



# California Landlords

Evictions-Notices-Management forms & Law



## CALIFORNIA EVICTIONS

# California Landlord's Rights and Responsibilities

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# Chapter 1

Every landlord wants to find the ideal tenant — the person who always pays rent on time, never disturbs others, doesn't complain or cause conflicts and keeps the premises in better condition than when he or she moved in. While this theoretical ideal may be unattainable, the way you maintain and market your property will affect what type of tenants you attract.

Effective marketing involves differentiating your property from others. In a tight rental market, advertising may not be as critical, but when renters have many places to choose from, you need to let them know why your place is better than others. Is it newer, bigger, cheaper, cleaner or safer than comparable units in the area? Does it have better appliances and amenities for the price?

Effective marketing will increase your chance of attracting the ideal tenant for your situation. The more clearly you state the benefits of your premises, the greater the odds of attracting appropriate prospects.

## Where to Advertise a Rental:

- Place a for rent/lease sign at the rental property.
- Advertise in newspaper classifieds
- Penny Saver
- If you are interested in attracting students, campus housing offices often provide a free listing service.

- Post a flyer on bulletin boards at libraries, community centers, grocery stores, and places of worship.
- Talk to friends and family members, letting them know that you are looking for tenants.

## Advertising Online:

- Internet mail lists
- Electronic bulletin boards
- Craig's List (If your Community is served)
- Web sites of community newspapers (classifieds section)



**Caution:** When paying for an online ad, don't get tricked by a report of thousands or millions of "hits". Web-page hits can be an inflated, misleading reporting method. Instead, ask how many unique users visit the relevant section of the website each day. Also, ask how many page-views — entire scrollable pages — the site gets each month.

## Finding Tenants

Someone offering a tiny bachelor apartment will have a different market than someone renting a spacious penthouse with extra features, such as a fireplace and a fantastic view. Consider the profile of the people you are trying to reach and then advertise in the places where they would be likely to look for a rental premises.

If you are renting a fairly basic basement apartment, you have a good chance of attracting people willing to live in a basement for the benefit of a lower monthly rent. University campuses, postings in local supermarkets or

"accommodations available" advertisements in community newspapers might be the best place to advertise this type of rental.

If you have an expensive condo to rent, advertise where people with the appropriate income might search. The local condo news, business-focused newspaper classifieds, or working with a rental locator at a real estate agent's office might work best.

If you are not sure where people look for rentals, ask! Talk to several people in the same demographic as prospective tenants.

## Evaluating Prospective Tenants

Every landlord wants to find good tenants — ones who pay the rent on time and take care of their rental property. Finding the best tenant can be offset by the need to have the premises rented within a narrow timeframe. While time to show the unit, accept and review applications and do background checks may be limited, a hasty decision could cost you money in the long run. If the wrong tenant moves in, you may end up losing money due to damages or disputes.



note

### Choose wisely

If you can afford a possible rent loss while waiting to fill the unit, take the extra time to make the right choice of tenant.

[You should thoroughly research a prospective tenant before making a final decision.](#) Getting candidates to fill in a rental application and properly screening for applicant suitability before accepting a new tenant are vital. If you accept tenants without screening and verifying their information, terminating the rental

agreement may be difficult even if you discover that they provided false information.

As a landlord you can ask	As a landlord you cannot ask
You can ask questions that will help you assess the suitability of a tenant, as long as you do not infringe on his/her rights. For example, you can ask a prospective tenant:	You cannot ask questions that infringe on the rights of the tenant under the Human Rights Code for your province. For example, you cannot ask a prospective tenant:
What is your income? Where do you work?	Do you plan to have (more) children?
How many people will be living with you and what are their names?	What is your ethnic background, religion, or sexual preference?
Do you have pets? Do you smoke?	Will your family be visiting?
Could you provide written permission for a credit check?	Are you Gay, are you married to your partner
May I see your references and their current contact information?	Are you married, single, or divorced?

You will want to find out as much as you can legally about prospective tenants. Check their financial suitability through a [credit bureau report](#). To access a credit report on a prospective tenant you must be a member of a credit bureau.



note

### **Changing Times ...**

In many areas information beyond basic financial data was previously available in a credit bureau report.

Beyond credit information, try to discover what kind of tenant will be living in your unit. Ask former landlords about the tenant's character and past rent-payment patterns. Consider talking to even the last two or three landlords to get a clear idea.

In California if the prospective Tenant is being evicted, or has just been evicted you will not be able to find the information out in any way except from the previous Landlord. Court Records are sealed and unavailable to the public for 60 days.

### **Checks for Screening Tenants**

- Check the applicant's credit bureau history and banking history.
- Confirm the applicant's employment situation.
- Check the applicant's tenancy history/evictions, if available.
- Check court records, if available. Remember recent evictions won't be available.
- Check the applicant's references and consider contacting previous landlords going back two or three tenancies

## **Human Rights Considerations**

While you will want to know as much about a rental applicant as possible, Federal and California law prohibits certain factors from being considered by a landlord when choosing who he or she will rent to. These factors include race, ancestry, place of origin, color, ethnic

origin, citizenship, creed, sex, age, marital status, family status, or handicap.

Americans with Disabilities Act, require that a landlord make reasonable accommodations for a disabled tenant. You cannot turn a prospective tenant down because of a disability. Not all disabilities are evident. For instance a doctor may have ordered that the person have a companion animal such as a dog or a cat. You will not be allowed to enforce a "Not Pet" rule as related to this person. You might think it is acceptable to ask personal questions to determine a tenant's suitability, but demanding answers as a condition of renting may contravene human rights. You cannot refuse to rent an apartment based on these conditions.

# Chapter 2

Before you can rent a rental unit, you must enter into one of two kinds of agreements: [a month to month rental agreement or a lease](#). The lease creates the tenant's right to live in the rental unit. The tenant's right to use and possess the landlord's rental unit is called a tenancy.

A month to month rental agreement states the length of time (the number of days) between the rent payments normally a month, but it could be for a week..

A rental agreement that requires one rent payment each month is a month-to-month rental agreement, and the tenancy is a month-to-month tenancy.<sup>51</sup> The month-to-month rental agreement is by far the most common kind of rental agreement, although longer (or shorter) rental periods can be specified.

If the periodic rental agreement requires that rent be paid once a week, it is a week-to-week rental agreement and the tenancy is a week-to-week tenancy.<sup>52</sup>

In effect, a periodic rental agreement expires at the end of each period. The tenant can continue to live in the rental unit as long as the tenant continues to pay rent, and as long as the landlord does not ask the tenant to leave.

In a rental agreement, the length of time between the rent payments (the rental period) determines three things:

- How often the tenant must pay rent;

- The amount of notice that a tenant and landlord must give, if either one decides to terminate (end) the tenancy; and
- The amount of advance notice the landlord must give the tenant if the landlord decides to change the terms of the rental agreement. (Special rules apply to the amount of advance notice that the landlord must give the tenant to raise the rent.

