California Tenants

A GUIDE TO RESIDENTIAL TENANTS' AND LANDLORDS' RIGHTS AND RESPONSIBILITIES

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NOTICE

The opinions expressed in this booklet are those of the authors and should not be construed as representing the opinions or policy of any official or agency of the State of California. While this publication is designed to provide accurate and current information about the law, readers should consult an attorney or other expert for advice in particular cases, and should also read the relevant statutes and court decisions when relying on cited material.

ORDERING INFORMATION

This publication is available on the Internet. See the Department of Consumer Affairs' home page at www.dca.ca.gov.

For information on ordering copies of this booklet, see page 111.

Dear Reader:

For most of us, where we live is the most significant consumer decision we make, and our housing costs are the biggest part of our budget. Our home is where we spend much of our time, and we want it to be hassle free!

Move-in day marks the beginning of an important relationship between a tenant and a landlord. To help tenants and landlords manage their rental-housing responsibilities, we're pleased to provide the Department of Consumer Affairs' practical "California Tenants" guide.

The "California Tenants" booklet is a practical resource for both tenants and landlords. We've provided information about rental applications, unlawful discrimination, security deposits, repair responsibilities, rent increases, termination of leases, and eviction notices. We've included an inventory checklist for use before moving in, and again when moving out.

If you need additional assistance, we've also provided a comprehensive list of resources in communities throughout the Golden State.

We hope you find "California Tenants" helpful. You can get more information by visiting the Department's Web site at www.dca.ca.gov or by calling (800) 952-5210.

California Department of Consumer Affairs


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RENT

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RENT


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Now
Leasing

Table of Contents


UNFURNISHED
APARTMENT
FOR
LEASE


FOR
RENT


FOR
RENT

APARTMENT
FOR RENT

FOR
RENT


NOW
RENTING


FOR
RENT


Now
Leasing

California Tenants

A GUIDE TO RESIDENTIAL TENANTS' AND LANDLORDS' RIGHTS AND RESPONSIBILITIES

INTRODUCTION

What should a **tenant** do if his or her apartment needs repairs? Can a **landlord** force a tenant to move? How many days notice does a tenant have to give a landlord before the tenant moves? Can a landlord raise a tenant's rent? *California Tenants—A Guide to Residential Tenants' and Landlords' Rights and Responsibilities* answers these questions and many others.

Whether the tenant is renting a room, an apartment, a house, or a duplex, the landlord-tenant relationship is governed by federal, state, and local laws. This booklet focuses on California laws that govern the landlord-tenant relationship, and suggests things that both the landlord and tenant can do to make the relationship a good one. Although the booklet is written from the tenant's point of view, landlords can also benefit from its information.

Tenants and landlords should discuss their expectations and responsibilities before they enter into a rental agreement. If a problem occurs, the tenant and landlord should try to resolve the problem by open communication and discussion. Honest discussion of the problem may show each party that he or she is not completely in the right, and that a fair compromise is in order.

If the problem is one for which the landlord is responsible (see pages 37–40), the landlord may be willing to correct the problem or work out a solution without further action by the tenant. If the problem is one for which the tenant is responsible (see pages 37–40), the tenant may agree to correct the problem once the tenant understands the landlord's concerns. If the parties cannot reach a solution on their own, they may be able to resolve the problem through **mediation** or **arbitration** (see page 82). In some situations, a court action may provide the only solution (see pages 46–48, 64–65, 72–78).

The Department of Consumer Affairs hopes that tenants and landlords will use this booklet's information to avoid problems in the first place, and to resolve those problems that do occur.

HOW TO USE THIS BOOKLET

You can probably find the information you need by using this booklet's Table of Contents, Index, and Glossary of Terms.

TABLE OF CONTENTS

The Table of Contents shows that the booklet is divided into nine main sections. Each main section is divided into smaller sections. For example, if you want information about the rental agreement, look under "Rental Agreements and Leases" in the "BEFORE YOU AGREE TO RENT" section.

INDEX

Most of the topics are mentioned in the Table of Contents. If you don't find a topic there, look in the Index (page 104). It's more specific than the Table of Contents. For example, under "Cleaning" in the Index, you'll find the topics "deposits or fees," "tenant's responsibility," etc.

GLOSSARY

If you just want to know the meaning of a term, such as **eviction** or **holding deposit,** look in the Glossary (page 84). The glossary gives the meaning of more than 60 terms. Each of these terms also is printed in **boldface type** the first time that it appears in each section of the booklet.

The Department of Consumer Affairs hopes that you will find the information you're looking for in this booklet. If you can't find what you're looking for, call or write one of the resources listed in "Getting Help From a Third Party" (see pages 81–82) or "Tenant Information and Assistance Resources" (see page 91).

WHO IS A LANDLORD AND WHO IS A TENANT?

GENERAL INFORMATION ABOUT LANDLORDS AND TENANTS

A landlord is a person or a company that owns a rental unit. The landlord rents or leases the rental unit to another person, called a tenant, for the tenant to live in. The tenant obtains the right to the exclusive use and possession of the rental unit during the lease or rental period.

Sometimes, the landlord is called the owner, and the tenant is called a resident.

A **rental unit** is an apartment, house, duplex, condominium, or room that a landlord rents to a tenant to live in. In this booklet, the term rental unit means any one of these. Because the tenant uses the rental unit to live in, it is called a residential rental unit.

Often, a landlord will have a rental agent or a property manager who manages the rental property. The agent or manager is employed by the landlord and represents the landlord. In most instances, the tenant can deal with the rental agent or property manager as if this person were the landlord. For example, a tenant can work directly with the agent or manager to resolve problems. When a tenant needs to give the landlord one of the tenant notices described in this booklet (for example, see pages 45–46, 49–50), the tenant can give the notice to the landlord's rental agent or property manager.

The name, address and telephone number of the manager and an owner of the building (or other person who is authorized to receive legal notices for the owner) must be written in the rental agreement or lease, or posted conspicuously in the rental unit or building.[1]

SPECIAL SITUATIONS

The tenant rights and responsibilities discussed in this booklet apply only to people whom the law defines as tenants. Generally, under California law, **lodgers** and residents of hotels and motels have the same rights as tenants.[2] Situations in which lodgers and residents of hotels and motels do and do not have the rights of tenants, and other special situations, are discussed in the "Special Situations" sidebar on pages 3–4.[3]

Continued on page 5

1 *Civil Code Sections 1961, 1962, 1962.5. See Moskovitz et al., California Landlord-Tenant Practice, Section 1.21A (Cal. Cont. Ed. Bar 2011).*

2 *Civil Code Section 1940(a).*

3 *See additional discussion in Moskovitz et al., California Landlord-Tenant Practice, Section 1.3 (Cal. Cont. Ed. Bar 2002, 2005, 2009, 2011).*

Special Situations

Hotels and motels

If you are a resident in a hotel or motel, you do *not* have the rights of a tenant in any of the following situations:

1. You live in a hotel, motel, residence club, or other lodging facility for 30 days or *less*, and your occupancy is subject to the state's hotel occupancy tax.
2. You live in a hotel, motel, residence club, or other lodging facility for *more than 30 days*, but have not paid for all room and related charges owing by the 30th day.
3. You live in a hotel or motel to which the manager has a right of access and control, and all of the following is true:
   - The hotel or motel allows occupancy for periods of fewer than seven days.
   - *All* of the following services are provided for *all* residents:
     - a fireproof safe for residents' use;
     - a central telephone service;
     - maid, mail, and room service; and
     - food service provided by a food establishment that is on or next to the hotel or motel grounds and that is operated in conjunction with the hotel or motel.

If you live in a unit described by either 1, 2, or 3 above, you are *not* a tenant; you are a **guest**. Therefore, you don't have the same rights as a tenant.[4] For example, the proprietor of a hotel can lock out a guest who doesn't pay his or her room charges on time, while a landlord would have to begin formal eviction proceedings to evict a nonpaying tenant.

Residential hotels

You have some of the legal rights of a tenant if you are a resident in a residential hotel, which is in fact your primary residence.[5] Residential hotel means any building which contains six or more guest rooms or efficiency units which are designed, used, rented or occupied for sleeping purposes by guests, and which is the primary residence of these guests.[6] In residential hotels, a locking mail receptacle must be provided for each residential unit. [7]

Special Situations continued on page 4

4 *Civil Code Section 1940.*

5 *Health and Safety Code Section 50519(b)(1). See California Practice Guide, Landlord-Tenant, Paragraphs 2:39, 2:40.1, 7:6.2 (Rutter Group 2011).*

6 *Health and Safety Code Section 50519(b)(1). See California Practice Guide, Landlord-Tenant, Paragraphs 2:39, 2:40.1, 7:6.2 (Rutter Group 2011).*

7 *Health and Safety Code Sections 17958.3; Civil Code Section 1944.1(i); Californrnia Practice Guide, Landlord-Tenant, Paragraph 3:21(a) (Rutter Group 2011).*

Special Situations continued from page 3

It is unlawful for the proprietor of a residential hotel to require a guest to move or to check out and re-register before the guest has lived there for 30 days, if the proprietor's purpose is to have the guest maintain transient occupancy status (and therefore not gain the legal rights of a tenant).[8] A person who violates this law may be punished by a $500 civil penalty and may be required to pay the guest's attorney fees.

Single lodger in a private residence

A **lodger** is a person who lives in a room in a house where the owner lives. The owner can enter all areas occupied by the lodger and has overall control of the house.[9] Most lodgers have the same rights as tenants.[10]

However, in the case of a *single* lodger in a house where there are *no other lodgers*, the owner can evict the lodger without using formal eviction proceedings. The owner can give the lodger written notice that the lodger cannot continue to use the room. The **amount of notice** must be the same as the number of days between rent payments (for example, 30 days). (See "Landlord's notice to end a periodic tenancy," page 50.) When the owner has given the lodger proper notice and the time has expired, the lodger has no further right to remain in the owner's house and may be removed as a trespasser.[11]

Transitional housing

Some tenants are residents of "transitional housing." Transitional housing provides services and housing to formerly homeless persons for periods of 30 days to 24 months. Special rules cover the behavior of residents in, and eviction of residents from, transitional housing.[12]

Mobilehome parks and recreational vehicle parks

Special rules in the Mobilehome Residency Law[13] or the Recreational Vehicle Park Occupancy Law,[14] and not the rules discussed in this booklet, cover most landlord-tenant relationships in mobilehome parks and recreational vehicle parks.

However, normal eviction procedures (see pages 67–80) must be used to evict certain mobilehome residents. Specifically, a person who leases a mobilehome from its owner (where the owner has leased the site for the mobilehome directly from the management of the mobilehome park) is subject to the eviction procedures described in this booklet, and not the eviction provisions in the Mobilehome Residency Law. The same is true for a person who leases both a mobilehome and the site for the mobilehome from the mobilehome park management.[15]

8 *Civil Code Section 1940.1. Evidence that an occupant was required to check out and re-register creates a rebuttable presumption that the proprietor's purpose was to have the occupant maintain transient occupancy status. (Civil Code Section 1940.1(a).) This presumption affects the burden of producing evidence.*

9 *Civil Code Section 1946.5.*

10 *Civil Code Section 1940(a).*

11 *Civil Code Section 1946.5, Penal Code Section 602.3.*

12 *Health and Safety Code Sections 50580-50591.*

13 *Civil Code Sections 798-799.10. See Moskovitz et al., California Landlord-Tenant Practice, Sections 6.62-6.89 (Cal. Cont. Ed. Bar 2011).*

14 *Civil Code Sections 799.20-799.79.*

15 *California Practice Guide, Landlord-Tenant, Paragraphs 11:27-11:28 (Rutter Group 2011).*

LOOKING FOR A RENTAL UNIT

LOOKING FOR AND INSPECTING RENTAL UNITS

Looking for a rental unit

When you are looking for a rental unit, the most important things to think about are:

- The dollar limit that you can afford for monthly rent and utilities.
- The dollar limit that you can afford for all deposits that may be required (for example, holding and security deposits).
- The location that you want.

In addition, you also should carefully consider the following:

- The kind of rental unit that you want (for example, an apartment complex, a duplex, or a single-family house), and the features that you want (such as the number of bedrooms and bathrooms).
- Whether you want a month-to-month rental agreement or a lease (see pages 15–17).
- Access to schools, stores, public transportation, medical facilities, child-care facilities, and other necessities and conveniences.
- The character and quality of the neighborhood (for example, its safety and appearance).
- The condition of the rental unit (see "Inspecting before you rent," page 5).
- Other special requirements that you or your family members may have (for example, wheelchair access).

You can obtain information on places to rent from many sources. Many Internet Web sites list rental properties. Local newspapers carry classified advertisements on available rental units. In many areas, there are free weekly or monthly publications devoted to rental listings. Local real estate offices and property management companies often have rental listings. Bulletin boards in public buildings, local colleges, and churches often have notices about places for rent. You can also look for "For Rent" signs in the neighborhoods where you would like to live.

Inspecting before you rent

Before you decide to rent, carefully inspect the rental unit with the landlord or the landlord's agent. Make sure that the unit has been maintained well. Use the inventory checklist (pages 107-110) as an inspection guide. When you inspect the rental unit, look for the following problems:

- Cracks or holes in the floor, walls, or ceiling.
- Signs of leaking water or water damage in the floor, walls, or ceiling.
- The presence of mold that might affect your or your family's health and safety.
- Signs of rust in water from the taps.
- Leaks in bathroom or kitchen fixtures.
- Lack of hot water.
- Inadequate lighting or insufficient electrical outlets.
- Inadequate heating or air conditioning.
- Inadequate ventilation or offensive odors.
- Defects in electrical wiring and fixtures.
- Damaged flooring.
- Damaged furnishings (if it's a furnished unit).
- Signs of insects, vermin, or rodents.
- Accumulated dirt and debris.
- Inadequate trash and garbage receptacles.
- Chipping paint in older buildings. (Paint chips sometimes contain lead, which can cause lead poisoning if children eat them. If the building was built before 1978, you should read the booklet, "Protect Your Family From Lead in Your Home," which is available by calling (800)-424-LEAD or online at www.epa.gov/lead/pubs/leadpdfe.pdf).

- Signs of asbestos-containing materials in older buildings, such as flaking ceiling tiles, or crumbling pipe wrap or insulation. (Asbestos particles can cause serious health problems if they are inhaled.) For more information, go to www.epa.gov/asbestos.
- Any sign of hazardous substances, toxic chemicals, or other hazardous waste products in the rental unit or on the property.

Also, look at the exterior of the building and any common areas, such as hallways and courtyards. Does the building appear to be well-maintained? Are the common areas clean and well-kept?

The quality of rental units can vary greatly. You should understand the unit's good points and shortcomings, and consider them all when deciding whether to rent, and whether the rent is reasonable.

Ask the landlord who will be responsible for paying for utilities (gas, electric, water, and trash collection). You will probably be responsible for some, and possibly all, of them. Try to find out how much the previous tenant paid for utilities. This will help you be certain that you can afford the total amount of the rent and utilities each month. With increasing energy costs, it's important to consider whether the rental unit and its appliances are energy efficient.

If the rental unit is a house or duplex with a yard, ask the landlord who will be responsible for taking care of the yard. If you will be, ask whether the landlord will supply necessary equipment, such as a lawn mower and a hose.

During this initial walk-through of the rental unit, you will have the chance to see how your potential landlord reacts to your concerns about it. At the same time, the landlord will learn how you handle potential problems. You may not be able to reach agreement on every point, or on any. Nonetheless, how you get along will help both of you decide whether you will become a tenant.

If you find problems like the ones listed above, discuss them with the landlord. If the problems are ones that the law requires the landlord to repair (see pages 37–40), find out when the landlord intends to make the repairs. If you agree to rent the unit, it's a good idea to get these promises in writing, including the date by which the repairs will be completed.

If the landlord isn't required by law to make the repairs, you should still write down a description of any problems if you are going to rent the property. It's a good idea to ask the landlord to sign and date the written description. Also, take photographs or a video of the problems. Use the time and date stamp, if your camera has this feature. Your signed, written description and photographs or video will document that the problems were there when you moved in, and can help avoid disagreement later about your responsibility for the problems.

Finally, it's a good idea to walk or drive around the neighborhood during the day and again in the evening. Ask neighbors how they like living in the area. If the rental unit is in an apartment complex, ask some of the tenants how they get along with the landlord and the other tenants. If you are concerned about safety, ask neighbors and tenants if there have been any problems, and whether they think that the area is safe.

THE RENTAL APPLICATION

Before renting to you, most landlords will ask you to fill out a written **rental application form**. A rental application is different from a **rental agreement** (see pages 15–17). The rental application is like a job or credit application. The landlord will use it to decide whether to rent to you.

A rental application usually asks for the following information:

- The names, addresses, and telephone numbers of your current and past employers.
- The names, addresses, and telephone numbers of your current and past landlords.

Continued on page 8

Prepaid Rental Listing Services

Businesses known as prepaid rental listing services sell lists of available rental units. These businesses are regulated by the California Department of Real Estate (DRE) and must be licensed.[16] You may check the status of a license issued to a prepaid rental service on the DRE Web site (www.dre.ca.gov) to ensure that the service is licensed. If you use a prepaid rental listing service, it must enter into a contract with you before it accepts any money from you.[17] The contract must describe the services that the prepaid rental listing service will provide you. The contract also must include a description of the kind of rental unit that you want to find. For example, the contract must state the number of bedrooms that you want and the highest rent that you will pay.

