

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

*Kimball, Tirey & St. John LLP*

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**1. Question:** Can we use a recent Section 8 inspection report as a standard of habitability in an eviction case?

**Answer:** The court will allow any relevant evidence that tends to prove the condition of the premises during the time in question. Since the purpose of the inspection is to qualify the unit as habitable and in compliance with HUD regulations, the report may be considered as evidence of the condition of the premises at the time of the inspection, but the custodian of records may have to testify as to the accuracy of the report. Also, the date of the report may be considered as well, if it was issued a long time ago, it may not carry a lot of weight.

**2. Question:** One of our tenants recently requested that we paint the inside of her apartment. She has threatened to do it herself and deduct the cost of the paint from the rent if we do not have it painted within the next two weeks. Is she legally able to carry out her threat?

**Answer:** Unless the condition of the walls rendered the premises uninhabitable, the owner is under no obligation to paint the unit at the request of the tenant. You would want to investigate the condition of the paint and respond to the request in writing. The tenant does not get to dictate the paint within the unit.

**3. Question:** What is the most useful information on the tenant's application for collection purposes?

**Answer:** The most useful for locating former residents are the social security, driver's license and license plate numbers. For collection on judgments, current employment and bank account records are the most valuable.

**4. Question:** I rent out a condo that I own. Are the rules and regulations of the homeowner's association automatically applicable to my tenant?

**Answer:** Not automatically; your residential lease should incorporate by reference the CC & Rs of the homeowner's association and all rules and regulations. That way if there is a breach of the association rules, you can serve an appropriate notice to perform or terminate the lease.

**5. Question:** What is an estoppel certificate? The owner of the property I manage requested that each of the tenants sign an estoppel certificate. I did not want to appear unknowledgeable.

**Answer:** An estoppel certificate is a document signed by the tenant certifying that the major terms of the lease are true and correct. Estoppel certificates are sometimes required during the sale of rental property, so the buyer knows that the tenant understands and agrees to the major terms of the lease.

**6. Question:** After serving a tenant with a three-day notice to pay rent or quit, what is my next step if the tenant does not comply? Serving a thirty-day notice?

**Answer:** Your next step would be to file the unlawful detainer (tenant eviction) in the proper court. Each court has geographical boundaries, so you should make sure you are filing the

action in the court of proper venue. You would also want to make sure that the notice you served meets all legal requirements in order to prosecute the eviction. Also make sure that you upload a copy of the notice to the city website, the Section 8 advisor, or any other legal entity that may require it. Some cities in California have now placed a burden on landlords to upload the notice.

**7. Question:** A tenant's child broke a glass shower door. Can I charge the tenant for the repair of the door?

**Answer:** The tenant is liable for any damage done by its invitees, guests or other occupants of the premises. The tenant should have to pay for the repair of the door.

**8. Question:** After a tenant moves out and gives their change of address to the post office, how long are the landlords responsible for any correspondence that may still arrive at their former address?

**Answer:** You should let the post office do their job and if the forwarding address has expired, give it back to the post office and indicate that the person no longer resides at the mailing address. We do not recommend you help accommodate your former tenant by playing "post office."

**9. Question:** I need to know the depreciation schedule of new carpeting in a home where the tenant lived for one year. The tenant put 5 cigarette burn holes in the carpet and spilled wax on the corner of this brand-new carpet.

**Answer:** California's security deposit law found in Civil Code Section 1950.5 states that the resident is responsible for damage above normal wear and tear. If the carpet needs to be replaced after one year and it should have lasted for five years, most judges will allow you to charge the resident 4/5 of the total replacement costs. You can review the lifetime expectancy from the vendor or store you purchased the carpet.

**10. Question:** I have a tenant who smokes outside his apartment. Can I request he not do that? There have been issues with cigarette butts on walkways and it also affects the tenants next door to him as they always close the kitchen window when he smokes.

**Answer:** You can create a non-smoking policy for all or part of the premises, so long as you are consistent in its enforcement and provide adequate legal notice of the new policy.

**11. Question:** I have a roommate situation. One roommate has moved out. Am I required by law to give back half of the security deposit to the one who has moved out?

**Answer:** California law does not require landlords to return the security deposit to one tenant if they move out before the remaining tenant(s). Landlords are not required to account for the use of the security deposit until after they have recovered possession of the property unless otherwise agreed at the inception of the lease.

**12. Question:** At my property, we are currently doing renovations and have notified all the residents that there will be noise and water shut offs. One resident said they are entitled to rent discounts because of the situation, is it true?

**Answer:** There is no "automatic" reduction in rent allowed for temporary shut off of water, and/or noise created by renovation or routine maintenance.

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