

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

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1. Question: How can we determine if the roaches in the apartment were the result of bad housekeeping? Is it our responsibility to get rid of the roaches?

Answer: Ask your pest control professional to give their opinion. The court will rely heavily on expert testimony in these cases. If you can prove the tenant was responsible for the infestation, they are responsible for the pest control cost. Landlords are responsible to make a unit habitable, which means free from pest control issues.

2. Question: If our tenant sublets, and the sublessee defaults in the rent, do I give a notice to the tenant or the sublessee?

Answer: Serve each one a notice with both of their names on it. They should be evicted in the same action.

3. Question: What should I do if I suspect drugs are being sold out of one of our apartments?

Answer: Call the police and report the incident. Ask the police for any further directions. Document all the calls and what you said, did and observed. Finally, contact an attorney to determine whether you have enough evidence to proceed with a notice or an eviction.

4. Question: If a tenant does not give a 30-day notice of intent to vacate, can the full security deposit be kept by the landlord?

Answer: If the tenant is month-to-month, you can deduct for unpaid rent for up to 30 days from the date the tenant is vacated, minus amounts paid by a replacement tenant (if any) during that 30-day period. If the tenant has a fixed term lease, you can deduct for unpaid rent through the lease end date, minus amounts paid by a replacement tenant (if any) during that period. You must make reasonable efforts to find a replacement tenant during the rent responsible period.

5. Question: I have signed a lease for one year with a tenant and now he wants to leave after four months. What is my recourse?

Answer: The tenant is responsible for the rent up to the date the lease expires, minus amounts paid by a replacement tenant (if any) during that period. You must make a reasonable effort to find a replacement tenant. Where specific requirements are met, the tenant may be entitled to early termination due to domestic violence, military service or material breach of the lease by the landlord; speak to an attorney in these cases.

6. Question: New tenants moved into our apartment complex one month ago. Since they moved in, we have received noise complaints about them from other tenants in the complex, who now want to vacate because of the disturbances. What should I do?

Answer: Contact an attorney about serving a notice. If the disturbances are major and continuous, the court may grant an eviction. Witnesses will be required to prove your case in court if the case is contested. An attorney can also help evaluate whether the tenant requesting to vacate is entitled to early termination and identify other considerations.

7. Question: If you state in the month-to-month contract that rent is due on the 1st of each month, but there is not a late charge until after the 10th, can the resident pay every month on the 10th?

Answer: The rent is delinquent the day after the rent is due. Provided that the day the rent was due was a business day, a 3-day notice to pay rent or quit can be served the next day, even though the late charge is not yet due.

8. Question: I have a prospective tenant whose company will pay his rent as a perk to his job. Who must sign the lease?

Answer: Ideally you should have the occupant named as the tenant and sign the lease. There are several potential issues that can arise if the employer signs the lease, and those issues should be discussed with an attorney (before signing a lease with the employer). Landlords are required to accept third party payments, provided that the third-party payor provides a statement that the payment will not create a tenancy on the part of the payor.

9. Question: If a guest causes problems or damages the property, what is my recourse?

Answer: Most leases include a provision stating the tenant is responsible for paying to repair any damage caused by their guest's negligence or intentional act. If the tenant fails to pay according to the lease provision, a notice to perform conditions and covenants or quit can be served, followed by termination of the tenancy and/or an eviction. It will be landlord's burden to prove the damage was done by the guest or invitee.

10. Question: If someone owes late charges and NSF check charges, do I give them a 3-day notice to pay rent?

Answer: No, serve a notice to perform covenant or quit for late charges and NSF charges. A 3-day notice to pay rent or quit should only include rent – no late charges or NSF charges. A notice to perform covenant or quit is only permitted when the obligation to pay a late fee or NSF charge is in the written lease agreement.

11. Question: One of our tenants is moving out in three weeks. She has refused to allow any prospective tenants to see the apartment. Is there any way we can force her to let us in since the law says we have the right to show it?

Answer: You may be able to serve her with a notice to perform conditions and/or covenants or quit requesting that she give you reasonable dates and times for entry. Contact an attorney for more information.

12. Question: Three roommates signed the lease. If one roommate doesn't pay their share, are the other roommates responsible for the unpaid amount?

Answer: Most leases have a "joint and several" liability provision, making all the roommates fully responsible for paying the full amount due to the landlord, regardless of any separate agreement between the roommates.

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