

**Legal Q&A**  
**by Richard Beckman, Attorney**

**Question 1:** The tenants at my Oakland Rent controlled property just added two roommates in the three bedroom unit and now there are seven adults. Because of the extra people, the water bill has increased by \$200. I have not made any rent increases in two years. What are my options for passing the water bill increase on to the tenants with a rent increase or increased housing costs?

**Answer 1:** As the unit is described by you as 'rent controlled,' there are limited ways to seek to increase the rent your tenants currently pay. In addition to the annual 'CPI' increase, in your case, given your facts, the two most applicable bases are:

- *Banking:* Saving rent increases that are not given in one year and imposing them in subsequent years; and
- *Increased Housing Service Costs:* An increase that compares two years of operating expenses and allows for an increase in situations where there has been an increase in those costs.

**NOTE: An owner may take the CPI Increase OR any combination of individual adjustments, but not both.**

You can review the applicable bases in detail at the Oakland Rent Board's Website (<http://cedaonline.oaklandnet.com/rentadjustmentsite/ordinance/index.htm>), or by contacting them at:

Housing and Community Development Division  
250 Frank Ogawa Plaza Suite 5313, Oakland, CA 94612  
Tel: 510.238.3015 | Fax: 510-238-3691 | TDD: 238-3254

**Question 2:** If my rental unit is exempt from rent control, is it also exempt from eviction control?

**Answer 2:** Not necessarily. Some rental units are exempt from both 'rent' control (the amount of rent the landlord can charge the tenant) and 'eviction' control (whether a landlord needs 'cause' to evict a tenant), and some are exempt from one or the other but not both. For example in Oakland, single family dwellings and condominiums rented after 1996 are generally exempt from *rent* control (due to the state law known as the Costa Hawkins Act), but are still subject to *eviction* control under Measure EE, which specifically applies to such units. However, 'owner occupied buildings' of three units or less (where the owner resides in one of the units as his or her principal residence) and buildings constructed after January 1, 1983 are exempt from both controls. If your unit is in a 'rent-controlled' jurisdiction such as Oakland, Berkeley or San Francisco, you should check with the local rent control board or knowledgeable professional to find out the exact status of your unit or building.

**Question 3:** What happens if I don't return the tenant's security deposit?

**Answer 3:** By statute (Civil Code Section 1950.5), a landlord who fails to comply with that statute could be liable for up to twice the amount of the deposit. 'The bad faith claim or retention by a landlord of the security or any portion thereof in violation of this section, or the bad faith demand of replacement security, may subject the landlord to statutory damages of up to twice the amount of the security, in addition to actual damages. The court may award damages for bad faith whenever the facts warrant that award, regardless of whether the injured party has specifically requested relief. In any action under this section, the landlord shall have the burden of proof as to the reasonableness of the amounts claimed.'

If there is no 'bad faith' violation, where for example the landlord either didn't know about the obligation to provide a detailed accounting of the deposit within 21 days of the tenant's surrender of the unit, or failed to provide the pre-move out inspection, the court (most likely Small Claims court) would order the entire deposit returned to the tenant. However, the landlord does not lose his or her claim for the amounts which the tenant would otherwise have owed and which could have been properly deducted from the deposit. One common result from a small claims trial in which the tenant seeks her deposit back because the landlord did not comply with the accounting rules of Section 1950.5 is that the tenant gets the deposit ordered returned, but the landlord gets an award for the amount of back rent, or property damage beyond normal wear and tear, and then the landlord's award is offset from the tenant's award, so that both parties get what they are entitled to after all.

**Question 4:** If the tenant hasn't paid the rent and seems to have moved out (but never told me they were leaving), can I go in and change the locks and re-rent the unit?

**Answer 4:** It happens occasionally that a tenant will simply disappear. They will not provide the owner with any notice that they are leaving, but when the rent is not received by the landlord, and the tenant does not respond to inquiries, the landlord investigates and finds that either the unit appears abandoned, or speaks with neighbors who might tell the landlord that the tenant hasn't been around in a while. In such cases, the landlord can employ one of two procedural methods to insure that the tenant's rights to possession are legally ended.

If it genuinely appears to the landlord that the tenant has abandoned the unit, based on evidence that a reasonable person would find persuasive, and the rent is at least 14 days overdue, the landlord can serve a "Notice of Belief of Abandonment" as provided by Civil Code Section 1951.3, which allows such notice "Where the rent on the property has been due and unpaid for at least 14 consecutive days and the Lessor reasonably believes that the lessee has abandoned the property. The date of termination of the lease shall be specified in the Lessor's notice and shall be not less than 15 days after the notice is served personally or, if mailed, not less than 18 days after the notice is deposited in the mail."

If the tenant does not affirmatively respond to claim a continued right of possession, the landlord may retake possession without liability to the tenant for wrongful eviction. However, the tenant can try to challenge whether the landlord's belief was 'reasonable.'

The legally more certain way to reclaim possession without liability, but at a higher cost, is to proceed through the unlawful detainer (eviction) process, beginning with the service of a 3 Day Notice to Pay Rent or Quit, followed by the filing of the eviction lawsuit, the tenant's default and finally with the Sheriff executing the writ of possession. If there is any real doubt whether the tenant has abandoned the property, or may simply be away on vacation or some other extended absence, the eviction process is probably the preferred way to go.

**Question 5:** If the tenant breaks something in the unit, do they have to pay for it?

**Answer 5:** Yes, unless they were using the thing that broke with reasonable care and it broke anyway, which indicates the thing was at the end of its useful life and needed to be replaced anyway. The more complicated question is how do you force the tenant to replace the broken thing or pay its reasonable cost, which is a question left for next month's issue.

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 co-ownership interests, purchase contract disputes, insurance coverage analysis and land use. Mr. Beckman also specializes in all aspects of landlord-tenant issues, representing landlords and tenants in residential and commercial matters.* He can be reached at 415-495-8500; fax 415-495-8590 or by visiting [www.BMDLLP.com](http://www.BMDLLP.com).