

Legal Q & A
Richard Beckman – NO CAL

Question 1: What do I do when the tenant moves out or is evicted and leaves “stuff” behind?

Answer 1: When a tenant leaves personal property behind after a tenancy is terminated, either by notice from the landlord or the tenant, or by eviction, the landlord must follow certain requirements under California law in disposing of the personal property. A failure to follow the required procedures may result in the landlord or its agent becoming liable to the former occupant for any loss or damage to the property left behind. Below is an overview of those rules. For a more detailed explanation, please review the applicable statutes or consult with a knowledgeable attorney or real estate professional.

In all cases where the tenant vacates the unit and leaves belongings behind, the landlord has an obligation to store the belongings for 15 to 18 days before the landlord can dispose of the property (the waiting period depends on how the tenant was notified of his right to reclaim the abandoned property). Then, after the waiting period has ended, the landlord must make a reasonable estimate of the value of the property left behind. If it is reasonably estimated to be worth no more than \$300, then the landlord can dispose of the property however she likes. If the property is worth over \$300, then the landlord must follow a procedure involving publication of a scheduled auction of the described property, followed by an auction of the property with any money remaining from the auction to be paid to the tenant - after deduction for the costs of storage and publication are paid to the landlord.

That is the basic process. However, the process should be understood in detail, with the landlord aware of the necessary procedures to avoid possible liability for loss or damage to a former tenant's property. When the tenant moves out and property is left behind, the notice procedure is set forth in Civil Code Section 1983. This basically requires that the tenant be given or mailed a written notice specifying certain information, as set forth on the form identified as NOTICE OF RIGHT TO RECLAIM ABANDONED PERSONAL PROPERTY. The notice must be hand-delivered to the tenant, or mailed to his/her last known address or place most likely to reach him/her (with a copy always mailed to the address of the premises the tenant left). If the notice is hand-delivered, the tenant has 15 days to seek return of the property, or 18 days if the notice is mailed. If the tenant seeks return of the property, the landlord must allow the tenant to take the property IF the tenant pays the reasonable cost of moving and storing the property. If the property remained in the premises, then the daily rental value of the premises is deemed the reasonable storage cost.

If the tenant was evicted, the Sheriff's notice of eviction that is posted on the tenant's door contains the Notice of Right to Reclaim Abandoned Property, and satisfies the landlord's notice obligation in the event the tenant leaves belongings behind. It provides the tenant with 15 days from the date of eviction to recover their possessions.

The personal property described in the Notice shall either be left on the vacated premises or be stored by the landlord in a place of safekeeping until the landlord either releases the property to the tenant or disposes of the property. The landlord shall exercise reasonable care in storing the property, but he is not liable to the tenant or any other owner for any loss not caused by his deliberate or negligent act. Should the tenant or other owner seek to reclaim property left behind, the landlord must release it if:

(1) The tenant requests, in writing, within the applicable time period (15 days from eviction, or 18 days from the date Notice of Right to Reclaim Abandoned Property is mailed), the surrender of the personal property and the request includes a description of the personal property held by the landlord and specifies the mailing address of the tenant.

(2) The landlord or the landlord's agent has control or possession of the tenant's personal property at the time the request is received.

(3) The tenant, prior to the surrender of the personal property by the landlord and upon written demand by the landlord, tenders payment of all reasonable costs associated with the landlord's removal and storage of the personal property. The landlord's demand for payment of reasonable costs associated with the removal and storage of personal property shall be in writing and shall either be mailed to the tenant at the address provided by the tenant pursuant to paragraph (1) or shall be personally presented to the tenant or to the tenant's authorized representative, within five days after the actual receipt of the tenant's request for surrender of the personal property, unless the property is returned first. The demand shall itemize all charges, specifying the nature and amount of each item of cost.

(4) The tenant agrees to claim and remove the personal property at a reasonable time mutually agreed upon by the landlord and tenant but not later than 72 hours after the tender provided for under paragraph (3).

If the property is worth over \$300 and no one comes to collect it during the notice period, it shall be sold at public sale by competitive bidding. This requires that a notice of auction be published according to statutory rules. Should you find yourself at this stage, you should consult with a qualified advisor for further assistance on the auction process.

Question 2: I think my tenant has left the apartment, but I'm not sure. He hasn't paid the rent, and he doesn't return my phone calls. Can I go in and investigate?

