

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

Kimball, Tirey & St. John LLP

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- 1. Question:** My tenant asked me to accept a payment from a third party for half of her rent. We have a policy not to take third party payments. Can I refuse?

Answer: No, you are required to accept third party payments provided that the third party payment also comes with a statement that says that the payment would not create a landlord tenant relationship with the third party.
- 2. Question:** I gave a sixty-day notice of a rent increase, and my cousin says that is not good enough but it is the same notice I have always used. Why is it not good enough?

Answer: It depends on how much you have increased the rent. If the total increase (including all increases over the last twelve months) is ten percent or less, then the notice required is thirty days. If the total increase over the last twelve months is more than ten percent, the required notice increased to ninety-days plus five calendar days for mailing, if mailed within California.
- 3. Question:** Am I within my legal rights to ignore oral notices and demand written thirty-day notice for a month-to-month lease termination?

Answer: Yes, California law requires termination notices to be in writing.
- 4. Question:** One of our tenants paid us \$50.00 per month rent less than what his lease required. We did not catch the mistake until after his third month. He says he does not owe it because we waived our right to collect it when he paid his rent. Is he right?

Answer: Probably not. If your lease contained a non-waiver provision, it should be upheld in court. Even if your lease were silent on this issue, he would have to prove that you knowingly waived your right to receive full payment by accepting a lesser amount.
- 5. Question:** Is there a clear definition of what constitutes "ordinary wear and tear"? My husband and I are spending day and night trying to clean and repair our once beautiful home we rented out and need to know how much to charge back to the residents.

Answer: There are not many legal guidelines on this issue so many judges use what they consider a common sense approach. We advise landlords to seek an opinion from the manufacturer of drapes, carpets, and appliances as to their expected lifetime assuming ordinary wear and tear. If the item needs replacing before that time, you can use this as a guideline to determine the pro rata amount to charge back to the tenant.
- 6. Question:** One of my residents recently had her phone line repaired. The telephone company charged her \$60.00. She did not notify us of the problem before ordering the repair. We could have made the repair ourselves at much less cost. The tenant wants me to pay the bill. What do you think?

Answer: California law deems owners of rental property responsible for the inside wiring to the property. However, tenants must first give landlords notice of a needed repair and provide a reasonable time to make the repair before undertaking a self-help action. You shouldn't have to pay more than what it would have cost for you to make the repair.

7. **Question:** Must three-day notices to pay rent or quit be served to all delinquent tenants at the same time? We manage a large apartment community and sometimes have a multiple of notices to serve.

Answer: California law does not require that you serve three-day notices to all delinquent residents at the same time. It is a good idea to do so, however, in order to avoid the appearance of favoritism or discriminatory conduct.

8. **Question:** Our tenants have a one year lease. They gave me a thirty-day notice of intent to vacate two months short of the one year lease expiration. What should I do?

Answer: You should let them know in writing that a thirty-day notice has no legal effect on their obligations under the lease and they remain liable for the rent until the lease expires or the date you are able to relet the premises, (once they vacate you have to use due diligence to relet), whichever comes first.

9. **Question:** Our tenant's children put a 6-inch hole in a plaster wall of the house they are renting. The tenant readily admitted that the children "might have been punching the wall a little." What are our legal options?

Answer: You can serve a three-day notice to perform conditions and covenants or quit to require the tenant to make repairs or to pay for the repairs. If they do not comply with the notice, you can proceed with an eviction, or alternatively, deduct repair costs from their security deposit.

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