

Gaining Access to Your Tenant's Unit By FDR (Frank D. Rubin), Attorney

The California Civil Code sets standards for most of the contentious areas of landlord/tenant inter-relationships. In California Civil Code Section 1954, the California Legislature that enacted that Code Section set very broad guidelines as to what is the legally acceptable standard of behavior re "getting in". This Code Section applies to residential dwellings. However, it also serves as an excellent guideline as to commercial buildings.

California Civil Code Section 1954 allows an owner to enter a residential tenant's dwelling:

- In case of an emergency
- To make necessary or agreed repairs, decorations, improvements or to exhibit the unit to workers or lenders
- When the premises are abandoned
- Per court order

Except when there is an emergency or abandonment, the owner may not enter other than during normal business hours unless the tenant consents at the time of entry. The landlord may not use this right to abuse or harass. 24 hours advance notice is presumed reasonable in the absence of evidence to the contrary.

So, while the legislature writes a standard that seems on the surface as being reasonable, what do the courts do? As I've written before – most anything they want on any day. We all think we know what those standards are, but it is only the court system in the event of an actual dispute that will sort out what those words mean.

Emergencies

"In case of emergency" – what is that? It allows an owner immediate access with no notice required. So, it better be a real emergency. An emergency is what, in your own opinion, you think it is. It is up to your attorney's later creativity to spin the events to create the aura of an emergency. Make sure you have "specific articulateable facts" to explain your entry without a notice. Just having a feeling or bad vibes about the urgency won't cut it. Facts are specific events that any reasonable rational person would deem there was an emergency situation. Seeing blood flowing, water gushing or a fire are obvious reasons. Those are real world facts that are easily understood by even the densest judicial officers as emergencies. They can be described in plain English.

However, what do you do about a crack in some glass? Unless there are sharp edges that pose an immediate danger, it is best to give a formal written 24 hour notice of entry. Keep in mind if you give the 24 hour's advance notice, you are always safe. It is only when you are not doing that that a definition of such things as emergency comes into possible issue.

Abandonment

Abandonment also allows entry without formal notice. Abandonment can be declared by following a special noticing procedure covered in my prior articles. After a time to respond has passed, then you may enter without notice. However, since the process takes 18 days, you certainly have time during the last few days to post a notice anyway to enter to verify an abandonment and inspect the premises.

The Code is very broad about what things for which you can enter. Repairs, decorations, improvements, to show the premises to workers or lenders are all an acceptable basis for entering. Reading the Code and all the many allowable reasons for which one can enter, it appears that even without legal cleverness and spin, you would be hard pressed not to have a legitimate legal basis to enter a dwelling. However, you still have to give advance notice.

Have it in Writing

In real estate, we have a saying – “an oral agreement is not worth the paper it wasn’t written on”. In other words, unless it is in writing, it does not exist. Many people routinely run afoul of that edict and for the lawyer community, it is a great source of income. It is difficult even with it in writing to resolve some items. Think of all the extra billable hours the same situation will generate when something isn’t in writing. On behalf of gainfully employed attorneys, I thank all of you who routinely do not put your real estate matters in written form.

So, unless it is your dream pursuit in life to support the legal profession, make sure you have a written copy of your notice to enter.

Posting the Notice

Post it on the front door at eye level. Unlike other notices such as to pay or quit, a copy can also be slid under the front door. Since you are only giving 24 hours notice, mailing is not realistic. However, if you are giving notice a few days in advance, then I do suggest mailing besides posting one on the front door.

Regarding posting, I suggest you get a roll of the semi-stick tape. It is the same tackiness as the little yellow peel-off notes. Other tapes, even when politely peeled off, can damage your front door paint work. The semi-stick tape is a nice item to keep in your landlord tool kit.

What are Considered Normal Business Hours?

Normal business hours may include Saturday; generally they are 9:00 am to 8:00 pm Monday through Friday and perhaps, 9:00 am to 5:00 pm on Saturday. Again, there are no set rules, so it would be up to you to show a judge, if there ever was a case, that you entered within normal business hours. Remember, there is no normal in law.

Keys are Always a Big Issue

A reading of California Civil Code Section 1954 is devoid of any mention of keys. Most owners take it as a matter of faith that the law requires the tenant to give them a key.

That is not the law. The Code Section only requires the tenant to let you in especially after the notice of entry is given. For the owner to have a key is a matter of contract. Most rental contracts have a special provision that mandates the owner be given a key to the unit if the tenant has changed any lock.

In most cases, the owner has a master key or a key since the owner installed the lock in the first place. However, if the tenant does something to the lock or adds another lock with a contractual provision, the owner is only left with a right to enter, particularly after advance notice is given.

Bring a Witness

Whenever you enter, always enter with a witness. Unless you do, there will be at least \$1,000 in cash and large museum-sized diamonds sitting on a dresser that you took. With a witness, those items will not be in plain sight for you to take or at least be accused of taking when you came in.

Good witnesses are a retired school teacher, a retired small business person, or a member of the clergy. Certainly you do not want a used car salesman, politician or even worse, a lawyer, as your witness when you enter. No one ever believes or should ever believe what they tell you. Go in with a credible, honest person and that will be your protection from a claim of missing cash and large gem stones.

Frank D. Rubin is admitted to practice in the California and federal courts. He is a member of the U.S. Supreme Court Bar. Mr. Rubin received his B.A. degree from the University of California in Los Angeles. He graduated from Loyola University of Los Angeles School of Law, where he earned his J.D. degree. Mr. Rubin has held the positions of president, vice president and director of several Los Angeles area apartment owners' associations. He has served the California State Apartment Owners Association as chairman of both the Legislative and Forms Committees. Mr. Rubin's practice emphasizes landlord/tenant law, both residential and commercial. He has handled thousands of evictions and related matters as an attorney for over 30-years.