## Oral rental agreements

In an oral rental agreement, you and the tenant agree orally (not in writing) that you will rent the rental unit. In addition, the tenant agrees to pay each month. This kind of rental agreement is legally binding on both you and the tenant, even though it is not in writing. If however you enter into an oral lease for a term more than one year, the agreement must be in writing. If such an agreement is not in writing, it is not enforceable. If you have a valid oral agreement and later have a disagreement with your landlord, you will have no written proof of the terms of your rental agreement. Therefore, it's best to have a written rental agreement.

However, even if the agreement is oral, you must give you a written statement regarding your name, street address, and phone number for receipt of legal notices; the contact information for the person who is to accept the rent; and how the rent is to be paid (for example by cash, check or money order.)

It's especially important to have a written rental agreement if your tenancy involves special circumstances, such as any of the following:

- You plan to rent the unit for a long time (for example, nine months or a year);

- You have agreed to allowing a pet or water-filled furniture (such as a waterbed); or
- There is a special agreement regarding the payment of any expenses (for example, utilities or garbage removal) or to provide any services (for example, a gardener).

### Written rental agreements

A written rental agreement is a periodic rental agreement that has been put in writing. The written rental agreement specifies all the terms of the agreement between you and the tenant - for example, it states the rent, the length of time between rent payments, and you and the tenant's obligations. It may also contain clauses on pets, late fees, and amount of notice.

The length of time between rent payments is important. In most cases, the amount of advance notice that you must give to the tenant of changes in the terms of the tenancy must be the same as the length of time between rent payments. For example, if you have a month-to-month rental agreement, you usually must give the tenant 30 days' advance written notice of changes.

In addition, the amount of advance written notice that *the tenant must* give you before the tenant moves out of the rental unit must be the same as the length of time between rent payments. For example, in a month-to-month rental agreement, the tenant must give you at least 30 days' advance written notice in order to end the rental agreement

Normally the amount of advance written notice that you give the tenant to change the terms of the tenancy must be, at a minimum, the same as the length of time between rent payments. However, the landlord and tenant can

specifically agree in writing to a shorter amount of notice. You and a tenant who have a month-to-month rental agreement might agree to 10 days' advance written notice for a change in the terms of the agreement (other than the rent). This would allow you, for example, to increase the charge for late fees or return checks or end the tenancy by giving the tenant 10 days' advance written notice. Similarly, the tenant could end the tenancy by giving you 10 days' advance written notice. However, the notice period agreed to by you and the tenant can *never* be shorter than seven days.

If you have a written periodic rental agreement, special rules apply to the [amount of advance notice that the landlord must give you to raise the rent](#).

### Leases

A lease states the total number of months that the lease will be in effect - for example, six or 12 months. Most leases are in writing, although oral leases are legal. If the lease is for more than one year, it must be in writing.

It is important to understand that, even though the lease requires the rent to be paid monthly, you are bound by the lease until it expires (for example, at the end of 12 months). This means that you must pay the rent and perform all of your obligations under the lease during the entire lease period.<sup>60</sup>

There are some advantages to having a lease. If you have a lease, you cannot raise the rent while the lease is in effect, unless the lease expressly allows rent increases. Also, you cannot evict you while the lease is in effect, except for reasons such as your damaging the property or failing to pay rent.

A lease gives you and the tenant the security of a long-term agreement at a known rent.

The disadvantage of a lease is that if the tenant ends up being undersirable, but complies with the terms of the lease you must ride out the term.

## **TRANSLATION OF PROPOSED RENTAL AGREEMENT**

You and a tenant may negotiate primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean for the rental, lease. In this situation, you must give the tenant a written translation of the proposed lease or rental agreement in the language used in the negotiation before the tenant signs it. This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for one month or less.

You must give the tenant the written translation of the lease or rental agreement whether or not the tenant requests it. The translation must include every term and condition in the lease or rental agreement, but may retain elements such as names, addresses, numerals, dollar amounts and dates in English. It is never sufficient for you to give the written translation of the lease or rental agreement to the tenant after the tenant has signed it.

However, you are not required to give the tenant a written translation of the lease or rental agreement if all of the following are true:

- The Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking tenant negotiated the rental agreement through his or her own interpreter; and
- The tenant's interpreter is able to speak fluently and read with full understanding English, as well as Spanish, Chinese, Tagalog, Vietnamese or Korean

(whichever was used in the negotiation); and

- The interpreter is not a minor (under 18 years of age); and
- The interpreter is not employed or made available by or through you.

If you are required to provide a written translation of a lease or rental agreement in one of these languages fail to do so, the tenant can rescind (cancel) the agreement.



# Chapter 3

## How much can you Charge?

California has no law regarding the amount of rent a landlord can charge for a particular rental unit. Excepting of Course The Rent Control Districts.

- [Berkeley](#)
- [Beverly Hills](#)
- [Campbell](#)
- [East Palo Alto](#)
- [Fremont](#)
- [Hayward](#)
- [Los Angeles](#)
- [Los Gatos](#)
- [Oakland](#)
- [Palm Springs](#)
- [San Francisco](#)
- [San Jose](#)
- [Santa Monica](#)
- [Thousand Oaks](#)
- [West Hollywood](#)

You can charge whatever the market will bear. Keeping in mind that you do have competition out there and you should check local newspapers and perhaps Craigslist (if your area is served) to determine what the going rate is.

## When is the rent due?

Your lease will determine when the rent is due, and it should also state the time when the late fee attaches. Make sure your tenants understand

that rent is due on the first day, stated in the lease, and delinquent on the day after. Most tenants believe that they have until the late fee attaches to pay.

If the rent is due on the first and delinquent on the 5<sup>th</sup> then you would be unable to list that month on a 3 day pay or quit until after the 5<sup>th</sup>.

## RENT INCREASES UNDER CALIFORNIA LAW \*\*

Whether you can raise the rent depends on whether there is a lease or a rental agreement, and what it says.

Some of you are using leases, instead of rental agreements, that is to say they have a definite term, usually one year. If there is a lease instead of a month to month rental agreement you can't raise the rent. However at the end of the term you can raise the rent without notice. If, however they continue to pay after the end of the term, and you continue to accept rent, then you have created a month to month tenancy and you will need to read this article and follow the rental agreement rules.

For those of you using, a month-to-month rental agreement, you can increase the rent unless the agreement has a provision against it. If, however, you are increasing the rent, then you must give the tenant proper advance written notice of the rent increase. The written notice tells the tenant how much the increased rent is and when the increase takes effect.

## How much advance notice must you give?

If there is a month-to-month (or shorter) periodic rental agreement, you must give you at least 30 days' advance written notice of a rent increase.

The amount of notice required depends on the percentage of the rent increase.

[You must give the tenant at least 30 days' advance notice if the rent increase is 10 percent \(or less\) of the rent charged at any time during the 12 months before the rent increase takes effect.](#)

If the increase in rent is greater than 10% percent, then you must give the tenant at least 60 days' advance notice.

In order to calculate the percentage of the rent increase, we need to know the lowest rent that you, the landlord, charged you during the preceding 12 months, and the total of the new increase and all other increases during that period.

