

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

*Kimball, Tirey & St. John LLP*

**December 2022**

**1. Question:** I received a large payment from Housing is Key but it does not cover the full balance, can I apply the payment wherever I want?

**Answer:** Payments from housing is key are covered under SB 91 which states that the payment come with a receipt. The receipt should tell you where the payment should be credited towards. Apply the payment exactly how it is on the receipt.

**Question:** Is there a general rule we need to follow for carpet depreciation?

**Answer:** It depends upon the quality of the carpet. You need to find out from the manufacturer the life span of the carpet under “ordinary wear and tear.” If it has to be replaced before that time, it may have been subject to extraordinary wear and tear and then the tenant would be held liable for the loss of the remaining life expectancy of the carpet.

**2. Question:** If the contract says no pets, but does not specify fish, can I stop a tenant from keeping a 150-gallon aquarium?

**Answer:** Fish are considered pets by most judges so they are violating the lease by having a 150-gallon tank. A small goldfish bowl may not constitute a major breach, but a 150-gallon tank most likely does.

**3. Question:** I have a former tenant who claims, since she had a one year lease, she is not obligated to give a thirty-day notice.

**Answer:** There is no statutory requirement that a thirty-day notice of non-renewal be given during a fixed term lease, but if the lease has a valid automatic renewal provision and she fails to give notice of nonrenewal or termination, she is in breach of the lease and can be liable for any losses you suffer as a result.

**4. Question:** How does one collect on a judgment against a former resident?

**Answer:** A judgment can be collected in a variety of ways: wage garnishment, bank levy, seizure of non-exempt personal property and sale are the most common. A judgment debtor examination can also be used to locate assets, and if the debtor fails to appear, a warrant can be issued for their arrest.

**5. Question:** One of our residents is a day sleeper and complains about the noisy children next door. They are under school age and I don't know how or if I should enforce excessive noise.

**Answer:** Most courts recognize that apartment living is in closer proximity than single family homes and occupants therefore must be more tolerant of disruptions, considering also the time of day or night and the cause of the disruption. If the noise the children make is not excessive for daytime tolerance, it is likely there is no violation of the lease or community rules. This is especially true where HUD has said children are meant to play. Have a witness come with you to determine whether the noise is excessive.

**6. Question:** Can tenants change their locks without permission and refuse to provide a key to the property manager?

**Answer:** Most leases restrict any alterations to the premises without your permission or consent and most leases specifically restrict changing locks without the landlord's permission.

**7. Question:** If a friend of a tenant appears to be living in the apartment, is there a time limit which allows me to compel the guest to fill out an application to be added to the rental agreement? Can the tenant have guests stay as long as they want?

**Answer:** If your lease prohibits subletting or assignment of the lease, or if your lease restricts the occupants to those named in the lease, the tenant could be in violation. You would need to prove that the person really moved in and was not just a guest. Newer leases specify the number of consecutive days and total number of days within a specified period are acceptable for visitors. Also, it is important to review local laws as some of those address this issue as well.

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