

CSA



SAN DIEGO COUNTY

BE INFORMED

2012

RENTAL HOUSING HANDBOOK

YOUR RIGHTS AND RESPONSIBILITIES

Who We Are and What We Do

CSA San Diego County is a non-profit corporation 501 (c) 3 registered with the State of California. It is one of San Diego County's oldest and most respected civil and human rights organizations.

Long an advocate for fair housing and tenant/landlord mediation, CSA San Diego County addresses many other issues as well -including hate crimes, the civil rights violations experienced by newly-arrived immigrants, human trafficking, youth alienation and poverty. Through direct client services, field outreach and public education we are able to reach those persons who have been underserved in their areas of need. Participation in regional, state and national policy work has enabled us to become even more effective in helping those looking to us for assistance and leadership. CSA San Diego County is becoming an organization of substance and a national leader/advocate for human and civil rights.

We are your neighbors. We are your community. We are your resource. Call us at (619) 444-5700.

Introduction

Everyone needs a home. In the present economy an increasing percentage of Americans find it necessary to rent that home. It is an advantage in a rental situation for both the tenant and the landlord to know the rights and responsibilities of each party so that their relationship can be both rewarding and beneficial. Whether renting an apartment, house, room, duplex or condominium, a renter has the protection of federal, state and local laws. The primary focus of this handbook is on the California state laws which govern the landlord/tenant relationship. California Civil Codes provide both tenants and landlords with valuable information on all phases of the rental relationship. The codes also include information on housing discrimination, mobile homes and rent control issues. The best way to prevent problems from escalating is through communication.

It is vital that all parties in a prospective rental situation discuss their expectations and responsibilities prior to signing the lease or rental agreement. When a problem occurs, every attempt should be made to reach resolution through open discussion and negotiation. However, if an amicable agreement is not possible, California law offers other options in tenant/landlord disputes. Everyone in a rental situation can benefit from the descriptive contents in these pages. The hope of this agency is that the handbook helps prevent conflicts from escalating to the point where legal recourse becomes the only option considered by the involved parties.

DISCLAIMER: This handbook has been prepared to respond with general information to the most commonly-asked questions. The material contained herein is in no respect intended to provide or substitute for legal counsel, but is meant to aid readers in understanding the basic rights and responsibilities of all parties in a rental relationship or dispute.

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The Rental Process

The Rental Application Most landlords require a rental application. This is similar to a job or credit application. Required information may include the prospective renter's type of employment, monthly salary or income, rental history, credit and/or personal references plus any other information that is pertinent to the prospective tenant's ability to pay rent.

Credit Checking/Screening Fees (CC 1950.6) The rental applications may be used to check credit history and past landlord/tenant relations. A credit bureau or credit reporting service which maintains credit history records is used by landlords to determine if there have been delinquencies in payment of rent or other bills or if the applicant has received one or more unlawful detainer (eviction) judgments. A prospective tenant may also be required to have three or more times the monthly rent in income or salary.

State law limits the credit check or application fees that a landlord may charge prospective tenants. Only the actual cost of obtaining a credit or similar screening report, plus the reasonable value of time spent obtaining the report or checking personal references and background information, can be charged. In 2004 the maximum fee charged per applicant was \$30. This figure is adjusted annually based on the Consumer Price Index. Upon the applicant's request, a landlord is required to provide a copy of his/her consumer credit report. A landlord is also required to present or mail a receipt itemizing the credit check or screening fees to the prospective tenant. No credit check or screening fee may be charged an applicant on a waiting list if no vacancies are available.

Deposits: Holding or Security (CC 1950.5) When a deposit is paid, there should be a clear understanding by all parties that it is either a holding fee (which may be forfeited if there is no move in) or a security deposit (to insure that the terms of the rental agreement are honored).

Holding Deposit A decision should be made on the rental unit before a deposit is paid. A receipt should be given the applicant specifying how the money will be used and indicating any conditions that apply to a partial or total refund if either party defaults. Depending upon the circumstances involved, an applicant may or may not get a holding deposit back. If the landlord defaults and the unit is rented to someone else, the full amount should be refunded to the original applicant. If he/she defaults, the landlord may deduct the per diem rental rate plus any advertising costs incurred in removing the unit from the market.

Security Deposit Prior to assuming their tenancy, renters are usually required to pay a security deposit in addition to the first month's rent. The landlord may require an amount equal to two months' rent for an unfurnished unit and up to three months' rent for a furnished unit. The security deposit is refundable at the termination of the tenancy if the dwelling is left clean and in habitable condition, exclusive of ordinary wear and tear, no damage has occurred during the tenancy and no amount of rent is delinquent at the time of vacation.

The Walk Through It is essential that the rental property be carefully inspected by the prospective tenant prior to any decision to move in. Following are the most common problem areas that

may indicate whether or not the property is well maintained and/or habitable.

- Cracks in the floor or wall
- Broken doors or windows. Broken locks.
- Evidence of water damage on wall, ceilings
- Leaks in kitchen or bathroom fixtures
- Lack of hot water
- Defective heating or air conditioning
- Improper or lack of ventilation
- Defects in electrical wiring or fixtures
- Inadequate lighting
- Damaged or badly stained flooring
- Torn or badly worn carpeting

If any of the above problems are observed, it is essential that the tenant inquire how soon necessary repairs will be made. Areas of concern should be noted in writing which of these conditions were pre-existing. Documentation will help avoid later disagreements regarding the extent of responsibility for the repair of any damage. It will also address any disputes that arise over deductions from the previous tenant's security deposit upon vacation of the premises.

Inspection Check List The inventory check list is for the protection of everyone. It should be completed within three days of move-in at the time of the walk-through with both the landlord and the tenant(s) present. At least one week before move-out, a mutually-agreeable time should be arranged for the final inspection. All conditions should be documented very carefully. Both tenant and landlord should sign and receive a copy of the completed check list following the initial and final inspections.

