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Tenant's Rights & Responsibilities

Please Note:

This Tenants' Rights and Responsibilities manual provides only general legal information. It is not advice about your own legal problem. If you need legal advice, consult an attorney. This information only applies to residential tenancies. The law for commercial tenancies is different. The Legal Aid Foundation of Los Angeles and the authors specifically disclaim any liability for loss or risk caused by the use and application of any of the contents of this book.

Tenant's Rights & Responsibilities

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NOTE TO THE READER

This manual was revised April 2003, by the staff of the Legal Aid Foundation of Los Angeles. We believe that this manual is accurate as of the date of its writing, but laws change frequently. Legal questions are often more complex than they appear on their face. There is no substitute for the advice of an attorney. If the reader has specific questions about any of the materials in this manual, or any of the sample letters attached, the reader should consult competent legal counsel

RENTAL AGREEMENTS

1. When you rent a house or apartment, your landlord will either make an oral agreement with you or have you sign a written agreement.

- a. Oral agreements

You talk with the landlord. He or she tells you what the rent is, when it is due and what the conditions of rental are. You say that you agree, will pay rent on time and your landlord says you can move in. Sometimes you agree by simply moving in. You do not sign any papers. This is called an oral agreement.

- b. Written agreements

All of the rules and the amount of rent you will pay for the apartment are written. When you sign, you agree to follow the rules and pay the rent on time. Only what is written becomes part of the agreement.

UNLESS YOU HAVE A GOVERNMENT SUBSIDIZED LEASE, THERE IS NO LAW THAT REQUIRES YOUR LANDLORD TO USE A WRITTEN RENTAL AGREEMENT. AN ORAL AGREEMENT IS LEGALLY VALID.

2. There are two basic kinds of written agreements, month-to-month rental agreements and leases for a longer, but specified, length of time.

- a. Month-to-month rental agreements (Note: The Rules are different if there is rent control. To find out if you live in a city with rent control, consult a lawyer):

-Your landlord can raise your rent, or change any other term (part) of the agreement, with 30-days written notice to you. He or she does not have to give a reason for changing the agreement. **BUT, IF YOUR LANDLORD WANTS TO INCREASE YOUR RENT BY MORE THAN 10% HE OR SHE MUST GIVE YOU 60 DAYS WRITTEN NOTICE.**

-Your landlord can evict you with 30-days written notice for any reason as long as he or she is not discriminating or retaliating against you. He or she does not need to tell you what the reason is. By the same token, you can move on 30 days written notice at any time, without a reason. **BUT, IF YOU HAVE LIVED IN YOUR UNIT FOR MORE THAN ONE (1) YEAR YOUR LANDLORD MUST GIVE YOU 60 DAYS WRITTEN NOTICE.**

NOTE: CHECK THE WRITTEN AGREEMENT. IT MAY SHORTEN THE NOTICE PERIOD. THE NOTICE PERIOD CAN BE AS LITTLE AS SEVEN (7) DAYS NOTICE IF A WRITTEN AGREEMENT SAYS SO. THIS MEANS YOUR LANDLORD CAN EVICT OR RAISE RENT WITH A VERY SHORT NOTICE. IF SO, YOU MAY WANT TO THINK CAREFULLY BEFORE SIGNING THE AGREEMENT, OR ASK THAT THE PROVISION BE CHANGED.

- b. Lease for a specific term

-This kind of written agreement may be for any amount of time - 6 months, 1 year, 2 years, etc.

-The agreement cannot be changed during the length of the lease. For example, the landlord cannot raise the rent or evict you for no reason while the lease is in effect.

PLEASE NOTE: IF YOU LIVE IN SUBSIDIZED HOUSING OR WHERE THERE IS RENT CONTROL, THE RULES ABOUT RENTAL AGREEMENTS, EVICTION NOTICES, RENT RAISES, AND CONTENT OF NOTICES ARE DIFFERENT. TO FIND OUT IF YOU LIVE IN A CITY THAT HAS RENT CONTROL, YOU SHOULD CONSULT AN ATTORNEY.

**WHAT TO DO BEFORE SIGNING A RENTAL AGREEMENT
OR PAYING A SECURITY DEPOSIT**

1. **Look carefully at the apartment.** Check the apartment when there is plenty of light to see by.

Check for these things:

- a. Is the plumbing in good condition? Is it rusted, leaking or in bad repair?
- b. Is there hot and cold running water from all faucets?
- c. Does the heater work?
- d. Are there loose or exposed wires? Do the plugs and switches work well?
- e. Are there cockroaches, other insects, mice or rats?
- f. Can the windows be opened and closed properly?
- g. Are there any holes, cracks or damaged windows or doors?
- h. Are there any stains on the ceiling indicating a leaking roof?
- i. Are the hallways and stairs well lit?
- j. Is the security of the apartment and of the building adequate?
- k. Are there enough trash cans for the building?
12. Are there proper locks on all doors and windows?

If there are problems that need to be fixed, talk to the landlord about the repairs. If the landlord promises to make repairs, get it in writing.