Before you enter into a contract with a prepaid rental listing service or pay for information about available rental units, ask if the service is licensed and whether the list of rentals is current. The contract cannot be for more than 90 days. The law requires the service to give you a list of at least three currently available rentals within five days after you sign the contract.

You can receive a refund of the fee that you paid for the list of available rentals if the list does not contain three available rental units of the kind that you described in the contract.[18] In order to obtain a refund, you must demand a full refund from the prepaid rental listing service within 15 days of signing the contract. Your demand for a refund must be in writing and must be personally delivered to the prepaid rental listing service or sent to it by certified or registered mail. (However, you can't get a refund if you found a rental using the services of the prepaid rental listing service.)

If you don't find a rental unit from the list you bought, or if you rent from another source, the prepaid rental listing service can keep only $50 of the fee that you paid. The service must refund the balance, but you must request the refund within 10 days after the end of the contract. You must provide documentation that you did not move, or that you did not find your new rental using the services of the prepaid rental listing service. If you don't have documentation, you can fill out and swear to a form that the prepaid rental listing service will give you for this purpose. You can deliver your request for a refund personally or by mail (preferably by certified or registered mail with return receipt requested). Look in the contract for the address. The service must make the refund within 10 days after it receives your request.

16 *Business and Professions Code Section 10167.*

17 *Business and Professions Code Section 10167.9(a).*

18 *Business and Professions Code Section 10167.10.*

- The names, addresses, and telephone numbers of people whom you want to use as references.
- Your Social Security number.
- Your driver's license number.
- Your bank account numbers.
- Your credit account numbers for credit reference.

The application also may contain an authorization for the landlord to obtain a copy of your **credit report**, which will show the landlord how you have handled your financial obligations in the past.

The landlord may ask you what kind of job you have, your monthly income, and other information that shows your ability to pay the rent. It is illegal for the landlord to discriminate or harass you because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or any disability[19] or whether you have persons under the age of 18 living in your household.[20] With the exception of source of income, the landlord may not ask you questions in writing or orally about your race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, any disability, or whether you have persons under the age of 18 living in your household.[21] Further, the landlord may not ask about your immigration or citizenship status.[22] Although the landlord may not discriminate on the basis of source of income, the landlord is allowed to ask you about your level of income and your source of income.[23] Also, the landlord should not ask you questions about your age or medical condition.[24] (See "Unlawful Discrimination," pages 11–15.)

The landlord may ask you about the number of people who will be living in the rental unit. In order to prevent overcrowding of rental units, California has adopted the Uniform Housing Code's occupancy requirements,[25] and the basic legal standard is set out in footnote 25. However, the practical rule is this: A landlord can establish reasonable standards for the number of people per square feet in a rental unit, but the landlord cannot use overcrowding as a pretext for refusing to rent to tenants with children if the landlord would rent to the same number of adults.[26]

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19 *Civil Code Section 51.*

20 *Government Code Sections 12955(b), 12955.1-12955.9; 12989-12989.3; 42 United States Code Sections 3601-3631; Moskovitz et al.,. California Landlord Tenant Practice Sections 2.22-2.25 (CEB 2011).*

21 *Government Code Section 12955(b).*

22 *Civil Code Section 1940.3(b). See California Practice Guide, Landlord Tenant, Paragraph 2:569.1 (Rutter Group 2011).*

23 *Government Code Section 12955(p)(2).*

24 *Government Code Sections 12900-12996; Civil Code Sections 51-53; 42 United States Code Section 3601 and following. However, after you and the landlord have agreed that you will rent the unit, the landlord may ask for proof of your disability if you ask for a "reasonable accommodation" for your disability, such as installing special faucets or door handles. (Brown, Warner and Portman, The California Landlords' Law Book, Vol. I: Rights & Responsibilities, pages 161-163 (NOLO Press 2011)). (See chapter 9 of this reference for a comprehensive discussion of discrimination).*

25 *Health and Safety Code Section 17922. See 1997 Uniform Housing Code Section 503(b) (every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two). Different rules apply in the case of "efficiency units." (See 1997 Uniform Housing Code Section 503(b), Health and Safety Code Section 17958.1.)*

26 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 166-167 (NOLO Press 2011). This reference suggests that a landlord's policy that is more restrictive than two occupants per bedroom plus one additional occupant is suspect as being discriminatory.*

CREDIT CHECKS

The landlord or the landlord's agent will probably use your rental application to check your credit history and past landlord-tenant relations. The landlord may obtain your credit report from a **credit reporting agency** to help him or her decide whether to rent to you. Credit reporting agencies (or "credit bureaus") keep records of people's credit histories, called "credit reports." Credit reports state whether a person has been reported as being late in paying bills, has been the subject of an **unlawful detainer lawsuit** (see pages 72-78), or has filed bankruptcy.[27]

Some credit reporting agencies, called **tenant screening services**, collect and sell information on tenants. This information may include whether tenants paid their rent on time, whether they damaged previous rental units, whether they were the subject of an unlawful detainer lawsuit, and whether landlords considered them good or bad tenants.[28]

The landlord may use this information to make a final decision on whether to rent to you. Generally, landlords prefer to rent to people who have a history of paying their rent and other bills on time.

A landlord usually doesn't have to give you a reason for refusing to rent to you. However, if the decision is based partly or entirely on negative information from a credit reporting agency or a tenant screening service, the law requires the landlord to give you a written notice stating all of the following:

- The decision was based partly or entirely on information in the credit report; and
- The name, address, and telephone number of the credit reporting agency; and
- A statement that you have the right to obtain a free copy of the credit report from the credit reporting agency that prepared it and to dispute the accuracy or completeness of information in the credit report.[29]

If the landlord refuses to rent to you based on your credit report, it's a good idea to get a free copy of your credit report and to correct any erroneous **items of information** in it.[30] Erroneous items of information in your credit report may cause other landlords to refuse to rent to you also.

Also, if you know what your credit report says, you may be able to explain any problems when you fill out the rental application. For example, if you know that your credit report says that you never paid a bill, you can provide a copy of the canceled check to show the landlord that you did pay it.

The landlord probably will consider your **credit score** in deciding whether to rent to you. Your credit score is a numerical score that is based on information from a credit reporting agency. Landlords and other creditors use credit scores to gauge how likely a person is to meet his or her financial obligations, such as paying rent. You can request your credit score when you request

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27 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 16-20 (NOLO Press 2011); California Practice Guide, Landlord-Tenant, Paragraphs 9:419.5, 9:419.11 (Rutter Group 2011).*

28 *Schoendorf v. Unlawful Detainer Registry, Inc. (2002) 97 Cal.App.4th 227 [118 Cal.Rptr.2d 313].*

29 *Consumer Credit Reporting Agencies Act, Civil Code Sections 1785.1-1785.36 and Section 1785.20(a); Investigative Consumer Reporting Agencies Act, Civil Code Sections 1786-1786.60 and Section 1786.40; 15 United States Code Sections 1681-1681x and 1681m(a). In order to receive a free copy of your credit report, you must request it within 60 days after receiving the notice of denial. See discussion in California Practice Guide, Landlord-Tenant, Paragraphs 2:104.50-2:104.55 (Rutter Group 2011). Landlords' responsibilities when using credit reports are outlined in a publication by the Federal Trade Commission titled "Using Consumer Reports: What Landlords Need to Know," which can be found online at www.ftc.gov/bcp/edu/pubs/business/credit/bus49.shtm.*

30 *Civil Code Sections 1785.16, 1786.24; 15 United States Code Section 1681i.*

your credit report (you may have to pay a fair and reasonable fee for the score), or purchase your score from a vendor.[31]

APPLICATION SCREENING FEE

When you submit a rental application, the landlord may charge you an application screening fee. In 2011, the landlord may charge up to $42.41, and may use the fee to cover the cost of obtaining information about you, such as checking your personal references and obtaining a credit report on you.[32]

The application fee cannot legally be more than the landlord's actual out-of-pocket costs, and, in 2012, can never be more than $49.50. The landlord must give you a receipt that itemizes his or her out-of-pocket expenses in obtaining and processing the information about you. The landlord must return any unused portion of the fee (for example, if the landlord does not check your references).

The landlord can't charge you an application screening fee when the landlord knows or should know that there is no vacancy or that there will be no vacancy within a reasonable time. However, the landlord can charge an application screening fee under these circumstances if you agree to it in writing.[33]

If the landlord obtains your credit report after you've paid the screening fee, the landlord must give you a copy of the report if you request it.[34] As explained in the section on "Credit Checks," it's a good idea to get a copy of your credit report from the landlord so that you know what's being reported about you.

Before you pay the application screening fee, ask the landlord the following questions about it:

- How long will it take the landlord to get a copy of your credit report? How long will it take the landlord to review the credit report and decide whether to rent to you?
- Is the fee refundable if the credit check takes too long and you're forced to rent another place?
- If you already have a current copy of your credit report, will the landlord accept it and either reduce the fee or not charge it at all?

If you don't like the landlord's policy on application screening fees, you may want to look for another rental unit. If you decide to pay the application screening fee, any agreement regarding a refund should be in writing.

HOLDING DEPOSIT

Sometimes, the tenant and the landlord will agree that the tenant will rent the unit, but the tenant cannot move in immediately. In this situation, the landlord may ask the tenant for a **holding deposit**. A holding deposit is a deposit to hold the rental unit for a stated period of time until the tenant pays the first month's rent and any security deposit. During this period, the landlord agrees not to rent the unit to anyone else. If the tenant changes his or her mind about moving in, the landlord may keep at least some of the holding deposit.

Ask the following questions before you pay a holding deposit:

- Will the deposit be applied to the first month's rent? If so, ask the landlord for a deposit receipt stating this. Applying the deposit to the first month's rent is a common practice.

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31 Civil Code Sections 1785.15(a)(2), 1785.15.1, 1785.15.2; 15 United States Code Section 1681g(f). Vendors include www.TransUnion.com, www.Experian.com, www.Equifax.com, and www.myfico.com.

32 Civil Code Section 1950.6. The maximum fee is adjusted each year based on changes in the Consumer Price Index since January 1, 1998. In 2012, the maximum allowable fee is $49.50.

33 Civil Code Section 1950.6(c).

34 Civil Code Section 1950.6(f).

- Is any part of the holding deposit refundable if you change your mind about renting? As a general rule, if you change your mind, the landlord can keep some—and perhaps all—of your holding deposit. The amount that the landlord can keep depends on the costs that the landlord has incurred because you changed your mind—for example, additional advertising costs and lost rent.

You may also lose your deposit even if the reason you can't rent is not your fault—for example, if you lose your job and cannot afford the rental unit.

If you and the landlord agree that all or part of the deposit will be refunded to you in the event that you change your mind or can't move in, make sure that the written receipt clearly states your agreement.

A holding deposit merely guarantees that the landlord will not rent the unit to another person for a stated period of time. The holding deposit doesn't give the tenant the right to move into the rental unit. The tenant must first pay the first month's rent and all other required deposits within the holding period. Otherwise, the landlord can rent the unit to another person and keep all or part of the holding deposit.

Suppose that the landlord rents to somebody else during the period for which you've paid a holding deposit, and you are still willing and able to move in. The landlord should, at a minimum, return the entire holding deposit to you. You may also want to talk with an attorney, legal aid organization, tenant-landlord program, or housing clinic about whether the landlord may be responsible for other costs that you may incur because of the loss of the rental unit.

If you give the landlord a holding deposit when you submit the rental application, but the landlord does not accept you as a tenant, the landlord must return your entire holding deposit to you.

UNLAWFUL DISCRIMINATION

What is unlawful discrimination?

A landlord cannot refuse to rent to a tenant, or engage in any other type of **discrimination**, on the basis of group characteristics specified by law that are not closely related to the landlord's business needs.[35] Race and religion are examples of group characteristics specified by law. Arbitrary discrimination on the basis of any personal characteristic such as those listed under this heading also is prohibited.[36] Indeed, the California Legislature has declared that the opportunity to seek, obtain and hold housing without unlawful discrimination is a civil right.[37]

Under California law, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against a person or harass a person because of the person's race, color, religion, sex (including pregnancy, childbirth or medical conditions related to them, as well as gender and perception of gender), sexual orientation, marital status, national origin, ancestry, familial status, source of income,

Continued on page 13

35 *For example, the landlord may properly require that a prospective tenant have an acceptable credit history and be able to pay the rent and security deposit, and have verifiable credit references and a good history of paying rent on time. (See Portman and Brown, California Tenants' Rights, pages 104, 106 (NOLO Press 2010).)*

36 *California Practice Guide, Landlord-Tenant, Paragraph 2:553.15 (Rutter Group 2011), citing Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142 [278 Cal.Rptr. 614].*

37 *Government Code Section 12921(b).*

Examples of Unlawful Discrimination

Unlawful housing discrimination can take a variety of forms. Under California's Fair Employment and Housing Act and Unruh Civil Rights Act, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against any person because of the person's race, color, religion, sex (including pregnancy, childbirth or medical conditions related to them, as well as gender and perception of gender), sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, medical condition, or age in any of the following ways:

- Refusing to sell, rent, or lease.
- Refusing to negotiate for a sale, rental, or lease.
- Representing that housing is not available for inspection, sale, or rental when it is, in fact, available.
- Otherwise denying or withholding housing accommodations.
- Providing inferior housing terms, conditions, privileges, facilities, or services.
- Harassing a person in connection with housing accommodations.
- Canceling or terminating a sale or rental agreement.
- Providing segregated or separated housing accommodations.
- Refusing to permit a person with a disability, at the person with a disability's own expense, to make reasonable modifications to a rental unit that are necessary to allow the person with a disability "full enjoyment of the premises." As a condition of making the modifications, the landlord may require the person with a disability to enter into an agreement to restore the interior of the rental unit to its previous condition at the end of the tenancy (excluding reasonable wear and tear).
- Refusing to make reasonable accommodations in rules, policies, practices, or services when necessary to allow a person with a disability "equal opportunity to use and enjoy a dwelling" (for example, refusing to allow a person with a disability's companion or service dog).[38]

38 *Government Code Sections 12926(p), 12927(c)(1),(e), 12948, 12955(d); Civil Code Sections 51, 51.2, 55.1(b). See Moskovitz et al., California Landlord-Tenant Practice, Section 2.27 (Cal. Cont. Ed. Bar 2011).*

or disability.[39] California law also prohibits discrimination based on any of the following:

- A person's medical condition or mental or physical disability; or
- Personal characteristics, such as a person's physical appearance or sexual orientation that are not related to the responsibilities of a tenant;[40] or
- A perception of a person's race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or medical condition, or a perception that a person is associated with another person who may have any of these characteristics.[41]

Under California law, a landlord cannot use a different financial or income standard for persons who will be living together and combining their incomes than standard used for married persons who combine their incomes. In the case of a government rent subsidy, a landlord who is assessing a potential tenant's eligibility for a rental unit must use a financial or income standard that is based on the portion of rent that the tenant would pay.[42] A landlord cannot apply rules, regulations or policies to unmarried couples who are registered domestic partners that do not apply to married couples.[43] Nor can a landlord inquire as to the immigration status of the tenant or prospective tenant or require that a tenant or prospective tenant make any statement concerning his or her immigration or citizenship status.[44] However, a landlord can request information or documents in order to verify an applicant's identity and financial qualifications.[45]

It is illegal for landlords to discriminate against families with children under 18. However, housing for senior citizens may exclude families with children. "Housing for senior citizens" includes housing that is occupied only by persons who are at least age 62, or housing that is operated for occupancy by persons who are at least age 55 and that meets other occupancy, policy and reporting requirements stated in the law.[46]

Limited exceptions for single rooms and roommates

If the owner of an owner-occupied, single-family home rents out a room in the home to a roomer or a boarder, and there are no other roomers or boarders living in the household, the owner is not subject to the restrictions listed under "Examples of unlawful discrimination" on page 12.

However, the owner cannot make oral or written statements, or use notices or

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39 *Government Code Sections 12926(p), 12927(e), 12955(a),(d). See Fair Employment and Housing Act, Government Code Section 12900 and following; federal Fair Housing Act, 42 United States Code Section 3601 and following.*

40 *Civil Code Sections 51, 51.2, 53; Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142 [278 Cal.Rptr. 614].*

41 *Government Code Section 12955(m), Civil Code Section 51.*

42 *Government Code Sections 12955(n),(o).*

43 *Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142 [278 Cal.Rptr. 614].*

44 *Civil Code Section 1940.3; California Practice Guide, Landlord-Tenant, Paragraph 2:569.1 (Rutter Group 2011).*

45 *California Practice Guide, Landlord-Tenant, Paragraph 2.553 citing Koebke v. Bernardo Heights Country Club (2005) 36 Cal.4th 824 [31 Cal.Rptr.3d 565]. See Civil Code Section 1940.3.*

46 *42 United States Code Section 3607(b), Civil Code Section 51.3(b)(1). "Housing for senior citizens" also includes: Housing that is provided under any state or federal program that the Secretary of Housing and Urban Development has determined is specifically designed and operated to assist elderly persons (42 United States Code Section 3607(b)); or a housing development that is developed, substantially rehabilitated or substantially renovated for senior citizens and that has the minimum number of dwelling units required by law for the type of area where the housing is located (for example, 150 dwelling units built after January, 1996 in large metropolitan areas) (Civil Code Sections 51.2, 51.3. Government Code Section 12955.9. See Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721 [180 Cal.Rptr. 496]). While the law prohibits unlawful age discrimination, housing for homeless youth is both permitted and encouraged. (Government Code Section 11139.3.)*

advertisements which indicate any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability.[47] Further, the owner cannot discriminate on the basis of medical condition or age.[48]

A person in a single-family dwelling who advertises for a roommate may express a preference on the basis of gender, if living areas (such as the kitchen, living room, or bathroom) will be shared by the roommate.[49]

Resolving housing discrimination problems

If you are a victim of housing discrimination (for example, if a landlord refuses to rent to you because of your race or national origin), you may have several legal remedies, including:

- Recovery of out-of-pocket losses.
- An injunction prohibiting the unlawful practice.
- Access to housing that the landlord denied you.
- Damages for emotional distress.
- Civil penalties or punitive damages.
- Attorney's fees.

