



17th Edition

# The California Landlord's Law Book: Rights & Responsibilities

- Prepare California-specific leases, termination notices, and other forms
- Avoid running afoul of rent control laws
- Avert costly discrimination lawsuits, security deposit disputes, and other problems

Attorneys David Brown, Janet Portman  
& Nils Rosenquest



OVER  
200,000  
IN PRINT



**EXCERPT**

only for three months, enter the date that's three months after the day the tenant is personally served (add five days if you mail the notice).

5. Complete the last half of the form by noting to whom the rent may be paid, at what location, and during what days and hours.
6. Follow the instructions below, for service on the tenant(s).

We've filled out a sample Notice for Rent to Be Paid in Cash Only, above. The landlord, Dana, demanded cash rent for the entire three-month period, and she personally served her tenant with this notice on June 2. Therefore, the cash-only period expired on September 2. Had she mailed the notice, the expiration date would have been September 7.



#### FORM

**The Nolo website includes a downloadable copy of the Notice for Rent to Be Paid in Cash Only.** See Appendix B for the link to the forms in this book.

## Preparing a Notice to Raise Rent

A notice raising the rent of a tenant who occupies a unit under an oral or written rental agreement with a periodic tenancy—for example, month to month or week to week—must be in writing and must clearly state the following:

- the name of the tenant
- the full address of the property, including street, city, and county
- the amount of the new rent
- the amount of the new security deposit (if increased)
- when the change is to go into effect. This can be no sooner than 30 days for a month-to-month tenancy (60 days for increases over 10%). But it can be longer, even if the lease or rental agreement doesn't require this. You can give a tenant as much additional notice as you want.
- prorated rental rate
- the date the rent increase notice is given, and
- the signature of the owner or manager.

Prepare your rent increase notice on a form called Notice of Change of Terms of Tenancy. A sample is shown above. You can use the same notice to change other terms of the tenancy as discussed in “Changing Terms Other Than Rent,” below.



#### FORM

**The Nolo website includes a downloadable copy of the Notice of Change of Terms of Tenancy.** See Appendix B for the link to the forms in this book.

**Deposits.** We noted in Chapter 5 that if you wish to raise the amount of a tenant's deposit when you raise the rent, you must specifically state that you are doing this. To accomplish this, check the box marked “Other” on the Notice of Change of Terms of Tenancy form (see the sample above), and indicate the amount of the new deposit. We discuss the maximum amount you can charge for a deposit for furnished and unfurnished units in Chapter 5.

## How to Serve the Notice on the Tenant

The law is very strict on how a notice changing the terms of tenancy must be served on a tenant. It is not enough that you mail the notice or simply post it on the door, unless the tenant admits to receiving it—something you can never count on. Here are the two legal methods of service for a 30-day notice.

### Personal Service

The best type of service of the 30-day notice is to simply hand your tenant the notice. Handing the notice to any other person, such as someone who lives with your tenant but is not listed as a cotenant on the written rental agreement, is not sufficient, except as described in “Effect of Improper Service,” below.

For personal service to be legally effective, it is not necessary that your tenants accept the notice in their hands, and you or your manager (or whoever serves the notice) should not attempt to force tenants to take the notice. It is enough that you make some

sort of personal contact with your tenant and offer the notice. If your tenant refuses to accept the notice, simply lay it down at the tenant's feet and walk away. Service is legally effective.

## Mailing a Rent Increase Notice

You can serve a rent increase notice by ordinary first class mail addressed to the tenant at the rental premises. We advise you not to use certified mail requiring a return receipt, which will not reach a tenant who declines to accept and sign for the certified letter.

If you choose to mail the notice instead of delivering it personally to the tenant, you must give the tenant an additional five days' notice of the rent increase. (CC § 827(b)(1)(B)(2) and (3); CCP § 1013.) This means giving 35 days' notice for a 10%-or-less increase and 65 days' notice of an over-10% increase.

Be very sure to understand that if you want to change other terms of the tenancy besides the rent, such as the amount of the security deposit or a pets rule, you must use personal or substituted service. Mail service is available *only* for rent changes.

**EXAMPLE 1:** In Example 1 above, if Len increases Tom's rent by 10%, effective July 1, Len must mail the notice to Tom on or before May 26—35 days prior to July 1.

**EXAMPLE 2:** In Example 2 above, where Len increases Tanya's rent by 15% effective June 1, he must mail it on March 27 in order to give Tanya the 65 days' notice required by law.

## Effect of Improper Service

Once the tenant acknowledges receiving the notice or pays the increased rent, the tenant gives up the right to complain about any legal insufficiency in the manner the 30-day or 60-day notice was served, and the rent increase becomes effective, even if the service of the notice is technically improper. This is true regardless of tenants' reasons for acquiescing to the increase—whether they didn't know the notice had

to be served a certain way, were too concerned about maintaining good relations with the landlord to raise the issue, or simply didn't care.

