

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

*Kimball, Tirey & St. John LLP*

### February 2025

1. **Question:** My tenant is asking me to accept rent from a local non-profit. I do not take money from non-tenants except the government, is that okay?

**Answer:** No, it is not okay. Landlords are required to accept payments of rent from any third party as long as the payment comes with a statement that the rent payment is on behalf of the tenant and that it would not create a landlord/tenant relationship with the third party.

2. **Question:** Our tenant owes us back rent and is stating that he is probably going to file bankruptcy. We've been trying to work with him but are getting nervous now. Do we lose all the back rent if he files bankruptcy?

**Answer:** It depends. If he files a Chapter 7, there is little hope. If he files a Chapter 13, you may receive all or a portion of the back rent. If the debt is named on the bankruptcy filing and is discharged, you would not be able to get payment. If the debt is not discharged or becomes due after the filing, you could still try to collect.

3. **Question:** There was a fire in one of our rental units due to a tenant's candle. What is my obligation to provide alternate accommodations for this tenant? Am I required to keep her as a renter?

**Answer:** You are not obligated to put the tenant up. You may have a right to evict her based upon waste of the unit, which requires a 3-Day Notice to Quit. The burden is on you to prove that it was the tenant who was responsible for the fire to evict.

4. **Question:** The tenants living in one of our apartments signed a one-year lease which states that there will be no pets allowed. They now have two cats in the apartment and are only in the second month of the lease. We served a 3-Day Notice to Perform Covenant or Quit. They have chosen to leave. The rent for the entire month was paid. Are they entitled to the prorated amount of rent for the unused portion of the month?

**Answer:** No, they are liable for the remainder of the lease or up to the time you relet the premises, whichever occurs first. A landlord must act with due diligence to rent the unit in order to mitigate the damages.

5. **Question:** My tenants paid an extra deposit for a pet. They gave away the dog after 2 months. Now they are asking if the pet deposit could be returned.

**Answer:** You do not have to account for the use of the deposit until 21 days from the date they return possession of the premises, so you don't have to refund any of the deposit.

6. **Question:** I rented an apartment to a young man; he signed a one-year lease and paid the deposit and first month's rent in full. He has received the keys but now he is requesting to get out of his lease because another apartment that he prefers became available. Is there any kind of buyer's remorse on signing a lease?

**Answer:** Your tenant is obligated to pay rent through the lease term or until the time the premises are relet, whichever occurs first. There is no buyer's remorse.

7. **Question:** One of the recent applicants to our apartment community claims he is paid "under the table". How do I verify his income?

**Answer:** You really can't, and because he is committing fraud, you should not consider this a legal source of income. If they fail to otherwise qualify, you can deny his rental application.

8. **Question:** One of our tenants was recently arrested and has not paid the rent. We served a notice by "post and mail", and it has been over three days. How do we serve the unlawful detainer (eviction) on the tenant while in jail?

**Answer:** Most jails will allow your process server to serve the tenant while in jail. It may take several hours before they are able to pull the inmate up, but your process server can be waiting for him or her and legally serve them while incarcerated.

9. **Question:** One of our residents served us with a written 30-day notice and has failed to vacate after 30 days. Can I start the eviction process, or must I serve a 30-day notice first?

**Answer:** Under state law, if a residential tenant serves the landlord with a written 30-day notice and the rental term is month-to-month, the landlord may immediately file an unlawful detainer (eviction) action in court on the 31<sup>st</sup> day, providing the 30th day fell on a business day. Do not serve another notice. However, if the property is subject to just cause, you cannot evict unless one of the just cause reasons permit this. Check with an attorney to see if local laws apply to your case.

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