



HELPING HAND:



LEGAL QUESTIONS & ANSWERS

By

VICTOR HAIRAPETIAN, ATTORNEY

Question to Victor:

Now that we're in 2004, are there any new laws that deal with tenancies that landlords should be aware of?

Victor's Advice:

ABSOLUTELY. First, regardless of the year, do your best to be familiar with laws dealing with property. The most notable changes which apply to both tenants and landlords in 2004 are as follows: 1) Civil Code Section 1940.2 allows the imposition of penalties, including punitive damages, to landlords who use threats, extortion or force to influence a tenant to vacate a building; 2) Security deposit refunds in non-residential cases has been extended to 30 days from the prior two week period; 3) Depending how repairs to a unit are sought after a tenant vacates the property, a landlord now must comply with certain verification provisions so as to establish that the amounts being deducted from the security deposit have been actually incurred (Please read Civil Code 1950.5 for all the details); and 4) There are provisions of the law that prohibit landlords from even serving a 3 day notice when certain standard provisions exist. There is simply not enough room in this article to address the changes, and still answer other's important questions. Please be careful, and if you are unsure, seek legal advice.

Question to Victor:

If I allow for service on a 3 day notice to a post office box, what happens if I receive the rent after 3 days.lease?

Victor's Advice:

If the tenant proves that the rent was mailed within 3 days, then it shall be considered paid on time since the post

office box is an address that makes personal payment of rent impossible.

Question to Victor:

How do I get a tenant to sign a rental agreement after a new lease has expired in a non-rent control jurisdiction..

Victor's Advice:

Start with a courtesy letter. If there is no response you may either serve a notice to quit, or provide a change in terms of tenancy and provide the new lease with the notice. If the tenant still ignores the request, an eviction would be appropriate.

Question to Victor:

The City has commenced a misdemeanor action against me for not complying with their notices, what does this involve

Victor's Advice:

This is a criminal action. The fact that you have not committed burglary or kidnapping does not make your act any less criminal. A misdemeanor is a lesser offense to a felony. You need proper legal representation, and should understand that there are potential fines, jail or both.

Question to Victor:

My contract has a provision identifying the tenant as a lessee instead of the word "tenant" does that give them the right to stay longer than month-to-month.

Victor's Advice:

No. Generally the term lessee is used interchangeably with the word "tenant". It is the term stated in your contract that

controls so you should make sure that wording is correct.

Question to Victor:

Can a tenant deduct rent for repairs they claim are necessary to be made

Victor's Advice:

Generally, there is a statute that does provide for such self-help remedies however the provisions which exist usually require uninhabitable conditions that you knew about, but failed to correct. It is not automatic in all cases, and most of the times the landlord can still proceed with serving a 3 day notice for nonpayment. Each case is different.

Question to Victor:

I tried to build fence and a neighbor said they had an easement preventing me from putting up the fence how would I know.

Victor's Advice:

First, look at county records. Second, there are different types of easements that arise under different situations. Use is one such instance, but under certain guidelines. You will need to seek legal help.

Quote of the Month: "...one bad tenant can ruin the entire building..."

Victor Hairapetian is an attorney licensed to practice law, and has conducted thousands of evictions in California. Feel free to submit your questions to him, and have them answered in the Apartment Management Magazine, or otherwise feel free to contact his office for any questions at (818) 500-9881 or email him at victor@lawandadvice.com