

Legal Question & Answers

By *Dennis Block, of Dennis P. Block & Associates*

Question One: I own a small garden style rent controlled apartment building located in Los Angeles. Several of my tenants are complaining about a tenant who smokes cigarettes in the common area. Am I obligated to do something?

Answer One: The issue of a landlord's duty to other tenants, as it relates to secondhand smoke, is working its way through the legal system. In a recent case, *BIRKE V. OAKWOOD WORLDWIDE*, the Second Appellate District allowed a case to proceed to trial where a tenant alleged exposure to secondhand smoke in the common area. This tenant complained that the smoke exacerbated her asthmatic condition.

The tenant claims the condition, permitted by the landlord, amounts to a public nuisance. By the ruling in this case, it appears that a landlord would have a duty to prevent exposure to secondhand smoke. You should impose a restriction on all tenants by serving a "Notice of Change of Terms of Tenancy" that smoking is not permitted in the common areas.

Question Two: My former tenant filed a small claims action against me for failing to return of her security deposit. I sent an itemization within the 21-day period. I did not return anything because of damages and unpaid rent. At the hearing, the judge gave my tenant all of the security deposit back for no apparent reason. What can I do now?

Answer Two: Your next step is to appeal the small claims court judgment. You must do so within 30 days of the date that the judgment was entered. Your appeal is actually a new trial of the original small claims case and will be heard by a different judge. The plaintiff must prove her case, and you can defend. This time, however, you are allowed to have an attorney representing you at the new trial hearing.

Question Three: My tenant gave me verbal notice that she was going to vacate by the end of May 2009. She further stated that she was not going to pay May rent since she was vacating and told me to use the security deposit to cover the rent. What should I do?

Answer Three: Serve your tenant a 3-day notice to pay rent or quit. If your tenant does not pay, you can proceed to evict your tenant for non-payment of rent. In this situation you can never be sure that the tenant will actually vacate at the end of the month. Many tenants serve their landlord a 30-day notice, with no intention of moving. This is done in hopes that the landlord will delay any action for 30-days.

Question Four: I had a pipe burst in the unit, which has caused damage to my rental. My tenant refuses to cooperate with my reasonable and prompt repair efforts, what should I do?

Answer Four: Civil Code Sect. 1941.1 imposes on the landlord the DUTY to maintain the rental premises in a habitable condition. If your tenant won't cooperate with your

reasonable efforts to make repairs, it is a fair inference that your tenant is trying to obtain an undeserved rent concession from you. Serve your tenant with a "Notice of Intent to Enter Dwelling" You should post this notice on the door stating the date, time and reason why you are entering the premises. The work should be done Monday through Friday, during the hours of 9:00 am to 5:00 pm. If there is no answer at the door, you may use your passkey. If that does not work, you may call a locksmith. If the tenant is there and refuses your entrance, call the local police. Do whatever it takes to get the problem fixed. Only by doing this can you "cut off" your tenant's claim for rent concessions. Civil Code Section 1954 gives you an absolute right to get in and do the work, with a written notice.

Civil Code Section 1941.1 imposes upon you the duty to do the work.

Your tenant's protestations to the contrary should have no influence on your efforts to make the repairs.

Question Five: I am considering buying a duplex at a foreclosure sale. The property is under rent control and there are tenants in possession. One of the tenants showed me a lease where the rent is only \$550 per month and the lease states that the rent has been paid for one year in advance. The unit should rent for \$1,500. What am I getting into if I should by this property?

Answer Five: The foreclosure would invalidate the lease and the alleged advance rent payments. Your tenant, however, is a protected tenant under rent control. That means that the tenant would have the right to pay only \$550 unless you could prove that this figure was fraudulently created.

Question Six: What is the earliest that I can serve a "3-Day Notice to Pay Rent or Quit"? For example, if the rent is due on the 1st, what is the first possible day that I can serve the notice? My lease allows for a five day grace period.

Answer Six: You can serve a notice the day after rent is due. Therefore, if the rent is payable on the first, you can serve the notice on the second. The exception to this rule is if the first is on a Saturday, Sunday or legal holiday. If that is the case, the due date would not occur until the following day and the notice could then be served one day thereafter.

A grace period in a lease deals with the imputation of a late charge and it does not affect when the notice can be served for the rent.

Question Seven: I have a rent controlled building in Los Angeles. When I bought the building, I got the tenants to sign new rental agreements. My rental agreement limited the parking spaces to one per unit. One tenant is parking two vehicles on the premises. He told me that he has always parked the vehicles on the premises, even before I was the owner. Since he signed my rental agreement, limiting his parking privileges, can I enforce this provision?

Answer Seven: Your tenant had no obligation to sign this new rental agreement. Since this tenant did sign the agreement, he must now follow the parking rules or that would be grounds for eviction.

Question Eight: I have a tenant who is an up and coming actor. He is having difficulty in paying me the rent. He told me that in a few years people will point to my building and say how this famous actor once lived here. What should I do?

Answer Eight: Tell your “soon to be famous” actor that people will start pointing tomorrow if the rent is not paid.

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