Things to look for include dust, dirt, grease, stains, burns, holes, excessive wear and tear and any other damage that occurred during the tenancy. Items that do not apply may be crossed out. Items which were added upon mutual agreement at the onset of tenancy should be addressed at this time. **Please refer to the sample check list at the back of this handbook on Page 43.**

Rental Agreements The most common rental agreement is the month-to-month tenancy. It may be either oral or written. Rent is due and payable on the first of the month, and either party may terminate the agreement with thirty days' written notification. Changes in the rental agreement also may be made by written notice 30 days prior to the effective date. It is important to note that, although an oral rental agreement is legally binding, a problem can occur if there is a disagreement between the landlord and the tenant since no documentation of terms exists. Therefore, it is important that any agreement be in writing, especially if there are special circumstances involved, such as pets or waterbeds.

Leases The basic difference between a lease and a month-to-month rental agreement is that a lease contains a specific time period at a fixed amount of rent. During the term of a lease, the tenant has the responsibility to pay the rent in full and on time. The lease may not be terminated except for violations of its provisions. Rent may not be increased unless it is so stipulated in the lease language.

The tenant does not waive any rights by signing or agreeing to a rental contract per Section 1953 of the California Civil Code. Per Sections 1091 and 1624 of the Civil Code and Section 1971 of the Code of Civil Procedure, the lease of property in which a tenant

will be living for a year or more requires the agreement to be in writing. If it is not, most likely the agreement is not enforceable.

Following are conditions which should be included in any lease or rental agreement:

- The amount of rent and the exact date when it is due
- The terms and amount of any late charge
- Number of persons allowed in the specific rental unit
- A pet or waterbed clause, if agreed upon, and if appropriate
- Whether attorney's fees can be collected if a lawsuit should arise between landlord and tenant

Lease Translations A landlord/agent who negotiates a rental lease or sublease primarily in Spanish, Chinese, Korean, Tagalog or Vietnamese is required to deliver a written translation in the negotiated language to the tenant before the signing. Exception: If the tenant supplies a translator fluent in both English and the lease language and is not a minor.

Full Understanding No rental agreement or lease should ever be signed if any portion appears unfair or ambiguous. Full understanding of all terms is absolutely essential. Once an agreement is reached, all involved parties should sign it. The tenant(s) are to receive a completed product which must be kept in a safe place with other important rental records.

THE RENTAL PROCESS: SUMMARY

Most landlords will require prospective tenants to complete a form similar to an employment or credit application. A report from a credit bureau/service may be required to determine if bills have been paid in the past. The charge for this service is

limited by law. A deposit also may be required, either holding or security. It is vitally important for the landlord and the rental applicant to communicate clearly on the terms of any agreement.

DURATION OF TENANCY

Landlord Responsibilities (CC 1941) The primary duty of the landlord is to maintain the property in a habitable condition. All problem items which fall under minimum legal requirements must be repaired unless the damages were caused by tenant negligence or lack of care. The right of “implied warranty of habitability” cannot be waived. Minimum obligations include the following:

- + Effective waterproofing and weather protection of the roof and exterior walls, including unbroken doors and windows
- + Plumbing and gas facilities, conforming to the applicable law at the time of installation, maintained in good working order
- + A water supply under the control of the tenant, approved under applicable law, capable of producing hot and cold running water, furnished to appropriate fixtures, and connected to a sewage system
- + Heating facilities which conform to applicable law at the time of installation maintained in good working order
- + Electrical lighting with wiring and electrical equipment both conforming to applicable law at the time of installation maintained in good working order. There must not be any loose or exposed wiring.

+ Building and grounds, in every part clean, sanitary and free of all accumulations of debris, filth, rubbish, garbage, rodents and vermin at the commencement of tenancy. All areas under the landlord's control are to be properly maintained.

+ An adequate number of serviceable receptacles for garbage and rubbish in clean condition and good repair at the commencement of the rental agreement and maintained in like condition thereafter.

+ Floors, stairways and railing maintained in good repair.

+ Civil Code Section 1940.9 requires owners of rental property, where utilities are not sub-metered, to disclose this information to applicants and tenants, and include specific language denoting individually apportioned payments in their rental agreements.

+ Civil Code Section 1941.3 requires the installation and maintenance of sturdy dead bolt locks on certain windows and doors with specific hardware to secure the premises and enhance the safety of tenants.

+ Civil Code Section 1941.4 mandates that rental property owners provide one working telephone jack and maintain all inside telephone wiring for each rental unit.

+ Health and Safety Code Section 13113.7 requires that all units in multi-unit buildings have working smoke detectors.

+ Owners of buildings built prior to 1978 must provide new tenants with lead information pamphlet.

+ California Code of Regulations, Title 25, Section 42, requires that a manager, janitor, housekeeper or other responsible person shall

reside upon the premises and have charge of every multi-family building with 16 or more rental units.

+ The Code of Civil Procedure, Section 2075, provides that whoever pays money is entitled to a receipt from the person to whom the payment is made.

+ Under the Health and Safety Code, Section 1597, a landlord may not forbid a tenant's use of rental premises as a licensed family day care home. A child care operation must obtain a state license and notify the landlord in writing of the intent to operate such a facility.

Tenant Responsibilities (CC 1941.2) The first responsibility of the tenant is to see that the rent is paid promptly each month. Each adult on the rental agreement can be individually held responsible for the entire amount if one or more of the tenants default.

If a payday does not coincide with the day the rent is due, rather than pay late each month and incur a late fee, an agreement can be negotiated between the tenant and the landlord. This would be an alternative payment plan/date with specific terms in writing and initialed by all parties involved. A copy of the revised agreement should be given to the tenant(s).

Additional responsibilities of the tenant include the following:

- Careful use of the property
- Maintaining a clean and sanitary dwelling
- Proper disposal of rubbish and garbage
- Consideration of the rights of all neighbors
- Use of the premises for intended purposes only

- Prompt report **in writing** of any problems requiring repair to the appropriate authority

Tenant Rights Tenants have basic legal rights in addition to their responsibilities. They include the following:

- Limits on the amount of security deposit
- The right to privacy
- The right to quiet enjoyment of the premises
- The rights under the implied warranty of habitability
- The right to use repair-and-deduct from rent for certain repair costs in situations where habitability is compromised
- The right to withhold rent under appropriate and specific circumstances
- The right to refund of the security deposit with a written itemization and accounting of deductions within 21 days of vacation of the premises
- The right to be free from, and to challenge, retaliatory eviction
- The right to a receipt for all rent paid, whether by cash, money order or check stating the exact date an amount of payment, including any late fees

Late Charges Late Charges may be imposed only if stipulated in the rental agreement. The landlord has the right to require that the rent be paid in full on the first of each month. However, Section 13 of the Code of Civil Procedure indicates that one business day at the first of each month must be allowed before late charges are applied

Late charges that are unreasonably high, especially those which increase on a daily basis, may be worth challenging as being excessive.