Sometimes, a court may order the landlord to take specific action to stop unlawful discrimination. For example, the landlord may be ordered to advertise vacancies in newspapers published by ethnic minority groups, or to place fair housing posters in the rental office.

A number of resources are available to help resolve housing discrimination problems:

- Local **fair housing organizations** (often known as fair housing councils). Look in the white (business) and yellow pages of the phone book. The National Fair Housing Alliance maintains a searchable database of local organizations that advocate for fair housing at www.Fairhousing.org.
- Local California apartment association chapters. Look in the white (business) and yellow pages of the phone book. The California Apartment Association maintains a list of local apartment association chapters at www.caanet.org.
- Local government agencies. Look in the white pages of the phone book under *City* or *County Government Offices*, or call the offices of local elected officials (for example, your city council representative or your county supervisor).
- The **California Department of Fair Employment and Housing** investigates housing discrimination complaints (but *not* other kinds of landlord-tenant problems). The department's Housing Enforcement Unit can be reached at (800) 233-3212 TTY (800) 700-2320. You can learn about the department's complaint process at www.dfeh.ca.gov.
- The **U.S. Department of Housing and Urban Development** (HUD) enforces the federal fair housing law, which prohibits discrimination based on sex, race, color, religion, national origin, familial status, and handicap (disability). To contact HUD, look in the white pages of the phone book under *United States Government Offices*, or go to www.hud.gov.
- **Legal aid organizations** provide free legal advice, representation, and other legal services in noncriminal cases to economically disadvantaged persons. Legal aid organizations are located throughout the state. Look in the yellow pages of the phone book under *Attorneys*, or go to www.lawhelpcalifornia.org/CA/StateDirectory.cfm.

47 *Government Code Sections 12927(a)(2)(A), 12955(c).*

48 *Civil Code Sections 51,51.2, Government Code Section 12948.*

49 *Government Code Section 12927(c)(2)(B).*

The Legal Aid Association of California also maintains a directory of legal aid organizations at www.calegaladvocates.org.

- Private attorneys. You may be able to hire a private attorney to take legal action against a landlord who has discriminated against you. For the names of attorneys who specialize in housing discrimination cases, call your county bar association or an attorney referral service.

You must act quickly if you believe that a landlord has unlawfully discriminated against you. The time limits for filing housing discrimination complaints are short. For example, a complaint to the Department of Fair Employment and Housing must be filed within one year from the date of the discriminatory act.[50] First, write down what happened, including dates and the names of those involved. Then, contact one of the resources listed above for advice and help.

BEFORE YOU AGREE TO RENT

Before you decide on a rental unit, there are several other points to consider. For example: Is an oral rental agreement legally binding? What are the differences between a lease and a rental agreement? What are some of the advantages and disadvantages of each? This section answers these and other questions.

RENTAL AGREEMENTS AND LEASES

General information

Before you can rent a rental unit, you and the landlord must enter into one of two kinds of agreements: a **periodic rental agreement** or a **lease**. The periodic rental agreement or lease creates the tenant's right to live in the **rental unit**. The tenant's right to use and possess the landlord's rental unit is called a **tenancy**.

A periodic rental agreement states the length of time (the number of days) between the rent payments—for example a week (seven days) or a month (30 days). The length of time between rent payments is called the **rental period**.

A periodic rental agreement that requires one rent payment each month is a month-to-month rental agreement, and the tenancy is a month-to-month tenancy.[51] The month-to-month rental agreement is by far the most common kind of rental agreement, although longer (or shorter) rental periods can be specified.

If the periodic rental agreement requires that rent be paid once a week, it is a week-to-week rental agreement and the tenancy is a week-to-week tenancy.[52]

In effect, a periodic rental agreement expires at the end of each period for which the tenant has paid rent, and is renewed by the next rent payment.[53] A periodic rental agreement does not state the total number of weeks or months that the agreement will be in effect. The tenant can continue to live in the rental unit as long as the tenant continues to pay rent, and as long as the landlord does not ask the tenant to leave.

In a periodic rental agreement, the length of time between the rent payments (the rental period) also establishes three things:

- How often the tenant must pay rent;
- The **amount of advance notice** that the tenant must give the landlord, and that the landlord must give the tenant, if either decides to terminate (end) the tenancy; and
- The amount of advance notice the landlord must give the tenant if the landlord decides to change the terms of the rental agreement other than the rent.[54] (Special rules apply

50 *Government Code Section 12980(b).*

51 *Civil Code Section 1944.*

52 *Civil Code Section 1944.*

53 *Civil Code Sections 1945, 1946, 1946.1.*

54 *Civil Code Sections 827(a), (b).*

to the amount of advance notice that the landlord must give the tenant to raise the rent (see pages 31–33).)

Oral rental agreements

In an oral rental agreement, you and the landlord agree orally (not in writing) that you will rent the rental unit. In addition, you agree to pay a specified rent for a specified period of time —for example, a week or a month. This kind of rental agreement is legally binding on both you and the landlord, even though it is not in writing unless a tenant and a landlord agree to the lease of a rental unit for more than one year, the agreement must be in writing.[55] If such an agreement is not in writing, it is not enforceable. If you have a valid oral agreement and later have a disagreement with your landlord, you will have no written proof of the terms of your rental agreement. Therefore, it's usually best to have a written rental agreement.

However, even if the agreement is oral, the landlord must give you a written statement regarding the name, street address, and phone number of the landlord or agent for receipt of legal notices; the contact information for the person who is to accept the rent; and how the rent is to be paid (for example by cash, check or money order.) [56]

It's especially important to have a written rental agreement if your tenancy involves special circumstances, such as any of the following:

- You plan to live in the unit for a long time (for example, nine months or a year);
- Your landlord has agreed to your having a pet or water-filled furniture (such as a waterbed); or
- The landlord has agreed to pay any expenses (for example, utilities or garbage removal) or to provide any services (for example, a gardener).

Written rental agreements

A written rental agreement is a periodic rental agreement that has been put in writing. The written rental agreement specifies all the terms of the agreement between you and the landlord —for example, it states the rent, the length of time between rent payments, and the landlord's and your obligations. It may also contain clauses on pets, late fees, and amount of notice.

The length of time between rent payments is important. In most cases, the amount of advance notice that the landlord gives you when notifying you of changes in the terms of the tenancy must be the same as the length of time between rent payments. For example, if you have a month-to-month rental agreement, the landlord usually must give you 30 days' advance written notice of changes such as an increase in the charge for parking or an increase in the security deposit.

In addition, the amount of advance written notice that *you* give the *landlord* before you move out of the rental unit must be the same as the length of time between rent payments. For example, in a month-to-month rental agreement, you must give the landlord at least 30 days' advance written notice in order to end the rental agreement (see page 49–50). If you have a week-to-week rental agreement, you must give the landlord at least seven days' advance written notice in order to end the rental agreement.

Normally, the amount of advance written notice that the landlord gives the tenant to change the terms of the tenancy must be, at a minimum, the same as the length of time between rent payments. The landlord and tenant can specifically agree in writing to a shorter amount of notice (a shorter notice period).[57] A landlord and a tenant who have a month-to-month rental agreement might agree to 10 days' advance written notice for a change in the terms of the

55 *Civil Code Section 1962(b).*

56 *Civil Code Sections 1091, 1624(a)(3).*

57 *Civil Code Section 827(a), 1946.*

agreement (other than the rent). This would allow the landlord, for example, to increase the charge for parking or end the tenancy by giving the tenant 10 days' advance written notice. Similarly, the tenant could end the tenancy by giving the landlord 10 days' advance written notice. However, the notice period agreed to by the landlord and the tenant can *never* be shorter than seven days.[58]

If you have a written periodic rental agreement, special rules apply to the amount of advance notice that the landlord must give you to raise the rent (see pages 31–33).

Leases

A lease states the total number of months that the lease will be in effect—for example, six or 12 months. Most leases are in writing, although oral leases are legal. If the lease is for more than one year, it must be in writing.[59]

It is important to understand that, even though the lease requires the rent to be paid monthly, you are bound by the lease until it expires (for example, at the end of 12 months). This means that you must pay the rent and perform all of your obligations under the lease during the entire lease period.[60]

There are some advantages to having a lease. If you have a lease, the landlord cannot raise your rent while the lease is in effect, unless the lease expressly allows rent increases. Also, the landlord cannot evict you while the lease is in effect, except for reasons such as your damaging the property or failing to pay rent.

A lease gives the tenant the security of a long-term agreement at a known cost. Even if the lease allows rent increases, the lease should specify a limit on how much and how often the rent can be raised.

The disadvantage of a lease is that if you need to move, a lease may be difficult for you to break, especially if another tenant can't be found to take over your lease. If you move before the lease ends, the landlord may have a claim against you for the rent for the rest of the lease term.

Before signing a lease, you may want to talk with an attorney, legal aid organization, housing clinic, or tenant-landlord program to make sure that you understand all of the lease's provisions, your obligations, and any risks that you may face.

SHARED UTILITY METERS

Some buildings have a single gas or electric meter that serves more than one rental unit. In other buildings, a tenant's gas or electric meter may also measure gas or electricity used in a common area, such as the laundry room or the lobby. In situations like these, the landlord must disclose to you that utility meters are shared *before* you sign the rental agreement or lease.[61] If you become a tenant, the landlord must reach an agreement with you, which must be in writing, about who will pay for the shared utilities (see page 22).

Rental units in older buildings may not have separate water meters or submeters. California law does not specifically regulate how landlords bill tenants for water and sewer utilities. Ask the

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58 Civil Code Section 827(a).

59 Civil Code Sections 1091, 1624(a)(3).

*60 However, the tenant's obligation to pay rent depends on the landlord's living up to his or her obligations under the **implied warranty of habitability**. See discussion of "Repairs and Habitability" (pages 36–40) and "Having Repairs Made" (pages 40–46).*

61 Civil Code Section 1940.9, Public Utilities Code Section 739.5. See California Practice Guide, Landlord-Tenant, Paragraphs 2:170.1–2:170.9 (Rutter Group 2011). See discussion of utilities billing in Moskovitz et al., California Landlord-Tenant Practice, Paragraph 4.41A-4.41E (Cal Cont. Ed. Bar 2011). There it is discussed that the California Public Utilities Commission (CPUC) has held that it has no jurisdiction in the vast majority of landlord-tenant billing relationships. Because there is no direct regulation or guidance from the CPUC or statute, it is important that all facets of the landlord-tenant billing relationship for utilities are agreed to in writing.

landlord if the rental unit that you plan to rent has its own water meter or submeter. If it does not, and if the landlord will bill you for water or sewer utilities, be sure that you understand how the landlord will calculate the amount that you will be billed.[62]

TRANSLATION OF PROPOSED RENTAL AGREEMENT

A landlord and a tenant may negotiate primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean for the rental, lease, or sublease of a rental unit. In this situation, the landlord must give the tenant a written translation of the proposed lease or rental agreement in the language used in the negotiation *before* the tenant signs it.[63] This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for one month or less.

The landlord must give the tenant the written translation of the lease or rental agreement whether or not the tenant requests it. The translation must include every term and condition in the lease or rental agreement, but may retain elements such as names, addresses, numerals, dollar amounts and dates in English. It is never sufficient for the landlord to give the written translation of the lease or rental agreement to the tenant after the tenant has signed it.

However, the landlord is not required to give the tenant a written translation of the lease or rental agreement if all of the following are true:

- The Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking tenant negotiated the rental agreement through his or her own interpreter; and
- The tenant's interpreter is able to speak fluently and read with full understanding English, as well as Spanish, Chinese, Tagalog, Vietnamese, or Korean (whichever was used in the negotiation); and
- The interpreter is not a minor (under 18 years of age); and
- The interpreter is not employed or made available by or through the landlord.

If a landlord who is required to provide a written translation of a lease or rental agreement in one of these languages fails to do so, the tenant can rescind (cancel) the agreement.[64]

WHEN YOU HAVE DECIDED TO RENT

Before you sign a rental agreement or a lease, read it carefully so that you understand all of its terms. What kind of terms should be in the rental agreement or lease? Can the rental agreement or lease limit the basic rights that the law gives to all tenants? How much can the landlord require you to pay as a security deposit? This section answers these and other questions.

62 *See discussion of utility billing in Moskovitz et al., California Landlord-Tenant Practice, Sections 4.41A-4.41E (Cal. Cont. Ed. Bar 2009). There it is discussed that the California Public Utilities Commission (CPUC) has held that it has no jurisdiction in the vast majority of landlord-tenant billing relationships. Because there is no direct regulation or guidance from the CPUC or statute, it is important that all facets of the landlord-tenant billing relationship for utilities be agreed to in writing.*

63 *Civil Code Section 1632(b). The purpose of this law is to ensure that the Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking person has a genuine opportunity to read the written translation of the proposed agreement that has been negotiated primarily in one of these languages, and to consult with others, before signing the agreement.*

64 *Civil Code Section 1632(k). See Civil Code Section 1688 and following on rescission of contract.*

WHAT THE RENTAL AGREEMENT OR LEASE SHOULD INCLUDE

Most landlords use printed forms for their leases and rental agreements. However, printed forms may differ from each other. *There is no standard rental agreement or standard lease!* Therefore, carefully read and understand the entire document before you sign it.

The written rental agreement or lease should contain all of the promises that the landlord or the landlord's agent has made to you, and should not contain anything that contradicts what the landlord or the agent told you. If the lease or rental agreement refers to another document, such as "tenant rules and regulations," get a copy and read it before you sign the written agreement.

Don't feel rushed into signing. Make sure that you understand everything that you're agreeing to by signing the rental agreement or lease. If you don't understand something, ask the landlord to explain it to you. If you still don't understand, discuss the agreement with a friend, or with an attorney, legal aid organization, tenant-landlord program, or housing clinic.

Key terms

The written rental agreement or lease should contain key terms, such as the following:

- The names of the landlord and the tenant.
- The address of the rental unit.
- The amount of the rent.
- When the rent is due, to whom it is to be paid, and where it is to be paid.
- The amount and purpose of the security deposit (see pages 24–26).
- The amount of any late charge or returned check fee (see page 30).
- Whether pets are allowed.
- The number of people allowed to live in the rental unit.
- Whether attorney's fees can be collected from the losing party in the event of a lawsuit between you and the landlord.
- Who is responsible for paying utilities (gas, electric, water, and trash collection).[65]
- If the rental is a house or a duplex with a yard, who is responsible for taking care of the yard.
- Any promises by the landlord to make repairs, including the date by which the repairs will be completed.
- Other items, such as whether you can sublet the rental unit (see page 35–36) and the conditions under which the landlord can inspect the rental unit (see pages 33–34).

In addition, the rental agreement or lease must disclose:

- The name, address, and telephone number of the authorized manager of the rental property and an owner (or an agent of the owner) who is authorized to receive legal notices for the owner. (This information can be posted conspicuously in the building instead of being disclosed in the rental agreement or lease.)
- The name, address, and telephone number of the person or entity to whom rent payments must be made. If you may make your rent payment in person, the agreement or lease must state the usual days and hours that rent may be paid in person. Or, the document may state the name, street address, and account number of the financial institution where rent payments may be made (if it is within five miles of the unit) or information necessary to establish an electronic funds transfer for paying the rent.

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65 *Civil Code Section 1942.2. If your landlord is obligated to pay utilities and has failed to pay, you may take over a utility service account if it is pending termination. This law requires utility service providers to give the termination of service notice in writing to the tenant in the following languages: English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. A tenant who has made a payment to a utility pursuant to Section 777, 777.1, 10009, 10009.1, 12822, 12822.1, 16481, or 1648.1 of the Public Utilities Code may deduct the payment from the rent.*

- The form in which rent payments must be made (for example, by check or money order).[66] (As a general rule, the landlord cannot require that you make rent payments in cash. (See pages 29–30.)[67]

If the rental agreement is oral, the landlord or the landlord's agent must give the tenant, within 15 days, a written statement containing the information in the foregoing three bullet points. The tenant may request a copy of this written statement each year thereafter.[68]

Every rental agreement or lease also must contain a written notice that the California Department of Justice maintains a Web site at www.meganslaw.ca.gov that provides information about specified registered sex offenders. This notice must be in legally required language.[69]

A rental agreement or lease may contain other terms. Examples include whether you must park your car in a certain place, and whether you must obtain permission from the landlord before having a party. A landlord may lawfully prohibit smoking anywhere on rental property. If the landlord chooses to do so, then the rental agreement must specify where on the property smoking is prohibited. If a landlord chooses to prohibit smoking after a rental agreement is entered into, the landlord must provide you with adequate notice of this change.[69.1] A landlord cannot prevent you from posting political signs, as long as the sign is less than six square feet In size and is not otherwise prohibited by law. If no local ordinance gives time limits for how long you may have the sign up, your landlord may establish a reasonable time limit for the posting and removal of the sign. A "'reasonable'" time period means at least 90 days before the election or vote to which the sign refers and at least 15 days after.[69.2]

It is important that you understand all of the terms of your rental agreement or lease. If you don't comply with them, the landlord may have grounds to evict you.

