Q & A by Richard Beckman

Question 1: Can I serve a notice of rent increase by mail or do I have to hand it to the tenant?

Answer 1: A notice often can be 'served' either by delivering it to the tenant in person, or mailing it first class mail. The notice period is 30 days, unless the increase exceeds 10% of the current rent, in which case, the notice period is 60 days. If mailed, the notice period is extended by five days, so the notice must be mailed at least 35 or 65 days before the rent increase takes effect.

Question 2: I have heard that San Francisco is considering outlawing owner move-in evictions if the tenant has a child. Is this true?

Answer 2: Not yet, though it may become law in the near future. In June, Supervisor Eric Mar introduced a draft ordinance amending Administrative Code Chapter 37 (the "Residential Rent Stabilization and Arbitration Ordinance") by amending Section 37.9(i) to prohibit owner move-in evictions of families with children, where a member of the household is under the age of 18 and a member of a household which has resided in the unit for at least 12 months. The proposed amendment would also change the definition of "disabled" tenants protected from owner move-in evictions to be the definition in Government Code Section 12955.3, in place of the current definition that is tied to federal Supplemental Security Income and California State Supplemental Program (SSI/SSP) definitions. The Government Code definition is much easier for the tenant to establish than the current SSI/SSP definition.

The proposed legislation has been assigned to the Land Use committee for further study, and you may track its progress by contacting Supervisor Eric Mar at marstaff@sfgov.org.

Question 3: Some of my tenants are complaining that another tenant in the building is operating a business from his apartment, and the lease says it may only be used for residential purposes. Do I have any right to ask the tenant about his activities in the apartment, and to not allow business activities?

Answer 3: If the lease prohibits the use of the apartment for anything other than residential use, you should be able to enforce this provision. Often, it will be a matter of degree. For example, may the tenant make calls to clients from the apartment? It is very difficult to argue that he may not, regardless of what the lease may say. May he see clients in the apartment? How would you distinguish clients from ordinary visitors? What if he is selling stereos from the apartment? Such an activity could be more easily established as a violation, and thus more easily subject to the remedy of a three day notice to cease the activity or quit the unit.

If the lease does not prohibit non-residential use, or you have an oral agreement, there is an implied covenant that the tenant will comply with all applicable laws affected by his use of the premises. Depending on where the apartment is located, local zoning and

planning regulations may limit your tenant's business use of the apartment. Many jurisdictions allow an apartment tenant to use the apartment for incidental business use, such as a home office. However, a typical such provision will prohibit the tenant's use of the apartment for storage of goods, or having customer visits. If the tenant's use of the apartment for business violates such municipal codes, he can be required to cease such use or face termination of the tenancy.

Discovering whether your tenant is in fact conducting such activity is another issue, though you are entitled to ask him directly, or ask other tenants if they have evidence of such activity. However, you may have to make an educated guess at some point and decide whether you have enough reliable information to act upon.

Question 4: My tenant had a lease that ran until the end of the year, but they moved out September 15th without notice. I have a security deposit of two months rent, which I plan to apply to the unpaid rent. Is there anything I should know before I do this?

Answer 4: You don't say if the tenant was current on the rent before they moved out, which will affect how much of the security deposit you can keep. The rule regarding security deposits is set out in Civil Code Section 1950.5, which is required reading for every landlord (and tenant, for that matter). In addition to deductions for cleaning and damages beyond normal wear and tear, the landlord may withhold an amount equal to the tenant's rent default, including rent owed up to the date the deposit accounting is sent to the tenant, which at latest is 21 days past the date the tenant vacates. In other words, if your tenant left September 15th without owing rent, you could withhold the equivalent of 21 days of rent, since the statute requires that the security deposit be accounted for in writing to the tenant no more than 21 days after the tenant vacates. While it would seem logical to withhold at least a full month's worth of rent where a tenant vacates without notice, cases interpreting the statute do not allow you to apply the security deposit to 'future damages' beyond the 21 day period.

Again, it is strongly recommended that every landlord review Civil Code Section 1950.5, as it also contains the very detailed pre-move-out inspection provisions that every residential landlord is required to follow. Failure to follow these rules can subject the landlord to a small claims lawsuit for return of the entire deposit, along with penalty award of up to twice the amount of the deposit.

Question 5: My tenant moved out and left someone else living in the unit, who says they have been living there for months and paying rent to the tenant. They want to stay, but I know nothing about them and prefer to start with a new tenant. Can I call the police to evict them?

Answer 5: In an interesting division of labor, the police force of a town or city will not be the law enforcement office to evict a tenant. That job falls to the county sheriff. Although there is one circumstance in which the local police may evict a tenant, the tenant has to come under a very narrow procedure known as 'the lodger law,' which was discussed in this column recently. In your situation, the hold over occupant is what is

known as a tenant at sufferance, meaning an occupant who was given possession by permission (presumably, by the master tenant), but whose permission has either been expressly revoked (by the master tenant), or by operation of law (when he remains in possession after the master tenant has vacated). In such circumstances, the landlord can either negotiate with the occupant to become a new tenant in direct contract with the landlord, or can file an unlawful detainer against the occupant as an unapproved subtenant holding over after that original tenant vacated. Even in rent and eviction controlled jurisdictions, this ground for eviction is recognized.

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, or by fax to (510-769-7485), or by mail to AOA, 1128 Lincoln Avenue, Alameda, CA 94501.

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