

New Landlord/Tenant Laws for Rental Property Owners by Ted Kimball, Esq.

Now that the legislative session is over, it is important for residential and commercial rental property owners and managers to gear up for the new laws that will be in effect in 2005.

Cash Payments Restricted

Effective January 1, 2005, cash may not be required to be the only form of payment of rent or security deposit unless the tenant has previously tendered a check to the landlord which was dishonored due to insufficient funds or stopped payment. If a "cash only" requirement exists in the lease or month-to-month agreement the landlord must give the tenants a written notice stating that the check was dishonored and informing the tenants that they are required to pay in cash for a specified period, not to exceed three months. A copy of the dishonored check must also be attached to the notice.

If the lease does not allow the landlord to insist on "cash only" under these circumstances, a thirty-day notice to change of terms of tenancy must be served on the tenant if the rental agreement is month-to-month. If the tenancy is a fixed term lease, the appropriate language must be added after the initial term has expired.

Prudent property owners and managers should make sure their leases include the appropriate language to enforce this new provision of the law.

Unlawful Detainer Complaint Attachments

As of January 1, 2005, unlawful detainer complaints must include a copy of the notice that is the basis of the eviction, proof of service of the notice and the lease, including any addenda or attachments to the lease. A landlord is exempt from this requirement if the complaint is solely based upon non-payment of rent. The vast majority of unlawful detainer actions are based upon non-payment of rent.

It is important for property owners and managers to keep original leases, notices and proofs of service, and attach clear and legible copies to the unlawful detainer complaint.

Megan's Law Extended

The California Department of Justice is now required to utilize a web site to inform the general public about certain sex offenders by July 1, 2005. They must also update this information on an on-going basis. The information that must be provided is the same as what is now currently available to the public on a CD-ROM in most police departments. Effective July 1, 2006, the home address of the most severe violators will be available.

This information will allow both landlords and their tenants to identify more easily the existence of a former sex offender who is living in the community, neighborhood or apartment complex. This creates legal challenges for landlords as Megan's law in California specifically prohibits using this information to deny housing accommodations. If a property owner or manager is found liable under this statute, a fine of up to \$25,000 can occur. On the other hand, state and federal laws recognize the right, if not a duty of rental property owners to not rent to anyone who is reasonably considered a direct threat to the health or safety of other residents. When a sex offender is identified landlords should seek legal advice immediately.

Residential Hotels Cannot Avoid Eviction

Residential Hotel owners cannot avoid going through an unlawful detainer action by requiring the occupant to check out and reregister before the thirtieth day of occupancy. Occupants of hotels are not subject to eviction procedures if they have been in possession of the unit for less than 30 days. Some owners were alleged to be circumventing the eviction process by "re-registering" occupants, to prevent there from being a continuous 30 day occupancy of a unit. Under the new law, if an occupant was required to check out and re-register before the 30 days

were up, there will be a legal presumption that the owner is attempting to circumvent the law by maintaining the transient status of the resident.

60-Day Rent Increases Now Permanent

If a residential landlord raises the rent more than 10% from what the rent was 12 months ago, and the lease is month-to-month, a sixty-day notice to increase rent must be served. If the rent is 10% or less, a 30 day notice to increase the rent is permitted. This law was due to "sunset" (expire) at the end of 2005. The sunset provision has now been removed, so that the 60 day notice requirement will remain enforceable. It is important for property owners and managers to understand that this law only applies when the tenancy is currently month-to-month and the landlord is attempting to raise the rent unilaterally. This law does not apply to renewal of a lease for a specific term.

Accommodations for Disabled Residents

The Department of Justice (DOJ) and the Housing and Urban Development Department (HUD) recently issued new guidelines regarding disability accommodations under the Federal Fair Housing Act. Most of the guidelines also apply to requests for disability modifications to the property. Under the new guidelines, if a person's disability is obvious, or otherwise known to the owner or manager, and if the need for the requested accommodation is also readily apparent or known, then the owner or manager may not request any additional information about the person's disability or the disability-related need for the accommodation. For example, if an applicant or resident who is obviously blind is requesting that he or she be allowed to keep a seeing eye dog as a disability accommodation, even though the property does not allow pets, the owner or manager may not require the person to provide any additional information about the disability or the need for the accommodation, since both are readily apparent.

If the person's disability is known or readily apparent to the owner or manager, but the need for the accommodation is not readily apparent or known, then the owner or manager may request only information that is necessary to evaluate the disability-related need for the accommodation. For example, a resident who is obviously blind is requesting to have the windows changed as a disability accommodation. The disability is obvious, but the need for having the windows changed is not. The owner or manager may ask the person to provide information about the disability-related need for the change.

Under the new guidelines, and depending on the person's circumstances, information verifying that the person meets the Act's definition of disability can be provided by the person themselves (for instance, proof that a person under 65 years of age receives SSI or SSDI benefits, or a "credible statement" by the disabled individual). A doctor, or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the person's disability may also provide verification of a disability. However, the guidelines seem to indicate that owners and managers may no longer insist that verification of a person's disability come from a health care provider. Unfortunately, this may open the door for potential abuse.

The guidelines go on to say that once an owner or manager has established that a person meets the Act's definition of disability, the owner or manager's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of the disability.

The guidelines also confirmed that you cannot deny an accommodation or modification because the person didn't follow the company's formal disability procedure, or because the person made the request orally, rather than in writing.

It is important to note that this is not a new law, or even a written "requirement." However, we believe it is the standard which the DOJ and HUD, may use to prosecute fair housing complaints in the future. Additionally, although the California Department of Fair Employment and Housing (DFEH) has not issued any formal comment on the new guidelines, we expect that they will likely follow them.

Local Laws

It is important to check with the city and county where your rental property is situated to determine if additional new laws are imposed upon your property rights. Many cities in California have or are contemplating passing laws establishing such requirements as: just cause for evictions, moratoriums on condominium conversions, lead-based paint inspection and removal programs, mandatory sprinkler retrofits, and laws that allow city and county prosecutors to file unlawful detainer actions against tenants who are unlawfully engaged in illegal drug offenses (plus charge the property owner for the costs of suit).

This article is intended as information only and is not to be construed as legal advice. Any questions in regards to the contents of this article or other legal questions should be made by calling 1-800-525-1690 or visit the website: www.kts-law.com.

Kimball, Tirey & St. John keeps abreast of all new legislative and legal matters affecting both the commercial and residential rental industry. Many of our attorneys are also active in lobbying legislation on behalf of rental property owners and write appellate briefs on significant cases that affect property rights.