Rent Increases Presently, there are no state or federal laws limiting the amount of rent that can be charged for a rental unit. However, there are some local jurisdictions (city or county) which do have rent control ordinances. A proper notice must be served prior to a rent increase, and it must be at least as long as the period of time between rent payments.

A month-to-month tenancy requires a 30-day written notice if the increase is ten percent or less, and a 60-day notice if the increase is greater than ten percent.

Formerly, a landlord has to serve the tenant a rent increase notice, either personally or to a responsible person at the rental. A last resort was to post a notice on the door and mail a second notice. Currently, the notice may be served by first-class mail addressed to the tenant at the premises. A tenant who remains in the dwelling and pays the new amount is presumed to accept the increase which then becomes part of the rental agreement.

A tenant receiving a rent increase notice only by mail service instead of personal or substitute delivery is entitled to an additional five days. This means the change is to 35 days for a ten percent increase and 65 days for an increase over ten percent. Tenants must be very certain they understand that if their landlord intends to serve a notice involving other changes in the terms of the tenancy besides a rent increase, personal or substitute service must be used. Mail service is only appropriate for rent increase charges.

Rent may not be increased during the term of a lease unless otherwise specified in the lease language.

Rules and Regulations Rules and regulations are for the protection and benefit of all parties in a rental situation and to afford tenants privacy and quiet enjoyment of the premises. They should be reviewed with management prior to entering into a rental agreement. This will help avoid any problems or misunderstandings that may arise during the tenancy. Rules are absolutely essential in rental communities to insure proper use and control of the grounds, parking areas, pool safety, excessive noise, and the proper disposal of trash. They are considered part of the rental agreement by inference and give the landlord authority to evict any tenant who persists in serious violations of the Tenant Code of Regulations.

Civil Code Section 1953 *prohibits the use of any provision in a rental agreement or any rule or regulation that waives tenants' rights or that are not legally enforceable.*

Changes in Terms of Tenancy Changes in terms of tenancy are covered in Section 827 of the Civil Code. Once a tenancy has been established, any change, addition or deletion to the existing terms of a month-to-month rental agreement must be in writing presented to the tenant at least 30 days prior to the effective date. No changes may be made to a lease unless it includes specific language to the contrary.

Guests/Visitors Tenants have the right to have guests in their home. It is their responsibility to see that the guests do not interfere with neighbors or damage the property. If extra services are requested, a small fee may be assessed for each additional

person. Guests who remain for an extended period of time or longer than rules allow may be redefined as tenants. It is legal to limit the number of persons in a rental as long as state and federal occupancy guidelines are followed.

Renter’s Insurance Renter’s insurance protects against loss of or damage to personal possessions and property resulting from theft, fire or vandalism. It also protects against possible liability for claims filed by others (including the landlord) in the event of personal injury or property damage. Types of coverage and costs differ widely between insurance providers so it is wise to comparison shop prior to making a decision.

Waterbed owners are required to have liability coverage of no less than \$100,000 with a company licensed to do business in the State of California and which possesses a Best’s Insurance Report rating of “B” or higher.

Uninhabitable Dwelling Penalty If timely repairs are not made to serious or health-affecting defects in a rental unit, a tenant has the option of filing a lawsuit against a landlord to recover damages. This kind of suit may be filed in Small Claims Court or Superior Court. If the tenant prevails, the court may award actual damages plus “special damages”.

DURATION OF TENANCY: SUMMARY

The primary responsibility of the landlord is to maintain the rental property in habitable condition for the tenant. The first responsibility of the tenant is to pay the rent in full and on time. The tenant is also responsible for the careful and thoughtful use of the rental unit and to obey all the rules and regulations.

Most landlords have rules and regulations which benefit all parties to a rental agreement. A tenant must understand them and be willing to abide by them prior to signing the rental agreement or lease.

CONFLICTS AND RESOLUTION

Owner Identification California Civil Code Section 1962 provides that a tenant has the right to know who is authorized to manage the premises and the name of address of the owner or agent with legal authority to make decisions can receive service of all notices and demands. This information must be kept current and maybe furnished to each tenant in writing or posted in a conspicuous location on the property.

Entry of Dwelling (CC 1954) The owner, agent, or manager may enter a rented dwelling in only four situations:

1. In case of an emergency
2. To make necessary or agreed-upon repairs, alterations or improvements, to supply necessary or agreed-upon services or exhibit the dwelling to prospective or actual purchasers, mortgagers, tenants, workers or contractors
3. When the tenant has abandoned or surrendered the premises, and
4. Pursuant to a court order

Unless there is a bona fide emergency, landlords are required to deliver in person to the tenant or responsible person written notice of intent to enter the premises. Entry must be during normal business hours unless indicated otherwise by the tenant. Normal business hours are considered to be from 8:00 a.m. to

5:00 p.m., Monday through Friday. Twenty four hours is presumed to be reasonable notice. No 24-hour notice is required upon a tenant's request for repairs. Entry based upon the pending expiration of a fixed-term lease can be no earlier than 60 calendar days prior to the lease's expiration date.

Influencing the Tenant to Move It is unlawful for a landlord to attempt to influence a tenant to move from a rental unit by engaging in any of the following:

- Using behavior that constitutes theft or extortion
- Displaying threats, force or menacing conduct which interferes with the tenant's right to quiet enjoyment of the premises
- Committing a significant and intentional violation of the rules that limit the landlord's right to enter the rental

A tenant may sue a landlord who violates this law for penalties up to \$2,000 for each violation. However, a landlord may give a tenant certain warning notices or explanation without violating the law.

