Legal Q & A
By Richard Beckman, Attorney

Question 1: My tenants just gave me a notice that they are leaving at the end of the month, and wanted me to inspect the apartment before they leave in case I have any security deposit issues. They said I have to do this or lose the deposit. Is this true?

Answer 1: Your tenants are right about the inspection. The consequences of failing to comply are less clear. According to Civil Code Section 1950.5, within a reasonable time after the tenant gives notice of her intention to move out in 30 days, the landlord is required to notify the tenant in writing that she is entitled to request an initial inspection by the landlord and she has the right to be present at the inspection. At a "reasonable time," (which is otherwise not defined but no sooner than two weeks before the move-out date), the landlord or his agent shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection is to allow the tenant an opportunity to remedy identified deficiencies.

If a tenant chooses not to request an initial inspection, the landlord is exempt from the inspection requirement. If an inspection is requested, the landlord and the tenant shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours' prior written notice of the date and time of the inspection if either a mutual time is agreed upon or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written waiver. The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection.

Then, based on the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security the landlord intends to make based on those issues. The statement must also include the part of the security deposit statute, Civil Code Section 1950.5 that lists the things which the landlord may charge the tenant's deposit for. The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security.

The penalty for failing to comply with the inspection requirement is not specified in the statute. The 'bad faith' retention of the deposit by the landlord allows the tenant to seek the deposit plus a penalty of twice the amount of the deposit. "Ignorant' violation of the statute, such as by a landlord unaware of the inspection requirement, would likely not fall under the ‘bad faith' rule. However, it is likely that violation of that obligation would

preclude the landlord from applying the deposit to items which the tenant could have fixed before leaving had the inspection been done.

P.S. As is frequently mentioned in this column, every landlord should be very familiar with Civil Code Section 1950.5, which is the state statute that governs residential security deposits. As an attorney who also sits as a small claims judge (pro-tem), I see more disputes about security deposits than any other single type of claim. The more familiar the landlord is with the rules governing security deposits, the less likely they will be summoned to small claims court by the tenant to explain why the deposit was not returned in compliance with Section 1950.5. The tenant will usually be asking for a penalty in addition to the actual deposit refunded.

Question 2: Is there any city or State law that specifies how much time must pass prior to imposing a late fee?

Answer 2: No. Most form leases provide a 'grace period' of five days, but this appears to be only a custom or tradition, rather than the result of any law or ordinance.

Question 3: I understand I can only require a security deposit of up to two month's rent for an unfurnished apartment. But can I also charge a separate, refundable pet deposit over and above the maximum security deposit limit?

Answer 3: No.

Question 4: Are there different notice periods a landlord must give to terminate a tenancy or end a lease? And are these different from the amount of notice a tenant has to give?

Answer 4: Yes and Yes.
For a "Fixed Term" lease (e.g., one year lease), no notice is needed after lease expires. If the tenant remains in possession, the landlord can either accept rent if offered and create a month to month tenancy, or consider the tenant to be unlawfully holding over and seek to evict the holdover by the unlawful detainer process.

For a "Periodic Tenancy" (e.g. oral or written month to month tenancy), a 30 day notice is required unless the tenancy is over one year old, at which point, 60 days notice is required. In cases where the landlord is selling a single family home to a purchaser who intends to live in the house, there is an exception allowing the landlord to only give 30 days notice to a tenant who has resided over a year.

For "Section 8" leases, generally a 90 day notice is required, but there are other guidelines limiting termination during the initial lease term and also after the initial lease expires. The tenant, however, may terminate a month to month rental agreement by giving 30 days notice.

CAVEAT –remember that in jurisdictions with eviction control laws, such as Oakland, the rules of lease termination are extremely limited, and the landlord should understand the local ordinance and its restrictions before seeking to terminate a lease or rental agreement.

Question 5: If the landlord accepts a partial or full payment during an eviction proceeding, what happens to the legal proceeding? May the landlord continue forward?

Answer 5: Acceptance of rent after expiration of the notice, including during the unlawful detainer process, will permit the tenant to have lawsuit be dismissed. Legally, acceptance of rent renews the tenancy. Acceptance of rent may not prevent the landlord from seeking to evict the tenant for a later, similar breach of the lease, but it will allow the tenant to remain in possession until a new notice is served. It should be noted that this rule applies only to residential premises, as commercial tenancies are governed by a different rule that allows the landlord to accept rent during an unlawful detainer proceeding without terminating the case and starting over.

Question 6: May the landlord specify in the lease and enforce the requirement of the tenant to obtain renter's insurance?

Answer 6: Yes.

Question 7: Is the rent control exemption for new construction being eliminated in San Francisco?

Answer 7: San Francisco's rent and eviction control ordinance has always contained an exemption from its rules for any housing built after the ordinance was originally passed in June, 1979. On Monday, November 2, 2009, the San Francisco Board of Supervisors Land Use and Economic Development Committee will consider an amendment to the ordinance that would apply eviction controls such buildings. Rent control of such buildings is not part of the proposal. In essence, if the proposal is adopted as an amendment to the ordinance, owners of residential buildings built after June 1979 will no longer be permitted to terminate a residential tenancy unless the owner has 'just cause' to do so, which means the owner is basing the notice of termination on one of the 14 permitted grounds to terminate a tenancy. As with all local rent control laws, information regarding the law and recent developments may be found at the local rent board's website. In San Francisco's case, that website is: http://www.sfgov.org/site/rentboard_index.asp.

Note to Readers: The Q&A section invites you to submit your questions, which may become the basis of one of the questions addressed in a subsequent issue. You may submit questions by email to Alison Karnes at akarnes@aoausa.com.

Richard Beckman has been practicing landlord-tenant law for over 19 years, primarily in rent-controlled jurisdictions such as San Francisco, Oakland and Berkeley. He represents clients in a broad range of real estate-related disputes, including partition of

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