2. **Read the lease or rental agreement.** Make sure it says what the rent is. Make sure it says what deposits you have paid. Make sure it says that the landlord will make the repairs you want. Check to see how much notice is needed to change the terms of the agreement or evict you. Also make sure the landlord puts all of his or her promises to you in writing in the lease or rental agreement. If the landlord does not want to put the promises in writing, it may be because he or she does not really mean to keep them.

DO NOT SIGN A DOCUMENT SAYING THAT THE APARTMENT IS IN GOOD CONDITION IF IT IS NOT.

3. **Make sure you understand the lease or rental agreement.** Look carefully at the agreement for things like these:

- a. Rules that say your landlord is not responsible for injuries to you or your property caused by poor upkeep of the building. This is illegal.
- b. Rules that require you to make habitability repairs instead of the landlord. This is illegal.
- c. Rules that let the landlord raise the rent or evict you without giving you proper notice or at least 7 days notice. Eviction without proper notice is illegal. (Note: if the agreement allows 7 days notice, it is best for the tenant to try to get the landlord to change it to 30-days notice.)
- d. Rules that let the landlord evict you without notice if you don't pay the rent. This is illegal.
- e. Rules that let the landlord enter your apartment whenever he or she wants to, instead of giving 24 hours written notice (except in case of emergency). This is illegal.
- f. Rules that require you to pay a "late charge" if your rent is late (Note: a rent reduction for paying on time is really a late charge.)
- g. Rules against subletting.
- h. Rules limiting the number of people who can live there, limiting the guests who can visit, or charging for overnight guests.

If you don't agree to a rule, ask the landlord to cross it out and to sign his or her initials by the cross-out. Of course, the landlord might be unwilling to do this.

Some provisions in a rental agreement are illegal (see above). If an agreement contains any such provision, the provision is not valid, but the rest of the agreement is valid (you do not have to ask the landlord to cross out the bad provision, it is just not valid).

4. **Be sure you get a copy of the lease or rental agreement.**
5. **Be sure you get a receipt for any deposits.** Get the landlord's or manager's signature and some indication that it is a deposit receipt. **Keep all receipts.** Check to see how much the total deposit is. The law says that for an unfurnished apartment, the total of the deposits may not be more than two times the amount of one month's rent. For a furnished apartment, the deposit may not be more than three times the amount of one month's rent.

WHAT TO DO BEFORE MOVING INTO AN APARTMENT (AFTER YOU AGREE TO RENT)

1. If at all possible, pay rent by personal check and keep the canceled checks. This makes payment easier to prove than if you pay by cash or money order.
2. **Keep records.** Remember always to keep your copy of the rental agreement and all receipts your landlord gives you for deposits and rent payments.

Suggestion: Start a folder of all your landlord-tenant records. Make notes of when you talked to your landlord and what you talked about. Keep these notes with your records.

3. **Make a list of things wrong with apartment.** Try to arrange to have the landlord or the manager meet you at the apartment to check over the condition of the apartment. If he or she will not come with you, have some adult who is not related to you be your witness. Make a list of all the things that are broken, stained, out of order, or missing. Include anything that the landlord or manager might try to say is your fault when you move out. Ask the landlord or manager to sign the list.

Make a copy of the list and give it to the landlord. **Keep the original list** with the landlord's signature. Staple or clip it to your copy of the rental agreement. If the landlord or manager does not or will not, sign it, mail a copy of the list to the landlord.

Take photos to make a permanent record.

YOUR DUTIES ONCE YOU MOVE IN

A landlord has certain rights and duties, and so do you. Your duties are: 1) To keep the premises clean and sanitary, 2) to dispose of all rubbish and garbage in a clean and sanitary manner, 3) to properly use and operate all electric, gas and plumbing fixtures, 4) to not wilfully destroy, damage, deface, impair, or remove any part of the structure or appliances therein, nor allow anyone else to do so, 5) to occupy the premises as a dwelling and use the premises for only the purposes for which it is designed, 6) to not disturb the neighbors' quiet enjoyment of their premises, and 7) to pay rent in full and on time (but see later discussion concerning "repair and deduct" and withholding rent).

HOW TO GET REPAIRS MADE

Your landlord must keep the apartment or house in good condition. There are State housing laws and local housing codes that require your landlord to maintain the property in good repair. If repairs are needed, there are four common methods used to get repairs made by the landlord:

1. **Ask the landlord to make repairs.**

If your apartment needs repairs, first write a letter to the landlord or the manager. State what needs repairing, and ask him or her to have the repairs done. Keep a copy of the letter. You should try to get the landlord to make the repairs before trying any other method of correction.

The landlord must make the repairs within a reasonable amount of time. What is reasonable depends on the circumstances. If the problem is very serious, such as a gas leak, a toilet that doesn't flush, no heat or hot water, or a leaky roof, the landlord should act very quickly. But if the problem is not that serious, such as a torn window screen, the law gives the landlord more time to take care of it.

If the landlord does not make the repairs within a reasonable length of time, you have two choices: (1) repair it yourself and deduct the cost of repairs from your rent (called repair and deduct), or (2) withhold your rent.

2. Contact local authorities.

If repairs are not voluntarily made by your landlord, you can call the local Health Department or Building Department, and ask them to come and inspect the building. They will require the landlord to repair the major problems. It is illegal for the landlord to retaliate against you in any way for complaining to authorities about the condition of your apartment.

