

Legal Q & A
by Ted Kimball, Esq.

Q: After a 60-day notice expires, can I change the locks and have the resident's belongings removed?

A: No, you must go through the eviction process if they did not comply with the 60-day notice. In any case, before you act, you should consult with an attorney.

Q: If a tenant does not give a 30-day notice of intent to vacate, can the full security deposit be kept by the landlord?

A: You can only deduct for any unpaid rent up to 30 days from the date the tenant vacated if the tenancy is month-to-month or until the premises are relet, whichever occurs first.

Q: I have signed a lease for one year with a tenant and now he wants to leave after four months. What is my recourse?

A: The tenant is responsible for the rent up to the date the lease expires or the date that you re-lease the property, whichever occurs first. You must use due diligence in trying to re-lease the premises.

Q: We served a 60-day notice of termination of tenancy on a renter. We have not received a rent payment yet, so we served her a 3-day notice to pay rent or quit. Do you recommend that we start eviction proceedings now or do we wait until the notice expires?

A: You should proceed immediately with the eviction; if they do not have enough money to pay you, they may not have enough to move out.

Q: A couple moved into our rental unit one month ago. Since they moved in, we have received eight complaints from the neighbors, who are now at the point of wanting to vacate because of these complaints. What should I do?

A: If the disturbances are major and continuous, the court may grant an eviction based upon a three-day notice to quit, but the disturbances to the quiet enjoyment of the neighboring property must be severe, and there must be witnesses to prove your case in court if the case is contested.

Q: If you state in the month-to-month contract that rent is due on the 1st of each month, but there is a grace period until the 10th, can the resident pay every month on the 10th?

A: The rent is delinquent the day after the rent is due. Provided that the day the rent was due was a business day, a three-day notice to pay rent or quit can be served the next day, even though the late charge is not yet due.

Q: I have a prospective tenant whose company will pay his rent as a perk to his job. Who must sign the lease?

A: It is our strong advice to have both the company and the individual sign the lease. If the employment is terminated you would have a stranger in your unit without a signed lease.

Q: Should co-signers sign the rental agreement?

A: If they sign the lease, they are considered tenants and are not really "co-signers." The mere statement that they are signing the lease as a co-signer would be difficult to enforce in court. It would be better to have them sign a separate Guarantee Agreement.

Q: If a guest causes problems or damages the property, what is my recourse?

A: The tenant is responsible to either repair or pay for the repair of any damage caused by their guest's negligence or intentional act. If they fail to pay a three-day notice to perform conditions and covenants or quit can be served.

Q: If I suspect a former tenant used drugs, should I tell the next manager when they call me for a reference?

A: Only if your suspicions are founded on objective evidence and are not merely your hunch. If the resident proves this statement is false, you could be liable for slander and misrepresentation.

Q: If a resident dies and was on a lease, does the estate still owe rent up until someone new moves in? What about a month-to-month agreement? Obviously the person couldn't give a 30-day notice.

A: When the resident dies and the lease is month-to-month, the lease is terminated. For a fixed term lease that expires on a specific date, the estate is still liable for the rent until the lease expires or the premises are relet.

Q: If someone owes late charges and NSF check charges, do I give them a 3-day notice to pay rent?

A: The three-day notice to pay rent or quit should only include rent – no late charges. A separate notice to perform covenant can be served at the same time as the notice to pay rent is served.

Q: How often can I legally raise the rent?

A: Unless you are under rent control or a state or federal subsidy program, there are no restrictions as to the number of times you can increase the rent.

Q: What do I do if the tenant does not follow a new policy change after receiving notice? Can I evict him?

A: If the notice has been properly served and the breach is material to the lease, you can serve a notice to perform covenant or quit to commence the eviction process.

Q: One of our tenants is moving out in three weeks. She has refused to allow any prospective tenants to see the apartment. Is there any way we can force her to let us in since the law says we have the right to show it?

A: You can serve her with a three-day notice to perform conditions and/or covenants or quit requesting that she give you reasonable dates and times for entry. If she fails to comply, an unlawful detainer action can be filed.

Q: Three roommates signed the lease. If one roommate pays the rent every month from his checking account, does that mean he is responsible for the rent instead of the other three roommates?

A: No, each resident is presumed to be "jointly and severally" liable for the breach of any of the provisions of the lease. This means they are individually, as well as collectively, responsible for all payments, including rent. Most leases state this in the body of the lease so there is no question.

This article is intended as information only and is not to be construed as legal advice. If you have any questions about this article, please call Kimball, Tirey & St. John at (800) 338-6039, or see their website www.kts-law.com which has numerous articles regarding rights and obligations of California landlords.