



## PREVENTIVE LAW SERIES

# BASICS OF RENTING



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### RENTAL AGREEMENTS AND LEASES

There are two different kinds of basic rental agreements: *periodic rental agreements* (for example a month-to-month agreement) or *leases*.

A *periodic rental agreement* states the length of time between the rent payments, which also determines the days of advance notice the tenant must give the landlord if he wants to move out, or the amount of advance notice the landlord must give the tenant if the landlord decides to change the terms of the rental agreement. For example, if the rent is paid on a monthly basis, the tenant must give the landlord a written notice at least thirty (30) days before he or she moves out. The periodic rental agreement is automatically renewed each period as long as the tenant continues to pay rent and until either the tenant or the landlord gives proper notice to terminate the agreement.

A *lease* specifies the time during which the lease will be in effect, for example six (6) or twelve (12) months. Leasing a residence for six (6) months or a year obligates the tenant to pay rent and to perform all the other conditions of the lease agreement for the entire lease period. Nevertheless, a lease agreement also offers advantages and protection for the tenant. The landlord cannot raise the rent during the lease period, unless expressly allowed in the lease agreement. Also, the landlord cannot evict the tenant while the lease is in effect, except for tenant violations such as failing to pay the rent and damaging the property.

Generally the tenant and the landlord enter into a written agreement, controlling the material aspects of the tenancy and defining issues such as the amount of rent, when rent is due, procedures for requesting repairs, obligations of the tenant, and obligations of the landlord. Oral agreements for less than one year are enforceable, but if you have a disagreement with your landlord it may be difficult to prove what the agreement should have been. Remember, if your agreement is for more than one year, IT MUST BE IN WRITING!

### THE RENTING PROCESS

Think about the type of place you would like to rent. For example, do you want an apartment, a duplex, or a home? How is the neighborhood and how is the access to stores, schools, etc.? Also, set a maximum amount you can pay per month and stick to that amount. Do you want a month-to-month agreement or do you want a lease agreement for six (6) months or a year?

Carefully inspect the rental BEFORE you rent. Check for cracks, leaks, hot water, defective heating/air conditioning, ventilation, lighting, wiring, telephone jacks, etc. In addition, you may want to return to the rental during the evening before you rent to make sure there are no noise problems. If you have decided to rent the property and you find any damage the landlord does not intend to fix, take pictures of the damage and date them to prove you were not the cause of the damage.

A landlord can use a credit report to determine your suitability as a tenant. In order to avoid surprises you can obtain a FREE copy of your credit report before you start your rental search under [www.annualcreditreport.com](http://www.annualcreditreport.com). If you discover incorrect information on your credit report you may contact one of the three major national credit bureaus, Trans Union: <http://www.transunion.com/>, Equifax: [www.equifax.com](http://www.equifax.com), and Experian: [www.experian.com](http://www.experian.com), to "clean up" any incorrect information in your report and rehabilitate your credit. If a landlord refuses to rent to you based on information in a credit report, you may request that he put it in writing and provide you with a copy of the credit report.

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The landlord cannot use the tenant's source of income to discriminate against certain tenants. For example, renters receiving public assistance may not be denied a lease based on receiving public assistance. It is permissible for a landlord to ask questions to establish your ability to pay rent.

### **BASIC TENANT'S RIGHTS AND RESPONSIBILITIES**

As a tenant you always have basic legal rights, which include the following:

1. Limits on the amount of security deposit that can be sought by landlord: two (2) times your rent if unfurnished or three (3) times your rent if the unit is furnished.
2. A landlord may enter the dwelling unit, after giving you notice, in the following cases: a) when you give permission for the landlord to enter, b) to make needed repairs (or assess the need for them), c) to show the property to prospective new tenants or purchasers, and d) when you give permission for an initial final inspection, after you have given notice that you are moving out. They may also enter in emergencies of life and limb. A written notice may be required in some circumstances pursuant to Cal. Civ. Code § 1954. Please see an attorney for more details.
3. Upon move out, you must receive a refund of your security deposit or an accounting of how it was used within twenty-one (21) days.
4. You may sue the landlord for violations of the agreement.
5. You may repair and deduct costs of repair from next rental payments (under certain specific circumstances). See a legal assistance attorney first.
6. You may withhold rent under certain circumstances. See a legal assistance attorney first.
7. You have the right to habitable premises.
8. You have the right to be free from retaliatory eviction.
9. You may be entitled to break the lease under the Servicemembers Civil Relief Act (SCRA). Please see the SCRA handout for more information. See a legal assistance attorney first.

The following are responsibilities expected of tenants:

1. Abide by the legal terms of your rental agreement or lease.
2. Pay your rent on time.
3. Keep your unit and adjacent common areas clean and undamaged.
4. Respect other tenants' right to privacy.
5. Properly use gas, plumbing and electrical fixtures.
6. Dispose of trash and garbage properly.
7. Do not intentionally or carelessly destroy or damage the property and do not allow others to do so.
8. Do not remove any part of the unit, equipment or facilities and do not allow others to do so.
9. Notify landlord of any locks or other security devices that are broken.
10. Return the unit in the same condition as when you moved in (except for normal wear and tear).
11. Notify the landlord of any repairs that are needed.

### **SECURITY DEPOSIT**

The maximum a landlord can charge for a security deposit is the total amount of two months' rent for an unfurnished unit or the total amount of three months' rent for a furnished unit. Make sure the amount you pay as a security deposit is accurately reflected in the agreement and that you get a receipt for it. A security deposit can be increased at the end of each term of the lease. For example, the landlord may increase the security deposit at the end of a month-to-month lease, but the landlord must give you thirty (30) days notice in that situation.

### **CAUTION**

In renting a residence, various types of problems are a possibility: Rent increases, repairs, the general condition and cleanliness of the premises (or the "habitability" of the premises). Please refer to the handout "Renting – Potential Problems and Pitfalls" for a more detailed discussion.

### **LEGAL ASSISTANCE SERVICES**

The Legal Assistance Department, as part of Region Legal Service Office Southwest, is separate from DSO West. A legal assistance attorney is available by appointment Monday from 0800 - 1100 and 1300 - 1500, Tuesday through Thursday from 0900 - 1100 and 1300 - 1500, and Friday from 0900 - 1045. Powers of attorney and notaries are

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available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island - Coronado, Building 318 - Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

## **RESOURCES**

**California Bureau of Consumer Affairs:** <http://www.dca.ca.gov/>; 1-800-952-5210  
California Civil Code §§ 1943-46, 1950.5, 1951.2, 1954 (2015)

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