3. Repair and deduct. Be careful. You must do this properly, or you cannot use this method.

This is a better method than withholding rent!

There are several conditions, all must exist or you cannot repair and deduct:

- a. The problem must be a serious one affecting your health or safety (see examples below).
- b. You or your family or your friends must not have caused the problem needing repair.
- c. The repair costs less than one month's rent (parts and labor combined), and
- d. If the landlord tries to make the repairs that you requested, you must let him or her in to do so at a reasonable time of day. Only when the landlord refuses to make repairs can you repair and deduct.

Problems affecting health or safety include things like:

- (1) a leaky roof or broken door or window,
- (2) plumbing that does not work (no hot or cold water, plumbing backs up, or toilet that does not flush).
- (3) a heater that does not work or is not safe,
- (4) windows that will not open,
- (5) lights and wiring that do not work or are not safe,
- (6) locks that do not work,
- (7) floors, stairways, and railings that are not safe,
- (8) unsanitary piles of trash in common areas or rodent/insect infestation,
- (9) not enough covered trash cans.

HOW TO REPAIR AND DEDUCT

If you meet all four of the conditions above (3a to 3d), you can pay for the repairs yourself and then deduct the cost of the repairs from your next payment of rent.

You must first give the landlord reasonable notice that you intend to do this (give the notice in writing!) and a chance to make the repairs himself or herself. Again, the amount of notice required depends on how serious the problem is. Thirty days notice is almost always legally enough, but if the problem is serious enough, less notice may be sufficient. To protect yourself, give written notice AND keep a copy of the notice.

If the landlord has not made the repairs after you gave reasonable notice, you may make the repairs and deduct the cost from your next payment of rent. It is best to have an outside person or company do the work, and not do it yourself. If an outside person does the work, you can deduct the cost of labor as well as materials. If you do it yourself, it is harder to justify deducting for labor (on the other hand, if you do not charge for labor, the full amount can be spent on materials). Keep the repair bills, make copies of them, and give the landlord the copies of the repair bills along with your next rent payment, to show the landlord how much rent you are allowed to deduct.

You may use the repair-and-deduct remedy only two times in any 12-month period, no more.

You should take "before and after" pictures of the problem to have as evidence, and you should also try to have some other adults, not related to you, look at the problem. They can be your witnesses if the landlord refuses to deduct the repairs from your rent and tries to sue you for the unpaid rent.

4. Withholding rent. Be even more careful!

This should be your last resort. You should only consider withholding your rent if: (1) the problem that needs repair is serious (serious means that it affects your health or safety), (2) your landlord will not make the repair and (3) you cannot fix it with one month's rent. The same conditions apply as described under "Repair and Deduct," except that you can withhold rent even if the cost of repairs is more than one month's rent.

5. How to withhold rent.

You should write your landlord a letter saying that you intend to withhold rent until the repairs are made. Keep a copy of the letter. You can withhold all or part of your rent. **YOU MUST SAVE THE RENT MONEY.** If you withhold your rent, the landlord will probably sue you in court for the unpaid rent and try to evict you for not paying rent. If you have followed the law, you should win in court based on a "habitability" defense.

Even if the court decides that you had the right to withhold rent, the court will order that you pay the landlord a *reasonable* amount of rent based on the condition of the apartment (instead of the normal amount of rent).

You must pay the amount set by the judge if you wish to stay in the apartment, and you will have not more than five days to pay it (Maybe less). Therefore, you must save the rent that you are withholding! Again, take pictures, call the Health Department or building inspectors, and get witnesses to prove your case in court.

In addition to ordering that you pay only a reasonable amount of rent (essentially reducing the rent due to the conditions), a judge can order the landlord to make repairs and can order that you pay only the reduced rent until the repairs are made.

Withholding rent is often more effective if a group of tenants does it together. This is called a "rent strike." The landlord may be more willing to seriously listen to complaints if he or she is losing substantial rental income. You should obtain legal advice before beginning a rent strike.

RENT INCREASES

1. Month-to-month:

Unless you live in a rent control area or in subsidized housing, under an oral rental agreement your landlord can raise your rent by any amount as long as he or she gives you a written 30-day notice. BUT, IF YOUR LANDLORD WANTS TO INCREASE THE RENT BY MORE THAN 10% HE OR SHE MUST GIVE YOU 60 DAYS WRITTEN NOTICE. The landlord does not have to tell you why the rent is being raised. If a written rental agreement says so, this notice may be as short as seven days. However, your landlord cannot raise the rent to retaliate or discriminate against you.

2. Lease:

Your landlord cannot raise your rent while the lease is in effect unless the lease agreement says he or she can.

PLEASE NOTE: IF YOU LIVE IN PUBLIC OR SUBSIDIZED HOUSING OR WHERE THERE IS RENT CONTROL, RENT INCREASES ARE CONTROLLED BY THE LAW AND THE RULES ARE DIFFERENT. TO FIND OUT IF YOU LIVE IN A CITY WITH RENT CONTROL, CONSULT AN ATTORNEY.

