

Kimball, Tirey & St. John LLP

Domestic Violence in Rental Housing

Lynn Dover, Esq.

August, 2009

If you own or manage residential rental property, you may have had to deal with domestic violence incidents between residents. And if you haven't yet, chances are you will at some point. When domestic violence occurs in a rental unit, owners and managers frequently have questions. For instance, if the victim obtains a restraining order and wants her locks changed, should you change them? Or if there is no restraining order and you receive complaints from other residents about loud fighting, should you evict both the victim and the perpetrator? What if the victim wants to terminate his or her lease? If you let the victim out of the lease, how do you handle the security deposit when the unit is finally vacant?

Definition of abuse

Before we look at these and other questions, let's look at what does – and does not – constitute domestic violence. California Family Code § 6211 defines domestic violence as abuse perpetrated against someone with whom the victim has (or had) a romantic relationship such as marriage, living together, dating, engagement or having a child with the person. It is also defined as abuse against a child of one of the parties to the relationship or against a person who is related to one of the parties (such as a parent, sibling, in-law or grandparent of one of the parties). The definition does not include disputes between people who are only roommates or neighbors.

Abuse includes any kind of physical violence or harm, such as hitting, kicking, pushing, pulling hair, throwing objects at, sexually assaulting or otherwise hurting the victim. It also includes following, stalking or harassing the victim or attempting or threatening to harm the victim. Abuse can be verbal, written or physical.

Restraining orders

So what are an owner's or manager's responsibilities when they become aware that domestic violence has happened, or is happening, in one of their rental units? Let's say that a resident tells you that she has obtained a restraining order against her boyfriend (who lives in the unit with her). She wants you to change the locks and not give her boyfriend a key to the new lock. Can you legally do what she is asking? Does the fact that she has a restraining order against him mean that he no longer has a right to live there?

A restraining order is not the same thing as an eviction. A restraining order says that the restrained person (in this case, the boyfriend) must stay a certain distance away from the victim at all times, wherever the victim is. Sometimes in domestic violence situations, the family court will also issue a "kick out" order which prohibits the restrained person from continuing to live in the home with the victim. But under California landlord-tenant law, neither a restraining order nor a "kick-out" order acts to terminate the tenancy rights of the restrained person. So should you

refuse to change the locks? Or should you change the locks (or allow the victim to do so) but tell the victim that you cannot legally refuse to give the boyfriend a key if he shows up asking for one? What if you give the boyfriend a key and he goes into the unit and commits another domestic violence act on the victim? Could you be liable for her injuries?

As you can see, these are complicated issues, and, unfortunately, there is no perfect answer. Owners and management companies will have to weigh the potential liability for injuries (or even death) if they allow the perpetrator access to the unit against the risk that the perpetrator will claim he was unlawfully evicted (known as a forcible detainer) if he is refused a key to the unit. At a minimum, if the decision is made that a key will be given upon request, it is recommended that the restrained person be advised of the restraining order and that he will be violating the order if he enters the unit. Also consider warning the victim that the restrained person is being given a key. The victim and/or the landlord can call the police to report the violation. The landlord should also promptly take steps to legally terminate the tenancy of the restrained person.

If there is no restraining order

But what if there is no restraining or “kick out” order in place? What if you are receiving complaints from other residents about constant fighting between the two persons and the police are being repeatedly called to the unit? Should you treat this situation the same as any other noise disturbance and take steps to terminate the household’s tenancy? Or could there be other issues to consider? If you automatically evict both parties, you could be opening yourself up to a potential fair housing complaint.

Possible discrimination issues

There have been a number of cases in recent years in which policies that result in automatic eviction of both the perpetrator and the victim have been found to be discriminatory. The argument goes something like this: statistics show that the majority of domestic violence victims are women. Policies that result in eviction of both parties when there has been domestic violence have a “disparate impact” or discriminatory effect on women. Such policies therefore constitute discrimination on the basis of sex (which is a protected class under both federal and state fair housing laws).

In addition, the federal Violence Against Women Act (“VAWA”), which was enacted in 1994 and reauthorized in 2005, prohibits unfair eviction of victims of domestic violence, sexual assault or stalking from public housing or project or voucher-based Section 8 housing. The prohibition exists even if the perpetrator continues to come onto the property and cause disturbances for other residents.

