

Law Offices of Dennis P. Block & Associates

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Property Management Alert

Spring 2014

a message from attorney Dennis Block

The challenges facing income property owners have never been greater. Governmental regulations, rent control, tenant's rights groups, spurious lawsuits and jury trials are just a few of the issues our industry is facing. This newsletter is designed to educate our industry and to prevent legal pitfalls.

update

3-day to pay rent or quit

Some judges have been declaring a 3-day notice invalid, for failing to state an individuals name on the notice. Under California law, a notice must contain the name of a person to whom rent is to be paid. In addition, it must state a location where to pay the rent and times when payment can be made.

Some management firms merely put the name of their company, as the person to pay.

This has caused some eviction cases to be lost. Be sure that a person's name appears in the notice, as the person to whom rent is to be paid.

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1 800 77 EVICT (38428)
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Dennis P. Block & Associates

5437 Laurel Canyon Boulevard, 2nd Floor • Valley Village, CA 91607

Office: (323) 938-2868 • Fax: (323) 938-6069 • dennis@evict123.com

Toll Free Phone 800 77 EVICT (38428)

avoiding a jury trial in a tenant eviction

A trend is now occurring, where tenant defense attorneys are now requesting jury trials. It should be first noted that all litigants have the right to a jury trial, as long as a proper request is made. This is true even if your lease agreement waives the right to a jury trial.

The litigant must file a "Request for Jury Trial" form and pay jury fees. The fees must be paid 5 days before the trial date. The jury fees are \$150. A jury trial will generally last 2 to 3 days. An attorney representing a landlord will be forced to charge several thousands of dollars to prosecute a jury trial.

Now let's discuss the motivation of the tenant's attorney for requesting a jury trial. Clearly, the tenant would not be able to afford the cost associated with hiring an attorney for a jury trial. The defense attorney is gambling on the fact that the landlord would rather pay the tenant to move, then to pay the cost of a jury trial. Furthermore, if the landlord should not prevail in the trial, your tenant would be entitled to reasonable attorney fees, if a written rental agreement between the parties provides for these fees. A tenant attorney would be able to file a motion

for attorney fees and seek thousands of dollars, which the landlord would be forced to pay.

Our firm has taken the strategy of not settling with the tenant's attorney, if a demand for money is made. It is abhorrent to reward a tenant with a cash settlement where the tenant has failed to pay the rent. By paying settlements, it only encourages defense attorneys to continue with the practice.

In the war against jury trials, my firm has come up with an additional plan to take the financial incentive out of requesting jury trials. If your rental agreement limits reasonable attorney fees to \$500, there would be no incentive for a tenant's attorney to go through with a jury trial. If you do not agree to pay settlement money, the defense attorney will be forced to do a jury trial with a potential gain of only \$500 in attorney fees. Usually a settlement can be negotiated for a "pay and stay", or in some cases, a waiver of the rent for an immediate vacating of the unit.

It is imperative to check your rental agreements to see if there is an attorney fee limitation. If one does not exist, it will be nec-

essary to serve on all month-to-month tenants a "Change of Terms of Tenancy". This form will limit the attorney fees to a maximum of \$500. This form can be obtained on my website at no charge at: www.evict123.com

illegal subletting through Airbnb

Here we go again. Tenants are now using a leasing service to make big profits on your rentals. Airbnb is a vacation leasing service which allows persons to find a short term lease in an apartment or house. Persons go online and see your unit listed as a vacation rental. Tenants are charging \$100 plus per day to sublease their unit. They are literally making more profit on the unit than the landlord. This website can be viewed at: www.airbnb.com

Landlords should check this website to see if their tenants are violating their lease agreements. Having a tenant set up a business within your property, which brings in strangers, can have disastrous effects in terms of property damage and liability issues.

This issue is further complicated in rent control properties. Under current eviction law, a guest would have to occupy the unit more than 30-days, before there would exist a ground for an eviction. While most rental agreements prohibit operating a business, this would be difficult to prove, as the

interest on security deposits

Property subject to rent control in the City of Los Angeles must pay yearly interest on all security deposits being held. The current interest rate is 0.18%. This must be distributed to your tenants yearly on their anniversary date.

Hint: If you normally do not charge your tenant the monthly SCEP fee of \$3.61, you can serve notice on the tenant that you are offsetting the SCEP fee to any interest owed. In this way, no interest will need to be paid.

See the free form at: www.evict123.com

Continued on page four.

Questions & Answers

Question One:

I have a tenant who has been in my property for 10 years and now is complaining of bedbugs. I believe that they brought them into their apartment. What is my responsibility to eradicate this problem? Also, they are now demanding that I replace their carpeting. Is that my responsibility as well?

