

# WHAT SHOULD I KNOW BEFORE I RENT?

State Bar of California

## LANDLORD/TENANT QUESTIONS AND ANSWERS APPLICABLE TO CALIFORNIA LAW ONLY!

### 1. Are all rental agreements alike?

No. The two most common kinds of rental agreements are "lease" and "month-to-month."

A lease is for a definite period of time, generally one year. Unless you break the terms of the lease. The owner of your apartment or house, your landlady or landlord cannot raise your rent unless the lease says otherwise. The owner also cannot ask you to move until the lease is up.

A month-to-month rental agreement is not for a set period of time. It continues until you decide to move or the owner asks you to leave. If you pay your rent monthly, you must give the owner 30 days written notice that you are moving. An owner who wants you to leave or decides to raise your rent must inform you, in writing, 30 days ahead of time. However, you and the owner may agree in writing to a shorter notice. Moreover, if you break the rules, perhaps by using the apartment for illegal purposes or creating a nuisance, the owner can give you a three day notice.

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### 2. Must all rental agreements be in writing?

No. Both leases and month-to-month agreements may be oral or written, However, a lease for more than one year generally must be in writing.

- \* Oral agreement. With an oral agreement, nothing is written down. You and the owner talk things over and come to an understanding. Some people like oral agreements because they have fewer rules than other agreements do. On the other hand, several months later, you and the owner might remember the agreement differently so it is generally better to put the agreement in writing.

- \* Written agreement. If you have a written agreement, read it carefully and make sure that you understand everything it says. Sometimes a lease or month-to-month agreement mentions another paper such as "House Rules." Do not sign the agreement until you read the extra rules. Also, make sure that any blank spaces in the agreement are filled in or crossed out before you sign it and ask for a copy.

Whether you have an oral or written agreement, be sure to get the name, address and telephone number of the owner or the owner's agent. You will need this information in case of an emergency, such as a broken water pipe or lost keys. You also should know where to reach the owner if you have a complaint.

Strangely enough, some tenants do not know where to find the people who own their apartments. But in California, the law says that the names and addresses of the owner and manager must be on the rental agreement, if the building has three or more apartments. Or, they can be posted in the building in two places where tenants are likely to see them. If the owner's address is not listed, talk to your building manager. The manager must fill in for the owner.

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### **3. Can I change a written agreement?**

You can make changes before you sign, as long as the owner agrees. Just cross out whatever the two of you agree to take out. Write in any additions. For instance, your agreement may say that the owner can give you as little as seven days notice before raising your rent. If you want longer notice in your agreement, you can ask the owner to change it to 30 days or cross it out. But be sure you both initial all changes.

If you want to smoke or keep a pet in the apartment and the lease says you cannot, you can ask if the owner will change that part of the agreement.

Some written agreements have rules that cannot be enforced. Many rental agreements are printed forms available at stationery stores. Often, these forms are out of date because the law has changed.

You will not be bound by any illegal or outdated rules in the agreement you sign. For example, your agreement may say that the owner is not responsible if you get hurt because the building is not kept in good repair. But, under the law, that may not be true. The agreement might say that you cannot make repairs and then deduct the cost from your rent. But sometimes you cannot.

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#### **4. Do I owe any money besides the rent?**

You might. The owner has the right to ask for a number of fees and deposits. And you have a right to a receipt or written agreement that tells what the money is for and how you can get it back.

Although the law considers all deposits to be "security deposits," here are some of the payments that the owner might ask you to make:

- \* Last month's rent in advance. The owner can ask you to pay the last month's rent before you move in. Then, if you give proper notice when you want to move out, you will not have to pay rent for the last month.
- \* A Security deposit. This deposit can be used for such things as replacing a window that you broke before moving out. But, if you do not cause any damage, the security deposit will be given back to you.
- \* Cleaning fee or deposit. Some owners want a cleaning deposit or fee. Your lease may say that such a fee is not refundable. But that is illegal. Whether it is called a fee or a deposit, you usually can get the money back if you keep your place clean.

