

Legal Questions & Answers

By Dennis Block, Attorney

Question 1: My tenant broke her lease and she wants her security deposit back. She has four months left on her lease. I said no because she broke her lease and I have yet to re-rent the premises. Am I wrong?

Answer 1: If the tenant is, in fact, on a year lease and leaves the unit prior to the expiration of the lease, you may use her security deposit to cover the rent as it becomes due. Make sure you send her an accounting within 21 days of her vacating. However, as a landlord you have a duty to mitigate your damages and try to re-rent the premises.

Question 2: How do I file my judgment with the courts? I recently discovered that three of my former tenants now own homes with substantial equity and the judgments range from \$1,700.00 to \$6,000.00.

Answer 2: You must first prepare an "abstract of judgment". It is issued by the court and then you record it at the county recorder's office. By recording it, you will place a lien on the real property owned by the tenant.

Question 3: By law, what is the maximum amount of people that can live in a 1 bedroom and a 2 bedroom apartment?

Answer 3: The determination of the maximum amount of occupants usually is determined by square footage of the living space excluding the kitchen and bathrooms. It is astounding how many persons can be allowed to live in a unit before it is considered overcrowding. In one jurisdiction, they allow 10 persons in a total of 470 square feet.

Question 4: On our rental agreement for one of our tenants, listed are 2 adults and 2 children for a one bedroom unit. The tenant's wife left and has the children for the summer. During the rest of the year, the tenant has them. Our tenant wants to have his sister with her 4 children move in with him. What is the total allowable occupancy for a one bedroom unit? We need to know if we can amend the agreement to allow the additional tenants or to serve a 3-day notice to cure violations.

Answer 4: You can certainly allow these persons to move into your unit if you choose however, you do not have to allow the extra occupants. If you choose not to have them move in, as soon as they have occupied the premises for fifteen days straight, you can then serve a three day perform or quit notice to have the additional unauthorized occupants vacate. If they do not vacate the premises, you can begin eviction proceedings.

Question 5: I recently purchased an apartment building. All of the tenants are on a month to month tenancy. One of the tenants is complaining about a lot of things. First, he said that the carpet in his unit was exactly the way it is now as when he moved in. The carpet is filthy. Am I required to replace the carpet?

Answer 5: No. You would only have to replace the carpet if it was torn or frayed and it rendered the premises uninhabitable under Civil Code Section 1941.1. Under this section, you as a landlord are required to have effective waterproofing, plumbing and gas in working order, hot and cold running water, heating, floors and stairways in good repair, and building and grounds at the time of the lease clean and sanitary and free of rodents and vermin. Torn or frayed carpet falls into the category of keeping the floors and stairways in good working condition. If the carpet is only dirty then it is the tenant's responsibility to clean it.

Question 6: This same tenant also claims that he has rats in his apartment. I have talked to other tenants and no one has this problem. Should I ask him to show me evidence or should I go ahead and hire a pest control person?

Answer 6: There is no harm in asking the tenant to show you evidence of a rat problem. However, it is not a good idea to ignore the tenant's complaints. If the tenant does have a rat problem, then this could render the premises uninhabitable under Civil Code Section 1941.1. I would suggest calling a pest control service.

Question 7: Can I evict this tenant even after he has made these complaints?

Answer 7: It depends on why you want to evict this tenant. If the tenant fails to pay his rent, then you can evict him for non-payment of rent. Further, if other tenants are complaining that this tenant is a nuisance, then you could serve the tenant a notice to vacate. The only time you have a problem in evicting the tenant is if you're evicting the tenant because the tenant had complained as to the habitability of the property. If the tenant has made complaints in the last six months, then it could be deemed that you

are evicting the tenant in retaliation under Civil Code Section 1942.5. This code Section does not apply if the tenant is in default of rent.

Question 8: I am selling my rental unit in Orange County. My tenant is on a month to month tenancy: Can I serve him a 60 day notice to move? Do I need to tell him why? Are there any special laws that would prohibit me from giving my tenant notice?

Answer 8: No. There is no law that prohibits you from serving your month to month tenant a notice to vacate if it is not under rent control.

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