Don't sign a rental agreement or a lease if you think that its terms are unfair. If a term doesn't fit your needs, try to negotiate a more suitable term (for example, a smaller security deposit or a lower late fee). It's important that any agreed-upon change in terms be included in the rental agreement or lease that both you and the landlord sign. If you and the landlord agree to change a term, the change can be made in handwriting in the rental agreement or lease. Both of you should then initial or sign in the area immediately next to the change to show your approval of the change. Or, the document can be retyped with the new term included in it.

If you don't agree with a term in the rental agreement or lease, and can't negotiate a better term, carefully consider the importance of the term, and decide whether or not you want to sign the document.

The owner of the rental unit or the person who signs the rental agreement or lease on the owner's behalf must give you a copy of the document within 15 days after you sign it.[70] Be sure that your copy shows the signature of the owner or the owner's agent, in addition to your signature. Keep the document in a safe place.

Continued on page 22

66 *Civil Code Section 1961-1962.7. See Muskovitz et al, California Landlord-Tenant Practice, Section 1.21A (Cal. Cont. Ed. Bar 2011); California Practice Guide, Landlord-Tenant, Paragraphs 2:147-147.6 (Rutter Group 2011).*

67 *Civil Code Section 1947.3.*

68 *Civil Code Section 1962(b).*

69 *Civil Code Section 2079.10a, Penal Code Section 290.46. The required language differs depending on the date of the lease or rental agreement. See Appendix 5.*

69.1 *Civil Code Section 1947.5.*

69.2 *Civil Code Section 1940.4.*

70 *Civil Code Section 1962(a)(4).*

Alterations to Accommodate a Tenant With a Disability

A landlord must allow a tenant with a disability to make *reasonable* modifications to the rental unit to the extent necessary to allow the tenant "full enjoyment of the premises."[71] The *tenant* must pay for the modifications. As a condition of making the modifications, the landlord may require the tenant to enter into an agreement to restore the interior of the rental unit to its previous condition at the end of the tenancy. The landlord cannot require an additional security deposit in this situation. However, the landlord and tenant may agree, as part of the tenant's agreement to restore the rental unit, that the tenant will pay a "reasonable estimate" of the restoration cost into an **escrow account**.[72]

71 Civil Code Section 54.1(b)(3)(A). See Examples of Unlawful Discrimination page 12.

72 Civil Code Section 54.1(b)(3)(A).

Tenant's basic legal rights

Tenants have basic legal rights that are always present, no matter what the rental agreement or lease states. These rights include all of the following:

- Limits on the amount of the security deposit that the landlord can require you to pay (see pages 24–26).
- Limits on the landlord's right to enter the rental unit (see pages 33–36).
- The right to a refund of the security deposit, or a written accounting of how it was used, after you move (see pages 53–65).
- The right to sue the landlord for violations of the law or your rental agreement or lease.
- The right to repair serious defects in the rental unit and to deduct certain repair costs from the rent, under appropriate circumstances (see pages 41–42).
- The right to withhold rent under appropriate circumstances (see pages 43–45).
- Rights under the warranty of habitability (see pages 36–47).
- Protection against retaliatory eviction (see pages 79–80).

These and other rights will be discussed throughout the rest of this booklet.

Landlord's and tenant's duty of good faith and fair dealing

Every rental agreement and lease requires that the landlord and tenant deal with each other fairly and in good faith. Essentially, this means that both the landlord and the tenant must treat each other honestly and reasonably. This duty of good faith and fair dealing is implied by law in every rental agreement and every lease, even though the duty probably is not expressly stated.[73]

Shared utilities

If the utility meter for your rental unit is shared with another unit or another part of the building (see page 17), then the landlord must reach an agreement with you on who will pay for the shared utilities. This agreement must be in writing (it can be part of the rental agreement or lease), and can consist of one of the following options:

- The landlord can pay for the utilities provided through the meter for your rental unit by placing the utilities in the landlord's name;
- The landlord can have the utilities in the area outside your rental unit put on a separate meter in the landlord's name; or
- You can agree to pay for the utilities provided through the meter for your rental unit to areas outside your rental unit.[74]

LANDLORD'S DISCLOSURES

Lead-based paint

If the rental unit was constructed before 1978, the landlord must comply with all of these requirements:

- The landlord must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling before the tenant signs the lease or rental agreement. The landlord also must give the tenant a copy of the federal government's pamphlet, "Protect Your Family From Lead in Your Home" (available by calling

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73 Andrews v. Mobile Aire Estates (2005) 125 Cal.App.4th 578 [22 Cal.Rptr.3d 832]. A typical legal description of the implied covenant of good faith and fair dealing is that neither party will do anything that will injure the right of the other party to receive the benefits of the agreement. See the Andrews decision for a discussion of the closely related implied covenant of quiet enjoyment.

74 Civil Code Section 1940.9. This section also provides remedies for violations.

(800) 424-LEAD, or online at www.epa.gov/lead/pubs/leadpdfe.pdf), before the tenant signs the lease or rental agreement.[75]

- The landlord is not required to conduct any evaluation of the lead-based paint, or to remove it.[76]
- The lease or rental agreement must contain a lead warning statement in legally-required language.[77]
- The landlord also must give potential tenants and tenants a written Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards.[78]

Periodic pest control treatments

A pest control company must give written notice to the landlord and tenants of rental property regarding pesticides to be used when the company provides an initial treatment as part of an ongoing pest-control service contract. The landlord must give a copy of this notice to every new tenant who will occupy a rental unit that will be serviced under the service contract.[79]

Asbestos

Residential property built before 1981 may contain asbestos. A leading reference for landlords recommends that landlords make asbestos disclosures to tenants whenever asbestos is discovered in the rental property. (This book also contains detailed information on asbestos disclosures, and protections that landlords must provide their employees.)[80]

Carcinogenic material

A landlord with 10 or more employees must disclose the existence of known carcinogenic material (for example, asbestos) to prospective tenants.[81]

Methamphetamine contamination

Residential property that has been used for methamphetamine production may be significantly contaminated.

A local health officer who inspects rental property and finds that it is contaminated with a hazardous chemical related to methamphetamine laboratory activities must issue an order prohibiting the use or occupancy of the property. This order must be **served** on the property owner and all occupants. The owner and all occupants then must vacate the affected units until the officer sends the owner a notice that the property requires no further action.

The owner must give written notice of the health officer's order and a copy of it to potential tenants who have completed an application to rent the contaminated property. Before signing a rental agreement, the tenant must acknowledge in writing that he or she has received the notice and order. The tenant may void (cancel) the rental agreement if the owner does not does not comply with these requirements. The owner must comply with these requirements until he or she receives

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75 California Practice Guide, Landlord-Tenant, Paragraphs 2:104.20-2:104.23 (Rutter Group 2011); 42 United States Code Sections 4851b, 4852d (this disclosure requirement does not apply to dwellings with zero bedrooms, or to housing for elderly or disabled persons (unless a child younger than six is expected to live in the housing)); 24 Code of Federal Regulations Section 35.88; see Health and Safety Code Section 17920.10 (dwellings that contain lead hazards).

76 24 Code of Federal Regulations Section 35.88.

77 24 Code of Federal Regulations Section 35.92. See Appendix 5.

78 Moskovitz et al., California Landlord-Tenant Practice, Section 1.29 (Cal. Cont. Ed. Bar 2011); 24 Code of Federal Regulations Sections 35.88, 35.92. The disclosure form is available at www.epa.gov/lead/pubs/lesr_eng.pdf and is reproduced in Appendix 5.

79 Business and Professions Code Section 8538, Civil Code Section 1940.8.

80 Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 245-248 (NOLO Press 2011). See also: Portman & Brown, California Tenants Rights, pages 184-198 (NOLO Press 2010).

81 Moskovitz et al., California Landlord-Tenant Practice, Section 1.29 (Cal. Cont. Ed. Bar 2011); Health and Safety Code Sections 25249.5-25249.13.

a notice from the health officer that the property requires no further action.[82]

These requirements took effect on January 1, 2006.

Demolition permit

The owner of a dwelling who has applied for a permit to demolish the dwelling must give written notice of this fact to a prospective tenant *before* accepting any fee from the tenant or entering into a rental agreement with the tenant. (The owner must give notice to current tenants, including tenants who haven't moved in yet, before applying for a permit.) The notice must state the earliest approximate dates that the owner expects the demolition to occur and that the tenancy will end.[83]

Military base or explosives

A landlord who knows that a rental unit is within one mile of a closed military base in which ammunition or military explosives were used must give written notice of this fact to a prospective tenant. The landlord must give the tenant this notice before the tenant signs a rental agreement.[84]

Death in the rental unit

If a prior occupant of the rental unit died in the unit within the last three years, the owner or the owner's agent must disclose this fact to a prospective tenant when the tenant offers to rent or lease the unit. The owner or agent must disclose the manner of death, but is not required to disclose that the occupant was ill with, or died from, AIDS. However, the owner or agent cannot intentionally misrepresent the cause of death in response to a direct question.[85]

Condominium conversion project

A rental unit may be in a condominium conversion project. A condominium conversion project is an apartment building that has been converted into condominiums or a newly constructed condominium building that replaces demolished residential housing. Before the potential tenant signs a lease or rental agreement, the owner or subdivider of the condominium project must give the tenant written notice that:

- The unit has been approved for sale, and may be sold, to the public, and
- The tenant's lease may be terminated (ended) if the unit is sold, and
- The tenant will be informed at least 90 days before the unit is offered for sale, and
- The tenant normally will be given a first option to buy the unit.

The notice must be in legally required language. This notice requirement applies only to condominium conversion projects that have five or more dwelling units and that have received final approval. If the notice is not given, the tenant may recover actual moving expenses not exceeding $1,100 and the first month's rent on the tenant's new rental unit, if any, not to exceed $1,100. These notice provisions do not apply to projects of four dwelling units or less, or as a result of transfers due to: court order (including probate proceedings), foreclosure proceedings, or trusts.[86]

BASIC RULES GOVERNING SECURITY DEPOSITS

At the beginning of the tenancy, the landlord most likely will require you to pay a **security deposit**. The landlord can use the security deposit, for example, if you move out owing rent, damage the rental unit beyond normal wear and tear, or leave the rental less clean than when you moved in.[87]

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83 Civil Code Section 1940.6.

84 Civil Code Section 1940.7.

85 Civil Code Section 1710.2.

86 Government Code Section 66459; California Practice Guide, Landlord-Tenant, Paragraphs 5:313.5-5:313.9 (Rutter Group 2011). See Appendix 5 for the required language.

87 Civil Code Section 1950.5(b).

Under California law, a lease or rental agreement cannot say that a security deposit is nonrefundable.[88] This means that when the tenancy ends, the landlord *must* return to you any payment that is a security deposit, *unless* the landlord properly uses the deposit for a lawful purpose, as described on pages 26 and 53–65.

Almost all landlords charge tenants a security deposit. The security deposit may be called last month's rent, security deposit, pet deposit, key fee, or cleaning fee. The security deposit may be a combination, for example, of the last month's rent plus a specific amount for security. No matter what these payments or fees are called, the law considers them all, as well as any other deposit or charge, to be part of the security deposit.[89] The one exception to this rule is stated in the next paragraph.

The law allows the landlord to require a tenant to pay an application screening fee, *in addition* to the security deposit (see page 10).[90] The application screening fee is *not* part of the security deposit. However, any other fee charged by the landlord at the beginning of the tenancy to cover the landlord's costs of processing a new tenant *is* part of the security deposit.[91] Here are examples of the two kinds of fees:

- **Application screening fee**—A landlord might charge you an application screening fee to cover the cost of obtaining information about you, such as checking your personal references and obtaining your credit report (see page 10). The application screening fee is *not* part of the security deposit. Therefore, it is not refundable as part of the security deposit.
- **New tenant processing fee**—A landlord might charge you a fee to reimburse the landlord for the costs of processing you as a new tenant. For example, at the beginning of the tenancy, the landlord might charge you for providing application forms, listing the unit for rent, interviewing and screening you, and similar purposes. These kinds of fees *are* part of the security deposit.[92] Therefore, these fees are refundable as part of the security deposit, *unless* the landlord properly uses the deposit for a lawful purpose, as described on pages 24 and 53–65.

The law limits the total amount that the landlord can require you to pay as a security deposit. The total amount allowed as security depends on whether the rental unit is unfurnished or furnished and whether you have a waterbed.

- **Unfurnished rental unit:** The total amount that the landlord requires as security cannot be more than the amount of *two months' rent*. If you have a waterbed, the total amount allowed as security can be up to two-and-a-half times the monthly rent.
- **Furnished rental unit:** The total amount that the landlord requires as security cannot be more than the amount of *three months' rent*. If you have a waterbed, the total amount allowed as security can be up to three-and-a-half times the monthly rent.
- **Plus first month's rent:** The landlord can require you to pay the first month's rent *in addition* to the security deposit.[93]

The landlord normally cannot require that you pay the security deposit in cash. (See page 29.)

88 *Civil Code Section 1950.5(m); Portman and Brown, California Tenants' Rights, page 235 (NOLO Press 2010).*

89 *Civil Code Section 1950.5(b).*

90 *Civil Code Sections 1950.5(b), 1950.6.*

91 *Civil Code Section 1950.5(b).*

92 *Civil Code Section 1950.5(b).*

93 *Civil Code Section 1950.5(c). These limitations do not apply to long-term leases of at least six months, in which advance payment of six months' rent (or more) may be charged. Civil Code Section 1940.5 sets the limits on security deposits when the tenant has a waterbed or water-filled furniture. The section also allows the landlord to charge a reasonable fee to cover the landlord's administrative costs.*

Security deposit example: Suppose that you have agreed to rent an unfurnished apartment for $500 a month. Before you move in, the landlord can require you to pay up to two times the amount of the monthly rent as a security deposit ($500 x 2 = $1,000). The landlord also can require you to pay the first month's rent of $500, plus an application screening fee of up to $42.41, in addition to the $1,000 security deposit. This is because the first month's rent and the application screening fee are not part of the security deposit.

Suppose that the landlord has required you to pay a $1,000 security deposit (the maximum allowed by law for an unfinished unit when the rent is $500 a month). The landlord cannot also demand, for example, a $200 cleaning deposit, a $15 key deposit, or a $50 fee to process you as a new tenant. The landlord *cannot* require any of these extra fees because the total of all deposits then would be more than the $1,000 allowed by law when the rent is $500 a month.

Suppose that you ask the landlord to make structural, decorative or furnishing alterations to the rental unit, and that you agree to pay a specific amount for the alterations. This amount is not subject to the limits on the amount of the security deposit discussed on pages 24–25, and is not part of the security deposit. Suppose, however, that the alterations that you have requested involve cleaning or repairing damage for which the landlord may charge the *previous tenant's* security deposit. In that situation, the amount that you pay for the alterations *would* be subject to the limits on the amount of the security deposit and *would* be part of the security deposit.[94]

A payment that is a security deposit cannot be nonrefundable.[95] However, when you move out of the rental, the law allows the landlord to keep part or all of the security deposit in any one or more of the following situations:

- You owe rent;
- You leave the rental less clean than when you moved in;
- You have damaged the rental beyond normal wear and tear; and
- You fail to restore personal property (such as keys or furniture), other than because of normal wear and tear.

If none of these circumstances is present, the landlord must return the entire amount that you have paid as security. However, if you have left the rental very dirty or damaged beyond normal wear and tear, for example, the landlord can keep an amount that is reasonably necessary to clean or repair the rental.[96] Deductions from security deposits are discussed in detail on pages 53–65.

Make sure that your rental agreement or lease clearly states that you have paid a security deposit to the landlord and correctly states the amount that you have paid. The rental agreement or lease should also describe the circumstances under which the landlord can keep part or all of the security deposit. Most landlords will give you a written receipt for all amounts that you pay as a security deposit. Keep your rental agreement or lease in case of a dispute.[97]

THE INVENTORY CHECKLIST

You and the landlord or the landlord's agent should fill out the Inventory Checklist on pages 107–110 (or one like it). It's best to do this

94 *Civil Code Section 1950.5(c).*

95 *Civil Code Section 1950.5(m).*

96 *Civil Code Section 1950.5(b),(e).*

97 *Civil Code Section 1950.5(o) (describes evidence that proves the existence and amount of a security deposit).*

before you move in, but it can be done two or three days later, if necessary. You and the landlord or agent should walk through the rental unit together and note the condition of the items included in the checklist in the "Condition Upon Arrival" section.

