

Legal Q & A's
By Richard Beckman, Attorney

Question 1: If two people want to rent my apartment, should I have them both sign the lease?

Answer 1: Yes. When both occupants sign the lease, they both are responsible for the obligations of the lease, most importantly the one to pay timely rent. A non-lease signer can be evicted along with a signed tenant for non-payment of rent, but would not (absent some other legal reason) be liable for the unpaid rent. There are other benefits to having all occupants sign the lease, including if you ever have to serve a notice to pay rent or quit, or similar notice, service on one lease signer constitutes service on all lease signers.

Question 2: What should I expect to pay an attorney for an unlawful detainer and what should I expect from the court process?

Answer 2: The ultimate cost of an unlawful detainer (the 'eviction' lawsuit) is impossible to predict, since every case will present a different set of facts. The ideal arrangement for the owner would be to find an attorney who would do the case on a 'flat fee.' However, because of the unknowns facing the attorney at the beginning of the case, it is very rare to receive that type of price quote from the attorney.

Some attorneys (the author included) will offer a flat fee for what is described as an 'uncontested eviction,' which is where the tenant does not offer a defense to the action. In such a case, the attorney typically prepares and serves the notice (although sometimes the client has already done that), and then prepares, files and serves the lawsuit (assuming the tenant does not 'cure' the default set out in the notice), and when the tenant fails to file a written response to the lawsuit (as they are required to do), the attorney has the court enter the tenant's 'default', which then entitles the attorney to have a writ of possession issued for the sheriff to 'execute,' which means the sheriff will go to the premises, post a five notice of eviction, and then return to complete the eviction by placing the owner back in possession. In that scenario, which is also the speediest possible recovery of the rental unit, the attorney might charge a flat fee for the attorney time (as the author does, at \$600-800, depending on whether it's a rent controlled jurisdiction or not), and then charge the client additionally for the 'court costs.'

Court costs are fees incurred to third parties, including the filing fee to the court (approximately \$200 to \$365 depending on the amount of money at issue), process servers' fees (which can vary depending on how difficult it is to serve the tenant) and sheriff's fees for the eviction (which vary by county, but are generally in the \$150 range for residential evictions).

So, as you can see, even an uncontested eviction can add up to about \$1,250.00 when the court costs are included. An eviction that is contested by the tenant (more commonly the case in 'rent-controlled' locations such as Oakland, Berkeley or San Francisco) can cost significantly more, and take much longer, depending on how tenaciously the tenant defends the eviction.

Question 3: My current tenants in San Mateo signed a one year lease that will expire in five months. The tenants have decided to buy their own house and want to move out this month. If they move out, they will be breaking their one year lease with me. Can I make them pay the five months of rent they owe from now until their lease expires? Will I be able to sue them if they don't agree to pay for the months they owe me?

Answer 3: The tenants are responsible for the full amount of the rent for the entire term of the lease, whether they remain in possession or not. However, if they decide to leave early, and notify the landlord they are surrendering the unit back to the landlord, the landlord has an obligation to use reasonable efforts to re-rent the unit to 'mitigate' (i.e., lessen) the tenants' rental obligation to the landlord. The security deposit can be applied to unpaid rent (as least up to the amount due 21 days after the tenants vacate), and the remaining rent would need to be pursued in court (small claims court, if the amount remaining is less than \$7500, and assuming the tenants are not willing to pay the balance owed voluntarily).

Question 4: In October 2008 my tenants gave me a notice, and moved out. I put together their security deposit itemization and mailed it with a post mark on the 18th day to the tenants' vacant unit because they would not give me their forwarding address. I never heard from them after that, so I thought they must have received the paperwork on time. Now, I am being contacted by the tenants' lawyer, because they are suing me for twice their security deposit and claiming they never got the security deposit paperwork. What can I do to avoid the lawsuit and defend my rights as an owner?

Answer 4: Civil Code Section 1950.5 governs residential security deposits, and if you complied with its requirements, you should be safe from any liability. I recommend every landlord read that section carefully every time a tenant gives notice to surrender, or the landlord terminates a tenancy. In your case, you met the 21 day deadline to send the itemized statement, and according to Section 1950.5(g)(6) "Any mailings to the tenant pursuant to this subdivision shall be sent to the address provided by the tenant. If the tenant does not provide an address, mailings pursuant to this subdivision shall be sent to the unit that has been vacated." In other words, if you can prove you mailed the itemization in time to the old unit, you should have no problem defending the claim.

Question 5: I own property in SF. The building has a laundry room available to the tenants; however, one of the units was formerly occupied by the owner, and has hookups for washer and dryer machines which I included as a bonus for the tenant. When the tenants moved in, nothing was included in the rental contract about the washer and dryer provided for their personal use. Now, they have added additional people as roommates and the water bill is very high. I would like to remove the washer and dryer in their unit and replace it with coin operated machines. Would I legally be allowed to make this change? Or is it possible to remove the machines from their unit altogether and notify the tenants to use the building laundry room instead?

Answer 5: I thought I was going to get through this Q&A relatively easily, and then someone has to ask a question like that. There is no short or easy answer to any question

involving what are considered 'housing services' under the San Francisco Rent Stabilization and Arbitration Ordinance (fondly known as the "Rent Ordinance" for short). Section 37.2(r) of the Ordinance was amended in 2006 to provide that "Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks, patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed from the tenancy by the landlord without just cause as required by Section 37.9(a). Any severance, reduction or removal permitted under this Section 37.2(r) shall be offset by a corresponding reduction in rent. Either a landlord or a tenant may file a petition with the Rent Board to determine the amount of the rent reduction."

In other words, any change to an existing service should be carefully considered. You would probably be permitted to change the existing machines to pay machines, with a "corresponding reduction in rent" likely equal to the amount the tenants were dropping in the machines each month. You would have more difficulty removing the machines altogether and telling the tenants to use the building laundry room, though it should be allowed, again with a corresponding reduction in rent (probably higher due to the additional time the tenants would spend going to and from the common laundry room). The easiest way to avoid complications may be to simply file a petition with the Rent Board explaining the plan and allowing the Rent Board to 'sign off' on the new arrangement beforehand, which would be the surest way to eliminate claims from the tenants after the change took place.

Question 6: What is the percent of annual allowable rent increases allowed by rent control this year?

Answer 6:

Oakland – Effective July 1, 2009 through June 30, 2010, the allowable annual rent increase is 0.7%

Berkeley – Effective January 1, 2009 through December 31, 2009, the allowable annual rent increase is 2.7%.

San Francisco: Effective March 1, 2009 through February 28, 2010, the allowable annual rent increase is 2.2%.

Question 7: 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 7: Stay tuned - this one will have to wait 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

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