

Kimball, Tirey & St. John LLP

Questions & Answers

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1. Question: Are e-mail communications between tenant and landlord admissible in court?

Answer: Yes, e-mails can be allowed into evidence, but cannot be used to serve notices.

2. Question: I want to serve a three-day notice to pay rent or quit to a tenant who is very late on his rent. The rental amount listed on the lease is \$875.00 plus an additional \$25.00 for parking. The tenant has paid the \$900.00 for the past 24 months. Which amount should be placed on the notice?

Answer: It is safer to serve a separate three-day notice to pay rent or quit, as well as a three-day to perform conditions and covenants or quit for the parking charge at the same time. If they do not pay either one, or both, you can proceed with the eviction process.

3. Question: When a month-to-month resident decides to vacate after being served a three-day notice to pay or quit, do the owners have the right to charge for thirty days after the move-out to comply with their month-to-month agreement?

Answer: Yes, you can charge up to the time the premises are relet or thirty days from the date of their departure, whichever occurs first, so long as you make diligent attempts to relet the property.

4. Question: Our tenant gave a thirty-day notice of termination, intending to move out on the 10th of the next month. Since the rent was due on the first of the month, can we require the tenant to have given thirty-days' notice on the first of the month?

Answer: Once you are on a month-to-month tenancy, either party can terminate it by serving a thirty-day notice at any time. They are, however, responsible for the rent up to the date the thirty-day notice expires, so they would owe pro rata rent for the following month.

5. Question: We have a tenant who has been provoking other tenants so we gave her a thirty-day notice. She is now very angry and has flooded her apartment and the three apartments below her by inserting a roll (still on the spool) of toilet paper into her toilet and then flushing the toilet over and over. What can we do?

Answer: You can serve a three-day notice to quit based upon this activity. If she fails to vacate in three days, the court eviction can commence and you would not have to wait for the thirty-day notice to expire. You can also call the police for vandalism.

6. Question: I served a tenant a three-day notice to pay rent or quit. The tenant wrote a personal check that bounced. Do I have to give another three-day notice?

Answer: No, you do not have to serve a new three-day notice. You can proceed directly to the next step by filing an unlawful detainer action.

7. Question: We have a "quiet" couple who lease one of our rental units. Unfortunately, they have loud friends. Their guests like to zoom down the parking lot and screech their tires. Not only does this cause disturbance to other residents, it is unsafe and dangerous. Our tenant says they cannot control their friends' activity and are not responsible for what they do. Is there any way we can hold our tenants responsible if a problem occurs?

Answer: According to California law, tenants are responsible for the actions and conduct of their guests. If the guests are violating the house rules or the rental agreement, the tenant is in breach. It is just as though your tenants committed these acts themselves.

8. Question: I had to go through an eviction to regain possession of one of my rentals. I also received a judgment for the rent, court costs and my attorneys' fees. How can I collect this judgment? Do I have to go back to court?

Answer: The law provides for a variety of ways to collect the judgment. Wage garnishments, bank levys, attachment of personal property and judgment debtor examinations are formal ways to collect monetary judgments. Of those listed, a bank levy is the most effective way to collect a judgment. Receiving accurate information on the rental application allows optimal opportunity to collect.

9. Question: Last Monday I served a resident with a three-day notice to pay rent or quit. I served it by posting a copy on my tenant's door, and then the next day, I mailed a copy by certified mail. Someone said I have to mail it through the normal mail. Isn't certified mail better than normal mail?

Answer: The California legislature has created the procedural laws for serving a delinquent resident with a notice to pay rent or quit. Unless the tenant admits receiving the notice, the notice is invalid unless properly served. In this case, the law is specific and requires that a second copy of the notice be mailed, regular mail.

10. Question: One of my tenants vacated the property and left his roommate behind. Both signed the rental agreement and now the tenant who vacated is demanding his share of the security deposit be returned to him. Is he right? What should I do?

Answer: You are not required to return or account for the use of the security deposit until you regain possession of the property after the tenants have vacated. California requires the deposit be accounted for in writing and sent to the last known address of the tenants no later than 21 days following the return of possession unless the lease requires an earlier time frame. The tenant who vacated early should work out an arrangement with his former roommate. You are under no obligation to account for the deposit at this time.

11. Question: I own and manage a 10-unit apartment building. One of my tenants gave me 10 days' notice of her intention to vacate. She wrote that she would not be responsible for rent after that since I have a security deposit and she is on a month-to-month agreement. Is she right?

Answer: Unless you have agreed to a shorter amount of time in which to terminate your month-to-month rental agreement, the law requires a thirty-day notice be served by either the owner or the tenant in order to terminate the tenancy. If less than thirty days is given, the tenant is still liable for the full thirty days unless you were able to re-let the premises before the thirty days ran out.

Ted Kimball is a partner with Kimball, Tirey & St. John LLP. The law firm specializes in landlord/tenant, collections, fair housing and business and real estate, with offices throughout California. Property owner's and manager's with questions regarding the contents of this article, please call 800.338.6039.