



PREVENTIVE LAW SERIES

RENTING: PROBLEMS AND PITFALLS



Prepared by:
Legal Assistance Department
Region Legal Service Office Southwest
3395 Sturtevant Street Suite 9
San Diego CA 92136-5072
(619) 556-2211

DISCRIMINATION

California law prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability. California law also prohibits discrimination based on a person's medical condition, mental or physical disability, as well as personal characteristics, such as a person's physical appearance or other characteristics that are unrelated to the responsibilities of a tenant. It is also illegal to discriminate against families with children under the age of 18, except in regards to housing for senior citizens, which may exclude families with children. 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 they or their guests cause by 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) the unit is clean, without trash, rodents, or other pests when you move in; and
- (10) there are enough cans or bins with covers for trash. If you have any problems with these items, you should call your landlord to inform him 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 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 follow these rules and other required legal procedures, or the repair was not to an item covered by the warranty of habitability. See a legal assistance attorney first.
- (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 non-repair of a bathroom ceiling, exposed and faulty wiring, and rat, mice and cockroach infestation. See a legal assistance attorney first.
- (3) You may vacate the premises and be discharged from further rent payments.
- (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 BEFORE USING THESE REMEDIES TO ENSURE THAT YOU

WARNING: PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT INTENDED TO BE TAKEN AS SPECIFIC LEGAL ADVICE.
FOR LEGAL ADVICE IN A PARTICULAR SITUATION, ALWAYS CONSULT WITH AN ATTORNEY.

COMPLY WITH ALL REQUIRED LEGAL PROCEDURES.

RENT INCREASES

Rent may not be increased during a fixed-term lease unless the lease agreement allows it. Usually, the landlord is able to increase the rent on a periodic rental agreement such as a month-to-month tenancy. The landlord must give proper advance notice of any increase, which would be thirty (30) days in the case of a month-to-month tenancy. If the total of all rent increases over the past twelve (12) months (including the current raise) is higher than 10% of any monthly rent charged during the previous year, the tenant is entitled to sixty (60) days notice.

RIGHT TO PRIVACY

A landlord may enter the dwelling unit without your permission only in an emergency or, after giving you notice, in the following cases: a) to make needed repairs (or assess the need for them); b) to show the property to prospective new tenants or purchasers; or, c) when you give permission for an initial final inspection after you have given notice that you are moving out. A written notice may be required in some circumstances pursuant to Cal. Civ. Code § 1954. Please see an attorney for more details.

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. With an assignment, however, the new tenant is responsible directly to the landlord.

NOTE: Most leases require that the landlord agree to either of these agreements, and the original tenant may still be responsible for the nonpayment of rent by the new tenant.

MOVING OUT PROCEDURES – GIVING AND RECEIVING PROPER NOTICE

You are usually required to 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 on a month-to-month lease then you must give your landlord at least thirty (30) days' notice. If you have a long term lease beyond a month-to-month lease, then you should consult with an attorney as to your options in terminating the lease. Make sure you give your notice IN WRITING, including the date of notice and the date you intend to move out. You must receive written confirmation from the landlord that he received your notice to move out. If you mail the notice 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. The landlord may otherwise agree to release you from the remainder of the lease. See a legal assistance attorney first.

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. In the case that you are using the apartment for an illegal purpose, the landlord only needs to provide a written three-day notice.

SECURITY DEPOSITS

A landlord has twenty-one (21) days to refund the 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; and, if you can show bad faith, you can recover additional punitive damages up to twice the amount you paid as a security deposit. 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; and for unpaid rent.

UNLAWFUL DETAINER LAWSUITS

Eviction proceedings are also called unlawful detainer lawsuits. 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. The tenant will usually receive a three (3)-day notice to pay rent or quit and then the complaint for the unlawful detainer. He has five (5) days to respond (answer) to the complaint after he was served with it. Until the court resolves the issue, however, the landlord CANNOT cut off utilities or take the belongings of the tenant without a court order. If the landlord wins, he will be awarded the possession of the premises and he may be awarded money for unpaid rent, damages, costs,

WARNING: PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT INTENDED TO BE TAKEN AS SPECIFIC LEGAL ADVICE.
FOR LEGAL ADVICE IN A PARTICULAR SITUATION, ALWAYS CONSULT WITH AN ATTORNEY.

and fees (attorney's fees if provided by rental or lease agreement). If the tenant wins an eviction trial, the landlord cannot evict him, and the tenant may be able to get a judgment for court costs (attorney's fees if provided by rental or lease agreement). If you receive an unlawful detainer notice, seek the advice of a legal assistance attorney IMMEDIATELY on how to properly respond.

RETALIATORY EVICTION

A landlord cannot evict a tenant solely because he exercised his rights or complained about a problem. In general, the tenant will be protected from the landlord trying to punish him by raising the rent or trying to evict him because he exercised his 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 SERVICES

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 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 Department of Consumer Affairs: www.dca.ca.gov, (800) 952-5210

California Courts Self-help: www.courtinfo.ca.gov/selfhelp/other/landten.htm

California Civil Code §§ 1940 et seq., 1950 et seq. (2015)

WARNING: PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT INTENDED TO BE TAKEN AS SPECIFIC LEGAL ADVICE.
FOR LEGAL ADVICE IN A PARTICULAR SITUATION, ALWAYS CONSULT WITH AN ATTORNEY.