

Kimball, Tirey & St. John LLP

Legal Alert

November 14, 2008

New Domestic Violence Law Affects Termination of Leases

On September 28, 2008, Governor Schwarzenegger signed into law Assembly Bill 2052, which went into effect immediately upon the Governor's signature. The law has two parts relating to domestic violence on residential rental properties:

1. Section 1946.7 is added to the California Civil Code

This new Civil Code Section allows a resident to terminate his or her tenancy in the event that the resident or a family member (living in the same unit) is a victim of domestic violence, sexual assault or stalking.

In order to terminate the tenancy, the resident must give written notice of the intent to terminate along with a copy of a) a temporary restraining order or emergency protective order issued by the court or b) a copy of a written report by a law enforcement officer stating that the resident or household member has filed a report alleging that he or she is a victim of domestic violence, sexual assault or stalking. The notice must be given within 60 days of the date of issuance of the court order or written law enforcement report or within the time period outlined in Civil Code Section 1946 (normally 30 days but could be less if there is a periodic tenancy of less than a month).

The resident is responsible for payment of rent for 30 days following the date of the notice of termination (or less in the case of a periodic tenancy of less than a month), but after that date, the resident will have no further responsibility under the rental agreement (and no penalty for early termination can be assessed). The law does not release any remaining resident(s) from their obligations under the rental agreement.

2. Section 1161.4 of the Code of Civil Procedure is amended

Section 1161.4 of the Code of Civil Procedure describes the circumstances under which a tenancy may be terminated based on nuisance. This code section is amended to provide that if a resident commits an act of domestic violence, sexual assault or stalking against another resident on the premises, there is a rebuttable presumption that the person has committed a nuisance on the premises.

This means that for any notice to quit alleging that a resident has committed such an act on the premises, the landlord is given a presumption at trial that the resident committed a nuisance.

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Since the presumption is rebuttable, the resident would have the burden of proving to the court that he/she did not commit the alleged act (or that such act did not rise to the level of a nuisance). However, the rebuttable presumption will not apply if the victim or family member of the victim (other than the perpetrator) has not moved out of the premises.

This new language does not supersede any provisions of the federal Violence Against Women Act of 2005, which grants certain rights to victims of domestic violence in tenancies with federal funding.

Kimball, Tirey & St. John LLP provides eviction services for their clients, including unlawful detainer actions based upon behavior issues. If your tenant or their guests are causing disturbances or are engaged in suspected illegal activity, please call our office to speak with one of our landlord/tenant experts to assist you in resolving the issue. For more information on this Legal Alert, please contact the author, Lynn Dover, at 800-338-6039.

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