Subleases and Assignments When a tenant who has a lease finds it necessary to move before the expiration of that lease or is unable to pay the rent, two possibilities exist:

1. Subleasing the rental unit or
2. Assignment of the lease to another person

A sublease is a rental agreement between the original tenant and one or more persons who move in to share the costs. The original tenant remains responsible for paying the rent to the landlord.

Under an assignment agreement, the new tenant becomes legally responsible to the landlord for rent, payment of any damage costs, etc. However, an assignment doesn't relieve the original tenant of the legal obligation to the landlord if the new tenant defaults. ***Either of these arrangements should be entered into with caution and careful consideration.***

Repairs (CC 1941.1) Under the “implied warranty of habitability” the landlord is responsible for repairing conditions that seriously affect the living suitability of a rental unity. The landlord is also required to comply with building and housing codes involving or affecting the health of tenants. The implied warranty of habitability does not require the landlord to repair any damage caused by tenants, their family or their guests.

Repair and Deduct (CC 1942) If a landlord refuses to make a necessary repair, California law provides a tenant the right to make or hire someone to make repairs, then deduct the cost from the following month's rent. Certain restrictions apply to this remedy, and it can be used **ONLY** for those defects which affect habitability. Conversely, this remedy does not apply to damage caused by the tenant or anything which is a violation of the tenant's responsibilities. A request for repairs must be submitted to the landlord in writing, and a reasonable amount of time (30 days or less) allowed for the repairs to be completed. In more urgent matters (i.e., broken plumbing or lack of heat) a reasonable amount of time is presumed to be less than 30 days. If no response is forthcoming, “Repair and Deduct” may be used as long as the cost does not exceed one month's rent, and this remedy is not used more than twice in any 12-month period.

Withholding Rent for Needed Repairs Legal action may also be taken to force the repair of items on the habitability list. Under a 1974 California Supreme Court Decision (Green v. Superior Court) a tenant has the right to withhold rent until the necessary repairs are completed. **Legal counsel should be consulted prior to withholding rent as this is a drastic measure having specific requirements and should be used only as a last resort when all else has failed.**

Sample Letter/Request for Repairs Following is a sample letter requesting necessary repairs. It should be sent to the landlord by certified mail, "Return Receipt Requested".

Date

Name of Landlord

Address

City, State, Zip Code

Dear (Landlord's Name):

On (date) I requested a (needed service or repair) be completed. However, to date nothing has been done. This is your notification that if the matter has not been taken care of within 30 days, I will have the work done and the cost deducted from next month's rent (my right under Sections 1941 and 1942 of the California Civil Code).

I hope this action will not be necessary, and that the needed repair will be completed in a timely manner.

Sincerely

(Tenant's signature and address)

Dispute Resolution The resolving of disputes can be unnecessarily complex, costly and time-consuming when handled via formal court proceedings where an adversarial climate exists. It is now recognized that more effective, efficient and less-threatening alternatives are available to assist in dispute resolution. Arbitration, conciliation and mediation are routinely utilized by courts, prosecuting authorities, law enforcement and administrative agencies. The focus of this handbook is on mediation in the rental arena.

Mediation This is a voluntary procedure where disputants can resolve their differences in a non-judicial and non-threatening manner. Anyone with a sincere desire to address conflict-causing issues is able to utilize the process. It is much less stressful, less time consuming and less expensive than court proceedings. The disputants come together and discuss ways in which they can resolve their differences and ultimately reach a mutually-satisfactory agreement.

The Mediator Who is a mediator? It is “the person in the middle”. It is the one who encourages both sides to engage in productive conversation the exchange of information, and the sharing of perceptions of any given situation in a safe and non-threatening environment. The mediator is a professionally trained person in this discipline. It includes a variety of communication techniques to assist and enable the parties to reach resolution. A mediator does not condone threats or violence, does not take sides, makes no judgment on who is right or wrong and never places blame on anyone.

The Agreement Mediation can be a catalyst in facilitating resolution. The Agreement is an honest, workable, win-win solution worked out jointly by all parties involved.

CONFLICTS AND RESOLUTION: SUMMARY

California law protects a tenant who exercises his/her right to that protection from retaliation by a landlord. The tenant has the right to know who is authorized to manage the premises as well as the name and address of the owner/agent who has authority to make decisions and receive service of all notices and demands.

The landlord's right to enter a rental unit is limited to emergencies, to make agreed-upon or necessary repairs, when a tenant vacates or abandons rental property, and pursuant to a court order.

Subleasing or assignment may be done if allowable by the terms of the lease or rental agreement.

The landlord is responsible for repairing conditions that seriously affect health and habitable conditions other than any damage caused by the tenant, the tenant's family or guests.

Dispute resolution may be done by one of several means: arbitration, conciliation or mediation. They are less threatening, stressful or costly than repeated law enforcement action or lengthy court procedures. Trained, professional mediators are able to facilitate mutually-satisfactory agreements that are honest, workable, and almost always win-win resolutions.

TERMINATION OF TENANCY

30-, 60-Day Notice (CC 1946) and 90-Day Notice (CC 1954.535) Either of the parties to a month-to-month rental agreement has the right to terminate the tenancy with a written notice. No reason need be stated. A tenant should surrender the premises and return the keys at the designated time on the move-out date. If the tenant does not surrender the premises within the specified amount of time, it is considered unlawfully detaining the property. A written notice is also protection for the owner who already may have rented the unit to another party. Every effort should be made by the tenant to comply when served with a notice. **A landlord cannot take any action to force a tenant to leave prior to the specified move-out date (i.e., disconnecting the utilities or changing locks on the doors.)**

Notice to Vacate: Landlord to Tenant In order to terminate a month-to-month- tenancy (for reasons other than nonpayment of rent, breach of the rental agreement or violation of a lease term) the landlord may serve the tenant with a notice simply stating the premises must be vacated in 30 or 60 days. (Tenants who have lived in a unit for a year or more are entitled to 60 days' notice while others with less residency time receive 30 days). In San Diego County the landlord is not required to give an explanation for the notice to vacate. However, in the City of San Diego the "Just Cause Eviction Ordinance" is an exception for tenants of two or more years' residency.

For tenants receiving Section 8 housing assistance, a 90-Day notice to vacate is required. It is illegal for a landlord to give a tenant notice to vacate if this action is either retaliatory or discriminatory.

