

Legal Q & A

By Ted Smith

Q: I am having trouble calculating the days in which a tenant has the right to pay the rent after being served a three day notice to pay rent or quit.

A: Here's how you do it. Do not count the day of service. Start the count the next day. For example, where a three day notice is served on Monday, the tenant has Tuesday, Wednesday, or Thursday to pay the full amount or vacate the premises. However, remember this: when the third day of a 3-day notice expires on a weekend or holiday, you must afford the tenant the following business day to pay or quit before initiating further legal proceedings.

Q: Can you comment on rent collection policies?

A: Of course. First, rent is due and payable on the first; rent is delinquent on the second. The late charge provision in your rental agreement does not create a grace period.

On rental accounting, make sure you apply payments, whether full or partial, to oldest rent first, then carry the balance forward to current rent. This way, if you have to serve a three day notice to pay rent or quit, you will be asking for current, pure rent. Do not include late charges.

After service of a three day notice to pay rent or quit, you must accept the full rent stated in the notice within the three-day period. You may, but are not legally required to, accept a partial payment within the three-day period. *If a partial payment is accepted, the existing notice will be void and a new three day notice will have to be served for the balance due.*

It is recommended that only one check be accepted per apartment. Each resident on the lease or rental agreement is jointly responsible for the rent. This means that each resident can be held accountable for 100% of the rent. If you make separate agreements with roommates on portions of rent, the court might conclude you have limited their liability to less than 100% of the rent.

A no-cash policy must be in the lease or rules and regulations. Have a provision in your rental agreement that no third party checks will be accepted.

When a rent check has been returned by the bank for non-sufficient funds after service of a three day notice to pay rent or quit, you are not required to serve a new notice. The bank's return of the first check makes the original three day notice to pay rent or quit enforceable by a follow-up unlawful detainer action.

Q: My residents, a husband and wife, both signed the lease, which has several months to go before it expires. The wife has given me a copy of a restraining order involving domestic violence and served me a 30-day notice that she intends to leave with no further responsibility on her part. Is that legal?

A: Yes. In 2009, the California Legislature passed a bill which allows a victim of domestic violence to vacate the premises and terminate their obligations under the lease. This must be documented by credible evidence that would include a police report regarding the behavior or, as you say in this case, a copy of the court restraining order against the husband. The wife's liability is terminated, but the husband continues to be responsible for the balance of the lease term.

Q: Must I allow a family daycare home in my apartment building?

A: Yes. California's Health & Safety Code provides for a family daycare home, even though the

lease disallows commercial use and the apartment building is in a residential zone. However, the Code does not allow for just any “babysitter” who charges fees to operate, only those properly licensed by the California Department of Social Services. The daycare provider should give you a copy of that license, together with insurance, a bond, or waivers of liability by each parent. The liability waiver states the parents are aware the provider has no insurance. Finally, you may require that the security deposit be increased to the maximum allowed by law which, for unfurnished units, is two times the monthly rent. The provider must control the children’s behavior; if she fails to do so, it would still constitute a violation of the rental agreement and the property’s rules and regulations.

Q: My tenant moved into possession of the premises and failed to pay the required security deposit of \$750 per the month-to-month rental agreement. What is the best type of notice to serve the tenant for the lack of security deposit?

A: You could serve a 30-day notice terminating the month-to-month tenancy. Assuming they just moved in, the 30-day notice, without cause, would be appropriate. Or, you can serve a three day notice to cure breach or quit (aka perform covenant/conditions or quit). This notice requires payment of the deposit within three days or the tenant must vacate the premises. Note that the deposit is not rent. Therefore, a three day notice to pay rent or quit is not appropriate to collect the security deposit.

Q: Is the rental of a single family home exempt from California’s fair housing laws as they relate to children?

A: No. California law prohibiting landlords from discriminating against children applies to any rental unit, even single family homes.

Q: My tenants are on a month-to-month tenancy. I’ve heard there are different types of notices to be served: a 30-day notice, a 60-day notice, and a 60-day notice with cause. Please clarify.

A: *Here is the formula for determining the proper notice to use.* In all areas of San Diego County, including the city of San Diego, for residential month-to-month tenancies of less than one year, they are terminated by a 30-day written notice with no cause stated; a month-to-month tenancy lasting longer than one year can only be terminated by a 60-day notice, again, with no cause stated. Keep in mind, however, that the tenant can initiate termination after one year with only a 30-day written notice.

Finally – and only for rental units located in the city of San Diego, for tenancies of more than two years a 60-day notice *with cause* is required. “Cause” could be late payment of rent, disturbance, or other violation of the lease.

Q: May the owner set reasonable standards under which a guest would be considered a tenant?

A: Yes. The rental agreement may legally designate when a guest will be considered a resident after a period of occupancy, for example, 14 days.

Q: Here is a multiple choice question. The owner has an 8-unit building and wishes to provide a long-time friend with a place to live. Because of their friendship, owner gives resident the

keys. There is no promise to pay rent and no rent is quoted. Nothing is in writing and there are no terms for how long the resident may remain in the apartment. What is the status of the resident's occupancy of the premises? Is it (a) trespasser, (b) month-to-month tenant, (c) tenant at will, or (d) life estate?

A: The correct answer is (c). This type of arrangement can best be described as what is called a tenancy at will. It is not a month-to-month tenancy; there has been no agreement to pay rent on a month-to-month tenancy basis. It is not a life estate since the resident has no ownership interest in the property. The tenancy at will continues forever until terminated by the owner by service of a written 30-day notice in accordance with California Civil Code section 789. Owner would then be required to follow up the notice with an unlawful detainer should the resident refuse vacate after the notice period expires.

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