

## **Multiple Tenants in a Unit: Laws Addressing Co-Tenants, Guests, and Occupants** **By Anthony Marinaccio and Matthew Gorman, Attorneys**

One of the most overlooked areas that many landlords find themselves in trouble after the fact is what to do with co-tenants, guests of tenants, and a tenant's occupants. It is important for landlords to realize how important it is to keep a tab on who is living in their rental units because often trouble can be addressed early on when a person first moves in. This is one of many major reasons why a written lease agreement is very important in any landlord-tenant relationship and those that are provided by AOA are invaluable in aiding in potential disputes over who is supposed to live in a unit, what to do with unauthorized residents, and how to address co-tenants.

### **Rent**

First, if several adults are looking to rent a unit from you it is important that all adult residents who will be on the lease agreement fill out a rental application completely. You will often be more fully protected if all adults over the age of 18 years old are placed on the lease agreement as tenants. First, all tenants listed on a lease agreement are liable for rent and you can receive a judgment from each person in a later unlawful detainer action. Even if there are multiple tenants on the lease agreement, each tenant is responsible for the entire rent. For example, if the rent is \$1,000 a month for a unit having two tenants, each tenant would be fully responsible for the \$1,000 (although you can't receive \$2,000!). It is often easier for accounting purposes to receive one form of payment from each unit as opposed to each tenant paying his or her own pro-rata share; however, it is not illegal to allow each tenant to pay their share. However, if you do receive one tenant's pro-rata share and not the other, you are still allowed to issue a 3-Day Notice to Pay Rent or Quit on the entire unit's tenants because the entire rent has not been received.

### **Application Process**

Prior to accepting applications from co-tenants, it is important for any landlord to develop standards to address how you will review applications from co-tenants. For example, what will do you if one applicant has a stellar credit history while the other does not? In addition, you must know whether you will combine the incomes from all tenants, which is most likely the best approach for multiple tenants. ***All adult residents over the age 18 should complete a Rental Application and be on the Lease Agreement.***

To avoid a discrimination allegation or lawsuit, it is necessary to treat married couples and unmarried cohabitants the same. ***You may not treat married couples different from unmarried couples.*** This would apply to combining income or averaging credit scores. This also applies to roommate situations – you must treat a married couple the same as two roommates living together, no matter their relationship.

### **Security Deposits**

A landlord is often approached by one tenant who wants to leave that he wants to receive his share of the security deposit he gave you. California law does not address this situation, so it is important to understand what you will do prior to being asked this question so you will always have a common answer to anyone. In general, you are not required to return a security deposit until a unit is completely vacated and not when just one resident decides to leave while others

plan to stay. Try to get all tenants to agree on a possible situation. Often the easiest method will be to tell the moving tenant to attempt to have the other tenant “buy-out” his security deposit so that the remaining tenant pays the moving tenant his share of the deposit.

It is best not to return a resident’s security deposit until the unit is vacated because you may later have a situation where you do not have a complete deposit but you would have kept the entire deposit due to repairs needed. The only time it would be a good idea to return a resident’s security deposit is if a new tenant will basically pay back that share. For example, you give back the moving tenant’s share of his deposit and then receive the same amount (or a new amount) from the new tenant. It is important to agree to anything in writing to avoid later disputes regarding the security deposit when the unit becomes vacant.

In addition, each co-tenant is responsible for damage to any unit. For example, a tenant cannot argue that his portion of the security deposit should be returned and you can only deduct from the other roommate’s deposit because he was the one who caused the damage. It does not matter which tenant caused the damage because you may deduct from the entire deposit.

### **Mediating Disputes Among Roommates**

Often tenants will tell a landlord, “Kick my roommate out!” It never fails that tenants believe you should be a mediator for roommate disputes. You should avoid taking sides in any roommate dispute and in general avoid getting involved in any roommate disputes as long as the tenants pay rent and are not a nuisance to others or themselves (i.e. being violent against each other or with anyone else).

In general, each tenant is responsible for the actions of a co-tenant, including any damage to the property or causing any nuisance. You should remember that each tenant has a right to possession of the unit, so one tenant cannot request that you “lock out” the other tenant. In any situation where violence is a possibility, suggest to the tenant that he receive a restraining order against the roommate. You should not get involved in these disputes and tell the roommates to attempt to settle any disputes they have among themselves.

If you do have co-tenants, it may be wise to suggest that they enter into a “Roommate Agreement” which would delineate who is responsible for what. This is important because if one co-tenant cannot pay his or her share of the rent, the other good paying tenant is on the hook. A Roommate Agreement could help solve these issues and many other common areas of dispute. As a landlord, you are not a party to a Roommates Agreement (and thus you are not obligated by it).

### **New Tenants and Unauthorized Residents**

In general, your lease agreement should prohibit all unauthorized residents from living in the unit. In general, unauthorized residents would be a ground for an unlawful detainer after a Three Day Notice is provided. If a new resident decides to live in a unit, it would be wise to enter into a new lease agreement with all current residents to keep the lease agreement as current as possible. This would also apply to any tenant who leaves the unit because that tenant would still be liable for the rent and you would need to provide notice to the moved-out tenant for any

lawsuits or potentially notices. Outside of rent control jurisdictions, any new lease agreement could contain any new provisions including a new rental amount.

If one tenant decides to leave during the term of a lease agreement and there is another person who takes his place, it is often better to enter into a new lease agreement with new tenants. Although you are not required to do so, entering into a new lease agreement would more fully protect yourself and interests along with those of your tenants because the new tenants will be on the hook for the rent and any other rental obligations.

You may also not discriminate against new residents or guests. For example, you may discriminate against overnight guests based upon racial, religious, or moral views. Guests and unauthorized roommates often have as many rights with regards to any potential discrimination as do tenants in addition to the tenant being able to sue for discrimination.

Consequently, it is important to know who is living in your building by requiring rental applications from all tenants and updating lease agreements when new residents come and go. By making the extra effort to determine who is actually living in your unit during the tenancy you can avoid troubles later on.

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