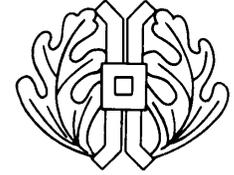


PREVENTIVE LAW SERIES
RENTING -
POTENTIAL PROBLEMS AND PITFALLS



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Potential Problems

Discrimination

California law prohibits discrimination on the basis of race, color, beliefs, personal traits, or other characteristics that are unrelated to the responsibilities of a tenant. It is also illegal to discriminate against families with children or against persons with mental or physical handicaps. If you feel you have been discriminated against you may contact your local legal assistance attorney or file a complaint with the California Department of Fair Employment and Housing or the U.S. Department of Housing and Urban Development.

Repairs And Habitability

A rental unit must be fit to live in, but tenants are responsible for reasonable care of their units and are liable for any damage caused by themselves or their guests' neglect or abuse. However, the implied warranty of habitability places the burden on the landlord to make sure the basic minimum requirements are met: (1) roofs and walls do not leak (2) doors and windows are not broken (3) plumbing and gas work (4) hot and cold water is provided (5) sewer and septic systems are operating (6) heater works and is safe: (7) lights and wiring work and are safe (8) floors and stairways are safe (9) when you move in, the unit is clean, without trash, rodents, or other pests (10) there must be enough cans or bins with covers for trash (11) at least one telephone jack. If you have any problems with these items you should call your landlord and follow up with a letter.

Your remedies if the landlord does not fix these items within a reasonable time after receiving written or oral notice (we advise written) are as follows: (1) you can repair the problem yourself and deduct the amount you paid from the next rental payment. **NOTE:** the amount you can deduct cannot exceed one month's rent and you cannot use this remedy more than twice in any twelve (12) month period. Be careful because the landlord can sue you for non-payment and/or try to have you evicted if you did not meet these rules or the repair was not to an item covered by the warranty of habitability. (2) You can withhold the rent if your landlord does not fix **SERIOUS** conditions covered by the warranty of habitability provided you follow the same rules as with the repair and deduct remedy. Some examples of **SERIOUS** conditions are collapse and nonrepair of a bathroom ceiling, exposed and faulty wiring, and continued rats, mice, and cockroaches. (3) You can abandon the unit that is uninhabitable if the condition is so serious that problems with your health and safety will result. (4) You can always sue your landlord for the amounts you paid to repair the unit. Some agreements provide for attorney's fees to the winner. **NOTE:** ALWAYS CONSULT AN ATTORNEY OR LEGAL AID SOCIETY BEFORE USING THESE REMEDIES.

Rent Increases

Your landlord must give you proper advance notice of any increase. The length of notice must be **AT LEAST** as long as the period between the time of your payments or if your agreement is for longer than the time of your payments then at the end of the lease.

Right To Privacy

A landlord can only enter the premises for the following reasons: (1) in an emergency (2) to make necessary or agreed upon repairs or improvements (after giving notice) (3) to show the unit (after giving notice) (4) when the tenant has abandoned the unit (5) if the court permits it. The notice must be at least 24 hours and only during normal business hours, unless in an emergency or the tenant agrees otherwise.

Subleases And Assignments

A sublease and an assignment are both separate agreements between the original tenant and a new tenant. The major difference is that with a sublease the original agreement between the tenant and the landlord remains in force and the tenant is still responsible for paying the rent to the landlord. However, with an assignment the new tenant is responsible directly to the landlord. NOTE: The landlord must agree to either of these and the original tenant is still responsible for the nonpayment of rent by the new tenant.

Moving Out

Giving and Receiving Proper Notice

Normally, you must give your landlord notice of your departure at least the same amount of time as between your rent payments. For example, if you pay rent monthly then you must give your landlord at least 30 days notice. Make sure you give your notice **IN WRITING**, including the date of notice and the date you intend to move out. If you mail this make sure it is by certified mail. NOTE: If your lease is for a certain time period you are obligated for that entire time period. If you submit a written notice to move out before the end of your lease period the landlord can still hold you liable for rent until the end of the lease term. However, the landlord may agree to release you from the remainder of the lease. If the landlord does agree to a release make sure you get it in **WRITING**. A landlord must follow these same rules in giving you notice to move out. If the date you are to leave falls on a Saturday, Sunday, or a legal holiday you can stay until the next business day.

Security Deposits

A landlord has twenty-one (21) days to refund your entire security deposit or provide you with a written accounting why it is not being fully refunded. This assumes that you give the landlord an address to send the deposit/accounting. If the landlord does not follow this rule you can sue to recover the amount you are entitled to, plus 2% interest, and up to \$600 in punitive damages if you can show bad faith. A landlord may use your security deposit for the following reasons only: for cleaning the unit; for other than normal wear and tear repairs caused by the tenant; replacing furniture, furnishings, etc. if the agreement allows for it; or for unpaid rent.

Evictions

Unlawful Detainer Lawsuits

Eviction proceedings are also called unlawful detainer lawsuits. You will usually receive a 3-day notice to pay rent or quit and then the complaint for the unlawful detainer. You have 5 days to respond (answer) to the complaint after you are served with it. However, until the court resolves the issue the landlord **CANNOT** cut off utilities or take your belongings without a court order. If the landlord does use unlawful detainer methods to evict you the landlord can be liable for your actual damages and up to \$100 per day for the time these methods were used. If the landlord wins at court the landlord can have a sheriff physically remove the tenant and seize the tenant's property. An unlawful detainer suit is a court process with a hearing where both the landlord and the tenant can present their sides of the case. If you receive an unlawful detainer suit seek the advice of a legal assistance attorney **IMMEDIATELY** on how to respond.

Retaliatory Eviction

A landlord cannot evict you solely because you exercised your right or complained about a problem. In general, you will be protected from the landlord trying to punish you by raising the rent or trying to evict you because you exercised your rights, e.g. lawfully using the repair and deduct remedy, complaining about the condition of the unit to a public agency, or filing a lawsuit.

LEGAL ASSISTANCE APPOINTMENTS:

For an appointment to see a legal assistance attorney, please contact the Legal Assistance Office, located in Building 610, Naval Air Station North Island, by telephone at (619) 545-6278.

RESOURCES:

California Department of Consumer Affairs: 1-800-952-5210, <http://www.dca.ca.gov>
California Civil Code Sections 1940 et seq.

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