WHEN CAN THE LANDLORD ENTER AN APARTMENT?

Your landlord cannot come into your home or apartment whenever he or she wants to. Your landlord must give you 24 hours written notice and must have a reason to come in unless it is an emergency. Your landlord may enter your apartment only during normal business hours, unless you agree to other hours.

Reasons your landlord can come in

- a. For inspection (to show your apartment to prospective buyers or tenants, repairmen, or contractors).
- b. To make necessary or agreed upon repairs.
- c. When a court order says he or she can.
- d. When you have abandoned or surrendered the premises.
- e. In case of emergency.

NOTE: THE LANDLORD MAY ENTER WITHOUT NOTICE AT ANYTIME IN CASE OF EMERGENCY (FIRE, ETC.) OR WHEN THE APARTMENT IS ABANDONED OR SURRENDERED BACK TO THE LANDLORD.

If you have a problem with your landlord invading your privacy, you should write your landlord a letter stating your complaint. Always keep a copy. If this does not stop the invasions, you might want to see an attorney for advice.

CALL THE POLICE AND SEE AN ATTORNEY IF YOUR LANDLORD COMES INTO YOUR HOME TO THREATEN YOU OR DAMAGES YOUR PROPERTY. YOUR LANDLORD CANNOT COME INTO YOUR HOME FORCIBLY.

HOW TO GET YOUR SECURITY DEPOSIT BACK

You may have paid a "Security" or "Cleaning" deposit or "last month's rent" when you moved into your apartment. You may have the right to some or all of this money when you move out, even if your landlord says the deposit is not refundable.

1. What is a security deposit?

Any deposit, fee, charge or payment beyond rent for the first month that you paid when you moved into your apartment is legally called "security."

It does not matter if the landlord calls it a security deposit, cleaning fee, key deposit, or last month's rent. It is all security and subject to being refunded to you. There is no such thing as a non-refundable deposit.

2. What the law says.

a. The landlord can keep all or part of your security deposit if:

- (1) You owed rent when you moved out - (to pay the unpaid rent).
- (2) You damaged the apartment beyond normal wear and tear - (to cover the costs of repair).

Note: a tenant is not responsible for normal wear and tear.

- (3) You left the apartment unclean - (to cover the costs of cleaning).

b. Your landlord is not required to return your deposit before you move or on the day you move out. He/she must, within 21 days after you move out, return all of your security deposit, or give you a written list as to how it was spent and return the balance. The list must say:

- (1) How much you deposited.
- (2) How it was used (for example: cleaning, repairing, etc.), and
- (3) How much was left. Whatever was left must be returned to you with the list.

NOTE: THE LANDLORD CANNOT RETURN YOUR DEPOSIT IF HE OR SHE DOES NOT KNOW WHERE YOU ARE. GIVE HIM OR HER AN ADDRESS TO SEND THE DEPOSIT TO.

3. Before you move out you should:

- a. Keep all receipts your landlord gives you for any deposit you paid.
- b. Have a witness check out the condition of the apartment. If possible, get the same witness who checked the apartment when you moved in.
- c. Take pictures to avoid disputes over whether you left the place in good condition.
- d. Get the landlord or manager to check out the condition of the apartment with you when you return the keys.
- e. Give your landlord an address where he or she can send the deposit refund. If you want to protect your privacy, use a postal box or friend's address.

4. Getting your money back.

Your landlord must return any money you have coming back to you from your deposits within three weeks after you move. If your landlord does not, you can:

- a. Write your landlord: Write your landlord a letter asking for the return of the money. Give a time limit for returning it, for example two weeks. Give the landlord an address where he or she can send the money. Explain that you have photographs and a witness to vouch for you about the condition of your apartment when you moved out. Keep a copy of the letter.
- b. Go to small claims court: If by your deadline the landlord still has not returned the money, take your landlord to Small Claims Court. To prove your case, you will need your photographs, your witness and the copy of the letter you wrote. You should also bring your receipt showing how much deposit you paid and your rent receipts to show you were not behind on your rent. You should sue for the amount of the deposit - plus \$600.00. The extra \$600.00 is a penalty that the law allows the Judge to make the landlord pay you for not returning your deposit on time.

There is a filing fee and a fee for service of the papers in Small Claims Court. If you are low income the fees can be waived by a judge. Ask the clerk for an Application to Waive Court Fees and Costs

In order to have the papers served, you will need to bring your landlord's address with you when you file your papers.

30-60-90-DAY AND 3-DAY NOTICES

Generally speaking, if you receive a 3 or 30-60-90-day notice, you have three choices: a) comply with the notice; b) do not comply and defend yourself in court if you are sued for eviction by the landlord; or, c) negotiate with the landlord to cancel the notice, change it, or give you a longer time to comply. The landlord CANNOT lock you out at the end of the 3 or 30-60-90 days (See "ILLEGAL LOCKOUTS" in the EVICTION section, below).

1. 30 or 60-Day Notices:

If you have a month-to-month agreement, the landlord can give you a written 30-Day Notice to Quit (leave), or change the terms of the tenancy, at any time during the month and for no particular reason. As long as the landlord gives you the full 30 days and is not discriminating or retaliating against you, the notice is good. BUT, IF YOU HAVE LIVED IN YOUR UNIT FOR MORE THAN ONE (1) YEAR, YOUR LANDLORD MUST GIVE YOU WRITTEN 60 DAYS NOTICE.