EXAMPLES: 1. Assume that your rent is \$500 per month due on the first of the month. Your tenant has been paying this rent for over a year. You want to increase the rent \$50 to \$550. How much advance notice must you give?

First, calculate the percentage increase in the rent. It is:  
50

$$500 = 10\%$$

The current rent increase (\$50) does not exceed 10 percent of the lowest rent charged in the past 12 months (\$500). Therefore, you must give your tenant at least 30 days' advance written notice of the rent increase.

2. Assume that the rent is \$500 per month due on the first of each month. You have charged this rent for over a year. You want to increase the rent \$60 to \$560. How much advanced notice must you give?

First, calculate the percentage increase in the rent. It is:  
60

$$500 = 12\%$$

The current rent increase (\$60) equals 12 percent of the lowest rent charged in the past 12 months (\$500). Therefore, you must give your tenant at least 60 days' advance written notice of the rent increase.

3. On January 1, 2008, you started charging monthly rent of \$475. In November 2008, the rent was increased \$25 to \$500. Effective January 1, 2009, you want to increase the rent another \$50 to \$550. How much notice is required?

The percentage increase in the rent must be calculated by adding all the rental increases made in the 12 months previous to January 1, 2009. Combined rent increase is:

\$ 25

+ 50

\$ 75

The percentage of increase is calculated using the lowest rent charged during the preceding 12 months. The lowest rent charged was \$475. The percentage of increase equals:

75

$$475 = 15.7\%$$

Since the increase is greater than 10%, you must give at least 60 days' notice.

How may you deliver a notice of rent increase?

Your notice of rent increase must be in writing. [You may deliver a copy of the notice to your tenant personally.](#) In this case, the rent increase takes effect in 30 or 60 days from the date the notice is delivered.

Alternately, you may mail the notice, with proper postage and addressed to your tenant at the rental unit. If you mail the notice, [you must give an additional five days' notice.](#) That means you would have to give 35 days' notice from the date of mailing if the rent increase is 10 percent or less. If it is more than 10 percent, 65 days' notice is required.

### Timing of the Notice

Most notices of rent increase state that the increase will go into effect at the beginning of the rental period. For example, if you have a month-to-month rental agreement and you wish to increase your rent by 10 percent effective on October 1, you must make sure that the notice of increase is delivered to your tenant personally by September 1. (If you mail the notice to your tenant, you must give you an additional 5 days' notice, so the notice must be mailed by you by August 27.)

You may make the increase effective at any time in the month if proper advance notice is given. If the rent increase becomes effective in the middle of a rental period, your tenant is entitled to receive the increased rent for only a prorated portion of the period. For example:

Rental period -- Month-to-month, from the first to the last day of the month

Rent -- \$500 per month

Rent increase -- \$50 (from \$500 to \$550) per month (a 10 percent increase)

Date that the notice of rent increase is delivered to the tenant personally -- April 15

Earliest date that the rent increase can take effect -- May 15

Because you delivered the notice on April 15, the increase cannot become effective until May 15 or 30 days later. The rent payment for May would be calculated as follows:

First period: May 1 - May 14 -- During this period the old rental rate of \$500 is in effect.

Second period: May 15 - May 31 -- During this period the new rental rate of \$550 is in effect.

- Number of days in first period -- 15
- Number of days in second period -- 16
- Prorated Rent Due for the Month of May

$\$ 500 \times 15/31 = \$ 241.94$   
 $+ \$ 550 \times 16/31 = \$ 283.87$   
 $\$ 525.81$

### Can you require the tenant to pay the increased rent in cash?

you normally cannot require the tenant to pay the rent (or the increased rent) in cash. However, you can require the tenant to pay the rent in cash if, within the last three months, the tenant has paid you with a check that was dishonored by the bank (A dishonored check is one that the bank returns without paying because the tenant stopped payment on it or because the tenant's account did not have enough money in it.)

In order to require the tenant pay the rent in cash, you must first give the tenant a written notice stating that the tenant's check was dishonored and that the tenant must pay cash for the period of time stated by you. *This period cannot be more than three months after the tenant.*

- Ordered the bank to stop payment on the check, or
- Attempted to pay with a check that the bank returned to you because of insufficient funds in the tenant's account.

[You must attach a copy of the dishonored check to the notice.](#) You can personally deliver the notice to the tenant, or serve the notice on the tenant using "substitute" service.

The requirement that the tenant pay rent in cash may change the terms of the tenant's rental agreement. [If so, you must give the tenant proper advance written notice of this change.](#)

### Additional Considerations

Normally in the case of a periodic rental agreement, you can increase the rent as often as you like. However, you must give proper advance written notice of the increase. [The rent increase cannot discriminate against you or retaliate against you for exercising a right as a tenant.](#)

Increases in rent for government-financed housing are usually restricted. If you're renting a government-financed unit, check with your local public housing authority to find out whether there are any restrictions on rent increases.

Local rent control ordinances may also limit rent increases, or impose additional requirements on landlords. If your rental unit is in an area with rent control, check with your local rent control board or your local elected representative to find out whether there are any restrictions on rent increases.

\*\*California Department of Consumer Affairs

### Late Fee

A rental agreement generally includes a pre-determined late fee. This is acceptable if it isn't exorbitant. A late fee which is excessive and designed to punish the tenant is unacceptable. The Law abhors penalties, and the late fee imposed must be a reasonable proximate of the actual costs the landlord will incur. A late fee that is so high that it amounts to a penalty is not legally valid.

Additionally late fees are limited by local rent control ordinances.

The catch word, when it comes to late fees is "reasonable". If you as a landlord are reasonable,

and your late fees aren't exorbitant then you are within the law.

### Other fees

As a landlord you can charge the tenant other fees, such as a fee for returned check. The law allows you to charge the tenant the amount the Bank charges you, together with an additional sum to reimburse you for the costs of handling the return check. Again the amount must be reasonably calculated to reimburse you for your costs.

For example, a reasonable returned check fee would be the amount that the bank charges you, plus your reasonable costs because the check was returned. Under California's "bad check" statute, you can charge a service charge instead of the dishonored check fee described in this paragraph. The service charge can be up to \$25 for the first check that is returned for insufficient funds, and up to \$35 for each additional check.

### SECURITY DEPOSIT

At the beginning of the tenancy, you most likely will require the tenant to pay a security deposit. You can use the security deposit, for example, if the tenant moves out owing rent, damage the rental unit beyond normal wear and tear, or leaves the rental less clean than when the tenant moved in.

Under California law, a lease or rental agreement *cannot say that a security deposit is "nonrefundable."* This means that when the tenancy ends, you must return to the tenant any payment that is a security deposit, unless you properly use the deposit for a lawful purpose, as described below and under Refunds of Security Deposits.

The security deposit may be called last month's rent, security deposit, pet deposit, key fee, or cleaning fee. The security deposit may be a combination, for example, of the last month's rent

plus a specific amount for security. No matter what these payments or fees are called, the law considers them all, as well as any other deposit or charge, to be part of the security deposit. The one exception to this rule the application screening fee. The application screening fee is not part of the security deposit. However, any other fee charged by the landlord at the beginning of the tenancy to cover the landlord's cost of processing a new tenant is part of the security deposit. Here are examples of the two kinds of fees:

- [Application screening fee](#)
- New tenant processing fee

[The Application screening fee](#) – is charged to cover the cost of obtaining information about the tenants, such as checking their personal references and obtaining your credit reports. The application screening fee is not part of the security deposit. Therefore, it is **not refundable** as part of the security deposit.

