

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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1. Question: In a co-signer situation what forms do you recommend that the co-signer sign along with the tenant?

Answer: They should sign a separate guarantee agreement that has been reviewed by competent counsel.

2. Question: As resident managers, we are dealing with several tenants in violation of pet rules. In retaliation, they have made false accusations of us entering their apartments without notice. They are now disturbing other tenants with this untruth and questioning our integrity. How can we protect or defend ourselves?

Answer: You can serve a Three-Day Notice to Perform Conditions and/or Covenants or Quit to permanently remove the unauthorized pets, if permitted by your local moratoria, if any in place. If you can prove the pets are still there after the notice expires, you can file for unlawful detainer.

3. Question: I want to start charging a late charge in my future leases. Is there a law stating how many days after the due date must expire before a late charge can be imposed?

Answer: California law does not prohibit a landlord from charging the tenant a bona fide late charge after the rent is delinquent. The rent is not delinquent unless one business day has passed at the time the rent became due. If the rent is due on the first and the first is on a weekend, a late charge could not be imposed until after the first business day expires.

4. Question: What happens when the lease expires? Is it assumed that the agreement goes month-to-month? Or should a new agreement be signed?

Answer: If the lease does not speak to renewal or reversion to month-to-month and the tenant remains in the premises with the landlord's consent, the law will presume a month-to-month agreement if the rent is paid and accepted by the landlord. It then can be terminated by either side serving the other with a written Thirty-Day or Sixty-Day Notice to Quit unless subject to a just cause provision like AB 1482 or a local provision.

5. Question: I have a lease with two male tenants. The lease specifies two occupants only. One of the tenants has a girlfriend who spends the night every day of the week for the last month. How do you determine when a guest is an occupant?

Answer: Unless the tenant admits to having another person move into the rental unit, you need to prove that they are occupying the unit through circumstantial evidence. Proof of facts such as receiving mail at the premises, coming to and from work on a daily basis, present on weekends, or making requests from management all could lead a trier of fact to conclude that the person is an occupant of the premises. The required level of circumstantial evidence may vary from different jurisdictions.

6. Question: Is there a law for returning the security deposit within a certain time frame? If I missed the due date is there an automatic penalty? I overlooked accounting for a deposit and it has been 25 days.

Answer: California law allows residential tenants and landlords to contract for up to 21 days for the accounting and, if applicable, return of all or a portion of the tenant's security deposit. There is no automatic penalty for being late. It is advisable to have the accounting provided within 21 days, even if the accounting provides for the estimates for work not already completed.

7. Question: When we have called attention to a violation of the lease or community rules, tenants frequently will say we are “picking” on them. How can we protect ourselves?

Answer: First, make sure you are enforcing the lease and community rules equally to all violators. The best way to avoid or minimize legal challenges is by documenting all incidents and responding in a consistent manner.

8. Question: When typing up a new lease, should we use the spelling of the tenant’s names as it appears on the application or on their driver’s license?

Answer: It is important to be consistent on how you spell their name in the event legal action is necessary. It is best to use the name exactly as it appears on their driver’s license and request that they fill out the application in a manner consistent with this request.

9. Question: If a one-year residential lease is broken, what becomes of the security deposit?

Answer: Once the tenants have vacated the premises and the landlord has taken over possession, the time to account for the use of the security deposit (normally 21 days) begins. The deposit can be used for any monies owed the landlord including delinquent rent left over from the contract.

10. Question: I have single family homes that I have for lease. They have large, well-maintained gardens. How do I best ensure that they are kept up?

Answer: Your best bet is to hire a gardener yourself, build the cost into the rent and have the lease read that the gardener has permission to enter the property for gardening, landscaping, mowing etc. That way you have more control over the price and the quality of the work done.

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