Answer One:

Under the Civil Code, it is the landlord's responsibility to keep the premises free from pests and rodents. You mentioned that the tenant brought the bedbugs into the apartment, but that would be a very difficult fact to prove. You should immediately schedule a pest control company to schedule the work. You do not want this spread to other units. A landlord needs to replace carpeting if it is worn through or ripped. Given the age of the carpeting, it would appear that the carpeting should be replaced.

Question Two:

I evicted a tenant for non-payment of rent and obtained a judgment. The Sheriff was scheduled to do the lockout when they informed me that the tenant had just filed bankruptcy and that the eviction is stalled. What are my options at this point?

Answer Two:

You probably have nothing to worry about. If a residential tenant files bankruptcy after the eviction judgment has been obtained, the lockout can continue without any further legal action in the bankruptcy court in most cases. You need to send notice to the Sheriff's office to proceed with the lockout notwithstanding the bankruptcy.

The exception would be if the tenant, in his bankruptcy petition, certifies that the tenancy could be reinstated and one-month rent is posted with the bankruptcy court.

Question Three:

I have a rent control tenant who has decided to take over the crawl space and make it a storage space. It is preventing me from making necessary repairs. He is refusing to remove his belongings. What can I do about this?

Answer Three:

Most rental agreements, including the AOA lease, state that tenants cannot store items in the common areas. If this is the case, you could serve a 3-Day Notice To Perform Or Quit, which would give the tenant 3-days to remove the personal property. If the tenant fails to remove the items, this would be a ground for eviction.

Continued on page four.

how much security can a landlord charge?

Upon move-in a landlord may charge an amount equal to two months rent for an unfurnished unit. (Three months for a furnished unit.) Therefore, where there is an unfurnished unit renting for \$600, a landlord may charge a first month rent and a \$1200 security deposit for a total of \$1800.

When does the security deposit have to be returned?

The landlord has 21 days to itemize and return that portion of the security deposit, if any, to the tenant. A written statement should be prepared and mailed to the tenant. If you do not have the tenant's new address, you must mail it to the unit that the tenant vacated. If the envelope comes back, do not open it. This will be the best proof that you have complied with the law.

What can be deducted from the security deposit?

You are allowed to deduct for the following items:

- Rent or other charges owed under the rental agreement.
- Reasonable cleaning charges.
- Unusual wear and tear to the unit.

Be conservative when making deductions from the security deposit. You are allowed to deduct for the cleaning of the drapes and the carpeting. However, you should not deduct for painting unless it constitutes unusual wear and tear.

Receipts are now required!

Under the new rules you are required to give receipts for items or service performed where deductions exceed \$125. If you are deducting for labor, keep time sheets of the hours worked and the rate per hour.

Q&A

Continued from page three.

Question Four:

I have a couple living in a one-bedroom apartment in Los Angeles that is under rent control. They have now decided to have a family. Am I allowed to collect more rent?

Answer Four:

Under the Rent Stabilization Ordinance for the City of Los Angeles, you cannot charge for the first dependant child which joins the tenancy. As to the second child or any other additional occupant you are entitled to charge an additional 10 percent. This additional charge must be requested within the first 60-days that the additional person joined the tenancy.

Question Five:

My tenant sent me a text that she would be vacating in 30-days. Is this a legal way to terminate a tenancy?

Answer Five:

In order for a tenant to legally terminate a month-to month tenancy, it must be a written 30-day notice. At this point, the law would not recognize a text or even an email sent by the tenant. You should require the tenant send a written notice. I am sure that it is only a matter of time before this will become legally sufficient.

Question Six:

I leased a single-family house in Culver City. Prior to leasing the house I had installed automatic sprinklers to maintain the plants and the lawn in the backyard. The tenants have now vacated. I have discovered that the tenants had turned off the sprinklers in order to save money on their water bill. The plants and the lawn are completely dead. May I deduct the cost of replanting from their security deposit?

Answer Six:

Your rental agreement requires the tenant maintain the premises. Clearly the tenant's attempt to save money, on a water bill, violated this term of the lease and you could properly deduct the cost from the security deposit. It is a wise idea for a landlord to pay for a weekly gardening service. In this way, the problem could have been quickly identified.

Illegal Subletting

Continued from page two.

guest would have already vacated the unit.

Cities such as West Hollywood and Santa Monica are contemplating enacting an ordinance. In the interim, I have drafted a form that should give some relief to landlords for rent control property. "Illegal Subletting Form" This form is on my website: www.evict123.com

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

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DENNIS BLOCK, ESQ.
5437 Laurel Canyon Boulevard
2nd Floor
Valley Village, CA 91607