

# Kimball, Tirey & St. John LLP

## Landlord/Tenant Questions & Answers

*Ted Kimball, Esq.  
September, 2017*

### 1. Question:

Our tenant owes us back rent and is stating that he is probably going to file bankruptcy. We've been trying to work with him but are getting nervous now. Do we lose all the back rent if he files bankruptcy?

#### Answer:

It depends. If he files a Chapter 7, there is little hope. If he files a Chapter 13, you may receive all or a portion of the back rent.

### 2. Question:

If a tenant's rent is due on the first day of the month and there is no grace period, what is the earliest date I can serve a 3-day notice to pay rent or quit?

#### Answer:

You can serve a 3-day notice to pay rent or quit when the rent is legally delinquent. California law requires that one business day must expire before the rent is considered delinquent. So, if the first day of the month falls on a weekend or holiday, you must wait until the day after the first business day expires before serving the notice. If the first day of the month is a business day, the notice can be served on the second of the month.

### 3. Question:

If the landlord accepts a rent payment from someone other than the lessee, does that give them any rights?

#### Answer:

It could if they are occupants of the property. They would have to convince the court that they are now tenants under a verbal agreement.

### 4. Question:

There was a grease fire in one of our rental units due to a tenant's lack of knowledge of cooking. What is my obligation to provide alternate accommodations for this tenant? Am I required to keep her as a renter?

#### Answer:

You are not obligated to put the tenant up. You may have a right to evict her based upon waste of the unit, which requires a 3-day notice to quit.

### 5. Question:

The tenants living in one of our apartments signed a one-year lease which states that there will be no pets allowed. They now have two cats in the apartment and are only in the second month of the lease. We served a 3-day notice to perform covenant or quit. They have chosen to leave. The rent for the entire month was paid. Are they entitled to the prorated amount of rent for the unused portion of the month?

#### Answer:

No, they are liable for the remainder of the lease or up to the time you relet the premises, whichever occurs first.

**6. Question:**

My tenants paid an extra deposit for a pet. They gave away the dog after 2 months. Now they are asking if the pet deposit could be returned.

**Answer:**

You do not have to account for the use of the deposit until 21 days from the date they return possession of the premises, so you don't have to refund any of the deposit.

**7. Question:**

What is a request for a reasonable modification?

**Answer:**

A reasonable modification is a physical change to the apartment or the common areas that is necessary to afford a resident with a disability full and equal use and enjoyment of the rental property.

**8. Question:**

I rented an apartment to a young man; he signed a one-year lease and paid the deposit and first month's rent in full. He moved in today and less than 24 hours later, he is requesting to get out of his lease because another apartment that he prefers became available. Is there any kind of buyer's remorse on signing a lease?

**Answer:**

Your tenant is obligated to pay rent through the lease term or until the time the premises are relet, whichever occurs first. There is no buyer's remorse.

**9. Question:**

My tenant claims he paid the rent by mailing us a money order. We never received it and he says we should have received it. Who would bear the loss if we do not find the missing payment?

**Answer:**

Under most leases, it is the responsibility of the tenant to ensure the landlord receives payment. Since it is up to the tenant to choose the method of delivery, he or she bears the risk that the payment is in fact made. However, some leases determine the method of delivery. In those cases, the landlord may bear the risk that the payment reaches the landlord.

**10. Question:**

One of the recent applicants to our apartment community claims he is paid "under the table". How do I verify his income?

**Answer:**

You really can't, and because he is committing fraud, you should not consider this a legal source of income. If they fail to otherwise qualify, you can deny his rental application.

**11. Question:**

One of our tenants was recently arrested and has not paid the rent. We served a notice by "post and mail" and it has been over three days. How do we serve the unlawful detainer (eviction) on the tenant while in jail?

**Answer:**

Most jails will allow your process server to serve the tenant while in jail. It may take several hours before they are able to pull the inmate up, but your process server can be waiting for him or her and legally serve them while incarcerated.

---

*This article is for general information purposes only. Laws may have changed since this article was published. Before acting, be sure to receive legal advice from our office. Ted Kimball is a partner with Kimball, Tirey & St. John LLP. Our primary practice areas are landlord/tenant, collections, fair housing and business and real estate, with offices throughout California. Property owner's and manager's with questions regarding the contents of this article, please call 800.338.6039.*

**12. Question:**

One of our residents served us with a written 30-day notice and has failed to vacate after 30 days. Can I start the eviction process or must I serve a 30-day notice first?

**Answer:**

If a residential tenant serves the landlord with a written 30-day notice and the rental term is month-to-month, the landlord may immediately file an unlawful detainer (eviction) action in court on the 31<sup>st</sup> day, providing the 30th day fell on a business day.

---

*This article is for general information purposes only. Laws may have changed since this article was published. Before acting, be sure to receive legal advice from our office. Ted Kimball is a partner with Kimball, Tirey & St. John LLP. Our primary practice areas are landlord/tenant, collections, fair housing and business and real estate, with offices throughout California. Property owner's and manager's with questions regarding the contents of this article, please call 800.338.6039.*