New tenant processing fee - You might charge you a fee to get reimbursed for the costs of processing your tenants as new tenants. Be advised however that these kinds of fees are part of the security deposit. Therefore, these fees are refundable as part of the security deposit, unless you properly use the deposit for a lawful purpose, as described below and under Refunds of Security Deposits.

The law limits the total amount that you can require the tenant to pay as a security deposit. The total amount allowed as security depends on whether the rental unit is unfurnished or furnished and whether you have a waterbed.

Unfurnished rental unit: The total amount that you can require as security cannot be more than the amount of two months' rent. If the tenant has a waterbed, the total amount allowed as security can be up to two and-a-half times the monthly rent.

Furnished rental unit: The total amount that you can require as security cannot be more than the amount of three months' rent. If the tenant has a waterbed, the total amount allowed as security can be up to three-and-a-half times the monthly rent.

Plus first month's rent: You can require the tenant to pay the first month's rent in addition to the security deposit.

You cannot normally require the tenant to pay the security deposit in cash, however you can require a Cashier's Check, or Certified Check..

A payment that is a security deposit **cannot be nonrefundable**. However, when the tenant moves out of the rental, the law allows you to keep part or all of the security deposit in any one or more of the following situations:

- The tenant owes rent;

- The tenant leaves the rental less clean than when he or she moved in;

- The tenant has damaged the rental beyond normal wear and tear; and

- The tenant fails to restore personal property (such as keys or furniture), other than because of normal wear and tear.

If none of these circumstances is present, you must return the entire amount that the tenant has paid as security. You have 21 days from the day the tenant returns possession to you to account for the security deposit. Any expenses reported must have a receipt. Mail the statement to the last known address, with a check if there is a surplus, or with a bill if there is a deficit.

# Chapter 4

The State of California has no Rent control, that's not to say that some in the legislature haven't been trying to implement it State wide for many years. We'll let you know if it should ever occur.

In the mean time these are the rent control districts in the State.

Not all rental housing, however, within a rent-controlled city is subject to rent control. Under state law, property that was issued a certificate of occupancy after February 1, 1995 is exempt from rent control. (CC § 1954.52.)

Also, new construction is exempt in most rent control cities if it was built after the effective date of the ordinance. Most cities also exempt owner occupied buildings with four (or sometimes three or two) units. A few cities also exempt "luxury units" that rent for more than a certain amount. And as of January 1, 1999, all tenancies for single-family homes and most condos are exempt under state law if the tenancy began after January 1, 1996. Furthermore, government-subsidized tenancies are exempt from rent control, with Berkeley as the lone exception.

Each and every one of them is different.

- [Oakland](#)
- [Palm Springs](#)
- [San Francisco](#)
- [San Jose](#)
- [Santa Monica](#)
- [Thousand Oaks](#)
- [West Hollywood](#)

If you own a rental unit in any of these cities then it is very important that you familiarize yourself with the rules and regulations propagated by these jurisdictions.

- [Berkeley](#)
- [Beverly Hills](#)
- [Campbell](#)
- [East Palo Alto](#)
- [Fremont](#)
- [Hayward](#)
- [Los Angeles](#)
- [Los Gatos](#)

# Chapter 5

## DISCRIMINATION

There was a time, not so very long ago, when a landlord could refuse to rent to someone, or to evict a tenant for any reason whatsoever. If he didn't like the tenant's skin color, religion, or national origin, all sorts of groups, including african-americans, Asians, Jews, Hispanics, unmarried couples, gays, families with children, and the disabled, were at the mercy of landlord's prejudices. The days of legal discrimination are no longer tolerated. Federal, State, and local laws provide penalties for landlords who discriminate on the basis of race, religion, sex, age, and a number of other categories. The categories named in the various statutes are not the only groups that are protected. The California supreme Court, as the court often does, took on the role of the legislation, and legislated, prohibiting discrimination based on "personal characteristics" or "personal traits," meaning a person's geographical origin, personal beliefs, or physical attributes.

There are legal reasons to turn down prospective tenants, such as a bad credit history or too many tenants for the size of the rental unit.

There are special rules applying to landlords who share their premises with tenants. Legal Reasons for Refusing to Rent to a Tenant the most important decision a landlord makes, save possibly for deciding whether to purchase rental property. You are legally free to choose among prospective tenants as long as your decisions are based on valid business criteria, such as an applicant's ability to pay the rent and properly maintain the property. You can legally refuse to rent to individuals with bad credit histories, unsteady employment histories, or even low incomes that

you reasonably regard as insufficient to pay the rent. These reasons are reasonably related to your right to run your business in a competent, profitable manner, or your "legitimate or valid business interests". If a person who has one or more obvious "bad tenant risk" if the person happens to be a member of a minority group, you are still on safe legal ground as long as you are consistent in your screening and treat all tenants more or less equally—for example,

- you always require a credit report for individuals applying for the rental unit.
- you are not applying a generalization about a particular group of people, and
- you consistently document your legal reasons for not renting to a prospective tenant.

It is important that you follow the rules, and that if you refuse to rent to a person who happens to be african-american, has children, or speaks only Spanish, be sure you document your legitimate business reasons why this person is not qualified, such as insufficient income, or prior evictions.

Federal, State and local Fair Housing Administrations, will be knocking at your door if you are turning down qualified individuals in favor of a particular group, or eliminating a particular group of individuals.

### Acceptable Reasons to refuse an applicant

Acceptable reasons for denial are requirements that you establish before a prospective tenants even apply. For example, a requirement had an eviction for nonpayment of rent is "objective" because it is a matter of history. This criteria can be answered in the affirmative or negative.i.e. "yes" or "no."

Some accepted examples of allowable, objective criteria for choosing tenants:

- No negative references from previous landlords
- Sufficient income to pay the rent, and
- A good credit history

## Married and Un-married couples

If the applicants are unmarried, be sure to consider both of their incomes. If, however, one has good credit, and no evictions, and the other has bad credit and evictions, the bad information may be reason enough to select another person, or couple with good credit.

## Incomplete or Inaccurate Rental Application

Your [application form](#) will provides you with all the necessary information. If a tenant fails to complete your application, or lies about a material fact, then you are certainly within your rights to refuse to rent to that individual.

As part of the application, the tenant will have to come up with the legally allowed credit check funds, and if the tenant refuses, then again you can refuse the applicant.

## Pets

There is no law that compels you to rent to a person with a pet. and you can restrict the types of pets you accept. Further you can allow some tenants to keep a pet and say no to others—because “pet owners,” unlike members of a religion or race, are not as a group protected by antidiscrimination laws. The issue of pets is a contractual issue, if your lease states that pets are not allowed then the tenant is in breach of the lease if they obtain a pet. The fact that other tenants have pets is no defense to a 3 day notice to

comply with the terms of the lease or quit. Keep in mind that you cannot refuse to rent to someone with an animal if that animal is a properly trained “service” dog for a physically or mentally disabled person.