Discrimination means the landlord is taking action against you because you are a member of a group protected by the law. For example, your landlord cannot take action against you because of your race, sex, age, disability, or religious beliefs. Retaliation refers to action taken against you because you exercised a legal right, for example evicting you because you complained about the condition of your apartment to public health authorities.

There are two important points to remember about this type of notice. First, your landlord can give you less than thirty (30) days written notice if you have a written rental agreement saying that this is all right. Second, if you do not move out, pay the increased rent, or do what the notice says by the end of the time period, the landlord can immediately start a lawsuit against you to have you evicted. No further notice is necessary.

2. 90-DAY NOTICES

In some cases, tenants who receive Section 8 assistance from the local housing authority are entitled to receive a written 90 DAY NOTICE from their landlord if the landlord wants to end his or her contract with the housing authority. The Section 8 rules and regulations are complicated. If you have questions concerning your rights as a Section 8 tenant, consult an attorney.

** See "ILLEGAL LOCKOUTS" below under EVICTIONS concerning the landlord attempting to lock you out of the dwelling if you do not move by the end of the thirty, sixty, or ninety day period.

NOTE: IF YOU LIVE IN SUBSIDIZED HOUSING OR IN A CITY THAT HAS RENT CONTROL, YOUR LANDLORD MAY BE REQUIRED TO HAVE "GOOD CAUSE" TO EVICT YOU (A LEGALLY RECOGNIZED GOOD REASON), RENT RAISES MAY BE RESTRICTED AND THE NOTICE REQUIREMENTS MAY BE DIFFERENT. TO FIND OUT IF YOU LIVE IN A CITY THAT HAS RENT CONTROL, OR IF YOU HAVE QUESTIONS CONCERNING YOUR RIGHTS AS A SECTION 8 TENANT, CONSULT AN ATTORNEY.

3. 3-Day Notice:

When certain problems arise between you and your landlord, the landlord can give you a Three-Day Notice, in writing, to require you to do something. If you do not comply, the landlord may start the eviction process.

There are three basic reasons permitting the landlord to give you this type of notice:

- a. You have not paid the rent; or
- b. You are violating the terms of your rental agreement, for example, by keeping pets in your apartment, or
- c. You are committing a "nuisance" on the premises, using the premises for an unlawful purpose, or have seriously damaged the premises.

If the problem can be cured, the law requires the notice to be "in the alternative." "In the alternative" means that you have a choice of what to do, for example, pay the rent or quit living in the apartment. If the problem cannot be cured, the notice does not have to be "in the alternative." In that case, it does not give you a choice. For example, it might simply tell you to quit living in the apartment.

If you have not paid the rent, the notice will tell you to "Pay or Quit" (leave) within three days. If you are violating the terms of your agreement, the notice will tell you to stop violating the terms of your agreement or leave within three days.

If the landlord says you are committing a "nuisance," "a crime on the premises," etc., the notice may not give you a choice, it will tell you to leave within three days, period. This is a three day "notice to quit."

If you have an "in the alternative" notice and you do what it says during the 3 days, then you should not be evicted. If your landlord tries to sue you, you will have a defense. Note: The landlord does not have to take your rent after the 3 days are up, but he or she can if they want to.

If you do not comply with the three day notice, the landlord can go to court and begin the court process to evict you.

Counting the days: If you receive either type of Three (3) Day Notice, it is important that you know how to count the three days.

The three days are counted from when you *actually receive the notice*, not from any date you might see on the notice itself.

The law says that you have three full days after, and not counting, the day you receive the notice. You do not count the day you get the notice. You do count weekends and holidays. Thus, if you get the notice on Sunday, count Monday, Tuesday and Wednesday, as your three days. If you get the notice on Friday, count Saturday, Sunday, and Monday as your three days. If you do not do what the landlord wants within those three days, the landlord may start an eviction lawsuit against you.

**** See "ILLEGAL LOCKOUTS," below under *EVICTIONS* concerning the landlord attempting to lock you out if you do not take the required action in three days.**

EVICTION - THE "UNLAWFUL DETAINER" PROCESS

"Eviction" is the name given to the legal procedures a landlord may use to have a tenant lawfully removed from the premises. "Unlawful Detainer" is the name of the lawsuit used to evict tenants. The key thing to know about any eviction, however, is that it can only start with a written 3 or 30, 60, or 90-day notice given to you by the landlord (or 7-day notice, if allowed by a written agreement between you and your landlord.)

"ILLEGAL LOCKOUTS": IF THE THREE DAYS OR THE 30, 60, OR 90 DAYS ARE OVER AND YOU HAVE NOT MOVED, HAVE NOT PAID THE RENT, OR HAVE NOT TAKEN THE ACTION DEMANDED IN THE NOTICE, THE LANDLORD CANNOT LOCK YOU OUT OR GET THE POLICE TO PUT YOU OUT. THE LANDLORD MUST GO TO COURT FIRST. ONLY A JUDGE CAN ORDER YOU OUT, AND ONLY A SHERIFF CAN LOCK YOU OUT.