Both of you should sign and date the checklist, and both of you should keep a copy of it. Carefully completing the checklist at the beginning of the tenancy will help avoid disagreements about the condition of the unit when you move out. See additional suggestions about the Inventory Checklist on page 107.

RENTER'S INSURANCE

Renter's insurance protects the tenant's personal property from losses caused by fire or theft. It also protects a tenant against liability (legal responsibility) for many claims or lawsuits filed by the landlord or others alleging that the tenant has negligently (carelessly) injured another person or damaged the person's property. Renter's insurance usually only protects the policyholder. It would not protect the roommate's personal property; in order to be protected, the roommate must take out his or her own policy.

Carelessly causing a fire that destroys the rental unit or another tenant's property is an example of **negligence** for which you could be held legally responsible.[98] You could be required to pay for the losses that the landlord or other tenant suffers. Renter's insurance would pay the other party on your behalf for some or all of these losses. For that reason, it's often a good idea to purchase renter's insurance.[99]

Renter's insurance may not be available in every area. If renter's insurance is available, and if you choose to purchase it, be certain that it provides the protection you want and is fairly priced. You should check with more than one insurance company, since the price and type of coverage may differ widely among insurance companies. The price also will be affected by how much insurance protection you decide to purchase.

Your landlord probably has insurance that covers the rental unit or dwelling, but you shouldn't assume that the landlord's insurance will protect you. If the landlord's insurance company pays the landlord for a loss that you cause, the insurance company may then sue *you* to recover what it has paid the landlord.

If you want to use a waterbed, the landlord can require you to have a waterbed insurance policy to cover possible property damage.[100]

RENT CONTROL

Some California cities have **rent control ordinances** that limit or prohibit rent increases.[101] Some of these ordinances specify procedures that a landlord must follow before increasing a tenant's rent, or that make evicting a tenant more difficult for a landlord. Each community's ordinance is different.

For example, some ordinances allow landlords to evict tenants only for "just cause." Under these ordinances, the landlord must state and prove a valid reason for terminating a month-to-month tenancy. Other cities don't have this requirement.

Some cities have boards that have the power to approve or deny increases in rent. Other cities' ordinances allow a certain percentage increase in rent each year. Because of recent changes in State law, all rent control cities now have "vacancy decontrol." This means that the landlord can re-rent a unit at the market rate when the tenant moves out voluntarily or when the landlord terminates the tenancy for nonpayment of rent.

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98 *In general, every person is responsible for damages sustained by someone else as a result of the person's carelessness. (Civil Code Section 1714).*

99 *See discussion of renter's insurance in Portman and Brown, California Tenants' Rights, pages 313-314 (NOLO Press 2010).*

100 *Civil Code Section 1940.5(a).*

101 *See list of rent control cities in Appendix 2 on page 90.*

Some ordinances make it more difficult for owners to convert rentals into condominiums.

Some kinds of property cannot be subject to local rent control. For example, property that was issued a certificate of occupancy after February 1995 is exempt from rent control. Beginning January 1, 1999, tenancies in single family homes and condos are exempt from rent control if the tenancy began after January 1, 1996.[102]

A rent control ordinance may change the landlord-tenant relationship in other important ways besides those described here. Find out if you live in a city with rent control. (See the list of cities with rent control in Appendix 2.) Contact your local housing officials or rent control board for information. You can find out about the rent control ordinance in your area (if there is one) at your local law library,[103] or by requesting a copy of your local ordinance from the city or county clerk's office. Some cities post information about their rent control ordinances on their Web site (for example, information about Los Angeles' rent control ordinance is available at www.lacity.org/lahd).

LIVING IN THE RENTAL UNIT

As a **tenant**, you must take reasonable care of your **rental unit** and any common areas that you use. You must also repair all damage that you cause, or that is caused by anyone for whom you are responsible, such as your family, guests, or pets.[104] These important tenant responsibilities are discussed in more detail under "Dealing with Problems," pages 36–47.

This section discusses other issues that can come up while you're living in the rental unit. For example, can the **landlord** enter the rental unit without notifying you? Can the landlord raise the rent even if you have a **lease**? What can you do if you have to move before the end of the lease?

PAYING THE RENT

When is rent due?

Most **rental agreements** and leases require that rent be paid at the beginning of each **rental period**. For example, in a month-to-month tenancy, rent usually must be paid on the first day of the month. However, your lease or rental agreement can specify any day of the month as the day that rent is due (for example, the 10th of every month in a month-to-month rental agreement, or every Tuesday in a week-to-week rental agreement).

As explained on page 19, the rental agreement or lease must state the name and address of the person or entity to whom you must make rent payments. If this address does not accept personal deliveries, you can mail your rent payment to the owner at the stated name and address. If you can show proof that you mailed the rent to the stated name and address (for example, a receipt for certified mail), the law assumes that the rent is receivable by the owner on the date of postmark.[105]

It's very important for you to pay your rent on the day it's due. Not paying on time might lead to a negative entry on your **credit report**,[106] late fees (see page 30), and even eviction (see pages 67–71).

102 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 81 and Appendix C (NOLO Press 2011); and Civil Code Section 1954.52.*

103 *For example, see the discussions in Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, Appendix C (NOLO Press 2011) and California Practice Guide, Landlord-Tenant, Chapter 5 (Rutter Group 2011).*

104 *Civil Code Sections 1929, 1941.2.*

105 *Civil Code Section 1962(f).*

106 *If the landlord intends to report negative credit information about the tenant to a credit bureau, the landlord must disclose this intent to the tenant. The landlord must give notice to the tenant, either before reporting the information, or within 30 days after reporting it. The landlord may personally deliver the notice to the tenant or send it to the tenant by first-class mail. The notice may be in the rental agreement. (Civil Code Section 1785.26; Moskovitz et al., California Landlord-Tenant Practice, Sections 1.29, 4.9 (Cal. Cont. Ed. Bar 2011).*

Check or cash?

The landlord or landlord's agent normally cannot require you to pay rent in cash. However, the landlord or agent *can* require you to pay rent in cash if, within the last three months, you have paid the landlord or agent with a check that has been dishonored by the bank. (A **dishonored check** is one that the bank returns without paying because you stopped payment on it or because your account did not have enough money in it.)

In order to require you to pay rent in cash, the landlord must first give you a written notice stating that your check was dishonored and that you must pay cash for the period of time stated by the landlord. This period cannot be more than three months after you:

- ordered the bank to stop payment on the check, or
- attempted to pay with a check that the bank returned to the landlord because of insufficient funds in your account.

The landlord must attach a copy of the dishonored check to the notice. If the notice changes the terms of your rental agreement, the landlord must give you the proper **amount of advance notice** (see pages 15–17).[107]

These same rules apply if the landlord requests that you pay the security deposit in cash.

Example: Suppose that you have a month-to-month rental agreement and that your rent is due on the first of the month. Suppose that the rental agreement does not specify the form of rent payment (check, cash, money order, etc.) or the amount of notice required to change the terms of the agreement (see pages 15–17).

On April 1, you give your landlord your rent check for April. On April 11, your landlord receives a notice from his bank stating that your check has been dishonored because you did not have enough money in your account. On April 12, the landlord hands you a notice stating that your check was dishonored and that you must pay rent in cash for the next three months. What are your rights and obligations under these facts? What are the landlord's rights and obligations?

Unfortunately, the law that allows the landlord to require cash payments does not clearly answer these questions. The following is based on a fair interpretation of the law.

The requirement that you pay rent in cash changes the terms of your rental agreement and takes effect in 30 days (on May 12). This is because under your rental agreement, the landlord must give you 30 days' notice of changes in it. (See pages 15–17.) Therefore, you *could* pay your May 1 rent payment by check. However, this might cause the landlord to serve you with a **30-day notice** to end the tenancy (see pages 67-68). The requirement that you pay rent in cash continues for three months after the landlord received the notice that your check was dishonored (through July 10). You would have to pay your June 1 and July 1 rent payments in cash, if the tenancy continues. What about your April 1 rent check that was returned by the landlord's bank? As a practical matter, you should make the check good immediately. If you don't, the landlord can serve you with a **three-day notice**, which is the first step in an action to **evict** you (see pages 67–71).[108]

107 Civil Code Section 1947.3. Waiver of these provisions is void and unenforceable.

108 See discussion of late fees and dishonored check fees, pages 29–30. Paying by check with knowledge that the account has insufficient funds and with intent to defraud is a crime. (Penal Code Section 476a.).

Obtaining receipts for rent payments

If you pay your rent in cash or with a money order, you should ask your landlord for a signed and dated receipt. Legally, you are entitled to a written receipt whenever you pay your rent.[109] If you pay with a check, you can use the canceled check as a receipt. Keep the receipts or canceled checks so that you will have records of your payments in case of a dispute.

Late fees and dishonored check fees

A rental agreement cannot include a pre-determined late fee. The exception to this rule is when it would be difficult to figure out the actual cost to the landlord caused by the late rent payment. Even then, the pre-determined late fee should not be more than a reasonable estimate of costs that the landlord will face as a result of the late payment. A late fee that is so high that it amounts to a penalty is not legally valid.[110]

Additionally, in some communities, late fees are limited by local rent control ordinances. (See "Rent Control," pages 27–28.)

What if you've signed a lease or rental agreement that contains a late-fee provision, and you're going to be late for the first time paying your rent? If you have a good reason for being late (for example, your paycheck was late), explain this to your landlord. Some landlords will **waive** (forgive) the late fee if there is a good reason for the rent being late, and if the tenant has been responsible in other ways. If the landlord isn't willing to forgive or lower the late fee, ask the landlord to justify it (for example, in terms of administrative costs for processing the payment late). However, if the late fee is reasonable, it probably is valid; you will have to pay it if your rent payment is late, and if the landlord insists.

The landlord also can charge the tenant a fee if the tenant's check for the rent (or any other payment) is dishonored by the tenant's bank. (A **dishonored check** is often called a "bounced" or "NSF" or "returned" check.) In order for the landlord to charge the tenant a returned check fee, the lease or rental agreement must authorize the fee, and the amount of the fee must be reasonable.

For example, a reasonable returned check fee would be the amount that the bank charges the landlord, plus the landlord's reasonable costs because the check was returned. Under California's "bad check" statute, the landlord can charge a service charge instead of the dishonored check fee described in this paragraph. The *service charge* can be up to $25 for the first check that is returned for insufficient funds, and up to $35 for each additional check.[111]

Partial rent payments

You will violate your lease or rental agreement if you don't pay the full amount of your rent on time. If you can't pay the full amount on time, you may want to offer to pay part of the rent. However, the law allows your landlord to take the partial payment and still give you an **eviction notice**.[112]

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109 Civil Code Section 1499.

110 See Harbor Island Holdings, LLC v. Kim (2003) 107 Cal.App.4th 790 [132 Cal.Rptr.2d 406] (liquidated damages provision unenforceable because it bore no reasonable relationship to range of actual damages parties could have anticipated); Orozco v. Casimiro (2004) 121 Cal.App.4th Supp. 7 [17 Cal.Rptr.3d 175] (late fee invalid because landlord failed to establish that damages for late payment of rent were extremely difficult to fix).

111 Civil Code Section 1719(a)(1). Advance disclosure of the amount of the service charge is a nearly universal practice, but is not explicitly required by Section 1719. The landlord cannot collect both a dishonored check fee and a service charge. The landlord loses the right to collect the service charge if the landlord seeks the treble damages that are authorized by the "bad check" law. (Civil Code Section 1719).

112 Code of Civil Procedure Section 1161 paragraph 2.

If your landlord is willing to accept a partial rent payment and give you extra time to pay the balance, it's important that you and the landlord agree on the details in writing. The written agreement should state the amount of rent that you have paid, the date by which the rest of the rent must be paid, the amount of any late fee that is due, and the landlord's agreement not to evict you if you pay the amount due by that date. Both you and the landlord should sign the agreement, and you should keep a copy. Such an agreement is legally binding.

SECURITY DEPOSIT INCREASES

Whether the landlord can increase the amount of the **security deposit** after you move in depends on what the lease or rental agreement says, and how much of a security deposit you have paid already.

If you have a lease, the security deposit cannot be increased unless increases are permitted by the terms of the lease.

In a periodic rental agreement (for example, a month-to-month agreement), the landlord can increase the security deposit unless this is prohibited by the agreement. The landlord must give you proper notice before increasing the security deposit. (For example, 30 days' advance written notice normally is required in a month-to-month rental agreement.)

However, if the amount that you have already paid as a security deposit equals two times the current monthly rent (for an unfurnished unit) or three times the current monthly rent (for a furnished unit), then your landlord *can't* increase the security deposit, no matter what the rental agreement says. (See the discussion of the limits on security deposits, pages 24–26.) Local **rent control ordinances** may also limit increases in security deposits.

The landlord must give you proper advance written notice of any increase in the security deposit. (See "Proper Service of Notices," page 71.)

The landlord normally cannot require that you pay the security deposit increase in cash. (See page 29.)

RENT INCREASES

How often can rent be raised?

If you have a lease for more than 30 days, your rent cannot be increased during the term of the lease, unless the lease allows rent increases.

If you have a **periodic rental agreement**, your landlord can increase your rent, but the landlord must give you proper advance notice in writing. The written notice tells you how much the increased rent is and when the increase goes into effect.

California law guarantees you at least 30 days' advance written notice of a rent increase if you have a month-to-month (or shorter) periodic rental agreement.

Under the law, your landlord must give you at least 30 days' advance notice if the rent increase is 10 percent (or less) of the rent charged at any time during the 12 months before the rent increase takes effect. Your landlord must give you at least *60 days'* advance notice if the rent increase is *greater than* 10 percent.[113] In order to calculate the percentage of the rent increase, you need to know the lowest rent that your landlord charged you during the preceding 12 months, and the total of the new increase and all other increases during that period.

113 *Civil Code Section 827(b). Longer notice periods apply if required, for example, by statute, regulation or contract. (Civil Code Section 827(c).) Tenants in Section 8 housing must be given at least 30 days' written notice of a greater-than-10-percent rent increase if the increase is caused by a change in the tenant's income or family composition, as determined by the local housing authority's recertification. (Civil Code Section 827(b)(3)).*

Examples: Assume that your current rent is $500 per month due on the first of the month and that your landlord wants to increase your rent $50 to $550 beginning this June 1. To see how much notice your landlord must give you, count back 12 months to last June.

30 days' notice required: Suppose that your rent was $500 last June 1. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increase	Compared to	10% of rent
$500 rent x .10			
$50	$50	is the same as	$50

Your landlord therefore must give you at least 30 days' advance written notice of the rent increase.

60 days' notice required: Suppose that your rent was $475 last June 1, and that your landlord raised your rent $25 to $500 last November. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increase	Compared to	10% of rent
$475 rent x .10	$25 +$50		
$47.50	$75	is more than	$47.50

Your landlord therefore must give you at least 60 days' advance written notice of the rent increase.

Now suppose that your rent was $500 last June 1, but that instead of increasing your rent $50, your landlord wants to increase your rent $75 to $575 beginning this June 1. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increase	Compared to	10% of rent
$500 rent x .10			
$50	$75	is more than	$50

Your landlord therefore must give you at least 60 days' advance written notice of the rent increase.

Normally, in the case of a periodic rental agreement, the landlord can increase the rent as often as the landlord likes. However, the landlord must give proper advance written notice of the increase, and the increase cannot be **retaliatory** (see pages 79–80). Local rent control ordinances may impose additional requirements on the landlord.

Increases in rent for government-financed housing usually are restricted. If you live in government-financed housing, check with the local public housing authority to find out whether there are any restrictions on rent increases.

Rent increase; notice and effective date

A landlord's notice of rent increase must be in writing. The landlord can deliver a copy of the notice to you personally.[114] In this case, the rent increase takes effect in 30 or 60 days, as just explained.

114 Civil Code Section 827(b)(1)(A).

The landlord also can give you a notice of rent increase by first class mail. In this case, the landlord must mail a copy of the notice to you, with proper postage, addressed to you at the rental unit. The landlord must give you an additional five days' advance notice of the rent increase if the landlord mails the notice. Therefore, the landlord would have to give you at least 35 days' notice from the date of mailing if the rent increase is 10 percent or less. If the rent increase is more than 10 percent, the landlord would have to give you at least 65 days' notice from the date of mailing.[115]

Example of a rent increase

Most notices of rent increase state that the increase will go into effect at the beginning of the rental period. For example, a landlord who wishes to increase the rent by 10 percent or less in a month-to-month rental effective on October 1 must make sure that notice of the increase is delivered to the tenant personally by September 1 or mailed to the tenant by August 27. However, a landlord can make the increase effective at any time in the month *if* proper advance notice is given.

If the increase in the rent becomes effective in the middle of the rental period, the landlord is entitled to receive the increased rent for only the last half of the rental period. For example:

- Rental period: month-to-month, from the first day of the month to the last day of the month.
- Rent: $500 per month.
- Rent increase: $50 (from $500 to $550) per month (a 10 percent increase).
- Date that the notice of rent increase is delivered to the tenant personally: April 15 (that is, the middle of the month).
- Earliest date that the rent increase can take effect: May 15.

If the landlord delivers the notice on April 15, the increase becomes effective 30 days later, on May 15. The landlord is entitled to the increased rent beginning on May 15. On May 1, the tenant would pay $250 for the first half of May (that is, 15 days at the old rent of $500), plus $275 for the last half of May (that is, 15 days at the new rent of $550). The total rent for May that is due on May 1 would be $525. Looking at it another way, the landlord is entitled to only one-half of the increase in the rent during May, since the notice of rent increase became effective in the middle of the month.