## Other types of Discrimination

- Advertising that indicates that the preferred tenant criteria is based on race, religion, or any other protected category;
- falsely stating that a rental unit is unavailable to a person of a protected class;
- Having a more restrictive standards for a protected class of individuals.
- refusing to negotiate for a rental agreement or lease with a person who is a member of a protected class;
- Providing inferior housing conditions, privileges, or services to a protected class;
- terminating a tenancy for a discriminatory reason
- providing or suggesting different housing arrangements
- refusing to allow a disabled person to make “reasonable medications” to his living space, or
- Refusing to make “reasonable accommodations” in rules or services for disabled persons.



## Chapter

# 6

## Duty to Repair

The tenant's responsibility to pay rent depends on the landlord's fulfilling his legal duty to maintain the property and keep it in good repair. Obviously, then, keeping up rental property should be something every landlord takes seriously.

## Standards

There are several state and local laws that set housing standards for residential rental property. These laws require landlords to put their rental apartments and houses in good condition before renting them, and keep them that way while people live there. Here is a list of the laws you need to know about.

### California's State Housing Law.

Also known as the state building standards Code, lists property owners' general obligations to keep residential property in livable condition. Health and Safety Code §§ 17900–17997.8, refers to housing standards contained in the uniform housing Code enforced by local governments, of the city or county where you own rental property to see which local laws apply to your property. Civil Code Sections 1941.1–.3. this state statute lists the minimum legal requirements for a rental dwelling to be “tenantable,” or legal to rent to tenants. If your property doesn't meet these requirements—for example, if it has a leaking

roof—a tenant may be excused by a judge from paying full rent for the period of time the residence was defective.

### Civil Code § 1941.1 -.3

This code lists the minimum legal requirements for a residential rental unit, to be tenable. If the property doesn't come up to these standards by meeting the requirements set down in this statute, the the property is untenable, and cannot be rented without first repairing, and if already occupied then repaired as soon as possible. There are overlapping laws and all of them must be considered and met. For example **Civil Code § 1941.1** requires only that “hot water” be available, while the Uniform Housing Code requires that the water heater be able to heat the water to 110° Fahrenheit.)

### Civil Code Section 1941.4 and Public Utilities Code Section 788.

These statutes make residential landlords responsible for installing a telephone jack in each of their rental units and placing and maintaining inside phone wiring. Health and Safety Code Section 13113.7. this state statute requires all units in multiunit buildings to have smoke and carbon dioxide detectors.

Smoke detectors must be installed in every bedroom, and one outside in the hallway. Also one detector must be installed on every level, i.e. upstairs, the main floor and basement.

**As of January 1, 2014**, all smoke alarms installed in residential rental units must be on the State Fire Marshal's list of approved devices. In order to be on the list of approved devices, the device must:

- Display the date of manufacture on the device
- Provide a place on the device where the date of installation can be written
- Incorporate a hush feature
- Incorporate an end-of-life feature that provides notice that the device needs to be replaced; and Contain a non-replaceable,

non-removable battery that is capable of powering the smoke alarm for a minimum of 10 years (this last requirement applies only if the device is battery operated).

### Owners' Obligations

Under current law, only owners of multi-family rental units are responsible for testing and maintaining the devices, while owners of single family units are under no such obligation. However, as of January 1, 2014, owners of both, multi-family and single family rental units who rent or lease their property will be responsible for testing and maintaining the smoke alarms within all of the units in, or on, their properties. In the case of apartment buildings with two or more units, landlords will be responsible for testing and maintaining the devices in every unit, including vacant units.

In order to facilitate the owner's obligation to test and maintain the devices, owners or their agents are permitted to enter the unit for the purposes of installing, repairing, testing, and/or maintaining the devices. However, owners are required to provide tenants with reasonable notice, in writing, of their intent to enter the unit prior to going in. Reasonable notice is generally considered to be 24 hours in advance of entering, and entrance may be made only during normal business hours, (generally, Monday

through Friday between 9 a.m. and 5 p.m.). Of course, where a tenant grants permission or requests the landlord to enter on days other than those listed above, it is perfectly acceptable to do so.

Additionally, owners are required to ensure that smoke alarms are operable at the time a new tenancy is created. However, during the course of the tenancy, the tenant has the obligation to notify the owner once the tenant becomes aware of a problem with the smoke alarm and, of course, the owner is then required to correct any reported deficiencies in the smoke alarm.

### Tenant's responsibility for repairs

Tenants are required by law to take reasonable care of their rental units, as well as common areas such as hallways and outside areas. Tenants must act to keep those areas clean and undamaged. Tenants also are responsible for repair of all damage that results from their neglect or abuse, and for repair of damage caused by anyone for whom they are responsible, such as family, guests, or pets.<sup>101</sup> Tenants' responsibilities for care and repair of the rental unit are discussed in detail on pages 26-27.

### DEDUCT AND REPAIR

Under certain circumstances a Tenant can make repairs to the rental unit, and deduct the cost of those repairs from his/her rent. For a tenant to utilize this law, he/she must give the landlord written notice of the delapidation that renders the Unit uninhabitable. If the landlord fails to make the repairs within 30 days of the notice, then the tenant can make the repairs and deduct the cost from his/her rent. The amount of the cost cannot be more than one months rent, and the tenant can only use this provision twice in a 12 month period.

The 30 day period is a rebuttable presumption that that amount of time is reasonable. This means that the tenant can, under certain circumstances do the repairs quicker than the 30 days if the delapidation is so serious that he/she cannot live with it.

Instead of making the "deduct and repairs" the tenant can elect to vacate the premises and not have any further obligation for rent under the lease or rental agreement.

The tenant's remedy under subdivision (a) shall not be available if the condition was caused by the violation of Section 1929 or 1941.2 Civ. Code §§ 1942

## Chapter

# 7

### a. TERMINATING A TENANCY

Notice	Use
<a href="#">30 Day Notice</a>	To terminate a Month to Month tenancy where the tenant has had possession for less than a year.
30 Day Notice with reason.	To terminate a tenancy in Rent Control districts that require just cause, and for tenants where you suspect a defense of discrimination, etc.
<a href="#">60 day Notice</a>	To terminate a Month to Month tenancy where the tenant has had possession for more than a year  To terminate a

60 Day Notice with reason.	tenancy in Rent Control districts that require just cause, and for tenants where you suspect a defense of discrimination, etc.
90 Day Notice	To terminate Government subsidized housing, Section 8
3 Day Notice to Comply or Quit	To terminate a month to month tenancy or a lease where the tenant has violated a term of the agreement that is correctable. It gives the tenant 3 days in which to correct the deficiency.
3 Day Notice to Terminate Lease <a href="#">nuisance</a> <a href="#">Unconditional</a>	This terminates a month to month, or a lease, for a non-correctable violation of the lease. It may be preceded by numerous warnings. An example is a nuisance where the tenant or the tenant's guests disturb the peace and quiet of surrounding neighbors.

