

The Police Want My Tenant's Records—What should I do?

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It is not uncommon for local police, the FBI, or other law enforcement authority to ask or demand to see certain records of your tenants or request that you allow them entry into their apartment unit. Some of our clients have been asked to list all of the names of the occupants of certain apartment units or give them other information that is from their tenants' files. This article will inform you of your legal obligations to comply with these requests.

The right of privacy is a strongly protected right in California. It is inherent in Section 1 of Article I of the California Constitution. In addition, California Civil Code Section 1798.53 provides that any person who intentionally discloses information not otherwise public, which they know or should reasonably know was obtained from personal information maintained by a state or federal agency, shall be subject to civil liability for all damages as well as a penalty of a minimum of \$2,500 in addition to their attorney's fee and costs. Because of the perception of abuse of the right of privacy by some California landlords, judges and juries are prone to award maximum damages and penalties when they find that the rental owner or manager has invaded the right of privacy of their tenants.

Access to Tenant's Files

California Civil Code Section 1799.1 is the only statute that requires certain businesses to turn over records without the necessity of a search warrant or subpoena. It states that businesses which perform bookkeeping services may not disclose information of individuals or businesses without their express written consent. However, the statute specifically does not apply in several circumstances including the disclosure to a law enforcement agency when required for investigations of criminal activity. Civil Code Section 1799 defines "bookkeeping services" to mean keeping books, making trial balances, preparing statements, making audits, or preparing reports, all as a part of bookkeeping operations. What this means is that bookkeeping services must provide law enforcement with their records when required for investigations of criminal activity without requiring a subpoena or search warrant.

Are rental property owners or managers "bookkeeping services"? According to the statutory definition mentioned above, it does not appear that they are. Therefore, they would not be required to disclose private information concerning the tenants to law enforcement absent a subpoena or search warrant.

When a fair housing complaint is filed with the Department of Fair Employment and Housing or HUD, the tenant may be able to obtain production of rental records for other tenants in the building including current and former tenants' rental applications as the state's interest in preventing discrimination outweighs the intrusion on privacy interests of third party tenants. However, this information is not required by law to be provided voluntarily, but a subpoena can be issued to compel compliance.

Access to Tenant's Dwellings

Unless the entry is made in "hot pursuit" of an individual or individuals who are reasonably believed to have committed a crime, law enforcement must first obtain a search warrant to enter a private residential dwelling. A rental property owner or manager who allows law enforcement to enter a tenant's apartment unit without their permission or consent could therefore be sued for invasion of the tenant's right to privacy.

It is therefore advisable to indicate to the law enforcement officer that although you are willing to cooperate, you cannot allow them access to anyone's rental unit because you do not have the legal authority to do so and could be subject to a lawsuit.

It has also been suggested that instead of providing physical documents or files to police officers or identify names of occupants, that the on site manager simply state that they have seen

the person in question frequently go in and out of a certain apartment unit. This is a unveiled attempt to circumvent the tenant's right of privacy and although less risky than identifying the names of residents who live in certain apartment units or opening up your files, an action for invasion of privacy is still at risk.

Conclusion

California rental property owners and managers should not give law enforcement personnel access to their tenant's files or access to their dwelling unit without a subpoena or search warrant. They should also ask for proper identification of anyone claiming to be in law enforcement and document in writing the events that took place during the search or entry. To do otherwise would expose owners and managers to unnecessary liability risks for invasion of privacy.

The following article is intended as information only and is not to be construed as legal advice. For expert legal representation in landlord/tenant law, please consider the law firm of Kimball, Tirey & St. John. Our Los Angeles clients reach us by calling (213) 337-0050 and visiting our web site a www.kts-law.com Our web site also has numerous articles regarding rights and obligations of California landlords.