

POST DATED CHECKS

By Jamie Sternberg, Kimball, Tirey & St. John

Landlords and property managers should be familiar with some general principals applicable to tenants' post dated checks.

Under Business and Professions Code §17538.6:

- The landlord can't cash a post dated check until on or after the check's date; or
- If the landlord cashes a post dated check before the check's date, the landlord must give the tenant a written warning that the check may be cashed immediately (notwithstanding the post dating) unless the tenant gives his or her bank notice of the post dating. [A bank can cash a post dated check unless a customer gives notice to the bank of post dating, describing the check with "reasonable certainty." Cal Com. Code §4401]. Additionally, the tenant must acknowledge in writing that the written warning was given or the warning must be clearly printed on an invoice given to the tenant when the post dated check is solicited.

There are disadvantages with accepting post dated checks. A landlord who accepts a post-dated check is extending credit to the tenant. Like a promissory note signed by the tenant, a post dated check is a promise to pay a certain amount in the future. In most cases, if the check isn't honored, the landlord's rights are the same that would exist if the tenant failed to pay a promissory note. Some of the civil and criminal liabilities protecting a landlord from a tenant who passes a bad check don't exist when a post dated check is not honored.

A landlord who accepts a post dated check will normally not be successful if an eviction is started before check's date, even if the landlord correctly believes that the check ultimately will not be honored.

If amounts due are collected by someone other than the landlord or property manager, the collector is considered a "debt collector" under the federal Fair Debt Collection Practices Act ("FDCPA.") The FDCPA imposes additional restrictions on "debt collectors" who solicit, accept and deposit post dated checks. "Debt collectors" should familiarize themselves with these additional restrictions.

For expert legal representation in landlord/tenant law, please consider the law firm of Kimball, Tirey & St. John. They may be reached by calling 213.337.0050 or visiting their web site at www.kts-law.com. Our website also has numerous articles regarding rights and obligations of California landlords.

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