3 Day Notice to Pay Rent or Quit	This is in the alternative. The tenant must pay the amount demanded within 3 days or vacate the property.
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## The 30, 60 and 90 Day Notice

A landlord can terminate a month to month tenancy for any reason or for no reason at all. There are some restrictions however.

### 60 Day Notice

If the tenant has occupied the premises for a year or more. Example: if the tenant was on a one year lease, and holds over, and becomes a Month to Month tenant, then he or she must be given a 60 day notice rather than the 30 day notice.

### 30 and 60 day Notices stating “Cause”

Remember a 30 and 60 day notice can only be used on a month to month rental agreement, never on a lease, unless the term has expired. If the rental unit is in a Rent Control City, then the City may require that the tenancy cannot be terminated except for “Just Cause”. Also, discrimination is a defense to a 30 and 60 day notice, and therefore if you suspect a defense of discrimination, then you should give a notice showing just cause, to justify your termination of the Rental Agreement.

- Your tenant is repeatedly late with the rent. You’ve given three-Day Notices to Pay rent or Quit several times, and the tenant has come through with the rent before the end of the third day. your warnings to pay

rent on time in the future have had no effect;

- The tenant has given you a number of bad checks. you’ve used three-day notices and the checks were made good, but it keeps happening;
- Your tenant repeatedly disturbs other tenants or neighbors by having loud and boisterous parties or playing a stereo at unreasonable levels. Other tenants are complaining to you;
- Your tenant is using illegal drugs in or about the property or, even worse, dealing in them. (we discuss evicting drug-dealing tenants below.);
- The tenant has damaged the property—for example, by causing holes in the wall or cigarette burns in the carpet.

### Acceptance of rent beyond the notice period

If you should accept rent beyond the 30, 60 or 90 notice period you have just terminated the notice, and must start over again. As an example you serve a 30 day notice on the 18<sup>th</sup> of August, and the tenant pays all of September, or pays through the 20<sup>th</sup> of September, then you have terminated the Notice and must reserve and wait another 30 days.

In the above scenario, take the monthly rent, divide by 30 and multiply by 18, and accept only that amount of rent, or less.

### WHO CAN SERVE

Anyone 18 or over, including the owner can serve all notices. Unlike the Summons and Complaint that can only be served by a person who is not an owner or manager of the property, and must be 18 years of age and a US Citizen.

It’s always best to serve one of your tenants, but if no tenant is available you can served by any of the following ways:

- By serving your tenant
- By handing to a person of suitable age and discretion, and mailing, first class mail.
- By posting the notice and mailing it, first class mail.

### **How to count the days**

Start counting the day after the service. If you served on a Monday, Tuesday would be the first day and the Thursday the last day.

If the last day, however, falls on a weekend or holiday, then you must give the tenant the next business day to comply.

So, if you serve the notice on Wednesday, then you count Thursday, Friday, and since the last day of the notice falls on Saturday, you must give the tenant through Monday to comply, and if Monday is a holiday, then you must give the tenant through Tuesday to comply.

(ALL NOTICES ARE AVAILABLE  
AT <http://www.california-eviction.com>)

### **b. Landlords Duty to Mitigate damages.**

A tenant on a lease is obligated to pay rent through the end of the lease, and by terminating the lease (with cause), the tenant has breached the lease and must continue to pay rent even though he/she doesn't have possession of the property.

However, it is the landlord's obligation to mitigate his damages. That is to say he must quickly find a new tenant to take over the provisions of the lease.

If the landlord has made every effort to rent the unit at the rate the tenant was paying, then he/she can rent it at a lower rate and charge the old tenant the difference, together with the cost of re-renting, such as newspaper ads, or the payment of an agent to find a tenant.

CIVIL CODE SECTION 1940-1954.1

## Chapter

# 8

## COLLECTING YOUR JUDGMENT

I know, many of you are say, "COLLECT A JUDGMENT?" YOU MUST BE KIDDING", but judgments are good, they have a life of 10 years, and they can be renewed for another 10 years if you can prove that you have attempted to collect. An added matter, is that they earn 10% interest. Therefore if you have some old judgments laying around get them out, dust them off, and try to find your old tenant. There are a number of web sites that can help you, especially if you got their social security number on their application. If you can't find the judgment, then go to the court and have them print a copy for you. Once you have them you can try to collect yourself, or you can send it to an attorney who specializes in collections, or to a collection agency, you will pay 40 to 50%, but hey, 50% of something is better than 100% of nothing.

## Chapter

# 9

Considering going Section 8? Already have Section 8 tenants and they're starting to cause problems? Are you beginning to consider the irony that the very tenants who have their rent paid by taxpayers are also the ones least respectful of their neighbors?

Not only do Section 8 tenants get 90% or more of their rent paid by the federal government, they have special rights when it comes to terminating their tenancies. Before you make any decision to enter the Section 8 housing assistance program or to evict a Section tenant, you should be aware of the special rules protecting their rights and limiting yours.

Distilled down, federal regulations transform every Section 8 eviction into a "for cause" eviction. Where state law would allow you to terminate most tenancies for any reason, federal law limits your ability to terminate a Section 8 tenancy to certain specified causes. As will be described below, the landlord's right to terminate Section 8 tenancies is even more limited in the "initial term" of the tenancy. In some states, California for example, a Section 8 tenancy can be terminated without cause. However, such termination can only occur after the initial one-year term of the tenancy and a 90-day notice is required.

Federal law only allows for two unqualified bases for terminating a Section 8 tenancy. First, the landlord may terminate for serious or repeated violations of the terms and conditions of the lease. The failure of the tenant to pay his portion of the rent qualifies as a serious violation of the lease. Second, a landlord may terminate the Section 8 tenancy if the tenant violates federal, state, or local law in connection with his occupancy or use of your premises.

The regulations contain a third ground-"other good cause"- but that ground is qualified. Also, the regulation does not provide an all-encompassing definition of "other good cause" although it does provide four examples. Other good cause includes failure by the tenant to accept a new lease or lease revision, tenant history of disturbing the neighbors or damaging or destroying the premises, owner's or damaging or destroying the premises, owner's desire to use the premises for personal or family use, or for business-related reasons like sale or renovation of the property.

Recall, however, that the Section 8 landlord cannot terminate for "other good cause" (aside from disturbing the neighbors or damaging the premises) in the "initial term" of the tenancy. The "initial term" of the tenancy is the first year. Thus, in the first year of the tenancy, the landlord can only terminate for non-payment of rent, violations of law, or creating a disturbance or damaging property.

There are three other grounds for terminating a Section 8 tenancy but those grounds must be specified in the lease.

First, you may also terminate a Section 8 tenancy for criminal drug activity occurring on the premises. Second, you may terminate a Section 8 tenancy for

other criminal activity that threatens the health, safety, or peaceful enjoyment of other residents or people residing in the

immediate vicinity of the premises. Third, you may terminate a Section 8 tenancy if the tenant is a fugitive or is violating a condition of probation or parole. Caveat: Be sure that you include in your lease a provision stating that foregoing conduct constitutes grounds for terminating the lease. If you don't specify these grounds in your lease, you cannot terminate the Section 8 tenant's for those reasons.