It is illegal for a landlord to attempt to evict a tenant by locking out a tenant, changing the locks, interrupting or terminating utility services, removing doors or windows, or removing the tenant's belongings. In such a case, the landlord can be sued for up to \$100 per day penalty damages (\$250 minimum), actual damages (costs) to the tenant, court costs, and attorney fees. If this happens to you, call the police. If the police refuse to help you, see an attorney immediately.

NOTE: THERE ARE SPECIAL LAWS IF YOU ARE RENTING A ROOM IN THE SAME HOUSE WHERE YOUR LANDLORD LIVES. IN SOME OF THESE CASES, A LANDLORD CAN HAVE THE POLICE PUT YOU OUT WITHOUT HAVING FIRST GONE TO COURT. CONSULT AN ATTORNEY IF YOU LIVE IN YOUR LANDLORD'S HOUSE.

NOTE: IF YOU LIVE IN A BONA FIDE HOTEL OR MOTEL FOR LESS THAN 30 CONTINUOUS DAYS, THE OWNER MAY BE ABLE TO LOCK YOU OUT. THERE ARE SPECIAL RULES FOR THESE CASES. YOU SHOULD KNOW THAT MANY PLACES CALL THEMSELVES A "HOTEL" OR "MOTEL," BUT ARE NOT CONSIDERED A HOTEL OR MOTEL UNDER THE LAW. IF YOU ARE BEING LOCKED OUT OF A HOTEL OR MOTEL, YOU SHOULD CONSULT AN ATTORNEY.

If you get a 3 or a 30, 60, or 90-day notice and do not do what the notice says, the landlord must go to Court and sue you to evict you. This type of lawsuit is called an "Unlawful Detainer." In this lawsuit, the landlord asks the Court two things:

- a. That you be evicted, and
- b. That a judgment be entered against you for all of the unpaid rent (if there is any), court costs, and process server's fees. If a written rental agreement says so, the landlord can also ask that you pay attorney's fees.

The landlord may also ask the Court to punish you by awarding the landlord a judgment against you for three times the rent due. The Courts, however, rarely award these "treble damages," because it is difficult for the landlord to show that your failure to move out was "malicious," that is, intentionally bad and harmful to the landlord.

1. What happens when you are sued?

- a. You may hire an attorney, but you do not need to have one. Often, though, it is difficult to proceed without some help. The rules are complicated and you must put your arguments into formal written legal documents. If you do not file your legal papers on time, you will automatically lose your case and you will be evicted quickly.
- b. You will be served with two documents, a Summons and a Complaint. The Summons will tell you that you are being sued for Unlawful Detainer (eviction) and that you will have five full days to file a written "Answer" at the Courthouse. Count the five days in the same manner as described for the Three (3) Day Notice, including weekends, but *in this case do not include court holidays*. If the fifth day falls on a holiday or weekend, you may file your papers on the next day the Court is open. The other document that you are served with is the Complaint. It tells you what the landlord wants -- the apartment, the rent money and you evicted. The complaint will also tell you what the landlord's reasons for the eviction are.

- c. If you get a Summons and Complaint you should get legal advice immediately. Take your Summons, Complaint, rental agreement, rent receipts, pictures, etc., with you to show the person you are seeking advice from. Act quickly! *You only have five days.*

DO NOT WAIT UNTIL THE LAST DAY TO GET HELP!

- d. If you intend to defend yourself in court, you must file a written answer with the court clerk and mail a copy to the landlord or his/her attorney. If you do not do this, the court clerk can issue an order to the sheriff to evict you immediately, without any trial or hearing. If you do file an answer, you will receive a notice of a trial date and can present your defense in court. The trial date will be in less than three weeks.

2. What is an answer?

An answer is a written document that explains to the court your defenses to the landlord's charges against you (that is, why you should not be evicted). Defenses are different in each case, depending on the landlord's claims against you.

Defenses must be based on reasons recognized by the law. For example, "I have no place to move to," or "I did not have the money to pay the rent," are not valid defenses. Nor is the fact that you are sick, pregnant, elderly, or disabled.

Examples of valid defenses (but not the only ones) are:

You did pay the rent, even though the landlord says you did not do so;
You did not receive a 3-day or 30, 60, or 90-day notice;
The 3-day notice asks you to pay more rent than you owe;
Your apartment is not habitable and so you lawfully withheld rent;
You properly "repaired and deducted," but were not given credit for the work done;
Your landlord is retaliating or discriminating against you.

3. If I win or lose, what next?

After you answer, you will get a notice of trial. At trial you will get a chance to present your case to the judge. If you win, you get to stay (but you still owe unpaid back rent, unless the judge says you do not owe back rent). If you lose your case, watch out, because things happen very quickly. Remember, your landlord started the lawsuit for two reasons: so you could be evicted and so the landlord could get a money judgment against you for the rent money owed.

