

## **Legal Q & A – Northern California – Richard Beckman**

**Question 1:** I recently bought a rental property in San Francisco, which apparently had numerous instances of people moving in and moving out without notice to the prior owner. I spoke with all the people living in the unit and learned that ALL original tenants have moved out. The unit is only occupied by the new subtenants. There is no rental agreement with any of them because prior management didn't know what was going on. I want all occupants to sign rental contracts and become original tenants.

**Answer 1:** This could be a landlord-tenant exam question, since it involves so many factual and legal issues, mostly related to the status of the current occupants and the new owner, legal rental rates and terms of the rental agreement. However, the question seems to be limited to whether the current owner can get the existing occupants to sign new rental agreements. So, this answer will address that specific issue.

If the property is covered by the SF rent ordinance, the tenants who are currently in possession and have been paying rent to the previous or current owner have established the terms of their tenancy and are now likely considered 'original tenants' as that phrase is used in the Ordinance's regulations at Section 6.14.

While this determination is one of the thorniest of all SF rent ordinance issues, for purposes of the writer's specific question, it will probably mean that it will be very difficult to require the current occupants to sign written rental agreements. Basically, tenants establish the terms of the rental agreement at the beginning of the tenancy, and the terms include the amount of rent they pay and the 'housing services' (laundry, right to sublet, have pets etc) to which they are entitled. A change in those terms during the tenancy which results in the loss of a housing service is either prohibited (unless the owner has a 'just cause' reason), or will require a rent reduction to reflect the value of the lost housing service. Since most leases reduce the rights the tenant probably has under her oral agreement with the owner, imposing a new lease would likely raise multiple instances of lost or decreased housing services.

**Question 2:** How long do I have to keep tenants' files after the tenant moves out? And do I have to keep applications or files for prospective tenants I have rejected?

**Answer 2:** I am not aware of any legal obligation regarding keeping tenant's files, either after they move out or as documentation of a rejected application. However, because the 'statute of limitations' for certain claims can be as much as four years (on a written lease), keeping a copy of the tenant file that long should cover any subsequent need for those records. As for prospective but rejected applicants, keeping records may provide evidence of the landlord's rental preferences, which could be helpful or harmful depending on the retained information should the landlord ever be subject to an investigation regarding discriminatory rental practices. And investing in a modestly priced 'scanner' allows the landlord to digitize all records for storage on a computer, eliminating the need to keep boxes of files around for years.

**Question 3:** I have a two unit building with upstairs/downstairs setup in San Francisco. I just found out the occupied downstairs unit is actually illegal. The upstairs unit is going to be vacant soon. Can I legally ask the downstairs tenant to move upstairs and keep the

bottom unit vacant until it can be made a legal unit?

**Answer 3:** It seems every question involving SF rental units raises multiple issues. Realistically, there should be no reason why you could not proceed just as you suggest in your question. However, because the SF rent ordinance has a prohibition on any effort by the landlord to 'endeavor to recover possession' of a unit from a tenant that does not comply with the ordinance, there's always the possibility some over-zealous tenant attorney out there will seek to convert your sensible plan into something more nefarious. Also, there would be the issue of what amount of rent you would charge the tenant for the upper, legal, unit. One would assume it would be higher, as upper units are usually bigger, and, being legal, justifies a higher rent.

To proceed strictly according to the rent ordinance, you would probably first want to know if the illegal unit can be legalized. If it can, then you would probably need to temporarily terminate the illegal tenancy, paying the mandatory relocation benefits to the tenant, and give them the option of moving upstairs, either permanently or until the work downstairs is finished and they can return. If the unit can not be legalized, different issues arise. Because of the issues involved, and the potential liability to you if handled incorrectly, you may want to seek specific legal guidance before proceeding.

**Question 4:** I have a property in the East Bay. My tenant has been there for almost six years. They have requested that I install brand new linoleum. The current linoleum is still in good condition and does not present any health or safety hazards. Should I grant their request? Is there a way I can have them pay for some or all of the cost for new linoleum?

**Answer 4:** This question is very similar to one previously submitted and published in the January 2010 magazine, and can be answered similarly. You, as the landlord, have no obligation to improve the amenities originally furnished to the tenant. You have an obligation to maintain the premises in a 'habitable' condition, which typically means insuring the tenant is provided with the basics of a livable dwelling. To see the specific requirements, review Civil Code Section 1941.1, which can be found online at <http://law.onecle.com/california/civil/1941.1.html>.

If the linoleum is in disrepair from ordinary wear and tear, it should be replaced with similar materials. If the existing linoleum is serviceable, you can let the tenants know what new linoleum will cost, and perhaps calculate some percentage of that cost as a depreciation of the remaining lifespan of the existing linoleum, and ask if the tenants would like to contribute the difference. However, if the tenant does contribute, you should document that the tenant's contribution is voluntary, is for the tenant's personal benefit, and there will be no reimbursement due to the tenant.

**Question 5:** I have property in Oakland where the new prospective tenants have signed the rental contract but did not give me the first month's rent or security deposit. No keys have been given to the "new tenants". For two weeks the tenants have made plans with me to drop off money and pick up keys but each time the tenants do not show up for the appointment. They are not requesting keys to move in. At this point, I don't want the tenants because they do not appear to be responsible. Can I void the signed contract?

**Answer 5:** Without seeing your specific lease, it's impossible to analyze what your rights to cancel or terminate the lease might be. Generally, once the lease is signed by both

parties, they have a binding contract which both sides are obligated to honor. The lease should have a 'start date', which is the date the landlord is obligated to provide possession and the date the tenants are obligated to begin to pay rent. If the tenants breach by not paying the amounts due under the contract (regardless of whether they actually take possession or not), the landlord can seek to enforce the contract through legal process. "Voiding" the contract without taking legal action depends on the language of the lease. It may contain a provision that provides for automatic termination if the tenants fail to make the required payment. You could have it reviewed by counsel to get a full understanding of your options. However, if you are willing to just let the tenants out of the deal without any penalty, you might simply contact them and offer to release them from any claims if they agree to sign a mutual release of all rights and obligations under the lease.

**Question 6:** I am having a hard time finding good tenants. A lot of new applicants are just wasting my time because they have a bad credit score, bad credit history, or just don't make enough money to pay the rent. Can you give me some tips on Rental Requirements the prospective tenant must meet before I agree to rent to them?

**Answer 6:** Other than past rental history, credit history and employment history, there is not much more you can legally consider when evaluating prospective tenants. However, it may be useful for you to know that AOA often sponsors a seminar entitled "The Move-In/Move-Out Process" that addresses tenant selection issues, and may provide additional ideas for you to consider in your application stage of renting. Plan on attending the next one!

*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](http://www.BMDLLP.com).*