

Avoiding Legal Pitfalls in California Evictions

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1. Causes Leading to an Eviction
 - a. Specific Causes
 - i. Failure to Pay Rent
 - ii. Breach of Contract
 1. Illegal Use of Property – Airbnb, Drug Use, etc.
 2. Illegal Occupants
 - iii. Expiration of the Lease
 - b. How Landlords Discover Issues
 - i. Limited Right of Entry
 - ii. Talking to Neighbors
 - iii. Code Enforcement
 - iv. Police Reports
 - c. Self-Help is NOT OK
 - i. Not Allowed to Change Locks
 - ii. Not Allowed to Turn Off Utilities
2. Eviction Process
 - a. Requirement to Give Notice
 - i. 3-day Notice to Perform or Quit
 - ii. 30/60-day Notice of Termination
 - b. File Lawsuit
 - i. Only After Time to Cure Has Expired
 - c. Service of Unlawful Detainer Action
 - d. Litigation
3. Technical Pitfalls in Performing an Eviction
 - a. Improper Notice
 - i. Must Specify Violation & Time to Cure
 - ii. Invalid Notice is a Complete Defense
 - b. Filing Suit Too Early
 - i. Must Restart Entire Process
 - ii. Filing Too Early is a Complete Defense
 - c. Accepting Rent from Tenant
 - i. Acts as a Waiver, and Considered “Cured”



- ii. Accepting Rent is a Complete Defense
 - d. Improper Service of Unlawful Detainer Complaint
 - i. Must Serve All Tenants
 - ii. Different Service Types Give Different Timelines to Cure
 - 1. Personal, Substituted, Notice & Acknowledgement, Posting, & Mailing
 - iii. Judgment Could Be Set Aside for Service Issues
 - 1. Would Have to Start Entire Process Over Again
- 4. Potential Tenant Defenses to an Eviction
 - a. Illegal Unit (Unpermitted Work)
 - i. Tenant Has Same Rights as Legal Unit
 - 1. Including Rent Control
 - ii. Could Potentially Recover All Rent Paid
 - b. Discrimination
 - i. Includes Familial Status, Gender, Family Size, Race, Etc.
 - c. Retaliation
 - i. Within 6 Months of Tenant:
 - 1. Exercising Legal Right (Repair & Deduct)
 - 2. Complained About Issue
 - 3. Causes Inspection
 - 4. Receives Citation
 - d. Delay
 - i. Automatic Stay in Bankruptcy
- 5. How to Prepare for Eviction Proceedings
 - a. Receive Answer
 - i. Request for Trial
 - ii. Jury Trial or Bench Trial
 - iii. Settlement Conference
 - 1. Settled
 - 2. Not Settled
 - iv. Judgment
 - b. No Answer
 - i. Default Judgment
 - c. Post-Judgement Enforcement
 - i. Possession
 - 1. Obtain Write of Possession
 - 2. Submit to Sheriff to Execute (NO SELF HELP)
 - ii. Damages
 - 1. After Tenant Vacates



- d. Abandoned Property
 - i. Inventory & Store Property
 - ii. Send Notice to Tenant of Abandoned Property
 - iii. Liquidating Property
 - 1. If Less Than \$700 – Dispose
 - 2. If More Than \$700 – Sell

5 Things To Remember When Evicting Tenants

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An apartment owner, landlord, or property manager who wants to regain possession of a leased property by evicting a tenant should remember these five procedures.

1. Be Specific in the Notice to Terminate Tenancy

A landlord who wants to regain possession of the property must provide written notice to the tenant in accordance with California Civil Code Section 1946.1. This notice is usually known as the “Notice to Terminate Tenancy.”

The notice must specify the date of termination, usually 30 to 60 days from the date of service and must contain specific language regarding the tenants abandoned personal property. The landlord must serve a copy of the notice directly to the tenant, or to a person of suitable age at the tenant’s home or work, or by taping it to the front door of the leased property and then mailing it to the tenant.

Before sending a notice to the tenant, the landlord should ensure the language is correct, and service of the notice follows California Civil Code Section 1162.

If the notice does not include date of termination, specific language regarding abandoned personal property, or it is not served properly, then the notice is invalid, unenforceable, and the landlord may not be able to recover possession of the property.



2. Beware of Retaliatory Eviction Claims

An eviction is presumed retaliatory if a landlord attempts to terminate the tenancy within 6 months of the tenant exercising their rights under the California Civil Code.

Some ways a tenant exercises their rights include: filing a complaint with an appropriate agency regarding the habitability of the property; request the landlord to conduct repairs; or withhold rent until the property is habitable. Other tenancy rights are stated in the California Civil Code and local ordinances.

Before sending a notice to the tenant, a landlord should determine the reason they are terminating the tenancy and state the reason in the notice, even though it is not required under the California Civil Code. This helps prove to the tenant that the termination is not retaliatory.

If a landlord is accused of conducting a retaliatory eviction, then the landlord may not be able to recover possession of the property.

3. Just Cause Evictions

The California Civil Code does not require a landlord to provide a reason for terminating a tenancy; however, certain local ordinances may require a landlord to provide a reason for the eviction. The most well-known ordinance in the Bay Area is The Rent Stabilization and Just Cause Ordinance of East Palo Alto, which requires the landlord to state a “Just Cause” for terminating the tenancy, such as owner move in; non-payment of rent; or causing a nuisance.

These “Just Cause” ordinances are rapidly emerging in cities and they require the landlord to use one of the available causes under the ordinance to evict a tenant. Some ordinances may require the landlord to file the notice with the city and/or pay relocation expenses to the tenant.

Before sending a notice to the tenant, a landlord should review their local laws to determine if there is a “Just Cause” ordinance. If there is such an ordinance, then the landlord should state the appropriate cause for terminating the tenancy in the notice, and then follow the other procedures outlined in the ordinance.

If a landlord does not abide by the ordinance, then the landlord may not be able to recover possession of the property.

4. Pre-Moveout Inspection

After the landlord served the notice to terminate tenancy, the landlord is required to send the tenant another written notice regarding the tenants right to a pre-moveout inspection.



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Once the landlord has sent the pre-moveout notice, the tenant should request the pre-moveout inspection. If the tenant does not request an inspection, then the landlord does not have to conduct a pre-moveout inspection.

The inspection should occur within two weeks of the termination date. At the time of the inspection, the landlord must provide the tenant an itemized statement of proposed repairs or cleanings that may be deducted from the security deposit. The itemized statement shall also include specific language from California Civil Code Section 1950.5.

The purpose of this provision is to allow the tenant an opportunity to remedy the identified deficiencies, increasing the likelihood they will recoup their security deposit.

5. Returning the Tenants Security Deposit

Within 21 days after the tenant vacated the property, the landlord must provide the tenant with a copy of the itemized statement and a check with the remaining portion of the security deposit. The itemized statement must include the reason for the deduction, the work performed, the cost (time spent/ hourly rate), and include a copy of the invoice/bill/receipt, if the deduction exceeds \$125. The security deposit must be personally delivered or by first-class mail.

The landlord may make certain deductions from the security deposit based on Civil Code Section 1950.5 and the terms of the lease. Some deductions include last month's rent, carpet cleaning, and patching repairs.

Before the termination date, the landlord should obtain the tenants forwarding address to ensure the tenant receives the security deposit.

If a landlord does not provide the tenant the security deposit within 21 days of the termination date, the landlord may be subject to legal penalties.

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