

Landlord/Tenant Questions & Answers

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July 2026

1. Question: If a tenant is evicted, do they forfeit their security deposit?

Answer: Even though a tenant is evicted, they still have a right to an accounting of the use of their security deposit. The deposit can be used for cleaning, repairs beyond normal wear and tear and delinquent rent. If any amount of the security deposit is remaining after lawful deductions are made, the tenant must also still receive the refund in a timely manner.

2. Question: Does a resident have to stay in his apartment for a certain number of days per month in order for his lease to remain in effect?

Answer: Not unless the lease requires actual occupancy. Pay special attention to lease provisions that discuss extended absences from the property or relate to responsibilities to maintain the unit that can only be done if they are occupying the unit.

3. Question: Our new residents, who are college kids, are driving the neighbors crazy with their partying, and they are only one month into their one year lease. What kind of notice do I need to serve?

Answer: If the disturbances are major and continuous or the police declare the behavior to be a nuisance, you may be able to serve a three-day notice based upon nuisance and commence the unlawful detainer action if they fail to vacate pursuant to the notice. If the noise is not major, you may serve a notice of lease violation, continue to document the behavior and serve notices to perform conditions or covenants or quit then proceed with a three-day notice if the residents do not comply. The facts will determine which notice to serve, and it is recommended to consult with an attorney to discuss the appropriate course of action.

4. Question: Can I have the resident pay more security deposit to make up the difference from rent increases?

Answer: You can unilaterally change the terms of a month-to-month tenancy by properly serving a thirty-day notice of change of terms of tenancy – but cannot do so during the term of a fixed term lease or for a tenancy within a jurisdiction that restricts unilateral changes or deposit changes. For fixed term leases, you would have to wait until the lease expires and then upon renewal (or when the tenancy goes month-to-month), request an addition to the deposit. Note that as of July 1, 2024, there is a limit of one month security deposit for most tenancies regardless of whether the unit is furnished or not, with a few exceptions.

5. Question: I rent a house to a married couple. I have found that they now have a third person living with them. Can I raise the rent, tell them they have to sign a new lease if they want an additional person, or can I say they cannot have additional people in the house since only two people signed the lease?

Answer: If your lease restricts the number or the identity of the occupants, and the tenants have exceeded the limit or allowed an unauthorized occupant to move in, it may be considered a breach of the lease, which can be remedied by serving a three-day notice to perform conditions and/or covenants or quit. As an alternative, you can invite the third party adult to fill out an application, and if qualified, add their name to the lease. Also be aware of fair housing and local law related to the addition of an occupant as well as occupancy limits when making decisions. This is especially important when the additional occupant is a minor. Some laws also restrict rent increases and do not allow a rent increase for additional occupants.

6. Question: Do we have to take pictures of the apartment before a resident moves in?

Answer: For tenancies beginning on or after July 1, 2025, you are required to take pictures of the apartment immediately before the tenant moves in. Many landlords also take video or prepare a written statement of condition of the unit, but these are not required by law.

7. Question: We have posted no smoking signs on our poolside bathrooms and laundry rooms. Is this legal? We have been challenged by several residents.

Answer: Yes, you may restrict smoking in the common areas of your apartment community. To enforce the no smoking rules as a violation of the lease, you may also want to serve a notice of change of terms of tenancy or add lease provisions or a lease addendum to control smoking. Multiple cities have also passed no smoking ordinances that further limit smoking in multi-family housing.

8. Question: We have an excellent single resident in one of our units. She has requested to move a troubled friend with relationship problems in with her for a couple of months. What legalities do I need to consider and what additional and/or new forms do I need to have filled out and signed?

Answer: You could have the additional occupant qualify as a resident and sign the current lease as a tenant. This will protect you if the occupant remains and the resident moves out. An amendment showing the change in occupants should be used. Fair housing laws should also be taken into account in making the decision about allowing the friend to be added to the lease.

9. Question: Can a three-day notice be served for the cost of damage to the unit caused by a resident? A five-year-old flooded an upstairs carpeted room, resulting in carpet repair and drywall repair of the ceiling downstairs. The standard lease form in effect clearly provides for the tenant to pay in this circumstance.

Answer: So long as your lease does not provide otherwise, you can serve a three-day notice to perform conditions or covenants demanding the resident pay for the repair. For example, some leases require a demand for payment or reimbursement prior to a notice being served.

10. Question: Who is responsible for keeping the carpet clean? The tenant or the owner?

Answer: The tenant is responsible for leaving the premises, including the carpet, in the same state of cleanliness that existed at the time they moved in or absent damage beyond ordinary wear and tear.

11. Question: I purchased a building in which two of the three tenants do not have a deposit on file. Can I require a deposit for continuing tenancy?

Answer: If their lease agreement is month-to-month (as opposed to a fixed term lease), you can serve a thirty-day notice changing the terms of the tenancy to require a deposit within the statutory limit unless the unit is in a rent controlled jurisdiction that limits deposits or unilateral lease changes.

12. Question: New tenants signed our lease and paid the first month's rent. Now they want to get out of the lease. They did not take possession.

Answer: When the tenant signs a lease, they are bound by the terms even if they change their mind later. The landlord must make reasonable efforts to try to find a replacement tenant, and if this effort is successful, the amount paid by the replacement tenant will reduce the original tenants' liability.

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