Notice to Vacate: Tenant to Landlord A tenant is required to give notice of intent to vacate at least 30 days prior to the actual date of leaving regardless of the length of time of residence.

Three-Day Pay or Quit Notice Non-payment of rent creates a problem to subsidize their tenant's incomes. Extraordinary circumstances sometimes do occur making it impossible for payment of rent in full and on time. In such situations, a tenant should communicate immediately with the owner/agent, explain the problem and offer a payment plan which will bring the rent to fully-paid status as soon as possible. Unless some type of temporary agreement is reached, the usual course of action is service of a three-day pay-or-quit notice indicating immediate action to correct the default. **(A tenant must never ignore this notice).**

Three-Day Perform Covenant Notice This notice may be served for some other violation of the rental agreement. It must state the reason and must allow the tenant to either correct the problem or leave. An exception to the last provision prevails when a tenant is engaged in illegal activity, endangers other or causes profound damage to the premises. The first of the three days begins with the day following receipt of the notice. If the last day falls on a Sunday or legal holiday, the third day then becomes the first business day after the Sunday or holiday. If the problem is not resolved within three days following the service, an unlawful detainer eviction notice may then be filed on the fourth day by the rental property owner.

Unlawful Detainer (CCP 1161) When a tenant fails to leave voluntarily following a properly-served notice, the landlord has the right to initiate the eviction procedure. This includes the

stated complaint and a summons to appear in court, the unlawful detainer. It is the legal action that may be taken after expiration of a three-day or thirty-day notice. The Tenant has five days in which to respond in writing to the complaint and summons. (If the fifth day falls in a legal holiday or weekend, the response may be filed on the following business day. However, Saturdays and Sundays, nor other judicial holidays, are counted as part of the five days.)

There is a fee to file the written response to the unlawful detainer. Low-income filers may request an application for waiver of fee from the court clerk. Once the complaint has been answered, both tenant and landlord will be notified of the hearing date and time.

During the hearing, both parties have the opportunity to present evidence and explain their respective cases. If the court decided in favor of the landlord, the tenant is subject to eviction. The prevailing landlord then has the right to obtain a writ of possession allowing the sheriff to take appropriate action. If the tenant does not respond, the court may enter a default judgment in favor of the landlord.

Writ of Possession (CCP 715.010-040) The writ of possession is a legal document used to evict a tenant against whom a judgment has been entered. The tenant is served a copy of the writ. The cost of it will be added to any other the court has awarded the landlord. Once the writ has been served, the tenant has five days in which to vacate and surrender the premises.

Illegal Eviction (CC 789.3) Three-day and thirty-day notices enforced by court action are the only legal means of eviction.

Lockouts, harassment, threats and utility cutoffs are prohibited by law. However, a landlord may give the tenant certain warning notices and explanations without violating the law.

Additionally, a landlord is prohibited from any attempts to influence a tenant to move by engaging in conduct that constitutes theft or extortion, using threats, force or menacing conduct which interferes with the tenant's right to quiet enjoyment of the premises. A landlord taking any of these illegal actions may be liable for the following:

- Actual damages to the tenant
- Up to \$100 per day or portion of a day during which the tenant's rights are violated
- Reasonable attorney's fees to recover damages

A tenant involved in an action against a landlord for illegal eviction may seek appropriate injunctive relief to prevent continuing or further violations during the pending action.

Retaliatory Eviction (CC 1942.5[c]) California law protects a tenant from certain retaliatory actions by an owner, agent or manager. If the tenant is current with rent, it is illegal to evict, increase rent or reduce services in retaliation when the tenant exercises the legal rights of any of the following:

- Making a complaint
- Requesting a health, building or safety inspection
- Requesting repairs or using "repair and deduct" when appropriate
- Joining a tenant organization
- Winning a judgment related to habitability

Disposition of Tenant' Possession at Termination of Tenancy (CC 1982-1991) An owner, agent or manager may not

enter the dwelling and remove a tenant's belongings other than following a writ of possession or abandonment of the premises by that tenant. When personal property remains, the landlord should send a formal written notice to the former tenant requesting that all material be removed. The property then must be inventoried and stored in a safe place.

Reasonable storage fees may be charged prior to the release of the possessions. If within 15 days (if the notice is personally delivered) or 18 days (if the notice is mailed) the tenant pays the storage costs, the landlord must relinquish the property.

If the property is not reclaimed after proper notification and is valued at less than \$300, the landlord may dispose of it in any discretionary manner. If the value is more than \$300, the property may be sold at public auction. The balance is turned over to the county – after the costs for storage and advertising have been deducted.

Security Deposit No lease or rental agreement shall contain the provision designating the security deposit to be non-refundable.

Since January 1, 2003, tenants have had the right to request an inspection of the premises by the landlord/agent prior to their move-out date. This allows them the right to be made aware of any damages and/or deficiencies claimed and time to correct them. The landlord may not make an initial inspection unless the tenant requests it. The rental unit should be returned to the same condition and level of cleanliness it was at the time of move-in minus any normal wear-and-tear.

As mentioned previously, each party should keep a copy of the check list completed upon move-in. The same check list should be used during the walk-through at the end of the tenancy. The rental property owner is allowed to deduct for the following items:

- The exact amount of delinquent rent
- The cost to repair damages caused by the tenant during the current tenancy, and
- Cleaning costs necessary to return the rental unit to the same level of cleanliness that existed at the onset of tenancy

The security deposit frequently presents a problem. It usually involves a difference in interpretation of what is considered ordinary wear and tear, what constitutes legitimate damage, and what is an appropriate deduction for necessary cleaning. After the tenant vacates, the owner has three weeks (21 days) to do one of two things:

1. Return the entire deposit, or
2. Give the tenant an itemized statement, either in person or by first-class mail, indicating why all or part of the deposit is being retained, if the amount is \$125 or more

If the landlord's employee did the work, the itemized statement shall reasonably describe the work performed. It also should include the amount of time spent with a reasonable hourly rate charged. If the landlord or the employee did not perform the work, the tenant should be provided with a copy of the bill, invoice or receipt from the person who did the work., Also

included should be the name, address and telephone number of that person (or company represented).

