

# 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 payment does not by itself necessarily indicate that you have accepted this person as a tenant. As of August 2018, landlords are required to accept third party payments provided that the payment also has the acknowledgement that the payor is not a tenant and acceptance of the payment will not create a tenancy. The acknowledgement needs to include specific language from Civil Code §1947.3(a)(3)(C). Without this acknowledgment or other similar agreement, the person may be able to argue that you have authorized their tenancy.

**3. Question:** I have a resident who moved in 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:** You may serve a Notice to Permanently Perform Covenant or Quit, and if the tenant continues to breach after the expiration of that notice, you can in some circumstances 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. If the disturbances are so severe that they 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; whether disturbances constitute a public or private nuisance is a high threshold.

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

**Answer:** If it is a term lease, it is not in your best interest to take him off the lease as he is still responsible for the lease payments through the end of the contract even though he moved out. You may choose to take him off the lease if you and all leaseholders agree in writing to remove him and they meet your criteria for doing so (e.g. the other spouse qualifies on their own). A well-drafted agreement should be utilized to ensure the terms and conditions of his removal are clear. If it is a month-to-month tenancy, the husband can provide a 30-day 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 good practice to do so.

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

**Answer:** You can control conduct in the common areas of the premises so you could ban open alcohol containers and/or 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 after the due date 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:** If the vehicle is parked on private property and does not have an engine, transmission, wheels, tires, doors, windshield or any other major part or equipment necessary to operate safely on highways, you can notify the local law enforcement and wait 24 hours. If the vehicle is still there after 24 hours, then you can have the vehicle towed. Otherwise, if the terms of the tenancy require that the tenant’s vehicles parked on the property are operable, then you can demand its removal or become subject to tow or lease violation. If not already in the lease, you can create such a lease term by either serving a Thirty-Day Notice of Change of Terms for a month-to-month agreement or waiting until the lease expires and having the new condition in the renewal lease. This provision may not be enforceable 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 exercise care to ensure the premises are in good condition and repair, including using fixtures properly and the requirement to notify you when repairs may be needed. 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. The method of demanding payment from the tenant may depend upon the terms of the lease.

**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 as confirmed by a law enforcement agency, you could evict the tenant for carrying on illegal activity on the premises. You may also be able to address this as a noise disturbance if the dog crying is causing other tenants to complain.

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