

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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1. Question: We rent a house to a family. My husband helped the tenant move a washing machine into the laundry room and noticed that the tenant's defective hoses had leaked water onto the sheetrock. We want to have the sheetrock repaired. Can we deduct the cost from his security deposit and then send a 30-day notice for the tenant to reinstate that amount?

Answer: You can serve a 3-day notice to perform conditions and covenants or quit to require the tenant to make repairs or to pay for the repairs if there is an appropriate provision in your lease regarding damages. If they do not comply with the notice, you can proceed with an eviction, or alternatively, deduct repair costs from their security deposit.

2. Question: I heard that if a tenant is using drugs on a property, the landlord can be charged on a drug charge, is this true?

Answer: A landlord can be cited for maintaining a drug-related nuisance if he or she does not take reasonable steps to remove the illegal drug activity from the property. The local enforcement agency must first advise the landlord of the nuisance.

3. Question: A tenant claims her attorney told her that since she did "quit" after we gave her the 3-day notice, she is not responsible for the balance of the rent for that month. Is she correct?

Answer: Her attorney is wrong. Even if a tenant "quits" pursuant to a notice to perform or quit, the tenant is still liable for lost future rent under the lease.

4. Question: Is the legal age for leaseholders over 18 or over 17?

Answer: The legal age to contract in California (including leases) is 18 or over. However, if the under age person is "emancipated" (is or has been married, in active military duty or by court order) he or she does have the ability to enter into binding contracts and leases.

5. Question: I am evicting a married couple. My attorney says that we have served the lawsuit on the wife personally and the husband by substituted service. What does this mean and what difference does it make?

Answer: A lawsuit for unlawful detainer can be served either personally or by substituted service by giving a copy of the lawsuit to a person at least 18 years of age, at the subject property or at the usual place of employment of the defendant, and then mailing a copy. Personal service is handing the Complaint directly to the defendant and is completed as of the date of delivery. A substituted service is completed 10 days after both the delivery and mailing are completed. The difference is how much time they have to respond to the Complaint. Personal service provides 5 days to respond and substitute service is 5 days plus 10 days or 15 total. As of September 2019, this time does not include Saturdays, Sundays, or judicial holidays.

6. Question: I have tenants who have a written rental agreement for their apartment. They also rent the garage at \$150, but there is no written agreement for the garage, either separately or in the rental agreement. If we give the tenant a 3-day notice to pay both the garage and the apartment rent, would it be enforceable in court?

Answer: Since the terms of the garage rental are unclear, it would be safer to serve two 3-day notices, one for the apartment rent and one for the garage rent. They should be served

simultaneously. If one notice has a defect depending on the facts, then the landlord can proceed on the other notice only.

7. Question: I am planning to rent to three adult roommates. I know they all have to fill out separate applications. But, how do I handle the security deposit? Do I ask each tenant for 1/3?

Answer: You should charge one deposit that need to be paid in a single payment and not account for it until all tenants vacate. Make this clear in your lease so that if one tenant vacates, it is up to his or her former roommates to get reimbursed.

8. Question: I have reason to believe that a single tenant has moved out from my rental property and have an arrangement with a third party couple now in residence. How do I best legally remove them and take back my apartment?

Answer: You can serve a 3-day notice to perform conditions and covenants or quit if your lease has a prohibition against subletting or assignment of the lease, or, if there is a provision limiting residency to named occupants.

9. Question: I have an applicant for an apartment who informed me that she has bad credit because of her ex-husband's irresponsibility. Her current employer has offered to co-sign. Is this a good idea to accept him as a co-signor, and how would this be done?

Answer: You should first determine whether or not you are going to have a policy of accepting applicants with bad credit on the condition they have a co-signor, in order to stay within fair housing laws. This should be a part of your written non-discriminatory rental criteria. Then decide what criteria the co-signor must meet, such as credit history, income, residency in the local area or at least in the state. Finally, require the co-signor to sign a separate guarantor agreement reviewed by legal counsel.

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