

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

*Kimball, Tirey & St. John LLP*

### September 2024

**1. Question:** A new tenant signed a six-month lease. Now, he claims he feels unsafe because of an incident at the property and wants to terminate the lease. The tenant claims he has a 72-hour period to rescind the lease after it is executed. Is this true?

**Answer:** There is no 72-hour right of rescission for residential leases. Depending on the facts of the incident, there may be grounds to terminate based upon domestic violence laws.

**2. Question:** Is there a law on the length of time a resident must reside in an apartment not to be charged for paint or carpet when they move out? What are the guidelines?

**Answer:** No, the tenant can always be charged for painting or carpet cleaning and/or replacement that is beyond ordinary wear and tear. They would be only charged for the remaining useful life of the item and again only if the damage is beyond normal wear and tear.

**3. Question:** We have a one-year lease with a tenant that will expire in four months. If we sell the house now, and the buyer wants to move in, would we be able to break the lease?

**Answer:** No, the buyer “steps into the shoes” of the seller and the lease is binding upon the new owner.

**4. Question:** Is the procedure for evicting a tenant from a garage any different than for a tenant who lives in a residential unit? Is delivering a notice to a post office box legally acceptable?

**Answer:** A notice of termination of a month-to-month tenancy may be given by 1) personal service, or 2) posting on the property and mailing a second copy, normal mail the same day. 3) substituted service by delivery to someone of suitable age and discretion and mailing a second copy, normal mail the same day, or 4) by certified or registered mail which method adds five days to the notice period. Because no one “lives” at the garage, and because the garage may not have its own post office address and service, you may wish to utilize additional service methods and/or alternate addresses to increase the chances that the notice will be received by the tenant.

**5. Question:** Is there any way to impose a rent increase on tenants with a lease or do you have to wait until the lease is expired?

**Answer:** You have to wait until the lease expires unless the lease specifies a specific rent increase during the term.

**6. Question:** I have a tenant who has been late with the rent on a number of occasions. I charge him a late fee and he pays it. When his lease expires, do I have to renew?

**Answer:** Consult with an attorney. There can be multiple layers of analysis necessary to determine whether the tenancy can be terminated. Many just cause jurisdictions do not permit a termination of tenancy just because the lease expires.

**7. Question:** We want to give notice to vacate to a renter of a garage who has been in occupancy for over one year. Can we give a thirty-day notice or does the sixty-day notice rule apply for garages as well?

**Answer:** You can give a thirty-day notice. Sixty-day notices are only required for residential property when the tenant has been in possession for one year or longer and the rental agreement is month-to-month.

**8. Question:** Are the laws any different between "motels" and "apartments"?

**Answer:** If you operate a motel, consult with an attorney or the California Hotel & Lodging Association regarding applicable laws. Under Civil Code §1940, many landlord tenant laws (specified in Civil Code §§1940-1954.05) don't apply to short term renters (30 days or less) or to hotel and motel residents if certain conditions are met.

**9. Question:** I have been asked by another property manager if a former tenant of mine caused any problems and if I would rent to him again. I suspected that he was a drug dealer or at least a drug user but I cannot prove it. What can I tell her?

**Answer:** If you are unsure, you should remain silent. From a legal point of view, it is always safest to say nothing. However, if you choose to do so, you should only reveal information, if any, that you know to be true and can be documented. When making a recommendation, you are always running the risk that the person you are referring to believes you are defaming their good name. Making timely notes of what you said and who you spoke to, will be valuable if you are questioned about the conversation in the future. Discuss only facts that pertain to compliance with your lease or rental agreement.

**10. Question:** A tenant of three years recently vacated with only a verbal two-week notice. Can she be charged for unpaid rent? She did not have a lease agreement and never signed anything stating that she would give a thirty-day notice.

**Answer:** If the rent is paid monthly and there is no term stated in the lease, written or verbal, the law presumes you are under a month-to-month agreement which requires a thirty-day written notice to terminate. If no written notice was given, the former tenant owes rent up to thirty days minus any amounts that can be collected from a replacement tenant (and you must make reasonable efforts to find a replacement tenant).

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