The owner either must give you the security deposit no later than two weeks after you move or must tell you in writing why you will not get back some or all of the money and how it was spent. An owner who needs to use part of the money for cleaning or repairs must give you the rest. What if the owner does not notify you or you believe the owner is not entitled to keep the money? Then, you can sue in small claims court. If you win the case, you could get part or all of your deposits back. You also may be paid a

penalty if the court decides that the owner failed to return the deposit because of "bad faith" which means it was not by mistake.

California law puts a limit on the deposits that the owner can ask for, no matter what they are called. All of them cannot add up to more than the cost of two months rent for an unfurnished apartment or three months rent for a furnished place.

Also, keep in mind that you are not covered by the owner's insurance policies. If you wish, you can purchase renter's insurance which covers your belongings against fire or theft,

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## **5. What happens when my lease runs out?**

Read your lease carefully. It may say what you must do. For example, the lease may have an "automatic-renewal" clause. This means that, before the lease runs out, you must tell the owner if you plan to move. And the owner must ask you to move before the lease ends. Otherwise, the lease will be renewed for the same period of time as the original agreement.

Note: Automatic renewal clauses cannot be enforced unless it is printed in eight-point bold faced type.

What if you have a six-month or one-year lease, but no automatic-renewal clause? If you pay rent monthly and the owner accepts your rent after the lease is up, the agreement is automatically renewed, but only on a month-to-month basis.

Some leases do not say that they last for a year or for a certain period of time. Instead, they might say the agreement ends on a particular date. In this case, you can stay on in the apartment past that date on a month-to-month basis if the owner accepts your rent payment.

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## **6. Who should make repairs in my home?**

You should, if you, your family or a friend cause the damage. For example, if your child cracks a window, you must replace the glass. Or, you can ask the owner or manager to make the repair

but you must be prepared to pay for it. If you did not cause the damage, the owner probably is responsible for making the repairs.

The best time to ask for repairs or improvements is before you move in, but after the lease is signed. Walk through the apartment or house with the owner or manager and ask to have certain things fixed. You may want to take a friend along. Then, your friend can be a witness if you and the owner later disagree about the repairs to be made.

It also is a good idea to take pictures of any problems, like a broken table leg or light fixture. Be sure that you and your friend initial and date the photographs. These photos also can help you prove that you are entitled to get back the security deposit when you move.

If the repairs are not made by the date that was promised, send a reminder in the mail and keep a copy.

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## **7. Can the owner come into my home without asking me?**

Yes, but only in emergencies. For example, perhaps water overflows a bathtub in the apartment above yours. The owner can check your apartment for water damage, even if you are not at home.

The owner can enter your apartment or house for certain other reasons, too, but only after giving you a 24-hour notice and only during normal business hours. For example, if you plan to move, the owner has a right to show the apartment or house to other people. Or, the owner might want to bring in an electrician to check the wiring.

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## **8. What are the owner's rights?**

The owner has a right to expect you to follow the rules of your rental agreement. For example, you certainly should pay your rent on time and keep the apartment or house clean. And you should not bother other tenants with noisy parties or a television set turned full blast.

In addition, you should use the apartment or house only as it is meant to be used. For example, don't cook if there is no kitchen.

The owner also has the right to expect you to fix something you damage. For instance, if you break a lamp in a furnished apartment, you should repair or replace it.

If you do not do these things, the owner may have a good reason to ask you to move. And if you do not move, the owner can sue to evict you. Also, although no one can refuse to rent to people with children, the owner can limit the number of people living in the apartment.

The owner also has the right to sell the building. If so, your lease, if you have one, will not change and the owner must either transfer your deposits to the new owner or refund them. If the deposits are transferred, the owner must tell you in writing and give you the new owner's name, address and telephone number.

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## **9. What are my rights?**

You may rent your apartment to someone else, as long as your agreement does not say you cannot. This is called "subleasing." If the agreement forbids subleasing, check with the owner and try to get approval in writing. Be sure that your subtenant is responsible. If a subtenant does not pay the rent or damages the place, you will have to pay.

