

Beckman – Legal Q & A

Question 1: My tenant has six months left on her one year lease, but she wants to move out because she says her boyfriend is abusive. Can I hold her responsible for the rent for the remainder of the lease?

Answer 1: In 2008, the legislature created a new law that allows a victim of domestic abuse to terminate a lease before it expires. However, the tenant must follow certain procedures to take advantage of this law, which is Civil Code Section 1946.7. The tenant's notice to terminate must be in writing, with one of the following attached to the notice:

- (1) A copy of a temporary restraining order or emergency protective order, or;
- (2) A copy of a written report by a peace officer, acting in his or her official capacity, stating that the tenant or household member has filed a report alleging that he or she or a household member is a victim of domestic violence, sexual assault, or stalking.

The tenant's notice to terminate the tenancy must be given within 60 days of the date that any order was issued, or within 60 days of the date that any written report was made. If notice to terminate the tenancy is properly provided to the landlord the tenant will be responsible for payment of rent for 30 days following the giving of the notice, and thereafter is released from any rent payment obligation under the rental agreement without penalty. Existing law governing the security deposit shall apply.

However, any person on the lease other than the victim of domestic violence remains obligated to the full terms under the rental agreement.

Question 2: My tenant constantly complains about very minor problems with the apartment. I would like to terminate the tenancy and bring someone else in. Can I do this?

Answer 2: I would first refer you to the question and answer No. 4 in last month's edition, as your question very closely resembles that question. Assuming you are not in an eviction control city (every answer to every questions seems to require that caveat), and your tenant is on a month to month lease, you are legally permitted to terminate the lease for any reason except retaliation or discrimination. If the motivation to terminate the tenancy is to retaliate or discriminate against the tenant, the tenant could defend any attempted eviction on those grounds. Situations such as yours – a constantly complaining tenant - present a real challenge to the landlord. In general, if the tenant's complaints are legitimate, meaning they are complaints about things the landlord is responsible for, the tenant is exercising legitimate rights which should not result in an eviction notice. If the tenant's complaints are petty, or vindictive or without substantial basis, the landlord may be able to terminate the tenancy on the grounds the tenant is simply a nuisance. However, it will almost always be a very close call, and any decision to seek to terminate such a tenant's occupancy should be very carefully considered.

Question 3: I am considering buying a foreclosure with a tenant in the house. What should I be concerned about?

Answer 3: If the property is not located in a ‘rent controlled’ city, such as Oakland, Berkeley or San Francisco, the standard legal position has traditionally been that the tenant may be evicted by the purchasing owner, upon 30-60 day notice. However, in March 2009, Congress passed legislation that provides protections for tenants whose landlords fall into foreclosure. Under the Helping Families Save Their Homes Act, tenants have the right to stay in their homes after foreclosure for 90 days or through the term of their lease. The protections expire at the end of 2012.

California law provides that leases are extinguished by foreclosure, with limited exceptions. Many tenants enter into one year leases, only to find a few weeks or months later that the property is heading for foreclosure and that their leases will be extinguished. The new federal law provides that the lease survives the foreclosure, except that the lease can be prematurely terminated and the tenant given 90-day notice where a purchaser seeks to occupy the premises.

However, if the unit is in a city that provides eviction protections under its rent control laws, in addition to the rules discussed above, the tenant is allowed to remain unless the purchaser has one of the ‘just cause’ grounds to terminate the tenancy. Generally, if the purchaser intends to live in the home, the tenant can be required to move for that reason. However, there may be ‘relocation payments’ required to be paid to the tenant. For example, in San Francisco, those payments can exceed \$20,000.00 under certain situations. In addition, the rules that govern termination of such tenancies are very detailed and have to be carefully followed or the eviction effort will likely fail. It is recommended that before purchasing a foreclosure, any potential buyer understand clearly the potential problems involved, from the physical condition of the property to the legal status of the occupants.

Question 4: I have heard that if I rent to a tenant in my house, and I want them to leave, I can just call the police to have them removed. Is this true?

Answer 4: There is one very limited situation in which what you have heard is true. It is sometimes referred to as “the lodger law”. If an owner of a dwelling lives in the dwelling with a single ‘lodger,’ the owner can serve the lodger with a notice to terminate the tenancy in the usual manner. After the notice expires, the lodger is legally considered a trespasser and can be removed by a police officer upon the owner’s request. As used in the applicable statute, Civil Code 1946.5, “lodger” means “a person contracting with the owner of a dwelling unit for a room or room and board within the dwelling unit personally occupied by the owner, where the owner retains a right of access to all areas of the dwelling unit occupied by the lodger and has overall control of the dwelling unit.”

There can be no more than one lodger in the dwelling.

It should be noted that many police departments are not familiar with this statute, and typically are not inclined to remove the lodger, mistakenly thinking it is a ‘civil matter’ that must be resolved by the courts. However, I have found that if the precinct captain is

‘educated’ with a copy of the statute, and an explanation that the owner comes under the statute, it is more likely the police will enforce the owner’s rights.

Question 5: Can I, the landlord, serve a notice of termination of tenancy, or do I have to hire someone to do that?

Answer 5: Anyone over the age of 18, including the landlord, may legally serve any notice to the tenant, including a notice of termination of tenancy. It must be served according to the rules for service of such notices, which requires that the tenant should be personally served if they can be found at home or their place of business. If the tenant is not home, and you don’t know their place of business, you can serve anyone at the property who appears to be of “suitable age and discretion” and by also mailing a copy of the notice to the tenant at the property, which is considered ‘substitute service.’ If no one of ‘suitable age and discretion’ can be found at the premises, the notice can be attached to “a conspicuous place on the property,” with a copy also mailed to the tenant, which is called ‘post and mail’ service. Service is deemed complete at the time the copy is mailed, and the notice period starts to run.

As for what is considered ‘suitable age and discretion,’ one court determined that the tenant’s 16-year-old daughter was of suitable age and discretion to accept substituted service of notice to pay rent or quit. (see Lehr v. Crosby (1981) 177 Cal.Rptr. 96, 123 Cal.App.3d Supp.1).

Please note however that the plaintiff (usually the landlord) can not serve the ‘summons’ that initiates the eviction lawsuit. That document must be served by someone at least 18 years old and who is not a ‘party’ to the lawsuit.

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.