

Kimball, Tirey & St. John LLP

Questions & Answers

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1. Question: If I gave a resident a thirty-day notice of rent increase which ends on the tenth of the following month, can I charge the resident pro-rated rent for the first nine days at the daily rental value before the rent increase and the other twenty one days at the daily rental value of the increased amount?

Answer: Yes, the rent increase is effective thirty calendar days from the date of service of the increase. The notice has to be for sixty days if the rent increase is more than ten percent from what it was one year before.

2. Question: Is there a “rule of thumb” for carpet depreciation?

Answer: It depends upon the quality of the carpet. You need to find out from the manufacturer the life span of the carpet under “ordinary wear and tear.” If it has to be replaced before that time, it may have been subject to extraordinary wear and tear and then the tenant would be held liable for the loss of use of the carpet.

3. Question: If the contract says no pets, but does not specify fish, can I stop a tenant from keeping a 150-gallon aquarium?

Answer: Fish are considered pets by most judges so they are violating the lease by having a 150- gallon tank. A small goldfish bowl may not constitute a major breach, but a 150-gallon tank most likely does.

4. Question: I have a former tenant who claims, since she had a one-year lease, she is not obligated to give a thirty-day notice.

Answer: There is no statutory requirement that a thirty-day notice of non-renewal be given during a fixed term lease, but if the lease requires a notice of non-renewal and she fails to give one, she is in breach of the lease and can be liable for any losses you suffer as a result.

5. Question: Can an apartment community charge a monthly pet rent and pet deposit to have a pet?

Answer: Yes, so long as it does not apply to service animals for the disabled.

6. Question: How does one collect on a judgment against a former resident?

Answer: A judgment can be collected in a variety of ways: wage garnishment, bank levy, seizure of non-exempt personal property and sale are the most common. A judgment debtor examination can also be used to locate assets, and if the debtor fails to appear, a warrant is issued for their arrest.

7. Question: One of our tenants was recently arrested and is incarcerated. How does this affect his lease? Is it considered abandonment?

Answer: The incarceration of a tenant does not have a legal effect on the tenant's right under the lease. If the tenant breaches any part of the lease agreement, such as non-payment of rent, the landlord may take legal steps to evict, and can serve notices to the tenant while in jail.

8. Question: We have an "open garage" situation with no gates. What are our responsibilities should car thefts and car break-ins start to rise?

Answer: A landlord is responsible for damage or injury caused by the criminal acts of others occurring on the property only if the criminal act was reasonably foreseeable, and the landlord failed to take reasonable steps to lessen the risk. A prior criminal act may satisfy the foreseeability issue. The landlord's liability then would rest on whether or not he acted in the same manner as a reasonably prudent landlord would have in similar circumstances.

9. Question: One of our residents is a day sleeper and complains about the noisy children next door. They are under school age and I don't know how or if I should enforce excessive noise.

Answer: Most courts recognize that apartment living is in closer proximity than single family homes and occupants must be more tolerant of disruptions, considering also the time of day or night and the cause of the disruption. If the noise the children make is not excessive for daytime tolerance, it is likely there is no violation of the lease or community rules. Having another witness to the noise would be helpful to see which side you end up on!

10. Question: One of our month-to-month residents gave a thirty-day notice to vacate the unit and now it is the thirtieth day and he refuses to move. What can I do now? Do I have to serve him with my thirty-day notice?

Answer: If the tenant's notice was in writing, the tenant is legally bound to vacate the unit within the thirty-day time frame. Failure to do so allows you to immediately file an action for unlawful detainer (tenant eviction).

11. Question: One of our tenants is moving out, but the roommate wants to stay and invite a friend of hers to take the out-going tenants' place. How do we indicate this on the lease?

Answer: One way is to draw up a new lease, assuming the new person meets your rental standards, with new signatures unless you want to hold the vacating tenant responsible for the remainder of their lease. In that event, simply add the new tenant to the lease and have them sign.

12. Question: One of my tenants had a problem with the inside wiring of the telephone line. The tenant called a telephone company to come out and fix it and then sent me the bill. Who is responsible for the inside wiring and does the law require me to pay the tenant back? My repairman could have fixed it for half the costs.

Answer: Rental owners own and are responsible for the inside wiring to the apartment building. However, before a landlord is responsible for a tenant ordered necessary repair, the landlord must be given notice of the need for the repair and then fail to make the repair within a reasonable time (30 days is presumed reasonable)

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.

13. Question: Our tenants deposit their rent directly into our bank account. This has worked well because we know exactly when the rent has been paid. Now we need to evict for non-payment of rent. Can they still deposit the rent and if so, have I hurt my case?

Answer: Acceptance of rent after an unlawful detainer action (tenant eviction) has been filed is a waiver of the right to evict in many cases. To avoid this possible defense, write your tenant a letter documenting that you are not going to accept any more rent. Periodically check your deposits and if rent was paid, send it back as soon as possible.

14. Question: I am a first time landlord and I rented my condo with a two-year lease. Now I need to sell and have been told that my tenant is the one with all the rights. What are my rights?

Answer: You have the right to sell the property and the buyer would “step into your shoes” as landlord and must honor the lease. The tenant must also allow access to the property to prospective purchasers, agents, etc. If you have trouble finding a buyer who wants a tenant, you may consider negotiating a “buy out” with your tenant.

15. Question: I am considering leasing to a corporation for use by their relocating personnel and/or short time visitors. Who/what do I name as the tenant (s) to assure that any future legal action can be handled expeditiously?

Answer: List the corporation and all occupants who are 18 or older as tenants on your lease documents.

16. Question: Can tenants change their locks without permission and refuse to provide a key to the property manager?

Answer: Most leases restrict any alterations to the premises without your permission or consent and most leases specifically restrict changing locks without the landlord’s permission.

17. Question: If a friend of a tenant appears to be living in the apartment, is there a time limit which allows me to compel the guest to fill out an application to be added to the rental agreement? Can the tenant have guests stay as long as they want?

Answer: If your lease prohibits subletting or assignment of the lease, or if your lease restricts the occupants to those named in the lease, the tenant could be in violation. You would need to prove that the person really moved in and was not just a guest. A common “guest” policy is two weeks.

18. Question: I do not know how to start the thirty-day notice to terminate. I have given a three-day notice for non-payment of rent, but I do not know what to do next.

Answer: If the tenant has not complied with the three-day notice, there is no reason to serve a thirty-day notice. Instead, you may start the unlawful detainer process in court immediately.

19. Question: My question concerns residents who deposit their check in the rent drop box after the due date. The lease provides that rent is due on the first and if it is not received by the fourth it is considered late and a \$25 late fee is imposed. On the morning of the fifth, the rent drop is emptied and any checks received after that time are deemed to be late. Each month there are a few residents who put an earlier date on the rent check and drop it in after the fourth. How should we respond to this situation?

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Answer: It makes no difference when the check is dated. If the check is delivered after the fourth, the tenant owes the late charge. By dating the check earlier, it only raises a question of proving when the check was first received. So long as you can demonstrate to the satisfaction of the court that the check was delivered late, you should be able to enforce the late charge (so long as the late charge is reasonably related to the actual losses).

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