

Kimball, Tiry & St. John LLP

Questions & Answers

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1. Question: I understand a security deposit refund must be postmarked within 21 days of vacating the premises. Is that correct?

Answer: The security deposit must be mailed within 21 days of the tenant vacating the unit.

2. Question: I have a maintenance worker who was terminated and was given seven days to vacate his apartment. He has not left, and I would like to know if I need to send him through the eviction process or if there is anything else I can do to get him out.

Answer: You need to send him through the eviction process. If he was purely an employee, you may be able to immediately file the unlawful detainer action.

3. Question: Is it illegal for an owner to charge for his own labor (as long as it is the going rate for that type of work) and deduct that amount from the tenant's security deposit?

Answer: It is not illegal to deduct for your own labor from the tenant's security deposit. You can charge a reasonable hourly rate and you must state the time and rate in your security deposit disposition statement.

4. Question: I have a tenant that I strongly believe is selling and using drugs. What actions can I take without having any evidence?

Answer: In order to use the illegal drug activity as a basis for eviction, you have to prove that the drug activity is going on; otherwise if you are on a month-to-month tenancy, you can serve a 30 or 60-day notice without cause unless you are in a rent controlled area. You should also call the police.

5. Question: Our tenants have just informed us via telephone that their rent check will bounce, they don't plan to cover it, and they intend to vacate the premises by the end of this month. They want us to use the majority of their security deposit as last month's rent. If we don't give a 3-day notice to pay or quit and proceed with an eviction, are we leaving ourselves more vulnerable?

Answer: If you do not proceed with a 3-day notice followed up by an eviction, you could find that the tenants decide to change their minds and not move out after all, prolonging their time in possession without paying rent. The extra "motivation" is often worthwhile.

6. Question: I served a 60-day notice of termination because I am going to sell my home. Since then, one of the two residents moved out and is asking for his half of the security deposit. Am I responsible to pay the security deposit before the second person moves out?

Answer: The security deposit is normally not returned until the owner recovers possession. The tenant who vacates should work that out with the tenant who remains. It is not the responsibility of the landlord to account for the deposit until he or she recovers possession.

7. Question: We served a 3-day notice to pay rent or quit. What is the latest date we could start an unlawful detainer without our 3-day notice "becoming stale" and having to be re-served?

Answer: It depends on the facts of any given case, but the longer you wait, the more of an argument you are giving the tenant. I would, in general, not wait more than one week.

8. Question: There is a very loud tenant in the apartment building across the alley from our rental. I have asked them to quiet down on numerous occasions and have even called the police. They keep playing their music late at night and into the wee hours of the morning. What else can we do?

Answer: You should continue to contact the police when unreasonable disturbances occur and consider contacting the owner of the property to inform him or her of the situation. The owner may not be aware of the problem and is able to take legal steps to remedy the situation if the loud tenant does not quiet down.

9. Question: After a lease expires and it is month-to-month, how much notice must a tenant give me in order to legally terminate the lease? He says one week. Is this true?

Answer: In California, 30 days or 60 days written notice is required to terminate a month-to-month tenancy and can be served by either party at any time during the tenancy. If all of the tenants have been in possession for one year or longer, you must serve a 60-day notice. Keep in mind the tenant can also serve a 30-day notice notwithstanding how long they have resided in the premises.

10. Question: Someone told me that if a resident is committing a crime on the premises they can be evicted in 3 days. I have never heard of this law and I rent to someone I suspect is dealing in drugs. Can you tell me more about it?

Answer: California law does allow an owner or manager of rental property to serve a 3-day notice to quit the premises based upon the commission of an illegal act on the property. The illegal conduct must, however, relate to the rented property. If your tenant was dealing with or possessed illegal drugs on the premises, you could serve the 3-day notice. If the tenant failed to quit, an unlawful detainer action could be filed in court to recover possession.

11. Question: One of our tenant's guests broke a window of the recreation room by throwing a ball through it. The host tenant claims he should not be responsible because the damage occurred outside the apartment and while they were playing catch in the common area. My tenant also refuses to give me the name or any information about his guest who caused the damage. What can I do?

Answer: In California, tenants are liable for the negligence of their guests while on the premises. The premises not only includes the actual rented unit, but the common area as well. Therefore the tenant and the tenant's guest are jointly liable for the damage to the window.

12. Question: I have a tenant who is on a long term lease. Recently, however, the tenant brought in a roommate and has been out of town for over 30 days. I am concerned that the roommate intends on staying and that my original tenant may have moved out for good. What are my legal options?

Answer: If you have a clause in your lease which prohibits the assignment or sublet of your lease agreement, you do not have to consent to the roommate. You could ask the roommate to fill out an application to rent and thereby identify who the roommate is. Once identified, you could choose to either allow the roommate to live there if he meets your qualifications, and sign the lease or start eviction procedures based upon the breach of the assignment and sublet clause of your lease.

13. Question: My great grandfather died last year and left me his home. I am trying to rent the house and my Realtor told me that I am required to inform prospective tenants of the death of

Ted Kimball is a partner with Kimball, Tirey & St. John LLP. The law firm specializes in landlord/tenant, collections, fair housing and business and real estate, with offices throughout California. Property owner's and manager's with questions regarding the contents of this article, please call 800.338.6039.

my great grandfather because he died in the home. Is this really true? If so, what is the purpose of this crazy law?

Answer: Because it has been deemed to be a material fact to consider when purchasing or renting a home, California requires sellers and landlords to inform prospective purchasers and tenants if a death occurred in the premises during the last 3 years, unless the death was caused by an HIV related illness.

14. Question: I want to rent out our condominium (we are buying a new house) and I need to know how much I can charge for a security deposit. Can I also charge a cleaning, pet and key deposit?

Answer: California law limits the amount of a residential security deposit to twice the amount of the monthly rent if unfurnished, or three times the amount of the monthly rent if the property is furnished. The legislature recognizes all deposits as a security notwithstanding how the parties are identifying it. All deposits, taken together, cannot exceed these limits.

15. Question: The lease for one of my tenants expires at the end of this month. He told me to take the month's rent out of his security deposit because he would leave the apartment clean and in good repair. He told me since it is his deposit, he has the right to deduct rent out of the deposit. What should I do?

Answer: California law requires the owner or manager to account for the use of the deposit no later than 21 days from the date the tenant vacated the unit. The law also provides that the deposit shall not be used without the owner's permission until after the tenant vacates. Since the tenant has failed to pay rent, a 3-day notice to pay rent or quit may be served. If the tenant fails to comply, an eviction may commence to produce a judgment for possession and monetary losses.

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