**EXAMPLE:** On May 28, Natalie mails a notice telling her tenant Linda her rent will be increased from \$1,100 to \$1,200 a month, effective July 1. Natalie mails the notice by ordinary first class mail. Linda pays the increased rent on July 1 and every month after, but learns in December that the law required that she be given 35 days' notice. Linda got only 34 days' notice. Linda demands that Natalie give her back the \$100 increase she paid during each of those months. Natalie doesn't have to give a refund, since Linda, by paying the increase, gave up her right to insist on technically legal service of the notice.

### Checklist to Raise Rent

Here is a checklist that should help you follow correct procedures when you are about to raise your tenant's rent.

- Determine whether your tenancy is from month to month or some other shorter period. As part of doing this, make sure your agreement doesn't require a 60- or 90-day notice period. (No increases are allowed during the term of a lease unless specified in the lease.)
- Find out if any local rent control laws prevent or limit your proposed increase.
- Decide when you want the increase to take effect. At least 30 days' notice is required for a month-to-month tenancy. Use the Rent Increase Worksheet, explained above, to make sure that you can safely use a 30-day notice. If your increase (including any others within the past year) is more than 10% of the lowest rent paid within the 12 months prior to the increase effective date, you'll have to use 60 days.
- Fill out the blank Notice of Change of Terms of Tenancy included on the Nolo website. Sign the notice and make a copy for your files.
- Give the notice personally to the tenant, or use substituted or posting-and-mailing service.

**CAUTION**

**Avoid informal rent increases.** In practice, rents are often increased by a simple agreement between the landlord and tenant (or even a simple acquiescence on the tenant's part), even though this rent increase procedure does not comply with legal requirements. If the tenant responds by paying the increased rent, for even a month, the tenant has given up the right to object to the increase. In effect, the tenant's failure to assert his right not to pay the increase is an implied agreement that the rent has been increased. But even if you know your tenants well and believe they will go along with a rent increase, we believe it is a poor business practice to rely on oral notice alone. As a courtesy, you may wish to tell your tenant of the increase personally, perhaps explaining the reasons—although reasons aren't legally necessary, except in areas covered by rent control. (See Chapter 4.) However, you should also follow up with a proper written notice. Good business practice requires written notice and documentation of all important decisions.

## When the Rent Increase Takes Effect

Tenants often assume that a rent increase can legally take effect only at the beginning of a rental term. This is not true. The increase will take effect 30 or 60 days after you serve the tenant with a 30- or 60-day notice of the increase. For example, in the case of a month-to-month tenancy, where the rent is paid in advance on the first day of each month, a 30-day notice can increase the rent effective June 10, if served 30 days earlier on May 10. (See CC § 827(a) (1).) However, if you increase rent in the middle of a month, the rent for that month must be prorated, and the calculations are a little tricky. For this reason, many landlords find it easier to raise the rent as of the first of the full month after the notice is properly given, even though this may mean you give the tenant more than 30 or 60 days' notice.

If you do wish to prorate, here is the proper way to do it. Assume you wish to raise the rent of a tenant who has a written rental agreement with rent payable on the first of each month, by giving notice on the tenth of the month. As long as you give the tenant

a notice on the tenth of May, increasing the rent from \$500 to \$550, the rent increase is effective June 9 (May has 31 days, but it's better to use a 30-day month, no matter how many days the month has). This would mean that the tenant would owe rent prorated at \$500 per month from June 1 through June 8, plus rent prorated at \$550 per month from the 9th through the 30th. Remember, the rent is due on the first of the month, because rent is payable in advance. This works out to \$537.10. Again, it may be more trouble figuring out how to calculate this number than it's worth.

## Changing Terms Other Than Rent

If you rent to tenants under a periodic tenancy, the law allows you to change the terms of the agreement other than the amount of rent. Any rental agreement provision can be modified or even added in this way, as noted in Clause 4 of our form rental agreement. (See Chapter 2.) For example, the landlord could, with a 30-day notice, impose a pool fee, change the rules or fees for parking, or reduce the number of people allowed to live in a unit. Similarly, a landlord who originally allowed a month-to-month tenant to have a pet could give a 30-day notice imposing a new provision forbidding pets.

### Preparing the Notice

The form (Notice of Change of Terms of Tenancy) you use to raise the rent can be used to change terms other than rent. (See "Preparing a Notice to Raise Rent," above.) But instead of checking "The monthly rent will be increased to \$ \_\_\_\_\_, payable in advance," check "Other" and write in the change you wish to make. For example:

- "Tenant may not keep pets in or on the premises." (See the sample notice, below.)
- "Tenant may park only one motor vehicle in the parking lot behind 111 Navelier Street."
- "Tenant must pay \$25 per month for use of the indoor garage. Payment to be made with the monthly rent."