Answer 2: A landlord may not enter a rental unit without prior notice to the tenant unless it is an emergency. If you reasonably believe there may be an emergency reason for entering, such as the health of the tenant or the safety of other tenants, you should enter and investigate to the extent necessary to determine the situation. Otherwise, you must comply with the notice requirements set out in Civil Code section 1954 before entering. If the rent is more than 14 days overdue, and you have a reasonable belief that the tenant may have simply moved out without notice to you, there is a procedure that allows you to legally recover possession of the unit without liability for wrongful entry. It requires service of a document called "Notice of Belief of Abandonment" in the form set out in Civil Code Section 1951.3. If properly served, the tenant has 18 days from the date of

mailing to notify the landlord that the tenant has not abandoned the property. If she fails to do so, the landlord may then retake possession of the unit. However, it is essential to the valid use of this process that the landlord have a good faith and reasonable belief that the tenant has in fact moved out. If there is any doubt, the prudent landlord is generally advised to proceed by serving a three day notice to pay rent or quit, and if that notice is unanswered, use the unlawful detainer procedure to recover legal possession of the unit. It should also be noted that where a Notice of Belief of Abandonment is given to a tenant, the Notice of Right to Reclaim Abandoned Property (see Answer 1 above) may be given at the same time as the Notice of Belief of Abandonment. If the notices are so given, the notices may be combined in one notice, or served as separate notices. Therefore, it is recommended that whenever a Notice of Belief of Abandonment is given, it should also include a Notice of Right to Reclaim Abandoned Property, so the notice periods run at the same time.

Question 3: Can I increase my tenant's security deposit?

Answer 3: If your tenant is on a month-to-month rental agreement, and your property is not in a 'rent controlled' city, you can increase the deposit up to a maximum of two months' rent for an unfurnished apartment, and three months' for a furnished apartment. You would serve the notice of deposit increase the same way you would serve a three day notice to pay rent, which is by first attempting personal service at the tenant's home or place of employment, and if no one is at the unit, and you don't know the place of employment or the tenant is not there, by posting the notice on the door and mailing a copy addressed to the tenant at the premises. If the tenant is not available for personal service, you may leave the notice with a person of "suitable age and discretion", and also mail a copy to the tenant at the premises. The notice takes affect 30 days after service, and if the tenant remains in possession, and pays the rent, he will be deemed to have agreed to the changed deposit amount and will be required to pay it.

However, if the tenant's rental agreement is for more than a month-to-month period, you will not be able to change the rental terms, including the deposit amount, unless the lease specifically allows you to do so.

Further, if the rental unit is subject to 'rent control', efforts to increase the deposit may be frustrated by the local law. For example, under San Francisco's Rent Stabilization and Arbitration Ordinance, 'rent' is defined to include any consideration given to the landlord by the tenant in exchange for the unit, including security deposits at the inception of the rental agreement. There is no consensus on this issue, and the local rent board takes the position that the issue is one of state law. Thus, a 30 day notice to change terms of tenancy to require increased deposit should be effective. But if the tenant fails to actually pay the increased amount, the landlord's options to enforce the change are arguably limited, since a three day notice requiring payment of the deposit increase (the normal remedy for the tenant's failure to pay the increased deposit when due) would likely fail since the tenant would argue that the increased deposit amount represents an unauthorized rent increase.

Question 4: It seems every day my tenant calls to let me know of some problem in the apartment he wants me to fix, or some extra thing he wants me to add, like an air conditioner. Can I ignore these constant demands?

Answer 4: The 'demanding tenant' poses a variety of issues for the landlord, primarily being which complaints to address and which to ignore. Under state law, you are legally obligated to provide your tenant with 'habitable premises', which are defined in Civil Code Section 1941.1. The minimum conditions of a habitable unit require:

- (a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- (b) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order.
- (c) A water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate Fixtures, and connected to a sewage disposal system approved under applicable law.
- (d) Heating facilities that conformed with applicable law at the time of installation, maintained in good working order.
- (e) Electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order.
- (f) Building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
- (g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being responsible for the clean condition and good repair of the receptacles under his or her control.
- (h) Floors, stairways, and railings maintained in good repair.
- (i) A locking mail receptacle for each residential unit in a residential hotel, as required by Section 17958.3 of the Health and Safety Code.

If these items are maintained, you are meeting your minimum obligations under state law regarding the condition of the unit. However, your lease or local law may impose other requirements on you. For example, the lease may provide that the tenant is entitled to washer-dryer facilities as part of the agreement. If one or the other appliance should

break, you would be obligated to repair or replace it. Similarly, under various local rent control laws, any 'service' provided at the beginning of the tenancy must be maintained, or, if withdrawn, a corresponding rent decrease must be given.

Finally, any 'retaliatory' action taken against the tenant who seeks to exercise rights provided by the lease or law is legally prohibited. In other words, seeking to terminate the lease of a complaining tenant can be the basis of a retaliatory eviction lawsuit, so caution should be exercised in this area.

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.