Of course, the landlord could deliver a notice of rent increase on April 15 which states that the rent increase takes effect on June 1. In that case, the tenant would pay $500 rent on May 1, and $550 rent on June 1.

WHEN CAN THE LANDLORD ENTER THE RENTAL UNIT?

California law states that a landlord can enter a rental unit only for the following reasons:

- In an emergency.
- When the tenant has moved out or has **abandoned** the rental unit.
- To make necessary or agreed-upon repairs, decorations, alterations, or other improvements.
- To show the rental unit to prospective tenants, purchasers, or lenders, to provide entry to contractors or workers who are to perform work on the unit, or to conduct an **initial inspection** before the end of the tenancy (see Initial Inspection sidebar, pages 55–58).

115 *Civil Code Section 827(b)(1)(B)(2),(3).*

- If a court order permits the landlord to enter.[116]
- If the tenant has a waterbed, to inspect the installation of the waterbed when the installation has been completed, and periodically after that to assure that the installation meets the law's requirements.[117]

The landlord or the landlord's agent must give the tenant reasonable advance notice in writing before entering the unit, and can enter only during normal business hours (generally, 8 a.m. to 5 p.m. on weekdays). The notice must state the date, approximate time and purpose of entry.[118] However, advance written notice is not required under any of the following circumstances:

- To respond to an emergency.
- The tenant has moved out or has abandoned the rental unit.
- The tenant is present and consents to the entry at the time of entry.
- The tenant and landlord have agreed that the landlord will make repairs or supply services, and have agreed orally that the landlord may enter to make the repairs or supply the services. The agreement must include the date and approximate time of entry, which must be within one week of the oral agreement.[119]

The landlord or agent may use any one of the following methods to give the tenant written notice of intent to enter the unit. The landlord or agent may:

- Personally deliver the notice to the tenant; or
- Leave the notice at the rental unit with a person of suitable age and discretion (for example, a roommate or a teenage member of the tenant's household); or
- Leave the notice on, near or under the unit's usual entry door in such a way that it is likely to be found; or
- Mail the notice to the tenant.[120]

The law considers 24 hours' advance written notice to be reasonable in most situations.

If the notice is mailed to the tenant, mailing at least six days before the intended entry is presumed to be reasonable, in most situations.[121] The tenant can consent to shorter notice and to entry at times other than during normal business hours.

Special rules apply if the purpose of the entry is to show the rental to a purchaser. In that case, the landlord or the landlord's agent may give the tenant notice orally, either in person or by telephone. The law considers 24 hours' notice to be reasonable in most situations. However, before oral notice can be given, the landlord or agent must first have notified the tenant in writing that the rental is for sale and that the landlord or agent may contact the tenant orally to arrange to show it. This written notice must be given to the tenant within 120 days of the oral notice. The oral notice must state the date, approximate time and purpose of entry.[122] The landlord or agent may enter only during normal business hours, unless the tenant consents to entry at a different

116 *Civil Code Section 1954(a)(4).*
117 *Civil Code Section 1940.5(f).*
118 *Civil Code Section 1954(b),(d)(1).*
119 *Civil Code Section 1954(d), (e).*
120 *Civil Code Section 1954(d)(1).*
121 *Civil Code Section 1954(d)(1).*
122 *Civil Code Section 1954(d)(2); see Moskovitz et al., California Landlord-Tenant Practice, Section 3.3 (Cal. Cont. Ed. Bar 2011).*

time.[123] When the landlord or agent enters the rental, he or she must leave written evidence of entry, such as a business card.[124]

The landlord cannot abuse the right of access allowed by these rules, or use this right of access to harass (repeatedly disturb) the tenant.[125] Also, the law prohibits a landlord from significantly and intentionally violating these access rules to attempt to influence the tenant to move from the rental unit.[126]

If your landlord violates these access rules, talk to the landlord about your concerns. If that is not successful in stopping the landlord's misconduct, send the landlord a formal letter asking the landlord to strictly observe the access rules stated above. If the landlord continues to violate these rules, you can talk to an attorney or a legal aid organization, or file suit in small claims court to recover damages that you have suffered due to the landlord's misconduct. If the landlord's violation of these rules was significant and intentional, and the landlord's purpose was to influence you to move from the rental unit, you can sue the landlord in small claims court for a civil penalty of up to $2,000 for each violation.[127]

SUBLEASES AND ASSIGNMENTS

Sometimes, a tenant with a lease may need to move out before the lease ends, or may need help paying the rent. In these situations, the tenant may want to **sublease** the rental unit or **assign** the lease to another tenant. However, the tenant cannot sublease the rental unit or assign the lease *unless* the terms of the lease allow the tenant to do so.

Subleases

A **sublease** is a separate rental agreement between the original tenant and a new tenant who moves in temporarily (for example, for the summer), or who moves in with the original tenant and shares the rent. The new tenant is called a **subtenant**.

With a sublease, the agreement between the original tenant and the landlord remains in force. The original tenant is still responsible for paying the rent to the landlord, and functions as a landlord to the subtenant. Any sublease agreement between a tenant and a subtenant should be in writing.

Most rental agreements and leases contain a provision that prohibits (prevents) tenants from subleasing or assigning rental units. This kind of provision allows the landlord to control who rents the rental unit. If your rental agreement or lease prohibits subleases or assignments, you must get your landlord's permission before you sublease or assign the rental unit.

Even if your rental agreement doesn't contain a provision that prohibits you from subleasing or assigning, it's wise to discuss your plans with your landlord in advance. Subleases and assignments usually don't work out smoothly unless everyone has agreed in advance.

You might use a sublease in two situations. In the first situation, you may have a larger apartment or house than you need, and may want help paying the rent. Therefore, you want to rent a room to someone. In the second situation, you may want to leave the rental unit for a certain period and return to it later. For example, you may be a college student who leaves the campus area for the summer and returns in the fall. You may want to sublease to a subtenant who will agree to use the rental unit only for that period of time.

Under a sublease agreement, the subtenant agrees to make payments to you, not to the landlord. The subtenant has no direct

123 *Civil Code Section 1954(b).*
124 *Civil Code Section 1954(d)(2).*
125 *Civil Code Section 1954(c).*
126 *Civil Code Section 1940.2(a)(4).*
127 *Civil Code Section 1940.2(b).*

responsibility to the landlord, only to you. The subtenant has no greater rights than you do as the original tenant. For example, if you have a month-to-month rental agreement, so does the subtenant. If your rental agreement does not allow you to have a pet, then the subtenant cannot have a pet.

In any sublease situation, it's essential that both you and the subtenant have a clear understanding of both of your obligations. To help avoid disputes between you and the subtenant, this understanding should be put in the form of a written sublease agreement that both you and the subtenant sign.

The sublease agreement should include things like the amount and due date of the rent, where the subtenant is to send the rent, who is responsible for paying the utilities (typically, gas, electric, water, trash, and telephone), the dates that the agreement begins and ends, a list of any possessions that you are leaving in the rental unit, and any conditions of care and use of the rental unit and your possessions. It's also important that the sublease agreement be consistent with the lease, so that your obligations under the lease will be fully performed by the subtenant, if that is what you and the subtenant have agreed on.

Assignments

An **assignment** is a transfer of your rights as a tenant to someone else. You might use an assignment if you have a lease and need to move permanently before the lease ends. Like a sublease, an assignment is a contract between the original tenant and the new tenant (not the landlord).

However, an assignment differs from a sublease in one important way. If the new tenant accepts the assignment, the new tenant is directly responsible to the landlord for the payment of rent, for damage to the rental unit, and so on. Nevertheless, an assignment *does not* relieve the original tenant of his or her legal obligations to the landlord. If the new tenant doesn't pay rent, or damages the rental unit, the original tenant remains legally responsible to the landlord.[128]

In order for the original tenant to avoid this responsibility, the landlord, the original tenant, and the new tenant all must agree that the new tenant will be *solely* responsible to the landlord under the assignment. This agreement is called a **novation**, and should be in writing.

Remember: Even if the landlord agrees to a sublease or assignment, the tenant is still responsible for the rental unit *unless* there is a written agreement (a novation) that states otherwise. For this reason, think carefully about whom you let live in the rental unit.

DEALING WITH PROBLEMS

Most landlord-tenant relationships go smoothly. However, problems sometimes do arise. For example, what if the rental unit's furnace goes out in the middle of the winter? What happens if the landlord sells the building or decides to convert it into condominiums? This section discusses these and other possible issues and problems in the landlord-tenant relationship.

REPAIRS AND HABITABILITY

A **rental unit** must be fit to live in; that is, it must be **habitable**. In legal terms, "habitable" means that the rental unit is fit for occupation by human beings and that it substantially complies with state and local building and health codes that materially affect tenants' health and safety.[129]

128 Civil Code Section 822.

129 Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 719]; Civil Code Sections 1941, 1941.1.

California law makes **landlords** and **tenants** each responsible for certain kinds of repairs, although landlords ultimately are legally responsible for assuring that their rental units are habitable.

Landlord's responsibility for repairs

Before renting a rental unit to a tenant, a landlord must make the unit fit to live in, or habitable. Additionally, while the unit is being rented, the landlord must repair problems that make the rental unit unfit to live in, or **uninhabitable**.

The landlord has this duty to repair because of a California Supreme Court case, called Green v. Superior Court,[130] which held that all residential **leases** and **rental agreements** contain an **implied warranty of habitability**. Under the "implied warranty of habitability," the landlord is legally responsible for repairing conditions that seriously affect the rental unit's habitability.[131] That is, the landlord must repair substantial defects in the rental unit and substantial failures to comply with state and local building and health codes.[132] However, the landlord is *not* responsible under the implied warranty of habitability for repairing damages that were caused by the tenant or the tenant's family, guests, or pets.[133]

Generally, the landlord also must do maintenance work which is necessary to keep the rental unit liveable.[134] Whether the landlord or the tenant is responsible for making less serious repairs is usually determined by the **rental agreement**.

The law is very specific as to what kinds of conditions make a rental uninhabitable. These are discussed in the following pages.

Tenant's responsibility for repairs

Tenants are required by law to take reasonable care of their rental units, as well as common areas such as hallways and outside areas. Tenants must act to keep those areas clean and undamaged. Tenants also are responsible for repair of all damage that results from their neglect or abuse, and for repair of damage caused by anyone for whom they are responsible, such as family, guests, or pets.[135] Tenants' responsibilities for care and repair of the rental unit are discussed in detail on pages 39–40.

Conditions that make a rental unit legally uninhabitable

There are many kinds of defects that could make a rental unit unlivable. The implied warranty of habitability requires landlords to maintain their rental units in a condition fit for the "occupation of human beings."[136] In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.[137]

A rental unit may be considered uninhabitable (unlivable) if it contains a lead hazard that endangers the occupants or the public, or is a substandard building because, for example, a structural hazard, inadequate sanitation, or a nuisance endangers the health, life, safety, property, or welfare of the occupants or the public.[138]

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130 Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].

131 Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704]; Hinson v. Delis (1972) 26 Cal.App.3d 62 [102 Cal.Rptr. 661].

132 Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719].

133 Civil Code Sections 1929, 1941.2.

134 Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].

135 Civil Code Sections 1929, 1941.2.

136 Civil Code Section 1941.

137 Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].

138 Civil Code Section 1941.1 paragraph 1, Health and Safety Code Sections 17920.3, 17920.10.

A dwelling also may be considered uninhabitable (unlivable) if it substantially lacks any of the following:[139]

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities in good working order.
- An electric system, including lighting, wiring, and equipment, in good working order.
- Clean and sanitary buildings, grounds, and appurtenances (for example, a garden or a detached garage), free from debris, filth, rubbish, garbage, rodents, and vermin.
- Adequate trash receptacles in good repair.
- Floors, stairways, and railings in good repair.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower. The toilet and bathtub or shower must be in a room which is ventilated and allows privacy.
- A kitchen with a sink that cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights. Windows in each room must be able to open at least halfway for ventilation, unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials.[140]
- Operable dead bolt locks on the main entry doors of rental units, and operable locking or security devices on windows.[141]
- Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.[142]
- A locking mail box for each unit. The mail box must be consistent with the United States Postal Service standards for apartment housing mail boxes. [143]
- Ground fault circuit interrupters for swimming pools and antisuction protections for wading pools in apartment complexes and other residential settings (but not single family residences).[144]

The implied warranty of habitability is *not* violated merely because the rental unit is not in perfect, aesthetically pleasing condition. Nor

139 *Civil Code Section 1941.1.*

140 *Health and Safety Code Sections 17900-17995; California Landlord's Law Book: Rights and Responsibilities, page 186 (NOLO Press 2011).*

141 *Civil Code Section 1941.3. See this section for additional details and exemptions. Remedies for violation of these requirements are listed at Civil Code Section 1941.3(c). See California Practice Guide, Landlord-Tenant, Paragraphs 3:21.5-3:21.10 (Rutter Group 2011).*

142 *Health and Safety Code 13113.7.*

143 *Health and Safety Code Section 17958.3; Civil Code Section 1941.1(i).*

144 *Health and Safety Code Sections 116049.1, 116064.*

is the implied warranty of habitability violated if there are minor housing code violations, which, standing alone, do not affect habitability.[145]

While it is the landlord's responsibility to install and maintain the inside wiring for one telephone jack, it is unclear whether the landlord's failure to do so is a breach of the implied warranty of habitability.[146]

An authoritative reference book suggests two additional ways in which the implied warranty of habitability may be violated. The first is the presence of mold conditions in the rental unit that affect the livability of the unit or the health and safety of tenants. The second follows from a new law that imposes obligations on a property owner who is notified by a local health officer that the property is contaminated by methamphetamine. (See page 23.) This reference book suggests that a tenant who is damaged by this kind of documented contamination may be able to claim a breach of the implied warranty of habitability.[147]

Limitations on landlord's duty to keep the rental unit habitable

Even if a rental unit is unlivable because of one of the conditions listed above, a landlord may not be legally required to repair the condition if the tenant has not fulfilled the tenant's own responsibilities.

In addition to generally requiring a tenant to take reasonable care of the rental unit and common areas (see page 37), the law lists specific things that a tenant must do to keep the rental unit liveable.

Tenants must do all of the following:

- Keep the premises "as clean and sanitary as the condition of the premises permits."
- Use and operate gas, electrical, and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets; flushing large, foreign objects down the toilet; and allowing any gas, electrical, or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner.
- Not destroy, damage, or deface the premises, or allow anyone else to do so.
- Not remove any part of the structure, dwelling unit, facilities, equipment, or appurtenances, or allow anyone else to do so.
- Use the premises as a place to live, and use the rooms for their intended purposes. For example, the bedroom must be used as a bedroom, and not as a kitchen.[148]
- Notify the landlord when dead bolt locks and window locks or security devices don't operate properly.[149]

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.[150]

If a tenant violates these requirements in some minor way, the landlord is still responsible for providing a habitable dwelling, and may be prosecuted for violating housing code standards. If the tenant fails to do one of these required things, and the tenant's failure has either substantially caused an unlivable condition to occur or has substantially interfered with the

145 *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719]; Hinson v. Delis (1972) 26 Cal.App.3d 62, 70 [102 Cal.Rptr. 661, 666].*

146 *Civil Code Section 1941.4; Public Utilities Code Section 788. See California Practice Guide, Landlord-Tenant, Paragraph 3:21.10 (Rutter Group 2011).*

147 *Moskovitz et al., California Landlord-Tenant Practice, Section 3.11B (Cal. Cont. Ed. Bar 2011); see Health and Safety Code Sections 25400.10-25400.46, effective January 1, 2006.*

148 *Civil Code Section 1941.2(a)(5).*

149 *Civil Code Section 1941.3(b).*

150 *Civil Code Section 1941.2(b).*

landlord's ability to repair the condition, the landlord does not have to repair the condition.[151] However, a tenant cannot withhold rent or has no action against the landlord for violating the implied warranty of habitability if the tenant has failed to meet these requirements.[152]

Responsibility for other kinds of repairs

As for less serious repairs, the rental agreement or **lease** may require either the tenant or the landlord to fix a particular item. Items covered by such an agreement might include refrigerators, washing machines, parking places, or swimming pools. These items are usually considered "amenities," and their absence does not make a dwelling unit unfit for living.

These agreements to repair are usually enforceable in accordance with the intent of the parties to the rental agreement or lease.[153]

Tenant's agreement to make repairs

The landlord and the tenant may agree in the rental agreement or lease that the tenant will perform all repairs and maintenance in exchange for lower rent.[154] Such an agreement must be made in good faith: there must be a real reduction in the rent, and the tenant must intend and be able to make all the necessary repairs. When negotiating the agreement, the tenant should consider whether he or she wants to try to negotiate a cap on the amount that he or she can be required to spend making repairs. Regardless of any such agreement, the landlord is responsible for maintaining the property as required by state and local housing codes.[155]

HAVING REPAIRS MADE

If a tenant believes that his or her rental unit needs repairs, and that the landlord is responsible for the repairs under the implied warranty of habitability, the tenant should notify the landlord. Since rental units typically are business investments for landlords, most landlords want to keep them safe, clean, attractive, and in good repair.