Termination of tenancy by the victim

What if the victim wants to terminate his or her tenancy? In October of 2008, Governor Schwarzenegger signed an emergency bill addressing this issue. That bill added Section 1946.7

Kimball, Tirey & St. John LLP is a full service real estate law firm representing residential and commercial property owners and managers. This article is for general information purposes only. Before acting, be sure to receive legal advice from our office. If you have questions, please contact your local KTS office. For contact information, please visit our website: www.kts-law.com. For past Legal Alerts, Questions & Answers, and Legal Articles, please consult the resource library section of our website.

to the California Civil Code. This code section provides that a victim of domestic violence, sexual assault or stalking can terminate the tenancy even if it is in the middle of a lease.

The resident must notify the landlord that she (or a family member living in the same household) was a victim of domestic violence, sexual assault or stalking and that the resident intends to terminate her tenancy. She must also provide a written notice to terminate the tenancy and either a restraining order or a police report showing that the resident or household member was a victim of domestic violence, stalking or sexual assault. The notice to terminate must be given to the landlord within 60 days of the date when the police report was made. There is no requirement in the law that any charges be filed against the perpetrator or that the perpetrator be convicted of any crime in order for the victim to have the right to terminate her lease. Once the notice is given, the victim remains liable for rent for the next 30 days, after which time all of her obligations under the lease or rental agreement are terminated. The remaining residents continue to be fully responsible under the lease.

If the victim moves out pursuant to Civil Code Section 1946.7 and you decide you want to terminate the tenancy of the perpetrator and any other remaining residents, the law gives you a rebuttable presumption that a nuisance has been committed on the property because of the domestic violence, stalking or sexual assault. This should allow you to terminate the tenancy with a 3-Day Notice to Quit based on nuisance. Note that this presumption only applies if the victim has moved out of the premises.

Security deposit disposition

Next, let's examine issues regarding the application of the security deposit at the end of the tenancy. If the victim has moved out pursuant to Civil Code Section 1946.7, the security deposit still stays with the unit until it has been vacated by all remaining residents. The law doesn't address what to do if a refund of the deposit is owed.

Normally, if multiple residents vacate a unit and a refund of the deposit is due, you would put the names of all the residents on one check and let them work out how to divide it up unless you have been given written instructions (signed by all residents) on how to divide it up. In a domestic violence situation, however, there could be issues with doing so. By putting the victim and the perpetrator's names on one check, you are, in effect, forcing the victim to have contact with the perpetrator in order to receive her security deposit refund. It might be better to divide the refund and send a check for each person's "share" directly to him or her. Because the law doesn't specifically address this issue, how to handle the refund is a risk-management decision for the owner or the company to make.

The law doesn't specify how to apply the security deposit when one resident terminates early. However, in the case of early termination under Civil Code Section 1946.7, the purpose of the law is to terminate the victim's liability after her early termination of the lease. Therefore, it seems that the spirit of the law would be to first apply the security deposit against rent and other amounts accruing before the domestic violence victim terminates the lease, secondly against

Kimball, Tirey & St. John LLP is a full service real estate law firm representing residential and commercial property owners and managers. This article is for general information purposes only. Before acting, be sure to receive legal advice from our office. If you have questions, please contact your local KTS office. For contact information, please visit our website: www.kts-law.com. For past Legal Alerts, Questions & Answers, and Legal Articles, please consult the resource library section of our website.

physical damages and thirdly against amounts accruing after the domestic violence victim terminates the lease.

Summary

Domestic violence issues can be legally complex and challenging. Be sure to seek legal advice when confronted with a specific domestic violence issue on your property.

These topics, and many others, are covered in our Fair Housing Fundamentals course available on DVD. If you are interested in purchasing this in-depth, 3 hour DVD, please contact Curtis Weldon at 800.525.1690.

Kimball, Tirey & St. John LLP is a full service real estate law firm representing residential and commercial property owners and managers. This article is for general information purposes only. Before acting, be sure to receive legal advice from our office. If you have questions, please contact your local KTS office. For contact information, please visit our website: www.kts-law.com. For past Legal Alerts, Questions & Answers, and Legal Articles, please consult the resource library section of our website.