Some communities have "rent control" laws that give you certain protection against rent increases. These laws usually say when and how much your rent can be raised. Many local governments have "rent board" agencies that can help you with issues involving local rent laws and ordinances.

You also have the right to a decent place to live for the rent you pay. The law says that your apartment must be livable. If the apartment is not livable through no fault of your own, you can move. You may not have to pay rent after you move, even though you have a lease.

According to the law, for a place to be unlivable or

"untenantable," the problem must be substantial and may involve a lack of:

- \* waterproofing and weather proofing such as unbroken windows.
- \* plumbing that is in good working order
- \* enough hot and cold running water to bathe and clean.
- \* electrical lighting that is in good working order.
- \* clean grounds and building, without a build-up of trash, at the time you move in.
- \* elimination of roaches and rodents.
- \* enough trash cans to hold your garbage.
- \* floors, stairs and railings that are in good repair

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### **10. Can I report the owner if the apartment is unlivable?**

Yes. Let's say the furnace has not worked for six weeks in the middle of winter, and the owner won't fix it, in spite of all your phone calls and letters. In this case, you can report the owner to a housing or building inspection department.

What if there are rats or mice in the building? Maybe garbage sits around for weeks at a time. Then, you should call the county or city health department. A lot of trash in the hallways could be a fire hazard. In this case, you can report the owner to the fire department.

The government department you call may give the owner a written notice to correct the problem within 60 days. If there is no improvement in that time, you can sue the owner.

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### **11. What can I do instead of reporting the landlord?**

If the problems affect tenantability, you can make repairs

yourself or pay to have them made. Then, you can deduct that money from your rent. But you cannot deduct more than the cost of one month rent for any one repair. And you cannot use the repair and deduct remedy more than twice a year.

You also could stop paying rent until repairs are made. This can be a risky procedure without legal advice because the owner may sue you if you do not pay rent. And, you probably should put your rent money into an "escrow" account. This means that your rent money is kept in a savings account or safe deposit box. This makes sure that you will have the money to pay the rent when repairs are made or if you have to move.

In either case, be sure to write to the owner first, saying what you plan to do. You also must give the owner a reasonable amount of time to make the repairs.

If you have a major complaint about the owner, it is possible that the other tenants do too. Get them together to talk things over. Perhaps all of the tenants will sign a letter asking the owner to make a certain repair or improvement, On they might select one person to meet with the owner on behalf of all the tenant

If all else fails, you and the other people in the building might consider holding a rent strike. In California, rent strikes are legal only under certain conditions. So you and the other tenants may want to pool your money and hire a lawyer.

Even if you do not hold a rent strike, you may need a lawyer's help.

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## **12. Can the landlord sue to evict me?**

Yes. In some cases, the owner can sue whether your rental agreement is a lease or month-to-month.

If you have a lease, the owner can try to evict you for such reasons as not paying your rent or creating a nuisance by having noisy parties. In these cases, the owner must give you a three day written notice to leave before suing to evict you. The owner also might sue to evict you if you break part of the agreement or

if you are asked to leave when your lease runs out and you refuse to do so.

If you have a month-to-month agreement, the owner can give you a 30-Day notice in writing, even if you have not done anything wrong. If you do not move within that time, the owner can sue to evict you. However, some communities have laws that limit evictions to certain "good cause" reasons only.

In order to have you evicted, the owner must go to court. The suit against you is called an "unlawful detainer action."

Here is how an eviction suit starts. After you get either a three-day or 30-day notice, the owner will send you a "complaint." This is a paper that says you are being sued. You have five days, including weekends, to reply to the complaint. You also will receive a "summons" which tells you when and where to respond. If the owner sues in municipal court, you must reply to the complaint in writing. If you do not, the case probably will be decided in the owner's favor.

To try avoiding a lawsuit, you might suggest that you and the owner try "mediation." This means that a "neutral third party", someone who has nothing to do with the problem, tries to help you and the owner work out a way to settle your differences. To locate a mediation program in your area, get in touch with the Dispute Resolution Coordinator, Department of Consumer Affairs, 1020 N Street, Sacramento, CA 95814, (916) 322-5254, and ask the free copy of a directory of dispute resolution programs. A directory of non-profit dispute resolution programs is available from the Office of Legal Services, State Bar of California, 555 Franklin Street, San Francisco, CA 94102-44984. For more information, see the State Bar pamphlet, "Should I Try to Settle My Problem Out Of Court?"

