

What to Do When Your Tenant Loses Keys (Another Lawsuit Waiting to Happen) by LCPIA

What should you, as a landlord do when a resident loses an apartment or house key? You are often better off changing the lock instead of providing a duplicate key. Why? Because the lost key could fall into the wrong hands, the resident could be burgled or attacked and then sue you for negligence.

But, you risk upsetting a resident who swears the key is at the bottom of the ocean or somewhere else where no one can find it. To solve this problem, there seems to be two policies for dealing with the lost key issue.

1. Require all keys to be replace without exceptions and;
2. Make an exception only when a resident is certain that no one can find the lost key, BUT, get the resident to sign an acknowledgment stating that he/she has agreed not to replace the lock.

Here's a closer look at these two policies. Be sure to consult with your attorney and insurance broker to decide which policy you should set and then be consistent. Unaccounted-for keys pose too great a security risk, say many of the landlords and property managers. Most agree that it just isn't worth taking a chance. A missing key is bad enough. But the key chain may have a photo, name or other form of identification that tips off a potential intruder as to who the resident is or where she lives. If someone breaks in, the resident may sue for not replacing the lock when the landlord knew there was a risk.

Residents who don't want to pay for a new lock may not understand the danger they are in. They may think you are just trying to get money from them and you have to convince the resident to accept replacement locks by explaining the risk to them. Once they realize we are looking out for their safety, generally there is no problem.

Your maintenance staff can replace the lock right away with little or no inconvenience to the tenant. And most locksmiths will work on very short notice. Changing the lock's cylinder takes less than an hour. But what if the resident calls in the middle of the night and you have no emergency maintenance staff on duty? Let the tenant in with your duplicate key and change the lock in the morning, or call a 24 hour locksmith. To cover the cost, charge a reasonable fee – usually \$25 to \$30.

If the resident is “absolutely” sure the key is lost for good and irretrievable, for instance, down a sewer or lost in a lake while fishing, some owners will give a duplicate key. Even so, still recommend replacing the lock and have the tenant sign the acknowledgment statement mentioned above.

You can't be certain in all instances that the resident is telling the truth about the key's whereabouts since they may be trying to avoid paying the lock replacement fee. Because of the risk that the tenant may not be completely truthful in this instance, the landlord should protect him or herself. If a crime later occurs, the resident may sue for negligence, claiming she requested changing the lock. Or the tenant could say he was not warned of the danger.

To protect yourself from a lawsuit, require the resident to sign an acknowledgment form which should:

- Acknowledge that you recommended replacing the lock
- Acknowledge that you explained and the resident understood the risks of not replacing the lock but that the resident still declined and
- Release you from any liability because of the resident's decision

Keep in mind that no release is an airtight protection from liability so talk to your attorney about the effect of the release in your state.

Make certain the person (either you or a staff person) fills in his or her name so you have a complete record of who spoke to the resident. If the lease is in more than one resident's name, each resident must sign the form. Keep the signed form in the resident's file so that, in the event an incident occurs, you'll have proof you recommended replacing the lock and that the resident refused.

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