As a practical matter, terminating a Section 8 tenancy is more complicated for two reasons. First, under California state law, most tenancies are month-to-month and a landlord can terminate them in most instances by just serving a 30-day or 60-day notice and no cause needs to be specified or proven. That option is not available in Section 8 tenancies.

Second, the simplest, most straightforward eviction case is the one based upon non-payment of rent. That ground is almost never available in a Section 8 case. Because Section 8 housing is subsidized, the tenant is nearly always able to pay his paltry share of the rent. Thus, if you want to evict, you'll have to base the eviction on one of the other causes and that requires proof. Therefore, eviction trials are always more complicated (particularly if the Section 8 tenant has a lawyer in which case you're probably looking at a jury trial) in Section 8 cases because it will involve witnesses, photos, videos, and pre-trial discovery.

The upside to being a Section 8 landlord is that your rent is guaranteed. You can count on full payment of rent every month. In San Diego, there is a shortage of Section 8 housing so landlords can also count on a decent rental rate from HUD. But there are other factors to consider relating to the quality of tenant and the complications involved in separating from the problem tenant.

Howard F. Burns, Esq.  
Law Office of Howard F. Burns



## TRANSLATION OF THE LEASE

### TRANSLATION OF THE LEASE

California Landlord Tenant Law in many respects is designed to protect potential tenants from the BIG BAD LANDLORD. Toward that end the legislature has required that if you negotiate the lease in a language different from English, you must provide the prospective tenant a written translation of the lease in the negotiation language and it must be signed before the tenant signs the English version. You and a tenant may negotiate primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean for the rental, lease. In this situation, you must give the tenant a written translation of the lease or rental agreement in the language used in the negotiation before the tenant signs it. This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for one month or less. You must give the tenant the written translation of the lease or rental agreement whether or not the tenant requests it. The translation must include every term and condition in the lease or rental agreement, but may retain elements such as names, addresses, numerals, dollar amounts and dates in English. It is never sufficient for you to give the written translation of the lease or rental agreement to the tenant after the tenant has signed it. However, you are not required to give the tenant a written translation of the lease or rental agreement if all of the following are true:

- The Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking tenant negotiated the rental agreement through his or her own interpreter; and
- The tenant's interpreter is able to speak fluently and read with full understanding English, as well as Spanish, Chinese, Tagalog, Vietnamese or Korean (whichever was used in the negotiation); and
- The interpreter is Not a minor (under 18 years of age); and
- The interpreter is not employed or made available by or through you.

If you are required to provide a written translation of a lease or rental agreement in one of these languages fail to do so, the tenant can rescind (cancel) the agreement.

### **PETS AND WATERBEDS**

**Landlords may refuse to rent to any tenant with a pet except properly trained dogs of any one of the protected disability classes of tenants. These tenant groups are the blind, visually handicapped, deaf or physically disabled {Civil. Code Sec. 54.1} A landlord may not charge an additional security deposit for such qualified dogs {Civil. Code Sec. 54.2} New law on the horizon may include senior citizen tenants keeping pets in certain public housing programs.**

**Landlords may not refuse to rent or continue to rent to tenants, with waterbeds or liquid filled furniture, who are residing in any structure built after 1972. Landlords are protected and have the right to be present at the time of waterbed installation to inspect for the proper installation, require minimum waterbed component standards, including conformity to the floor weight load limits of the local building code and most importantly require the tenant show proof of insurance for a minimum amount of \$100,00.00 {Civil. Code Sec. 1940.5}.**

## Chapter

# 12

### EVICTING A SERVICE MEMBER

#### (a) COURT-ORDERED EVICTION-

(1) IN GENERAL- Except by court order, a landlord (or another person with paramount title) may not--

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises--

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed \$2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

#### (2) HOUSING PRICE INFLATION ADJUSTMENT-

(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph--

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which--

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for November of 1984.

(ii) The term `CPI housing component' means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) PUBLICATION OF HOUSING PRICE INFLATION ADJUSTMENT- The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

#### (b) STAY OF EXECUTION-

(1) COURT AUTHORITY- Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service--

(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

(B) adjust the obligation under the lease to preserve the interests of all parties.

(2) RELIEF TO LANDLORD- If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

**(c) PENALTIES-**

(1) MISDEMEANOR- Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS- The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

(d) RENT ALLOTMENT FROM PAY OF SERVICEMEMBER- To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

**a) PROTECTION UPON BREACH OF CONTRACT-**

(1) PROTECTION AFTER ENTERING MILITARY SERVICE- After a servicemember enters military service, a contract by the servicemember for--

(A) the purchase of real or personal property (including a motor vehicle); or

(B) the lease or bailment of such property, may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

(2) APPLICABILITY- This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

**(b) PENALTIES-**

(1) MISDEMEANOR- A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS- The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(c) AUTHORITY OF COURT- In a hearing based on this section, the court--

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

(3) may make other disposition as is equitable to preserve the interests of all parties

# Chapter 13

The Federal Fair Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the California State Law Against Discrimination, and local fair housing laws require that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities. Reasonable accommodations are changes in rules, policies, practices, or services that are necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. Allowing tenants who have disabilities to utilize the assistance of live-in caregivers is a reasonable accommodation.

## What is a Disability?

Under fair housing laws, a person is considered to be disabled if s/he has a sensory, mental or physical condition that substantially limits one or more major life activities (such as walking, seeing, hearing, working, etc.). The state law definition includes disabilities that are temporary or permanent, common or uncommon, mitigated or unmitigated.

## DEFINITION OF LIVE-IN CAREGIVER

Although there is no definition of a live-in caregiver in the fair housing laws, regulations for HUD-subsidized housing provide a useful definition. Using the HUD regulations as guidance, a live-in caregiver may be defined as a person who resides with a person(s) with disabilities<sup>2</sup> who is:

(a) essential to the care and well being of the person(s);

(b) not obligated to support the person(s) with the disabilities; and

(c) would not be living in the unit except to provide the necessary supportive services.

**Although a live-in caregiver is an occupant of the unit, the caregiver is not considered a tenant for the purpose of income qualification and is not liable for paying rent. Because a live-in caregiver only lives in the unit for the purpose of providing supportive services for a person with a disability, the caregiver has no right to continue living in the unit if the tenant with the disability moves out.**

**HUD uses the term “live-in aide.**

**Residents of HUD-subsidized housing who are elderly or near-elderly also may request live-in aides. For more information about this, contact the housing authority or HUD-assisted property owner.**

**Can a Landlord verify that a live-in caregiver is necessary?**

**Yes. Housing providers are entitled to verify:**

- (1) the existence of the disability if it is not readily apparent,
- (2) the need for the accommodation if it is not readily apparent, and
- (3) that the caregiver is qualified to provide the supportive services that are needed because of the disability.