The landlord need not comply with the previous two paragraphs if either of the following is applicable:

1. The deductions for repairs and cleaning together do not exceed one hundred twenty five dollars (\$125.00)
2. The tenant waives his/her rights to receive the information. The waiver shall only be effective if it is signed by the tenant at the time, or after a notice to terminate the tenancy has been given.

If an agreed-upon repair to be done by the landlord (or the landlord's employee) cannot be completed within 21 calendar days after the tenant has vacated the premises, or if the documents from the person or entity providing the services, materials or supplies are not in the landlord's possession within the 21 days, the landlord may deduct the amount of a good faith estimate of the charges. Current California law does not require the security deposit to be held in a separate trust account unless mandated by an existing local ordinance.

If no refund is made within the legal time frame, the tenant should follow through with a written request to the property owner via certified mail, "Return Receipt Requested". If this does not bring results or a mutual agreement cannot be reached, the tenant's recourse is to file a claim in Small Claims Court. Tangible evidence and careful documentation are vital to substantiate the unit's condition at the time of vacation.

Section CC 1950.5(h) This section of the California Civil Code requires that a new owner get all security deposits from the former landlord. It is the responsibility of the new landlord to return security deposits to the current tenants at the end of their respective tenancies.

Return of Security Deposit Sample Letter This letter is requesting the return of the security deposit and any repair cost deductions should be sent to the landlord by certified mail, “Return Receipt Requested”. Always retain a copy.

Your address

Date

Name of Landlord

Address

City, State, Zip Code

Dear (Landlord’s name):

As you know, I lived at (address) until I moved on (date). I was a considerate tenant, took good care of the property and paid my rent in full and on time. I left the unit in good condition and as clean as I found it. According to California Civil Code Section 1950.5, I am entitled to a refund of my security deposit and an itemized list of any repair cost deductions within 21 days of my move-out. So far, I have heard nothing from you concerning my refund.

Please contact me at the above address by (reasonable date for return mail) in order to resolve this problem. Your failure to do so will be construed as acting in bad faith.

Sincerely,

(Tenant’s signature)

Sale of Property The sale of the rental property does not change the legal rights of the current tenants. Those with leases have the right to remain until the expiration date under the same terms and conditions as those included in their respective leases. However, the new owner may terminate a periodic (month-to-month) tenancy with appropriate notice.

Hotel and Motel Resident's Rights A person living in a hotel, motel or residence club room subject to a local room tax under the Revenue and Taxation Code is not considered a tenant if all of the following apply:

- The manager maintains control of the property and has the right of access to the rental room
- The hotel or motel has a fireproof safe for the use of residents
- Maid services, mail services and recreational services are provided for all residents
- Some residents occupy their rooms for less than seven days

Single Boarders in Family-Owned Homes Different rules apply to a person who rents a room (but does not have a lease) in house where the owner lives. There must be only one boarder. No discretionary advertising may be used by the homeowner. Either party may give the other a written notice of intention to vacate the room. The notice must be for the same amount of time as that between rental payments, but not less than seven days. Civil Code Section 1946 provides the owner with legal recourse if the boarder was served proper notice and the time has expired. Then the person has no further right to remain.

TERMINATION OF TENANCY SUMMARY

Either party to a month-to-month rental agreement has the right to terminate the tenancy with a 30-day written notice.

If a tenant cannot pay the rent when due, the landlord may deliver a “three-day pay-or-quit” notice.

A three-day notice may also be served for some other violation of the rental agreement.

If a tenant fails to vacate the premises voluntarily following a properly served notice, the landlord has a legal right to initiate the eviction procedure.

A landlord is prohibited from seeking to influence a tenant to move by using threats, force or menacing conduct that interferes with a tenant’s right to quiet enjoyment of the premises. The tenant is also protected from certain kinds of retaliatory action by the owner, agent or manager.

No lease or rental agreement shall contain a provision designating the security deposit as non-refundable. The landlord is allowed to deduct for certain items which must comply with the law and be thoroughly documented.

The remaining balance is due within three weeks (21 days) after the tenant has vacated the premises.

There are different rules and requirements for persons residing in hotels, motels or private homes where the owner lives and there are no other lodgers.

DISCRIMINATION

Discrimination is Prohibited Federal and state laws prohibit discrimination or harassment based on race, color, religion, national origin, ancestry, age, marital status, familial status, sex (including gender and perception of gender), sexual orientation, disability and source of income. These laws apply to the rental and purchase of housing accommodations. Their purpose is to provide every person with an equal opportunity to choose housing suited to individual needs and financial capability.

Owners are responsible for their agents' actions, but both can be held legally responsible for discriminatory practices. Rental decisions must be based upon objective business criteria and qualifications and must be applied equally to everyone.

FAIR HOUSING

Administrative agencies charged with the investigation and enforcement of fair housing laws are the U. S. Department of Housing and Urban Development (HUD) and the California Department of Fair Employment and Housing (DFEH).

Federal Fair Housing Laws The U. S. Department of Housing and Urban Development (HUD) is a Government agency that investigates and enforces federal fair housing laws. They include:

- **Civil Rights Act of 1866:** This is the first federal housing law granting all citizens equal rights regarding property. It prohibits racial discrimination and provides protection to non-whites and Hispanic-Americans by court interpretation.

- **Title VI of the Civil Rights Act of 1964:** This law prohibits discrimination based on race, color, and national origin in federally-assisted housing programs. Each federal department or agency that extends financial assistance to a program or activity through grants, loans or contracts is directed to issue rules or regulations to carry out the purposes of the Title.
- **Title VII of the Civil Rights Act of 1968:** This is the primary federal law which prohibits discrimination in the sale, rental, lease or negotiation from property based on race, color, sex, religion or national origin. It also prohibits discrimination in financing. Exclusions include owner-occupied boarding houses with no more than three units and non-commercial lodging.
- **Housing and Community Development Act of 1974:** This law prohibits discrimination on the basis of race, color, national origin and sex in federally-assisted community development activities.
- **The Fair Housing Amendments Act of 1988:** The most dramatic improvement in civil rights law since 1968. Effective March 1969, the nation's Fair Housing Act was significantly strengthened by this amendment which gave HUD the authority to initiate enforcement actions and to seek stiffer fines and penalties against individuals, business or organizations that discriminate on the sale, rental, or financing of housing. The Act provides for federal protection against housing discrimination and includes the disabled as well as families with children under the age of 18. It also continues the right of complainants to file private civil suits and extends the

filing deadline to two years after the discriminatory incident.

