

UNFURNISHED
APARTMENT
FOR
LEASE

FOR
RENT

FOR
RENT

CALIFORNIA TENANTS

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

Revised July 2012

FOR
RENT

APARTMENT (with Pool)

EXCERPT

Now
Leasing

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 Moskowitz 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).