It's best for the tenant to notify the landlord of damage or defects by *both* a telephone call *and* a letter. The tenant should specifically describe the damage or defects and the required repairs in both the phone call and the letter. The tenant should date the letter and keep a copy to show that notice was given and what it said. If the tenant gives notice to the landlord by e-mail or fax, the tenant should follow up with a letter. (See pages 45–46.)

The tenant should send the letter to the landlord, manager, or agent by certified mail with return receipt requested. Sending the notice by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent and ask for a receipt to show that the notice was received. The tenant should keep a copy of the notice and the receipt, or some other evidence that the notice was delivered. (See "Giving the landlord notice," pages 45–46.)

If the landlord doesn't make the requested repairs, and doesn't have a good reason for not doing so, the tenant may have one of several

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151 Civil Code Section 1941.2(a).

152 Civil Code Section 1929, 1942(c); see Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 188-189 (NOLO Press 2011).

153 Portman and Brown, California Tenants' Rights, page 30 (NOLO Press 2010).

154 Civil Code Section 1942.1.

155 Portman and Brown, California Tenants' Rights, page 20 (NOLO Press 2010).

remedies, depending on the seriousness of the repairs. These remedies are discussed in the rest of this section. *Each of these remedies has its own risks and requirements, so the tenant should use them carefully*.

The "repair and deduct" remedy

The "**repair and deduct**" remedy allows a tenant to deduct money from the rent, if those repairs would not cost more than one month's rent, to pay for repair of defects in the rental unit.[156] This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.[157] (See discussion of the implied warranty of habitability, pages 36–39.) Examples might include a leak in the roof during the rainy season, no hot running water, or a gas leak.

As a practical matter, the repair and deduct remedy allows a tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, it's a good idea for the tenant to talk to a lawyer, legal aid organization, or tenants' association before proceeding.

The basic requirements and steps for using the repair and deduct remedy are as follows:

1. The defects must be serious and directly related to the tenant's health and safety.[158]
2. The repairs cannot cost more than one month's rent.
3. The tenant cannot use the repair and deduct remedy more than twice in any 12-month period.
4. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
5. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed. (See "Giving the landlord notice," pages 45–46.)
6. The tenant must give the landlord a reasonable period of time to make the needed repairs.
   - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the situation. For example, if the furnace is broken and it's very cold outdoors, two days may be considered reasonable (assuming that a qualified repair person is available within that time period).
7. If the landlord doesn't make the repairs within a reasonable period of time, the tenant may either make the repairs or hire someone to do them. The tenant may then deduct the cost of the repairs from the rent when it is due. The tenant should keep all receipts for the repairs.
   - It's a good idea, but not a legal requirement, for the tenant to give the landlord a written notice that explains why the tenant hasn't paid the full amount of the rent. The tenant should keep a copy of this notice.

Risks: The defects may not be serious enough to justify using the repair and deduct remedy. In that event, the landlord can sue the tenant to recover the money deducted from the rent, or can file an **eviction** action based on the nonpayment

156 *Civil Code Section 1942.*

157 *California Practice Guide, Landlord-Tenant, Paragraphs 3:115-3:116 (Rutter Group 2011).*

158 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 189-190 (NOLO Press 2011).*

of rent. If the tenant deducted money for repairs not covered by the remedy, or didn't give the landlord proper advance notice or a reasonable time to make repairs, the court can order the tenant to pay the full rent even though the tenant paid for the repairs, or can order that the eviction proceed.

The landlord may try to evict the tenant or raise the rent because the tenant used the repair and deduct remedy. This kind of action is known as a "**retaliatory eviction**" (see pages 79–80). The law prohibits this type of eviction, with some limitations.[159]

The "abandonment" remedy

Instead of using the repair and deduct remedy, a tenant can **abandon** (move out of) a defective rental unit. This remedy is called the "**abandonment**" remedy. A tenant might use the abandonment remedy where the defects would cost more than one month's rent to repair,[160] *but this is not a requirement of the remedy*. The abandonment remedy has most of the same requirements and basic steps as the repair and deduct remedy.[161]

In order to use the abandonment remedy, the rental unit must have substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.[162] (See discussion of the implied warranty of habitability, pages 37–39.) If the tenant uses this remedy properly, the tenant is not responsible for paying further rent once he or she has abandoned the rental unit.[163]

The basic requirements and steps for lawfully abandoning a rental unit are:

1. The defects must be serious and directly related to the tenant's health and safety.[164]
2. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed. (See "Giving the landlord notice," pages 45–46.)
4. The tenant must give the landlord a reasonable period of time to make the needed repairs.
   - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances. For example, if tree roots block the main sewer drain and none of the toilets or drains work, a reasonable period might be as little as one or two days.
5. If the landlord doesn't make the repairs within a reasonable period of time, the tenant should notify the landlord in writing of the tenant's reasons for moving and then actually move out. The tenant should return all the rental unit's keys to the landlord. The notice should be mailed or delivered as explained in "Giving the landlord notice," pages 45–46. The tenant should keep a copy of the notice.
   - It's a good idea, but not a legal requirement, for the tenant to give the landlord written notice of the tenant's reasons for moving out. The tenant's letter may discourage the landlord from suing the tenant to collect additional rent or other damages. A written notice also documents the tenant's reasons for moving, which may be helpful

159 *Civil Code Section 1942.5(a).*

160 *California Practice Guide, Landlord-Tenant, Paragraph 3:127 (Rutter Group 2011).*

161 *Civil Code Section 1942.*

162 *California Practice Guide, Landlord-Tenant, Paragraph 3:115-3:116, 3:126 (Rutter Group 2011).*

163 *Civil Code Section 1942.*

164 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 189 (NOLO Press 2011).*

in the event of a later lawsuit. If possible, the tenant should take photographs or a video of the defective conditions or have local health or building officials inspect the rental unit before moving. The tenant should keep a copy of the written notice and any inspection reports and photographs or videos.

Risks: The defects may not affect the tenant's health and safety seriously enough to justify using the remedy. The landlord may sue the tenant to collect additional rent or damages.

The "rent withholding" remedy

A tenant may have another option for getting repairs made—the "**rent withholding**" remedy.

By law, a tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious defects that violate the implied warranty of habitability.[165] (See discussion of the implied warranty of habitability, pages 36–39.) In order for the tenant to withhold rent, the defects or repairs that are needed must be *more* serious than would justify use of the repair and deduct and abandonment remedies. The defects must be substantial—they must be serious ones that threaten the tenant's health or safety.[166]

The defects that were serious enough to justify withholding rent in Green v. Superior Court[167] are listed below as examples:

- Collapse and nonrepair of the bathroom ceiling.
- Continued presence of rats, mice, and cockroaches.
- Lack of any heat in four of the apartment's rooms.
- Plumbing blockages.
- Exposed and faulty wiring.
- An illegally installed and dangerous stove.

In the Green case, *all* of these defects were present, and there also were many violations of the local housing and building codes. In other situations, the defects that would justify rent withholding may be different, but the defects would still have to be serious ones that threaten the tenant's health or safety.

In order to prove a violation of the implied warranty of habitability, the tenant will need evidence of the defects that require repair. In the event of a court action, it is helpful to have photographs or videos, witnesses, and copies of letters informing the landlord of the problem.

Before the tenant withholds rent, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The basic requirements and steps for using the rent withholding remedy are:

1. The defects or the repairs that are needed must threaten the tenant's health or safety.[168]
   - The defects must be serious enough to make the rental unit uninhabitable. For example, see the defects described in the discussion of the Green case above.
2. The tenant, or the tenant's family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord either orally or in writing of the repairs that are needed. (See "Giving the landlord notice," pages 45–46.)

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165 Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].

166 Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 190-191 (NOLO Press 2011).

167 Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704]. See Hyatt v. Tedesco (2002) 96 Cal.App.4th Supp. 62 [117 Cal.Rptr.2d 921] for additional examples of substantial defects that violated the implied warranty of habitability.

168 Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 190 (NOLO Press 2011).

4. The tenant must give the landlord a reasonable period of time to make the repairs.
   - What is a reasonable period of time? This depends on the defects and the type of repairs that are needed.
5. If the landlord doesn't make the repairs within a reasonable period of time, the tenant can withhold some or all of the rent. The tenant can continue to withhold the rent until the landlord makes the repairs.
   - How much rent can the tenant withhold? While the law does not provide a clear test for determining how much rent is reasonable for the tenant to withhold, judges in rent withholding cases often use one of the following methods. These methods are offered as examples.

     Percentage reduction in rent: The percentage of the rental unit that is uninhabitable is determined, and the rent is reduced by that amount. For example, if one of a rental unit's four rooms is uninhabitable, the tenant could withhold 25 percent of the rent. The tenant would have to pay the remaining 75 percent of the rent. Most courts use this method.

     Reasonable value of rental unit: The value of the rental unit in its defective state is determined, and the tenant withholds that amount. The tenant would have to pay the difference between the rental unit's fair market value (usually the rent stated in the rental agreement or lease) and the rental unit's value in its defective state.[169]
6. The tenant should save the withheld rent money *and not spend it*. The tenant should expect to have to pay the landlord some or all of the withheld rent.
   - If the tenant withholds rent, the tenant should put the withheld rent money into a special bank account (called an **escrow account**). The tenant should notify the landlord in writing that the withheld rent money has been deposited in the escrow account, and explain why.

Depositing the withheld rent money in an escrow account is not required by law, but is a very good thing to do for three reasons.

First, as explained under "Risks" on page 45, rent withholding cases often wind up in court. The judge usually will require the tenant to pay the landlord some reduced rent based on the value of the rental unit with all of its defects. Judges rarely excuse payment of all rent. Depositing the withheld rent money in an escrow account assures that the tenant will have the money to pay any "reasonable rent" that the court orders. The tenant will have to pay the rent ordered by the court five days (or less) from the date of the court's judgment.

Second, putting the withheld rent money in an escrow account proves to the court that the tenant didn't withhold rent just to avoid paying rent. If there is a court hearing, the tenant should bring rental receipts or other evidence to show that he or she has been reliable in paying rent in the past.

Third, most legal aid organizations and lawyers will not represent a tenant who has not deposited the withheld rent money in an escrow account.

Sometimes, the tenant and the landlord will be able to agree on the amount of rent that is reasonable for the time when the rental unit needed repairs. If the tenant and the landlord can't agree on a reasonable amount, the dispute

169 *See discussion in Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 191 (NOLO Press 2011), Portman and Brown, California Tenants' Rights, pages 137-138 (NOLO Press 2010), and California Practice Guide, Landlord-Tenant, Paragraph 3:140-3:142 (Rutter Group 2011).*

will have to be decided in court, or resolved in an **arbitration** or **mediation** proceeding (see page 82).

Risks: The defects may not be serious enough to threaten the tenant's health or safety. If the tenant withholds rent, the landlord may give the tenant an **eviction notice** (a **three-day notice** to pay the rent or leave). If the tenant refuses to pay, the landlord will probably go to court to evict the tenant. In the court action, the tenant will have to prove that the landlord violated the implied warranty of habitability.[170]

If the tenant wins the case, the landlord will be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent. The rent ordinarily must be paid five days or less from the date of the court's judgment. If the tenant wins, but doesn't pay the amount of rent ordered when it is due, the judge will enter a judgment for the landlord, and the tenant probably will be evicted. If the tenant loses, he or she will have to pay the rent, probably will be evicted, and may be ordered to pay the landlord's attorney's fees.

There is another risk of using rent withholding: if the tenant doesn't have a lease, the landlord may ignore the tenant's notice of defective conditions and seek to remove the tenant by giving him or her a 30-day or 60-day notice to move. This may amount to a "**retaliatory eviction**" (see pages 79–80).[171] The law prohibits retaliatory evictions, with some limitations.[172]

Giving the landlord notice

Whenever a tenant gives the landlord notice of the tenant's intention to repair and deduct, withhold rent, or abandon the rental unit, it's best to put the notice in writing. The notice should be in the form of a letter, and can be typed or handwritten. The letter should describe in detail the problem and the repairs that are required. The tenant should sign and date the letter and keep a copy.[173]

The tenant might be tempted to send the notice to the landlord by e-mail or fax. The laws on repairs specify that the tenant may give the landlord notice orally or in writing, but do not mention e-mail or fax. To be certain that the notice complies with the law, the tenant should follow up any e-mailed or faxed notice with a letter describing the damage or defects and the required repairs.

The letter should be sent to the landlord, manager, or agent by certified mail (return receipt requested). Sending the letter by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent. The tenant should ask for a signed and dated receipt showing that the notice was received, or ask the landlord to date and sign (or initial) the tenant's copy of the letter to show that the landlord received the notice. Whatever the method of delivery, it's important that the tenant have proof that the landlord, or the landlord's manager or agent, received the notice.

The copy of the letter and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said. Keep the copy of the letter and the receipt in case of a dispute with the landlord.

The landlord or agent may call the tenant to discuss the request for repairs or to schedule a time to make them. It's a good idea for the tenant to keep notes of any conversations and phone calls about the request for repairs. During each conversation or immediately after it, the

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170 Depending on the facts, the tenant may be entitled to a rebuttable presumption that the landlord has breached the implied warranty of habitability. (Civil Code Section 1942.3.) This presumption affects the burden of producing evidence.

171 Moskovitz, California Eviction Defense Manual, Section 16.19 (Cal. Cont. Ed. Bar 2011).

172 Civil Code Section 1942.5(a).

173 Moskovitz, California Landlord-Tenant Practice, Section 3.13 (Cal. Cont. Ed. Bar 2011). See Civil Code Section 1942(a).

tenant should write down the date and time of the conversation, what both parties said, and the date and time that the tenant made the notes. **Important**: Neither the tenant nor the landlord can tape record a telephone conversation without the other party's permission.[174]

Tenant information

An occupant of residential property can invite another person onto the property during reasonable hours, or because of emergency circumstances, to provide information about tenants' rights or to participate in a tenants' association or an association that advocates tenants' rights. The invited person cannot be held liable for trespass.[175]

Lawsuit for damages as a remedy

The remedies of repair and deduct, abandonment, and rent withholding allow a tenant in a rental unit with serious habitability defects to take action against the landlord without filing a lawsuit. Arbitration and mediation are other methods of resolving disputes about the condition of a rental unit (see page 82).

A tenant has another option: filing a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects in the rental unit in a timely manner.[176] This kind of lawsuit can be filed in small claims court or Superior Court, depending on the amount demanded in the suit.[177] The tenant can file this kind of lawsuit without first trying another remedy, such as the repair and deduct remedy.

If the tenant wins the lawsuit, the court may award the tenant his or her actual damages, plus "special damages" in an amount ranging from $100 to $5,000.[178] "Special damages" are costs that the tenant incurs, such as the cost of a motel room, because the landlord did not repair defects in the rental unit. The party who wins the lawsuit is entitled to recover his or her costs of bringing the suit (for example, court costs), plus reasonable attorney's fees as awarded by the court.[179]

The court also may order the landlord to abate (stop or eliminate) a nuisance and to repair any substandard condition that significantly affects the health and safety of the tenant.[180] For example, a court could order the landlord to repair a leaky roof, and could retain jurisdiction over the case until the roof is fixed.

In order for a tenant to win such a lawsuit against the landlord, all of the following conditions must be met:[181]

- The rental unit has a serious habitability defect. That is, the rental unit contains a lead hazard that endangers the occupants or the public; or substantially lacks any of the a nuisance endangers the health, life, safety, property, or welfare of the occupants or the public; and
- A housing inspector has inspected the minimum requirements for habitability listed in the eight categories on page 38; or has been declared substandard because, for example,

174 *Penal Code Section 632.*

175 *Civil Code Section 1942.6. A tenants' association does not have a right under the California Constitution's free speech clause to distribute its newsletter in a privately owned apartment complex. (Golden Gateway Center v. Golden Gateway Tenants Assoc. (2001) 26 Cal. 4th 1013 [111 Cal. Rptr. 2d 336]).*

176 *Civil Code Section 1942.4.*

177 *One reference book cautions against a tenant litigating implied warranty of habitability issues in small claims court because collateral estoppel precludes an issue decided there from being relitigated. Moskovitz et al., California Landlord-Tenant Practice, Sections 5.16, 5.39 (Cal. Cont. Ed. Bar 2006), citing Pitzen v. Superior Court (2004) 120 Cal. App. 4th 1374 [16 Cal. Rptr. 3d 628].*

178 *Civil Code Section 1942.4(b)(1).*

179 *Civil Code Section 1942.4(b)(2), Code of Civil Procedure Section 1174.2.*

180 *Civil Code Section 1942.4(a),(c).*

181 *Civil Code Section 1942.4(a). See Health & Safety Code Sections 17920.3, 17920.10.*

a structural hazard, inadequate sanitation, or premises and has given the landlord or the landlord's agent written notice of the landlord's obligation to repair the substandard conditions or abate the nuisance; and

- The nuisance or substandard conditions continue to exist 35 days after the housing inspector mailed the notice to the landlord or agent, and the landlord does not have good cause for failing to make the repairs; and
- The nuisance or substandard conditions were not caused by the tenant or the tenant's family, guests, or pets; and
- The landlord collects or demands rent, issues a notice of rent increase, or issues a three-day notice to pay rent or quit (see pages 68–69) after all of the above conditions have been met.