If you or your manager asks for this verification, the tenant should obtain a signed letter from his/her doctor or other medical professional, or other qualified third party who, in their professional capacity, has knowledge about the disability and the Tenant's need for the caregiver. **The Tenant does not have to provide details about the disability or about the specific supportive services that the caregiver will provide.**

**NOTE: A verification letter stating that the caregiver would be “nice” or “helpful” is insufficient.**

## **What if my caregiver is a relative?**

There is no rule against a relative being the tenant's live-in caregiver provided the caregiver is essential to the Tenant's care and well being, not obligated to support him/her, and would not be living in the unit except to provide the necessary supportive services. If the Tenant's live-in caregiver is a relative, it would be reasonable for a landlord to follow HUD's policy of requiring the relative to sign a statement prior to moving into the unit relinquishing all rights to the unit in the event that the Tenant decides to move out.

## **Are live-in caregivers to be listed on the lease as an Occupant, but not as a Lessee – not responsible for the terms and financial aspects of the lease?**

If you wish to list a live-in caregiver on the lease, it would be as an occupant and not as a lessee. The Tenant is responsible for a caregiver's behavior on the premises whether or not the caregiver lives in the unit. If the Tenant knows, or has reason to know, that the caregiver is engaging in wrong-doing, the Tenant has an obligation to do something about it. If he/she does nothing, the you may be able to take action against the Tenant.

## **What happens if the Tenant moves out and the caregiver refuses to move?**

In some cases, a caregiver may wish to remain as a resident and you can require the live-in caregiver to submit a rental application and meet the standard tenancy qualifications. If, however, the caregiver refuses to move or to apply for tenancy, the you can follow the start the process for eviction. It's important that you remember when starting the evicton process, you are evicting the Tenant, even if the Tenant has vacated. If the Tenant was occupying under a Lease, and the Lease has expired, then the eviction process can start without any notice. If the Lease has expired an the tenant has remenained paying rent, then the lease has converted to a Month to Month Tenancy, and you will most likely be giving the Tenant a 3 Day Notice to Pay or quit.

**If you accept rent from the Care Giver after the Tenant has vacated, you have created a month to month tenancy with the Care Giver, in which case you will need to serve a 30 day notice terminating a Month to Month Tenancy, prior to commencing the eviction process.**

## Chapter

# 14

### LANDLORD'S DISCLOSURES

#### *Lead-based paint*

If the rental unit was constructed before 1978, the landlord must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling before the tenant signs the lease or rental agreement.

The landlord also must give the potential tenant a copy of the federal government's pamphlet, "Protect Your Family From Lead in Your Home" (available by calling 1-800-424-LEAD).

#### *Periodic pest control treatments*

A pest control company must give written notice to the landlord and tenants of rental property regarding pesticides to be used when the company provides an initial treatment as part of an ongoing

pest-control service contract. The landlord must give a copy of this notice to every new tenant who will occupy a rental unit that will be serviced under the service contract.

#### *Asbestos*

Residential property built before 1981 may contain asbestos. A leading reference for landlords recommends that landlords make asbestos disclosures to tenants whenever asbestos is discovered in the rental property. (This book also contains detailed information on asbestos disclosures, and protections that landlords must provide their employees.)

#### *Carcinogenic Material*

A landlord with 10 or more employees must disclose the existence of known carcinogenic material (for example, asbestos) to prospective tenants.<sup>59</sup>

#### *Illegal Controlled Substances*

The owner of a dwelling who knows that an illegal controlled substance has been spilled or dumped on or beneath the dwelling must give a prospective tenant written notice of this fact before the tenant signs a rental agreement. LSD and methamphetamines

are examples of illegal controlled substances. The owner must provide this notice if the owner knows of the condition, or if he or she has received notice of it from a law enforcement or health agency. The notice may be a copy of the agency's notice to the owner.<sup>6</sup>

#### *Demolition Permit*

The owner of a dwelling who has applied for a permit to demolish the dwelling must give written notice of this fact to a prospective tenant before accepting any fee from the tenant or entering into a rental agreement with the tenant. The notice must state the earliest approximate dates that the owner expects the demolition to occur and that the tenancy will end.

#### *Military Base or Explosives*

A landlord who knows that a rental unit is within one mile of a closed military base in which ammunition or military explosives were used must give written notice of this fact to a prospective tenant. The landlord must give the tenant this notice before the tenant signs a rental agreement.

## Chapter

# 15

### WHEN CAN THE LANDLORD ENTER THE RENTAL UNIT?

California law states that a landlord can enter a rental unit only for the following reasons:

- In an emergency.
- When the tenant has moved out or has abandoned the rental unit.
- To make necessary or agreed-upon repairs, decorations, alterations, or other improvements.
- To show the rental unit to prospective tenants, purchasers, or lenders, to provide entry to contractors or workers who are to perform work on the unit, or to conduct an **initial inspection** before the end of the tenancy
- If a court order permits the landlord to enter.<sup>87</sup>
- If the tenant has a waterbed, to inspect the installation of the waterbed when the installation has been completed, and periodically after that to assure that the installation meets the law's requirements.<sup>88</sup>

Except when the tenant has moved out of the rental unit, abandoned it, or in an emergency, the landlord or the landlord's agent must give the tenant reasonable advance notice in writing before entering the unit, and can enter only during normal business hours (generally, 8 a.m. to 5 p.m. on weekdays).

The landlord or agent may use any one of the following methods to give the tenant written notice of intent to enter the unit. The landlord or agent may:

- Personally deliver the notice to the tenant; or
- Leave the notice at the rental unit with a person of suitable age and discretion (for example, a roommate or a teenage member of the tenant's household); or
- Leave the notice on, near or under the unit's usual entry door in such a way that it is likely to be found; or
- Mail the notice to the tenant.<sup>89</sup>

The law considers 24 hours' advance written notice to be reasonable in most situations. If the notice is mailed to the tenant, mailing at least six days before the intended entry is presumed to be reasonable, in most situations.<sup>90</sup> The tenant can consent to shorter notice and to entry at times other than during normal business hours.

Special rules apply if the purpose of the entry is to show the rental to a purchaser. In that case, the landlord or the landlord's agent may give the tenant notice orally, either in person or by telephone. The law considers 24 hours' notice to be reasonable in most situations. However, before oral notice can be given, the landlord or agent must first have notified the tenant in writing that the rental is for sale and that the landlord or agent may contact the tenant orally to arrange to show it. This written notice must be given to the tenant within 120 days of the giving of the oral notice.<sup>91</sup> The landlord or agent may enter only during normal business hours, unless the tenant consents to entry at a different time.<sup>92</sup> When the landlord or agent enters the rental, he or she must leave a business card or other written evidence of entry.<sup>93</sup>

The landlord cannot abuse the right of access under these rules, or use this right to harass (repeatedly disturb) the tenant.

If your landlord violates these access rules, talk to the landlord about your concerns. If that is not successful in stopping the landlord's misconduct, send the landlord a formal letter asking the landlord to strictly observe the access rules stated above. If the landlord continues to violate these rules, you can talk to an attorney or a legal aid organization, or file suit in small claims court to recover damages that you have suffered due to the landlord's misconduct.