COVID-19 Response: Frequently Asked Questions for Residential Tenants

The global pandemic adds a lot of complicating factors into the lives of tenants. Many, including students who may have returned home to stay with family, have also been physically uprooted from their rental units and homes. This guide addresses some frequently asked questions about tenants’ rights and how those rules have and have not changed during the COVID-19 emergency.

I can’t pay my rent because of the coronavirus. Can my landlord evict me?

No, not right now. Governor Gavin Newsom issued multiple Executive Orders intended to protect California tenants who are unable to pay rent because of COVID-19. Currently, the tenant protections are effective through September 30th. In addition, the Judicial Council of California issued rules that prevent almost all new eviction cases from moving forward by restricting courts from issuing summonses through September 1st. There is an exception for landlords who want to evict a tenant for reasons of public health and safety. Locally, the City of Davis adopted an urgency ordinance that, amongst other prohibitions, temporarily halts residential evictions when a tenant is unable to pay rent because of impacts related to COVID-19 and allows tenants to pay past rent over six months after the emergency is over. The urgency ordinance has been extended through September 30.

So far, the ordinance has affected rent payments due April 1, May 1, June 1, July 1, August 1, and September 1. Under all of these Orders, it is important to note that you will still have to pay any rent that you owe after the emergency ends.

What if I can’t pay rent for a reason unrelated to the coronavirus? Can my landlord evict me?

Technically, yes, however, it is unlikely that you will be evicted during the state of emergency from a practical standpoint. Until September 1, the Judicial Council of California’s emergency rules prevent courts from issuing summonses in almost all unlawful detainer cases. However, you will still owe your rent, and your landlord may attempt to evict you once the emergency rule has expired. You will not have the extra time to pay your landlord unless you make an agreement.

Can I terminate my lease due to COVID-19?

A signed lease is a legally binding contract. Read the terms of the lease and the California Tenants Handbook to understand your obligations and how to proceed. If you have not yet taken possession of the rental unit, advise the landlord in writing of your request. The landlord may have a wait list or may otherwise be able to lease the unit prior to your arrival.

Although legal grounds to terminate a lease in California must be analyzed on a case by case basis, in general the COVID-19 outbreak is NOT a ground to terminate a lease under any of the applicable emergency orders. However, you may have a legal argument favoring termination of your lease under certain circumstances. You should review the specific terms of your lease (landlords are required to provide a copy of the lease to tenants within 15 days of execution pursuant to CA Civil Code section 1962), and consult with an attorney before attempting to terminate your lease based on these legal arguments:

- The tenant is immunocompromised and there is a greater risk of infection in the rental property than another abode where the tenant could reside (e.g., family residence).

- There currently is a condition in the rental unit that renders it uninhabitable within the scope of California Civil Code Section 1942, and the landlord is notified of the condition and fails to repair it.
• Your lease has a “force majeure” clause. “Force majeure” clauses are extremely rare in residential leases. They are more commonly found in commercial leases. If your lease has a force majeure clause, it would likely need to specifically list pandemic as one of the reasons to trigger the clause.

• Review your lease to see if there is a provision that allows early termination. Some leases, although not most, have a provision that allows termination if the tenant agrees to pay a fee that is likely less than paying the rest of the amount due.

What are my options if I do not have legal grounds to terminate my lease?

• If you have rental insurance, review your policy to see if it offers any relief in circumstances like a pandemic or where a national or local emergency has been declared.

• Explore subleasing your rental unit. You need to consider whether it is better to get some money to defray the cost of your rent or pay it all yourself. If you do choose to sublease, be aware that most leases require tenants to get the landlord’s written consent to sublease. Under California law, landlords should act in good faith when determining whether to consent to the sublease. Some landlords require prospective sublessees to go through the application process and have a credit check. It is very important that you have a written sublease to set forth all of the terms of the agreement. But there are risks:
  o If you sublease either all or part of your rental unit, you still remain liable under the terms of your lease with the landlord. So if your sublease fails to pay rent or damages the rental unit, the landlord will expect you to pay the rent or the cost of repairing the damage. This is why it is a good idea to ask for a deposit from the sublessee. Given the number of people looking for sublessees, however, you may have a hard time finding one who is willing to pay a deposit.
  o Because the landlord has no contractual relationship with the sublessee, only you (as a master tenant) have the standing to evict a sublessee. Therefore, if the landlord wishes to evict the sublessee, they will have to evict you (even if you are not at fault).
  o Another possible risk is that the sublessee may not leave the rental unit when the lease ends. This is particularly problematic if the sublessee has stopped paying rent. If the sublessee continues to live in the rental unit after the lease terminates, the landlord may decide to file an eviction action. See the section below for the consequences of an eviction action.
  o If you have roommates, and some of your roommates are staying in the rental unit, there may be an issue if your roommates do not approve of your sublessee. If you have a roommate agreement, either written or oral, then the terms of the agreement would govern what type of permission may be necessary.

• Negotiate with your landlord. With few exceptions, California law requires a tenant to pay rent through the end of the term of the lease. You can try to negotiate with your landlord to relieve you of the burden of paying rent, although your landlord may not be open to an early termination as landlords count on rent to pay the mortgage, insurance, and property taxes on their property. When you negotiate with your landlord, be respectful and reasonable. Being angry, rude, or belligerent are not winning techniques. Explain your situation calmly and thoroughly and explore any options that the landlord is
willing to consider. You can ask if the landlord would be willing to reduce the amount of rent even if they will not agree to terminate the lease. If the landlord agrees to any changes in the lease terms, you MUST get them in writing. An agreement reached via email, text, or social media is a workable alternative if the signed writing is not possible, but be sure to save it in a way that you can access easily if the landlord later backs out of the agreement.

Why can’t the City adopt a regulation that allows tenants to terminate leases without penalty?

The City is limited by state law and the California Constitution in the ways it may regulate the rights of landlords or tenants, or otherwise interfere with contracts between private parties. With respect to lease terminations, state law expressly allows landlords to collect lost rent payments from tenants as long as the landlord attempts to re-lease the unit. If a landlord cannot find a new tenant to take a unit, these damages may be substantial. Cities and counties cannot adopt regulations that are in conflict with state law, and therefore cannot require landlords to allow tenants to terminate their leases without penalty. Other jurisdictions may have adopted regulations that limit penalties, but those regulations only prevent landlords from assessing a penalty on tenants in addition to the damages landlords are allowed to collect from tenants under state law.

Other Tips

• Continue to monitor federal, state, and local regulations regarding rental agreements during the COVID-19 emergency as the available relief to tenants may change.

• If you are a UC Davis student, keep up to date on University guidance and check to see if you are eligible for any emergency grant relief that may be available. Legal services for students may be available through the Associated Student Union.

• Free legal services may be available for low income students through Legal Services of Northern California.

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