

Kimball, Tirey & St. John LLP

Landlord/Tenant Questions & Answers

Kimball, Tirey & St. John LLP

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1. Question:

I have a person who wants to terminate their tenancy because their father was a victim of domestic violence. He does not even live at the property. Do we have to let the tenant out of the lease?

Answer:

Yes, potentially. Domestic violence protections have been expanded to include protections that trigger even when the victim does not live at the property, so long as the victim is an immediate family member. A father of a tenant does count as an immediate family member. As long as the tenant provides correct documentation of the incident, the tenant may terminate the tenancy and only be responsible for 14 days of rent beyond the notice. If no part of the crime occurred within 1,000 feet of the tenant's unit, the tenant has to provide an additional written statement stating all of the following: their father was a victim of domestic violence; and the tenant intends to relocate as a result of their father being a victim of domestic violence to increase their own or their father's (1) safety, (2) physical, emotional or psychological well-being or (3) financial security.

2. Question:

Is a new owner subject to the pet policy of a previous owner?

Answer:

Yes, but if the lease is a month-to-month agreement, it can be changed by properly serving a 30-Day Notice of Change of Terms of Tenancy on the tenant. If the property is subject to just cause provisions, the removal of an animal or eviction for failure to remove an animal may not be possible at all.

3. Question:

What is the best way to handle the 31-day month? When a tenant moves in mid-month, is it best to prorate the remaining days until the 31st or is it best to ignore the 31st day and consider all months to be 30 days?

Answer:

There is no specific law on point so if your lease doesn't address this issue, most judges use a 30-day month to calculate daily rent notwithstanding the number of days in the month. Some judges use the rent multiplied by twelve months, divided by 365 days, which is the most conservative view.

4. Question:

We have a tenant who has been incarcerated. Her aunt is coming to remove her personal belongings from the unit before the tenant's 30-day notice expires. Does the tenant still owe rent for the remainder of the days left on the notice to vacate even though the unit key has been returned to us?

Answer:

Yes, unless you are able to re-lease the premises before the expiration of the 30-day notice.

5. 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 further direction. Document all of the calls and what you said, did and observed. If you can prove illegal activity, commence an unlawful detainer action. Proving the sale of drugs is usually a stronger case when the police can testify to the illegal activity.

6. Question:

If a resident dies and we discover the body, should we call the police first or a family member?

Answer:

Call the police and give them the names and addresses of the family members. Wait for further instructions from the police.

7. Question:

What happens if we rent to someone who is under 18 and is not an emancipated minor?

Answer:

The minor tenant may choose to void the lease at any time because they did not have legal capacity to legally enter into the agreement.

8. Question:

Where do I get the lead paint pamphlets?

Answer:

The Environmental Protection Services (EPA) has pamphlets available at <https://www.epa.gov/lead/protect-your-family-lead-your-home-english>. The lead disclosure form is available online at https://www.epa.gov/sites/production/files/documents/lesr_eng.pdf. Tenants should be requested to sign the disclosure form indicating that they have received the pamphlet and any reports. The signed disclosure forms should be retained for at least 3 years as proof of compliance.

9. Question:

What is a prejudgment claim? When should it be used?

Answer:

A prejudgment claim is a document that can be filed along with the Summons and Complaint for an unlawful detainer. It requires that all persons who are not named in the lawsuit but are claiming a right of possession to the subject property to file a response and they will then be added as additional parties (defendants) to the eviction lawsuit. It should be used whenever a landlord has a belief that there may be unknown adult occupants in the property. It can also be used as "insurance" to protect against persons coming in after the judgment to try to add themselves and restart the case.

10. Question:

What kinds of changes to the rental agreement require the "change of terms" notice?

Answer:

A material change to a month-to-month tenancy requires a written Notice of Change of Terms of Tenancy. Typically, the notice will be a 30-Day Notice of Change of Terms of Tenancy, although in some situations, like rent increases, longer notice may be required. Examples may include but are not limited to; increases in rent, removal of parking, limiting attorney fees, implementation of no smoking restrictions. Additionally, properties subject to just cause may have additional restrictions on the ability to unilaterally change the lease provisions and then enforce those provisions.

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