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### **13. Can the owner lock me out?**

An owner who wants you to move cannot legally lock you out of your apartment or house, or remove your belongings or any doors or windows. And, an owner cannot legally turn off the gas, electricity, heat or water. If one of these things happen, you can take the owner to court,

If you win the case, the owner will have to pay for any damage that occurred. For instance, maybe food spoiled in your refrigerator while the electricity was off. And the owner may have to pay you up to \$100 for each day that the utilities were turned off or at least \$250 for every law that was broken. The owner also may have to pay for your lawyer. However if you lose the case, you may have to pay for the owner's lawyer.

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#### **14. How do I handle an eviction suit?**

If the suit involves money and the amount is \$5,000 or less, the owner may take you to the small claims court. See the State Bar's "How Do I Use the Small Claims Court?" pamphlet, which can be ordered from the State Bar at the address listed on the back of the pamphlet. Please send a stamped self-addressed envelope with your request for a quick response.

Lawyers are not allowed in this court, but you can talk to one beforehand so that you will be able to defend yourself well. For example, a lawyer can tell you if you may be able to claim that the eviction suit is "retaliatory." That means the owner illegally wants to punish you for something, perhaps because you made a report to a building inspector.

Most eviction suits, however, are filed in municipal court where lawyers can represent you and the owner, too.

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#### **15. What happens if I lose the suit?**

If you lose, you may have to pay the owner's costs of going to court, including attorney fees. You also are allowed to "appeal." This means you can ask a higher court to rehear your case. But you will still have to move unless the court grants a "stay" or delay, until the case is finally decided.

If you do not appeal, there is not much you can do, except move. Otherwise, the owner can get a "writ of possession." This is a paper that orders the sheriff to move you out. If you are in the apartment, he will put you on the sidewalk.

What if you move out but leave your belongings behind? If your things are worth less than \$300, the owner can keep or sell them or throw them out. If they are worth more than \$300, the owner must give you 15 days (18 days if the notice comes by mail) to take them away. If the owner puts your things into storage during that time, you may have to pay storage charges.

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## **16. What can I do about discrimination?**

You may believe that the owner of an apartment or house won't rent to you or is evicting you because of your race, religion, national origin, ancestry, age, sexual preference, sex or disability. Perhaps the owner will not rent to you and a person of the opposite sex because you are not married.

If so, write or call the nearest office of either the California Department of Fair Employment and Housing or the U.S. Government Department of Housing and Urban Development (HUD). You should know, however, that the owners of housing for senior citizens do not have to accept families with children.

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## **17. How can I find a lawyer to represent me?**

If you do not know a lawyer, ask a friend, co-worker, employer or business associate to recommend one. You may want to ask if the lawyer has some experience in landlord/tenant law.

Or call a local State Bar-certified lawyer referral service. Look in the Yellow Pages under "Attorney Referral Services," "Attorneys" or "Lawyers." The person who answers you call can make an appointment for you to see a lawyer. You may be required to pay a small fee for the referral and may talk with the lawyer for about half an hour. Then, if you decide to hire the lawyer, make sure you understand what you will be paying for, how much it will cost, and when you will be expected to pay your bill.

What if you do not have enough money to pay for legal advice? You may belong to a "legal insurance plan" that covers the kind of services you need. Or, if your income is very low, you may

qualify for free or low-cost legal help. Check the white pages of your telephone directory for a legal services program such as a legal aid society in your county. You can also ask your county bar association if its State Bar-certified lawyer referral service offers free legal advice for low-income people or if it can direct you to a no-cost legal services organization.

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For more information, see the State Bar pamphlet, "How Can I Find and Hire the Right Lawyer?" For a copy of this pamphlet, send a self-addressed, stamped envelope with your request to State Bar Pamphlets, 555 Franklin Street, San Francisco, CA 94102.

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