To prepare for filing this kind of lawsuit, the tenant should take all of these basic steps:

- The tenant should notify the landlord in writing about the conditions that require repair. (See "Giving the landlord notice," pages 45–46.) The rental unit must have serious habitability defects that were not caused by the tenant's family, guests, or pets.
- The notice should specifically describe the defects and the repairs that are required.
- The notice should give the landlord a reasonable period of time to make the repairs.
- If the landlord doesn't make the repairs within a reasonable time, the tenant should contact the local city or county building department, health department, or local housing agency and request an inspection.
- The housing inspector must inspect the rental unit.
- The housing inspector must give the landlord or the landlord's agent written notice of the repairs that are required.
- The substandard conditions must continue to exist 35 days after the housing inspector mailed the notice to the landlord or landlord's agent. The landlord then must collect or demand rent, raise the rent, or serve a three-day notice to pay rent or quit.
- The tenant should gather evidence of the substandard conditions (for example, photographs or videos, statements of witnesses, inspection reports) so that the tenant can prove his or her case in court.
- The tenant should discuss the case with a lawyer, legal aid organization, tenant program, or housing clinic in order to understand what the lawsuit is likely to accomplish, and also the risks involved.[182]

Resolving complaints out of court

Before filing suit, the tenant should try to resolve the dispute out of court, either through personal negotiation or a dispute resolution program that offers mediation or arbitration of landlord-tenant disputes. If the tenant and the landlord agree, a neutral person can work with both of them to reach a solution. Informal dispute resolution can be inexpensive and fast. (See "Arbitration and Mediation," pages 82–83.) Please see page 45 regarding legal requirements for notices.

LANDLORD'S SALE OF THE RENTAL UNIT

If your landlord voluntarily sells the rental unit that you live in, your legal rights as a tenant are not changed. Tenants who have a lease have the right to remain through the end of the lease under the same terms and conditions. The new landlord can end a periodic tenancy (for example,

182 *Civil Code Section 1942.4, which gives the tenant the right to sue the landlord as described in this section, also can be used defensively. If the landlord brings an unlawful detainer action against the tenant based on nonpayment of rent, and the court finds that the landlord has violated all of the five conditions listed in the bullets on this page, the landlord is liable for the tenant's attorneys fees and costs of suit, as determined by the court. (Code of Civil Procedure Section 1174.21).*

a month-to-month tenancy), but only after giving the tenant the required advance notice. (See "Landlord's notice to end a periodic tenancy," pages 50–52.)

The sale of the building doesn't change the rights of the tenants to have their **security deposits** refunded when they move. Pages 63–65 discuss the landlord's responsibility for the tenants' security deposits after the rental unit has been sold.

When property is sold in foreclosure

State law provides that a tenant in possession of a rental housing unit at the time a property is sold in foreclosure shall be given 60 days' written notice to quit before the tenant may be removed from the property.[183] However, if your lease was signed before the deed of trust or mortgage was recorded, your lease will not be set aside by the foreclosure.[184]

Federal law now requires that you be given 90 days' written notice to quit (leave the property). Under the 2009 "Protecting Tenants at Foreclosure Act," a buyer of foreclosed property must honor your lease until the end of the lease term, unless the buyer will be moving in and using the property as the buyer's home.[184.1] In that case, you are entitled to 90 days' notice to quit.[184.2] This is also true if you are a month-to-month tenant. The Act creates similar protections for tenants with Section 8 vouchers. This rule does not apply to rental agreements that were not the result of arm's length transactions or where the rent is much less than fair market rent for that property.[184.3]

California recognizes that tenants of units sold in foreclosure now have a right to this 90-day notice under federal law. Specifically, any notice to quit served within one year after a foreclosure sale must also inform renters that they may stay in the unit for at least 90-days.[184.4]

CONDOMINIUM CONVERSIONS

A landlord who wishes to convert rental property into condominiums must obtain approval from the local city or county planning agency. The landlord also must receive final approval in the form of a public report issued by the State Department of Real Estate. Affected tenants must receive notices at various stages of the application and approval process.[185] These notices are designed to allow affected tenants and the public to have a voice in the approval process.[186] Tenants can check with local elected officials or housing agencies about the approval process and opportunities for public input.

Perhaps most important, affected tenants must be given written notice of the conversion to condominiums at least 180 days before their tenancies end due to the conversion.[187] Affected tenants also must be given a first option to buy the rental unit on the same terms that are being offered to the general public (or better terms). The tenants must be able to exercise this right for at least 90 days following issuance of the Department of Real Estate's public report.[188]

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183 Code of Civil Procedure 1161b(a) This notice requirement shall remain in effect only until Januaury 1, 2013, and as of that date will be repealed unless a later enacted statute that is enacted before January 1, 2013, deletes or extends that date.

184 Portman and Brown, California Tenants Rights, pages 4-5 (NOLO Press 2010).

184.1 Public Law 111-22, 2009 S896, Title VII, Section 702.

184.2 Public Law 111-22, 2009 S896, Title VII, Section 702.

184.3 Public Law 111-203, 2009-2010 H.R. 4173, Section 1484.

184.4 California Code of Civil Procedure Section 1161c.

185 Government Code Section 66427.1(a),(b).

186 Government Code Sections 66451.3, 65090, 65091.

187 Government Code Section 66427.1(c).

188 Government Code Section 66427.1, 66427.1(a)2F. See Business and Professions Code Sections 11018, 11018.2, California Practice Guide, Landlord-Tenant, Paragraph 5:306 and following (Rutter Group 2011).

DEMOLITION OF DWELLING

The owner of a dwelling must give written notice to current tenants before applying for a permit to demolish the dwelling. The owner also must give this notice to tenants who have signed rental agreements but who have not yet moved in. (See page 24.) The notice must include the earliest approximate dates that the owner expects the demolition to occur and the tenancy to end.[189]

INFLUENCING THE TENANT TO MOVE

California law protects a tenant from retaliation by the landlord because the tenant has lawfully exercised a tenant right (see pages 79—80). California law also makes it unlawful for a landlord to attempt to influence a tenant to move by doing any of the following:

- Engaging in conduct that constitutes theft or extortion.
- Using threats, force, or menacing conduct that interferes with the tenant's quiet enjoyment of the rental unit. (The conduct must be of a nature that would create the fear of harm in a reasonable person.)
- Committing a significant and intentional violation of the rules limiting the landlord's right to enter the rental unit (see pages 33–35).[190]

A landlord does not violate the law by giving a tenant a warning notice, in good faith, that the tenant's or a guest's conduct may violate the lease, rental agreement, rules or laws. The notice may be oral or in writing. The law also allows a landlord to give a tenant an oral or written explanation of the lease, rental agreement, rules or laws in the normal course of business.[191]

If a landlord engages in unlawful behavior as described above, the tenant may sue the landlord in small claims court or Superior Court. If the tenant prevails, the court may award him or her a civil penalty of up to $2,000 for each violation.[192] Keep in mind, however, that a lawsuit is not always a good solution. If you are faced with actions such as described above, try to assess the situation realistically. You may want to discuss the situation with a trusted friend, a tenant advisor, or a lawyer who represents tenants. If you are convinced that you cannot work things out with the landlord, then consider your legal remedies.

MOVING OUT

GIVING AND RECEIVING PROPER NOTICE

Tenant's notice to end a periodic tenancy

To end a **periodic rental agreement** (for example, a month-to-month agreement), you must give your **landlord** proper written notice before you move.

You must give the landlord the same amount of notice as there are days between rent payments.[193] This means that if you pay rent monthly, you must give the landlord written notice at least 30 days before you move. If you pay rent every week, you must give the landlord written notice at least seven days before you move.[194] This is true even if the landlord has given you a 60-day notice to end the rental agreement and you want to leave sooner (see discussion, page 48).[195]

If your rental agreement specifies a different amount of notice (for example 10 days), you must

189 *Civil Code Section 1940.6.*
190 *Civil Code Section 1940.2(a).*
191 *Civil Code Section 1940.2(c).*
192 *Civil Code Section 1940.2(b).*
193 *Civil Code Section 1946.*
194 *Civil Code Section 1946.*
195 *Civil Code Section 1946.1(e).*

give the landlord written notice as required by the agreement.[196]

To avoid later disagreements, date the notice, state the date that you intend to move, and make a copy of the notice for yourself. It's best to deliver the notice to the landlord or property manager in person, or mail it by certified mail with return receipt requested. (You can also **serve** the notice by one of the methods described under "Proper Service of Notices," page 71.)[197]

You can give the landlord notice any time during the **rental period**, but you must pay full rent during the period covered by the notice. For example, say you have a month-to-month rental agreement, and pay rent on the first day of each month. You could give notice any time during the month (for example, on the tenth). Then, you could leave 30 days later (on the tenth of the following month, or earlier if you chose to). But you would have to pay rent for the first 10 days of the next month whether you stay for those 10 days or move earlier. (**Exception**: You would not have to pay rent for the entire 10 days if you left earlier, *and* the landlord rented the unit to another tenant during the 10 days, *and* the new tenant paid rent for all or part of the 10 days.)[198]

The **rental agreement** or **lease** must state the name and address of the person or entity to whom you must make rent payments (see page 19). If this address does not accept personal deliveries, you can mail your notice to the owner at the name and address stated in the lease or rental agreement. If you can show proof that you mailed the notice to the stated name and address (for example, a receipt for certified mail), the law assumes that the notice is receivable by the owner on the date of postmark.[199]

Tenant's notice to end tenancy due to domestic violence, sexual assault, or stalking

You may notify your landlord that you or another household member has been a victim of domestic violence, sexual assault, or stalking, and that you intend to move out. However, you would still be responsible for payment of the rent for 30 days following your notice. You are required to attach to your notice to the landlord a copy of the restraining order, emergency protective order, or police report, within 180 days of the day such order or report was issued or made. [200]

A landlord cannot end or refuse to renew your tenancy based upon the fact that you or a member of your household is a victim of a documented act of domestic violence, sexual assault, or stalking.[200.1] If you request that the landlord change your locks and the landlord fails to do so within 24 hours of your request, you may then change the locks yourself. If the restrained person is also a tenant of the unit, that person is still responsible for upholding their end of the lease. These rules apply to leases signed after January 1, 2011.[200.2]

Landlord's notice to end a periodic tenancy

A landlord can end a periodic tenancy (for example, a month-to-month tenancy) by giving the tenant proper advance written notice. Your landlord must give you 60 days advance written notice that the tenancy will end if you and every other tenant or resident have lived in the **rental unit** for a year or more.[201] However, the landlord must give you *30* days advance written notice in either of the following situations:

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196 *Civil Code Section 1946.*

197 *Civil Code Section 1946.*

198 *See Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 357-358 (NOLO Press 2011).*

199 *Civil Code Section 1962(f).*

200 *Civil Code Section 1946.7.*

200.1 *Code of Civil Procedure Section 1161.3.*

200.2 *Civil Code Sections 1941.5, 1941.6.*

201 *Civil Code Section 1946.1(b).*

- Any tenant or resident has lived in the rental unit less than one year;[202] or
- The landlord has contracted to sell the rental unit to another person who intends to occupy it for at least a year after the tenancy ends. In addition, all of the following must be true in order for the selling landlord to give you a 30-day notice —
    - The landlord must have opened escrow with a licensed escrow agent or real estate broker, and
    - The landlord must have given you the 30-day notice no later than 120 days after opening the escrow, and
    - The landlord must not previously have given you a 30-day or 60-day notice, and
    - The rental unit must be one that can be sold separately from any other dwelling unit. (For example, a house or a condominium can be sold separately from another dwelling unit.) [203]

The landlord usually isn't required to state a reason for ending the tenancy in the 30-day or 60-day notice (see **30-Day or 60-Day Notice**, page 68). The landlord can serve the 30-day or 60-day notice by certified mail or by one of the methods described under "Proper Service of Notices," page 71. [204]

Note: In the circumstances described on pages 68–69, a landlord can give you just *three* days advance written notice.

If you receive a 30-day or 60-day notice, you must leave the rental unit by the end of the 30th or 60th day after the date on which the landlord served the notice (see page 68). For example, if the landlord served a 60-day notice on July 16, you would begin counting the 60 days on July 17, and the 60-day period would end on September 14. If September 14 falls on a weekday, you would have to leave on or before that date. However, if the end of the 60-day period falls on a Saturday, you would not have to leave until the following Monday, because Saturdays and Sundays are legal holidays. Other legal holidays also extend the notice period.[205]

If you don't move by the end of the notice period, the landlord can file an **unlawful detainer lawsuit** to evict you (see page 72).

What if the landlord has given you a 60-day notice, but you want to leave sooner? You can give the landlord the same amount of notice as there are days between rent payments (for example, 30 days' notice if you pay rent monthly) provided that —

- The amount of your notice is at least as long as the number of days between rent payments, and
- Your proposed termination date is before the landlord's termination date.[206]

What if the landlord has given you a 30-day or 60-day notice, but you want to continue to rent the property, or you believe that you haven't done anything to cause the landlord to give you a notice of termination? In this kind of situation, you can try to convince the landlord to withdraw the notice. Try to find out why the landlord gave you the notice. If it's something within your control (for example, consistently late rent, or playing music too loud), assure the landlord that in the future, you will pay on time or keep the volume turned down. Then, keep your promise. If the landlord won't withdraw the notice, you will

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202 Civil Code Section 1946. Civil Code Section 1946.1(c).

203 Civil Code Section 1946.1(d).

204 Civil Code Section 1946.1(f).

205 Code of Civil Procedure Section 12a. See California Practice Guide, Landlord-Tenant, Paragraph 7:220 to 7:220.6 (Rutter Group 2011) on whether service of the 30-day notice by mail extends the time for the tenant to respond.

206 Civil Code Section 1946.1(e).

have to move out at the end of the 30-day or 60-day period, or be prepared for the landlord to file an unlawful detainer lawsuit to evict you.

Special rules may apply in cities with rent control. For example, in some communities with rent control ordinances, a periodic tenancy cannot be ended by the landlord without a good faith "just cause" or "good cause" reason to evict. In these communities, the landlord must state the reason for the termination, and the reason may be reviewed by local housing authorities.

Suppose that you are a tenant who participates in the Section 8 housing voucher program. While the lease is in effect, the landlord must have good cause to terminate (end) the tenancy. Examples of good cause include serious or repeated violations of the lease, or criminal activity that threatens the health or safety of other residents.[207] However, incidents of domestic violence may not be used as a violation by the victim or threatened victim as good cause for the landlord to terminate the tenancy, occupancy rights or assistance of the victim.[208]

The landlord must give the tenant a three-day or 30-day or 60-day notice of termination under California law (see pages 67–69), and both the landlord and the tenant must give the public housing agency a copy of the notice.[209] What if the landlord simply decides not to renew the lease, or decides to terminate the HAP (housing assistance payment) contract? In this case, the landlord must give the tenant 90 days' advance written notice of the termination date.[210] If the tenant doesn't move out by the end of the 90 days, the landlord must follow California law to evict the tenant.[211]

If you live in government-assisted housing or in an area with rent control, check with your local housing officials to see if any special rules apply in your situation.

ADVANCE PAYMENT OF LAST MONTH'S RENT

Many landlords require tenants to pay "last month's rent" at the beginning of the **tenancy** as part of the **security deposit** or at the time the security deposit is paid. Whether the tenant can use this amount at the end of the tenancy to pay the last month's rent depends on the language used in the **rental agreement** or **lease**.[212]

Suppose that at the beginning of the tenancy, you gave the landlord a payment for the last month's rent and for the security deposit, and that the lease or rental agreement labels part of this upfront payment "last month's rent." In this situation, you have paid the rent for your last month in the rental unit. However, sometimes landlords raise the rent before the last month's rent becomes due. In this situation, can the landlord require you to pay the amount of the increase for the last month?

The law does not provide a clear answer to this question. If your lease or rental agreement labels part of your upfront payment "last month's rent," then you have a strong argument that you paid the last month's rent when you moved in. In this situation, the landlord should *not* be able to require you to pay the amount of the increase for the last month.[213] However, if your lease or rental agreement labels part of your upfront payment

207 *California Practice Guide, Landlord-Tenant, Paragraphs 12:251 and following (Rutter Group 2011). See this chapter for an indepth discussion of the Section 8 housing program.*

208 *California Practice Guide, Landlord-Tenant, Paragraph 12:250 and 12:273.1 (Rutter Group 2011) citing United States Code Sections 1437f(d)(1)(5), 1437f(c)(9)(B); 24 CFR sections 5.2005(a), 982, 452(b)(1).*

209 *Moskovitz, California Eviction Defense Manual, Section 18.22 (Cal. Cont. Ed. Bar 2011), citing Gallman v. Pierce (ND Cal. 1986) 639 F. Supp. 472, 485 (landlord must follow California law when terminating a tenant's Section 8 lease).*

210 *Civil Code Section 1954.535; Wasatch Property Management v. Degrate (2005) 35 Cal.4th 1111 [29 Cal.Rptr.3d 262].*

211 *California Practice Guide, Landlord-Tenant, Paragraph 12:301(Rutter Group 2011).*

212 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 96-97 (NOLO Press 2011).*

213 *Portman and Brown, California Tenants' Rights, page 243 (NOLO Press 2010); see Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 96-97 (NOLO Press 2011).*