### Notice of Change of Terms of Tenancy

To: Jean Friedman,  
Name(s)

Tenant(s) in possession of the premises at 456 Main Street, Apartment 7,  
Street Address

City of Los Angeles, County of Los Angeles, California.

The terms of tenancy under which you occupy these premises are changed as follows:

- The monthly rent will be increased to \$\_\_\_\_\_, payable in advance.
- Other: Tenant may not keep pets, including dogs and cats, on the premises.
- 

The change in terms of tenancy shall be effective:

- Date: April 1, 20 XX
- On the 30th day following service on you of this notice. If the change of terms of tenancy is an increase in rent, the amount due on the next following due date, prorated at the current rental rate prior to the 30th day, and prorated at the increased rate thereafter, is \$\_\_\_\_\_.
- [Rent increase over 10%] On the 60th day following service on you of this notice. If the change of terms of tenancy is an increase in rent, the amount due on the next following due date, prorated at the current rental rate prior to the 60th day, and prorated at the increased rate thereafter, is \$\_\_\_\_\_.

Felicia Alou  
 Landlord or Manager

January 31, 20xx  
 Date

Just as some cities' rent control ordinances regulate the amount by which landlords can raise rents, some ordinances also prevent a landlord from otherwise changing the terms of the tenancy, particularly by reducing services while keeping the rent the same. For example, San Francisco's rent control ordinance was interpreted to prevent several landlords from taking back their tenants' rights to park in previously allowed parking spaces or beginning to charge parking fees. If your property falls under a rent control ordinance, check to see if it restricts changes in terms other than rent. Also prohibited by local rent control laws, as well as by state law, are changes in rental agreement terms that purport to have the tenant give up legal rights. (CC § 1953(b).) In other words, the illegal and unenforceable rental agreement and lease terms discussed in Chapter 2 are no more effective if accomplished by a Notice of Change of Terms of Tenancy than they would be if included in the original lease or rental agreement.

The notice should specify the following information, as the sample above shows:

- the tenant's name
- the full address of the property, including street, city, and county
- the change of terms, spelled out as carefully as if you were inserting it as an additional clause in a rental agreement for the first time
- the date when the change of terms is effective, giving at least 30 days' notice in the case of a tenancy from month to month
- the date you're giving the notice, and
- the signature of the owner or manager.

## Serving the Notice

Serve the notice in the same manner as a notice increasing the rent, namely by personal service (or substituted or posting-and-mailing service, if necessary).

## Service of Notices Changing Other Tenancy Terms

Although a notice increasing a residential tenant's *rent* can be mailed, this is not true of notices changing other terms of the tenancy. For example, a notice changing the rent due date or stating that pets will no longer be allowed cannot be mailed. Such notices, if not served personally, should be served using one of the following methods.

### Substituted Service on Another Person

If the tenant to whom you're attempting to give the notice never seems to be home, and you know where he works, you must try to personally serve him at his place of employment. If you are unable to locate the tenant at his workplace, the law allows you to use "substituted service" in lieu of personally giving the notice to the tenant.

Substituted service simply means that you give the 30-day notice to a "substitute" person of "suitable age and discretion," preferably an adult, at your tenant's home or business, with instructions to that person to give the notice to the tenant. (However, if no adult is available, giving the notice to a teenage resident of the tenant's household may be sufficient if the teenager is "of sufficient age and discretion." *Lehr v. Crosby*, 123 Cal. App. 3d Supp. 1 (1981).) Substituted service must be followed with a mailed notice to the tenant's home to be effective.

To serve the notice this way, you must:

- try to personally serve the tenant at his home, but not succeed
- try to personally serve him at work, but not succeed
- leave a copy of the notice with an adult at home or work, and
- mail another copy to the tenant at home by ordinary first class mail. (CCP § 1162(a)(2).)

**CAUTION**

**Substituted service requires two notices.** Service of the notice is not legally complete until you both leave a copy with the substitute and mail a second copy to the tenant at home.

**Posting-and-Mailing Service**

If you can't find a tenant on whom you wish to serve the 30-day or 60-day notice, and you can't find anyone else at home or work (or if you don't know where the tenant is employed), you may serve the notice using a procedure known as "posting and mailing." (People in the business call it "nail and mail.") To do this, you

tack or tape a copy of the notice to the front door of the rental unit and mail a second copy to the tenant at that address. In order to serve the notice this way, you must do the following, in the order indicated:

1. Try to personally serve the tenant at home, and not succeed.
2. Try to serve the tenant at work, and not succeed.
3. Post a copy of the notice on the front door of the property.
4. Mail another copy to the tenant at home by first class mail. (CCP § 1162(a)(3).)

Again, service of the notice is not complete until you have followed through by mailing a second copy of the notice.





# End of EXCERPT

California Landlord's Law Book: Rights & Responsibilities  
<https://store.nolo.com/products/the-california-landlords-law-book-lbrt.html>