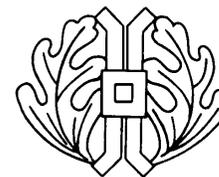


PREVENTIVE LAW SERIES

RENTING -THE EVICTION PROCESS



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CALIFORNIA RESIDENTIAL EVICTION PROCEEDINGS

There are several grounds for which a Landlord may properly evict a tenant in California. A Landlord may evict for non-payment of rent, for other lease violations, property damage, or nuisance, and may evict after termination of a month to month tenancy by 30 day notice.

Because there is so much to know about each one of these evictions, this handout will focus on evictions for non-payment of rent. If you have any questions about the other reasons for eviction, please contact the Legal Assistance Office for further information. However, please be advised that this handout is not meant to replace sound legal advice and is merely a tool to give you a general overview of the process. If you are being evicted, you should contact the Legal Assistance Office at **545-6278** to make an appointment to speak to an attorney. You may also call the Tenants Legal Center free information hotline number: (619) 571-1166.

The Process

Three Day Notice to Pay or Quit.

The first thing a landlord must do is properly serve the non-paying tenant a written three day notice to pay or quit. This is a court form that the landlord uses, not just a personal note from the landlord. If the tenant pays the amount of rent due before the end of the third business day after receiving the notice (the day the notice is given is not counted as one of the three days), the tenant may remain and no further proceedings will take place. If the tenant does not pay, however and chooses to move out, the tenant is still liable for the rent just as if he or she remained without paying.

Tenant Does Not Pay but Moves Out.

Even if a tenant moves out within three day notice period, the tenant is fully liable for the past due rent. Generally, a landlord will simply keep the tenant's deposit to pay for this amount. If the deposit does not cover the amount due and the remaining amount is less than \$5,000.00, the landlord may simply sue the tenant in Small Claims Court. An Unlawful Detainer action will not be necessary.

Tenant Does Not Pay

Complaint and Summons

If the tenant does not pay the amount due and remains on the premises, the landlord must then go to the Superior Court and begin the proceedings for an **Unlawful Detainer Action**. The landlord must properly serve a copy of the complaint and a summons on the tenant. The complaint must not allege any other amounts due the landlord other than past due rent.

Answer

Upon proper service, the tenant then has 5 days to "answer" the complaint, if served by personal service. If the tenant was served by substitute service or by post and mail service, he or she has 15 days to answer the complaint. The answer must be completed by "form." There are forms available for you at the Superior Court called an **ANSWER-- Unlawful Detainer**. A tenant must use this form to deny any allegations made by the landlord and to raise any defenses he or she may have.

There are other ways in which to respond to the complaint such as a Demurrer and a Motion to Quash Service of Summons. Please speak to an attorney about your options. A tenant may have 10 days after filing his or her answer to amend the answer. Therefore, always be sure to answer in some way during the time allotted for your response because you may have additional time to amend your answer. If you do not file a response, the landlord may be granted a **Default Judgment** and you will lose simply because you did not act.

The Trial

After the answer is filed and any and all amendments made, the court will notify the parties of the court date. Unless the parties demand a jury trial, the trial will generally be heard by a judge alone.

The Eviction

If the landlord wins at trial or due to a default judgment, the tenant will have to move out. A copy of the judgment or Writ of Possession, should be given to the Sheriff or Marshall's office by the landlord to enforce the eviction. The Sheriff or Marshall will post a 5 day notice on the door of the premises to notify the tenant of their involvement. If the tenant has not moved by the end of this 5 day period, the Sheriff or Marshall may remove the tenant's belongings from the premises and place them on the sidewalk or street. Immediately thereafter, the landlord generally changes the locks to the premises.

ILLEGAL EVICTIONS

Self-Help Evictions

Landlords are prohibited from changing the locks, cutting of the utilities, or removing the belongings of a tenant.

Retaliatory Evictions

Landlords are prohibited from evicting tenants as retaliation against the tenant for complaints, or the like, made to housing authorities.

Cases where Landlord is restricted from evicting the Tenant

- The tenant rightfully withheld rent because the rental unit was not fit to live in
- The tenant rightfully withheld part of the rent to pay for repairs that were necessary to make the rental fit to live in, or the tenant exercised a legal right.

Cases where Landlord may not evict the Tenant

- The notice to vacate the unit is defective (ex: not properly served, more rent is demanded than actually due)
- The landlord does not have "just cause" to end the rental agreement
- The landlord is terminating the tenancy because of race, religion, or another arbitrary reason
- The basis for the eviction stated in the notice is false

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 1951.2, 1952, and 1952.3