

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

*Kimball, Tirey & St. John LLP*

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**1. Question:** What are my legal rights regarding maintaining a full deposit on a unit when one roommate moves out and another stays? My understanding is that I am entitled to maintain the full deposit while at least one of the original tenants remain in residency, and it is that remaining person's responsibility to refund the deposit.

**Answer:** Unless your lease provides otherwise, you do not have to account for the use of the deposit or do an inspection until you regain possession of the unit. The roommate who vacated is not entitled to a refund or inspection at this time unless your lease specifically requires it.

**2. Question:** Does the acceptance of rent from someone who is not on the lease mean I've accepted him as a tenant?

**Answer:** Accepting a third party check does not by itself necessarily indicate that you have accepted this person as a tenant. It is a good idea to indicate that this is being received on behalf of the tenant and does not indicate any tenancy relationship between you and the check writer. As of August 2018, landlords are required to accept third party payments provided that the payment also has the acknowledgement that the payment will not create a tenancy.

**3. Question:** I have a resident who moved in this last month. I have had a lot of noise complaints about him from other residents. I have also issued three warning notices for noise and the cleaning of this patio. He has a one-year lease. What can I do?

**Answer:** If the disturbances rise to the level of a public or private nuisance (major, continuous disturbances to neighbors), then you could serve a Three-Day Notice to Quit based upon the nuisance. You may also serve a Notice to Permanently Perform Covenant or Quit and if the tenant continues to breach you can serve a notice to quit. You will need to make sure that you have evidence at the time of trial, which means tenants may need to come testify.

**4. Question:** I have tenants who recently divorced. The husband has moved out. Can we take him off the rental agreement?

**Answer:** It is not in your best interest to take him off the lease as he is still responsible for the lease payments even though he moved out through the end of the contract, if it is a term lease. If it is a month-to-month tenancy, the husband can provide notice that he will vacate and be responsible for the thirty days only.

**5. Question:** One of our employees said she believes that a tenant's rental agreement must be signed in the owner's or agent's presence, or notarized, or it will be invalid.

**Answer:** California rental agreements do not have to be notarized or signed in front of the owner or owner's agent, but it is a good practice to do so.

**6. Question:** Can I ban alcohol in the pool area?

**Answer:** You can control the common areas of the premises so you could ban the use of alcohol in the pool area.

**7. Question:** In our lease agreements we require tenants to pay their rent on the first of the month. If the first falls on a holiday, do you have to give the tenants until midnight on the second to pay the rent or can you still enforce the late fee as of midnight on the first?

**Answer:** Rent is not “legally late” unless one business day has expired from the date the rent is due. So if the first is a weekend or holiday, the rent is not late until the next business day after the weekend or holiday has expired. Also, you cannot serve a notice until after the end of the first business day has expired.

**8. Question:** I own a tri-plex. Unit B has two cars, one is broken down. What kind of demands can I place on Unit B about the broken down vehicle?

**Answer:** The provisions or demands must be a part of the lease. You can create a lease term requiring all vehicles to be in operable condition or they will be towed. To put this into place, you need to either serve a Thirty-Day Notice of Change of Terms to a month-to-month agreement, or wait until the lease expires and have the new condition in the renewal lease. This provision may not be available in areas covered by eviction control.

**9. Question:** Can I bill my tenant for excessive water usage if I can prove they neglected to fix two leaky faucets for over three months?

**Answer:** Most rental agreements and California law require the tenant to maintain the premises in good condition and repair. Failure to meet their obligations would therefore be a breach of the lease and you should be able to recover all losses suffered, provided you have sufficient proof.

**10. Question:** What can you do about a tenant being cruel to an animal such as keeping a large dog in small quarters outside with the dog crying in the rain, cold and heat?

**Answer:** You have a right to report any criminal or inhumane acts occurring on the rental property. If the mistreatment constitutes a crime, you could evict the tenant for carrying on illegal activity on the premises.

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