State Fair Housing Laws The California Department of Fair Employment and Housing (DFEH) is the agency which investigates and enforces housing discrimination complaints. It has offices in both northern and southern areas of the state.

Call toll free 800-884-1684 to register a discrimination complaint. Staff specialist's pre-screen calls on a statewide basis and, if merited, will refer them to the appropriate DFEH office. State Fair Housing Laws include the following:

- Unruh Civil Rights Act of 1959 (Civil Code Sections 51 and 52) prohibits discrimination regardless of sex, race, color, religion, ancestry, national origin, sexual orientation or source of income. Complaints to DFEH must be filed within one year of an incident.
- Fair Employment and Housing Act (FEHA) of 1963 is also known as the Rumford Fair Housing Act. The primary state law which prohibits discrimination in the sale, rental, lease negotiation or financing of housing based on race, color, religion, sex, marital status, national origin and ancestry. Exclusions include owner-occupied houses with no more than one boarder and non-commercial, religious, fraternal, charitable housing or post-secondary educational housing.

DFEH has full power to investigate, conciliate, and litigate for the FEHA Commission which conducts hearings and issues orders that are enforceable by the Superior Court. Private lawsuits may also be filed.

DFEH complaints must be filed within 60 days of the alleged violation, unless the complainant first obtained knowledge of the act after the expiration of the 60 days. **In this case there is an additional 60-day grace period allowed for filing.**

Ralph Civil Rights Act (Civil Code, Sections 51.7 and 52) This law prohibits acts of violence or intimidation by threat of violence against persons or property because of race, color, religion, ancestry, national origin, sex, political affiliation or a position in a labor dispute. Rental housing includes houses, apartments, hotels, boarding houses and condominiums.

- **California Civil Code (Sections 54 and 54.3)** include provisions requiring physically disabled persons to have equal access to housing accommodations.
- **California Fair Housing Act of 1992** brings the Fair Employment and Fair Housing Act (FEHA) into conformance with the Federal Fair Housing Amendments Act of 1988.

RESOURCE AND REFERRAL INFORMATION

Additional Sources of Housing Information Books on tenant/landlord subjects are available at public libraries, book stores and office supply stores. Included are:

The Landlord's Law Book- Rights and Responsibilities, Brown and Warner, Nolo Press

Managing Rental Housing, California Apartment Association

California Tenant's Rights, 17th Edition, Attorneys Janet Portman and David Brown, Nolo Press

Using the Small Claims Court, Free booklet, Department of Consumer Affairs, P.O. Box 310, Sacramento, CA 95802. Enclose a 7x10 stamped envelope.

Resource and Referral Information

Affordable Housing Advocates	(619) 233-8744
Aging and Independence Services	(800) 510-2020
California Dept. of Real Estate	(760) 726-3104
Caring Council, La Mesa	(619) 698-2480
Carlsbad, City of	(760) 434-2957
Catholic Charities	(619) 231-2828, ext. 103
CSA San Diego County	(619) 444-5700
Code Enforcement, San Diego	(619) 236-5542
Consumer Affair Department	(800) 233-3212
County Tax Assessor/Recorder/Clerk	(619) 236-3771
DFEH (Dept. of Fair Emp. & Housing)	(800) 884- 1684
East County Family Justice Center	(619) 871-6947
East County Lawyer Referral	(619) 588-1936
El Cajon, City of	(619) 441-1716
Elder Law and Advocacy	(858) 565-1392
Episcopal Family Services	(619) 228-2883
Escondido, City of	(760) 839-4841
Health Department, San Diego	(619) 236-5500

Resource and Referral Information

Housing & Urban Development	(619) 557-2606
La Mesa, City of	(619) 463-6611
Legal Aid Society of San Diego	(877) 534-2524
Lemon Grove, City of	(619) 825-3800
Neighborhood Code Compliance	(619) 280-1993
Poway, City of	(858) 668-4400
Restoration Justice Mediation Service	(619) 236-5500
San Diego Bar Association	(619) 231-8585
San Diego, City of	(619) 615-6111
San Diego Housing Authority	(619) 694-4000
San Diego Mediation Group	(619) 255-1799
Santee, City of	(619) 956-4000
Second Chance	(619) 233-8888
Small Claims Advisory Service	(619) 236-2471
Tenants Legal Center	(858) 571-7100
Vector Control, City of San Diego	(858) 694-2888

San Diego County Fair Housing Organizations

CSA San Diego County (C4SA)

131 Avocado Avenue
El Cajon, CA 92020

Telephone: (619) 444-5700 or (800) 954-0441

Fax: (619) 447-5761

Website: www.C4SA.org

Email: info@c4sa.org

Serving Carlsbad, El Cajon, La Mesa, Poway, Santee, and San Diego County east of I-15 from the Riverside County border south to Highway 94

Fair Housing Council of San Diego (FHSD)

625 Broadway, Suite 1114
San Diego, CA 92101-5418

Telephone: (619) 699-5888 OR (877) 699-5889

Fax: (619) 699-5885

Website: www.fhcsd.com

Serving Encinitas, Chula Vista and National City

San Diego County Fair Housing Organizations

North County Lifeline (NCL)

200 Michigan Avenue
Vista, CA 92084

Telephone: (760) 726-4900 ext. 321 or 226

Website: www.nclifeline.org

Email: kmatthews@ncliflifeline.org

Serving San Diego County west of I-15 from the Orange County/Riverside County Borders south to Solana Beach and Del Mar, excluding Escondido, Carlsbad and Encinitas.

South Bay Community Services (SBCS)

1124 Bay Boulevard, Suite D
Chula Vista, CA 91911

Telephone: (619) 420-3620 ext. 140

Website: www.southbaycommunityservices.org

Email: olacson@csbcs.org

Serving San Diego County's bay area, including Coronado and Imperial Beach, and south of the 94 Freeway, excluding Lemon Grove.