- a. Notice to vacate: The landlord will take the necessary papers to the County Sheriff and instruct the Sheriff to evict you. The Sheriff will come out to your apartment within a few days (sometimes longer) and put a written "Notice to Vacate" on your door. It will say that the Sheriff will return in five full days and will physically evict you if you are still there. Generally, the Sheriff will write down the last day you can be in the apartment. This will help you schedule your move.
- b. The money judgment: A money judgment is a decision by a court that says you owe money to your landlord. It usually does not say when you have to pay it. However, the landlord can collect the money at any time.

The money judgment may or may not be pursued by your landlord. The main thing your landlord wanted was possession of the apartment. However, the judgment is good for ten years, and renewable for ten more, and the landlord may try to collect it by garnishing your wages or bank accounts, or by taking your property (such as your automobile, if it has sufficient value). Consult an attorney about your rights if you are being garnished. There are some kinds of income (welfare payments, for example) and property that cannot be garnished. A lawyer can advise you about what to do if you are being wrongfully garnished.

- c. The fact that you were evicted and owe a money judgment will be reported to credit reporting agencies and will appear on your credit record.

4. **Moving out:**

If you receive a Notice to Vacate from the Sheriff, you must move all of your property before the Sheriff returns. If you do not, the Sheriff will make you and your family leave, with your property inside where you cannot get it, and the landlord can change the locks. The Sheriff will not stand by while you move your things.

This means the landlord now has your property. The law says that the landlord must give you your property back if you pay the landlord "reasonable" fees for its storage within fifteen (15) days following your eviction. What is a "reasonable fee" depends on the circumstances. It could mean the same as day-by-day rent, if the items are stored in the apartment itself. It could mean the cost of having a private moving company move and store the items. Either way, it is very expensive.

The landlord may try to make you pay all the unpaid rent before giving you back your property. While this action by the landlord is illegal, that does not help you. You will have to sue the landlord to get your things back and that takes time. It may be difficult to recover items that sometimes "disappear" during this process. Thus, you should move everything out before the Sheriff returns. Plan to do so a couple of days before the Sheriff comes in order to prevent last minute problems, such as car problems or problems getting help to move. Moving usually takes longer than you think it will.

If you have not recovered your property within fifteen (15) days, your landlord may sell it and apply the proceeds to the storage fees. According to the law, any money left over is supposed to be returned to you by the landlord. If the landlord thinks the property is worth less than \$500.00, he or she may do what they want with it, and will owe you nothing!

NOTE: WHEN THE SHERIFF IS COMING, DO NOT WAIT UNTIL THE LAST DAY TO MOVE YOUR THINGS. IF YOUR TRUCK BREAKS DOWN, YOU WILL BE STUCK AND YOUR BELONGINGS WILL BE LOCKED UP.

5. **What if I am not named in the lawsuit:**

Only a person named in the lawsuit and writ of possession (eviction order) can be evicted by the marshal or sheriff. If an adult person lived in the apartment on the date the unlawful detainer complaint was filed, and continues to live there, but is not named in the complaint, he or she can file a claim with the court asking to not be evicted and to have a right to present any defense to the eviction that he or she might have. This is called a Claim of Right to Possession. Sometimes this is called an "Arrieta claim," after the name of the court case that established this right, Arrieta vs. Mahon.

A Claim of Right to Possession is filed directly with the Sheriff or Sheriff's office that is evicting you. It may be filed at any time before the actual eviction, including after the trial has been held.

When filed, the claim prevents eviction. A hearing will be set in court for the judge to determine if the person making the claim should be evicted or should be allowed to answer the lawsuit and have a trial. The hearing must be held in not less than 5, and not more than 15 days.

To file such a claim, the person must pay 15 days rent to the court and the court's filing fee. If the claimant cannot pay the filing fee, he or she must file a request for a court order waiving fees and costs. If he or she cannot pay the 15 days rent, the hearing will be held very quickly (on the 5th day after filing).

The landlord can force any unnamed tenant to file his or her claim of right to possession before the case goes to court by serving, along with the summons and complaint served on the named tenants, a document called a Notice of Pre-Judgment Right of Claim of Possession, posting a copy, and mailing a copy to the residence addressed to "All Occupants in care of named Tenant." If this is done, the unnamed tenant must fill out this form and file it within ten days. Within 5 more days, the unnamed tenant must file an answer to the complaint, or be evicted without an opportunity to object to the eviction.

6. What if I receive a notice to vacate from the sheriff and have never been sued?

The Sheriff would not post a Notice to Vacate on your door unless you have been sued. You may not know about being sued for several reasons. For example, a process server might have lied and told the court that he or she served you with a summons and complaint, when they did not do so; the papers may have been served on the wrong person; the papers may have been served on your roommate who did not tell you about it; maybe the judge gave permission to post the summons on your property instead of serving you personally. There are lots of possibilities.

Whatever the reason, you must see an attorney immediately! You cannot remedy this problem yourself. You must act quickly, because the court process to correct this problem can take a few days. If you do not act quickly you will be locked out, and once you are locked out by the Sheriff, no matter how good your case may be, you will probably be unable to convince a judge to return possession of the apartment to you.

RELOCATION BENEFITS

Sometimes a tenant who is being evicted, or who voluntarily moves out after receiving a notice from the City or Landlord, is entitled to a payment of money to help cover the cost of moving. These payments are called "relocation benefits."

