steps to require the hazard be removed, or if necessary, terminate the tenancy and evict. If the condition does not amount to a health or fire hazard, you may elect to serve a thirty-day notice to terminate a month-to-month tenancy, or if the lease is a

fixed term, do not renew. If the tenant could have a disability called “hoarding,” you should seek legal advice before proceeding.

7. Question: One of our tenants informed me that residential landlords have to replace carpeting every five years. Is this true?

Answer: No. California does not have specific requirements for replacing carpets or any condition of the unit so long as it remains in a habitable condition, which means free from substantial health or safety hazards. As long as the carpet does not have holes or tears it is in habitable condition, if it can be repaired that is acceptable.

8. Question: How long should we retain old leases at our apartment complex? I have heard two years, is this correct?

Answer: The statute of limitations (the time one has to bring a lawsuit) for written leases is four years. Therefore, leases should be retained a minimum of four years from the date of the vacancy.

9. Question: One of our tenants is buying a home and gave us a thirty-day notice. Now they want to extend escrow fifteen more days beyond the thirty-day period. They are willing to pay for the additional rent. Should we require a new thirty-day notice from the tenants?

Answer: If you are in agreement to the additional fifteen days, agree in writing to extend the thirty-day notice period to expire on midnight on the agreed extension. The writing should provide for any additional payment and specifically state that the thirty days’ notice is not waived. Otherwise, the court may believe that you waived your right under the thirty-day notice by allowing the tenant to remain in possession and paying rent beyond the thirty-day notice period. If the tenant will not sign, then do not accept the additional time and proceed with eviction.

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