Index to Civil Codes and Codes of Civil Procedure

Abandonment of Residence

[California Civil Code, Section 1951.3]

After the Judgment Has Been Satisfied

[Code of Civil Procedure, Sections 724.010, 724.050]

Changes in a Lease or Rental Agreement

[Civil Code, Section 827]

Conditions Under Which a Landlord May Not Collect Rent

[Civil Code, Section 1942.4]

Credit Reports

[Civil Code, Sections 1786 – 1786.6, 950.6]

Deposits

[Civil Code, Section 1950.5]

Effect on a Deposit When Rental Property is Sold

[Civil Code, Section 1950.5 (g), (h), (i)]

Eviction and Your Credit Reports

[Civil Code, Sections 1785.1 – 1786.6]

Getting Repairs Done When a Landlord is Responsible

[Civil Code, Section 1941.1]

Illegal Lease or Rental Agreement Provisions

[Civil Code, Section 1953]

Index to Civil Codes and Civil Procedures

(Continued)

Illegal Lock-outs or Utility Cut-offs

[California Civil Code, Section 789.3]

Landlord's Duties and Responsibilities

[Civil Code, Section 1941.1]

Landlord's Entry of Dwelling

[Civil Code, Section 1954]

Landlord's Obligation to Install and Maintain Locks

[Civil Code, Section 1941.3]

Landlord Notification of Inoperable Locks by Tenant

[Civil Code, Section 1941.3]

Landlord's Right to Use Deposits

[Civil Code 1950.5(b)]

Late Charges

[Civil Code, Section 1671]

Personal Property

[Code of Civil Procedure, Section 1174]

Quiet Enjoyment of the Premises

[Civil Code, Section 3304]

Index to Civil Codes and Civil Procedures

(Continued)

Quiet Possession

[California Civil Code, Section 1927]

Reclaiming Personal Property after Vacation of Premises

[Civil Code 1965]

Repairs

[Civil Code, Sections 1929 and 1935]

Tenant's Duties and Responsibilities

[Civil Code, Sections 1929 and 1941.2]

Tenant's Remedies for Landlord's Failure to Make Repairs

[Civil Code, Section 1942]

Tenant's Rights Regarding the Deposit

[Civil Code, Section 1950.5(f),(k)]

Thirty Day Notice

[Civil Code, Section 1946]

Three-Day Notice

[Civil Code of Procedure, Section 1161]

Written Receipt Requirements

[Civil Code, Section 1499]

Sample Checklist

The following is a summary of the conditions of the premises at the following address:

		Condition on Arrival	Condition on Departure
Living Room	Floor and Floor Covering		
	Drapes		
	Walls & Ceilings		
	Furniture (if any)		
	Light Fixtures		
	Windows, Screens & Doors		
	Anything Else		
Kitchen	Stove & Refrigerator		
	Light Fixtures		
	Windows, Screens & Doors		
	Sink & Plumbing		
	Cupboards		
Dining Room	Floor & Floor Covering		
	Drapes		
	Walls & Ceilings		
	Furniture (if any)		
	Light Fixtures		
	Windows, Screens and Doors		
Bathroom(s)	Toilet(s)		
	Sink(s)		
	Shower(s)		
	Floor, Walls & Ceiling		
	Light Fixture		
	Windows, Screens & Doors		
Other Areas	Floor & Floor Covering		
	Windows, Screens & Doors		
	Walls & Ceilings		
	Furnace		
	Air Conditioning (If any)		
	Lawn, Ground Covering		
	Patio, Terrace, Deck, etc.		
	Other		

Arrival Inspection:

Date: _____

Tenant

Signature: _____

Landlord

Signature: _____

Departure Inspection:

Date: _____

Tenant

Signature: _____

Landlord

Signature: _____

Areas of Service/ County

Cities	Zip Codes	Services
Carlsbad	92008, 92009, 92013, 92014	FH, L/T
El Cajon	92019, 92020, 92021, 92090	FH, L/T
La Mesa	91941, 91942, 91943	F/H, L/T, SH
Poway	92074	FH, L/T
Santee	92071	FH, L/T
Spring Valley	91976, 91977, 91978, 91979	FH, L/T

County, CDPs: Alpine, Borrego Springs, Bostonia, Crest, Granite Hills, Harbison Canyon, Jamul, Julian, Lakeside, Pine Valley, Ramona, San Diego Country Estates, Valley Center and Wintergardens. (CDPs are census-designated communities that lack a separate municipal government, but which otherwise physically resemble incorporated places.)

Unincorporated Communities: 4S Ranch, Campo, Descanso, Jesmond Dene, Mount Laguna, and Santa Ysabel. All the above receive FH/L/T services.

Shared Housing Programs

During times of unstable economy, families and adults of all age groups often experience difficulty in maintaining former lifestyles and home environments due to changing financial circumstances. CSA San Diego County offers three different housing programs which match homeowners and those in need of housing through mutual exchange of money, services or personal care for the homeowner. CSA San Diego County has established and maintains high-quality procedures that will lead to lasting and satisfying homeowner and seeker matches. By contacting this agency at (619) 444-5700, persons may find less risk of unsafe matches through our established risk-reduction strategies in the city of La Mesa.

1. A seeker or homeowner contacts us for assistance. An appointment is schedule during which references are verified. A seeker usually wants to rent a room with no further obligation, although a lower rent may be negotiated through limited assistance (i.e., cooking, leaning, or driving).

2. A seeker or homeowner schedules an appointment with one of our counselors. We do an intake and verify references. The seeker provides the homeowner with 20 hours of service, five days a week. In exchange, the homeowner provides room and board. No money is exchanged between the two.

3. A seeker or homeowner schedules and appointment, meets with a counselor, references are verified and intake is done. In this arrangement, the seeker agrees to and is obligated to be available 24 hours a day, five days per week. In return for services performed, the owner pays the seeker \$1,000 to \$1,200 per month or whatever the negotiated amount may be.

Legislative Update-
Names, Numbers and Notes



CSA San Diego County

131 Avocado Avenue
El Cajon, CA 92020

Telephone: (619) 444-5700
Fax: (619) 447-5761
From Carlsbad call: (800) 954-0441
Email: info@c4sa.org
www.C4SA.org

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