State law generally requires such payments when a public body (such as a school board, redevelopment agency, city, etc.) takes possession of your landlord's property and requires you to move.

Some cities have their own relocation benefits law. City laws often protect the tenant when the City orders a building demolished, rehabilitated, or converted to another use.

Every City, County and State law about relocation is different. Most have special requirements that must be met to be eligible for benefits. For example, you might be required to have lived on the premises for a specific minimum period of time before you are eligible.

NOTE: SEEK LEGAL ADVICE IF YOU BELIEVE YOU ARE ELIGIBLE FOR RELOCATION BENEFITS. ACT QUICKLY, YOU HAVE A LIMITED TIME TO APPLY.

CREDIT REPORTS

Court records are closed to the public for 60 days. That means that no credit reporting agency, or anyone else, can find out about your eviction by searching court files. After 60 days, though, Court records are public and anyone can read them. After 60 days your credit report will reflect the fact that an unlawful detainer was filed against you. After a judgment has been entered, or after your case has been dismissed, your credit report will also reflect that information.

NOTE: THE COURT MAILES EACH DEFENDANT A NOTICE ENTITLED "NOTICE OF UNLAWFUL DETAINER FILING." THIS IS JUST TO LET YOU KNOW A CASE WAS FILED AGAINST YOU AND THAT FOR SIXTY DAYS NO ONE CAN READ THE FILE EXCEPT PARTIES OR THEIR ATTORNEYS. IT DOES NOT DELAY ANY TIME LIMITS. IT DOES NOT MEAN THAT YOU CAN PUT OFF ANSWERING THE COMPLAINT. IT DOES NOT MEAN THAT THE CASE IS DELAYED FOR 60 DAYS.

NOTE: TO MAKE SURE THERE ARE NO MISUNDERSTANDINGS, SETTLEMENT AGREEMENTS SHOULD ALWAYS BE IN WRITING. EACH PARTY SHOULD SIGN AND RECEIVE A COPY OF THE AGREEMENT.

SAMPLE LETTERS

In all cases, send the original letter to the landlord and keep a photocopy for yourself. Certified mail is not required, but it is recommended because it allows you to get a return receipt, so that you can prove the landlord received your letter, and you can show the date on which the landlord received it.

LETTER OF REQUEST FOR REPAIRS
(Notice of intent to Repair & Deduct)

(Date)

Dear _____:

(Owner/Manager/Agent)

This letter is to inform you that the following item(s) at

(Address)

need to be repaired:

- 1.
- 2.
- 3.

Your prompt attention to the repair(s) will be appreciated. Failure to do so may be a violation of California Civil Code Section 1941 which requires rental property to be maintained in a habitable condition. If the repair work is not done within a reasonable time, I will have the necessary repairs made and deduct the cost from my next month's rent as provided by California Civil Code Section 1942.

Please contact me as soon as possible so that we can make any necessary arrangements.

Sincerely,

(Tenant)

(Address)

(Phone)

LETTER REGARDING UNLAWFUL ENTRY
BY LANDLORD OR LANDLORD'S AGENT

(Date)

Dear _____:
(Owner/Agent)

This letter concerns the entry of _____
(Person's name)

into the property located at _____
(Address)

Under California Civil Code Section 1954, a landlord must give written 24 hours notice prior to entering a tenant's home and may only enter for the reasons specified therein. Any entry by the landlord must be during regular business hours.

I have had problems with _____
(Name)

trying to or actually entering my home without reasonable notice.

Please be advised that I expect written 24 hours notice prior to any entry and that entry will be only for legally allowable reasons.

If notice is not given, I will not allow entry. If anyone attempts entry or enters in my absence, without reasonable notice, I will pursue further legal remedies.

Sincerely,

(Tenant)

(Address)

(Phone)

LETTER REQUESTING RETURN OF DEPOSIT

(Date)

Dear _____

(Owner/Agent)

This letter concerns the return of my deposit.

As you know, I resided at _____

(Address)

On _____, I vacated, leaving the premises clean and in good physical
(Date)

condition.

As of today, I have not yet received my \$ _____
(Amount)

deposit, nor a required itemized list of any deductions. Section 1950.5 of the California Civil Code states that a landlord must return all deposits no later than three weeks after the tenant vacates. Further, Civil Code Section 1950.5 (k) says:

"The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof, in violation of this section...may subject the landlord or the landlord's successor in interest to statutory damages of up to six hundred dollars (\$600), in addition to actual damages."

I am requesting a response and a check in the mail from you within five working days after your receipt of this letter, so that there will be no need for further legal action.

Sincerely,

(Tenant)

(Address)

(Phone)

THIRTY DAY NOTICE OF INTENTION TO VACATE

(Date)

Dear _____:
(Owner/Agent)

This letter is to inform you of my intention to vacate the premises at:

(Address)

as of thirty days from the date of this notice.

I will leave the premises clean, and in good physical condition, and I will appreciate the return of my deposit promptly after I move. This notice is intended as a formal thirty-day notice terminating my tenancy.

You may return my deposit to the following address:

Sincerely,

(Tenant's Name)

(Phone)

