



California Tenants: ‘Know Your Rights’ Workshop - Notes

Tues., June 27, 2023

Legal Disclaimers: (1) *The below does not constitute legal advice, only legal information. Please consult an attorney about the details of your specific case.* (2) *Partnership between any non-profit organizations and Pai for Congress does not and should not be construed to imply political affiliation or endorsement. Any individuals participating do so strictly in their personal capacity.*

I. You have rights – do not give them up without a fight.

(“If you don’t know your rights, you don’t have any...”)

A. The landlord tenant relationship

- i. It’s a *relationship*: as tenant, you have rights and duties; the landlord is no different.
- ii. **The only lawful way to evict a tenant is to file a case in court and go through the legal process.** It is illegal to try to "evict" a tenant by locking them out, shutting off the water or electricity, or removing their personal property. A tenant who has been locked out may be entitled to return to their unit and seek damages from the landlord. (CA Civ. Code § 789.3.)
- iii. Landlords must give tenants **at least 30 days’ notice** in writing before increasing rent. This notice must include: the amount of the rent increase; the date the increase takes effect; and the new amount of rent. (CA Civ. Code § 827.)
- iv. In California, landlords are required to return a tenant’s security deposit within **21 days** after the tenant moves out of the rental unit. (CA Civ. Code § 1950.5.)
- v. The security deposit must be returned **in full**, *unless* the landlord can provide evidence of damages beyond normal wear and tear. (§ 1950.5.)

B. Habitability

- i. **Landlords are legally required to maintain safe and well-maintained units for their tenants. This is known as “habitability.”**
- ii. Habitability includes: providing safe and working plumbing, heating, electrical equipment, floors, and stairs; effective waterproofing; windows and doors with working locks; and keeping the property free from roaches, rats, and other vermin. (CA Civil Code § 1941.1; oag.ca.gov)

- iii. Even if tenants *knew* that their unit was not up to these standards when they moved in, it is *still* the landlord's responsibility to make all units habitable.
- iv. Tenants with health or safety issues in their homes have a right to ask their landlords to make repairs. Tenants should make repair requests and complaints about unsafe or unhealthy conditions **in writing** and **document everything**.
- v. If a tenant living in a unit with health or safety issues is served with an eviction notice, it is very important that they inform a lawyer or court about those issues. Doing so may protect the tenant from eviction. (Civ. Code §§ 1942.3, 1942.4; oag.ca.gov.)
- vi. **“Constructive eviction”**
 - “A landlord is liable for constructive eviction where a tenant elects to vacate the premises as a result of the **landlord’s “[f]ailure to repair and keep the premises in a condition suitable for the purposes for which they were leased.** The damages recoverable for constructive eviction include “the value of the term, less the rent reserved,” “expenses for removal,” “damages . . . for mental anguish,” and “exemplary” or punitive damages.” Stoiber v. Honeychuck, 101 Cal. App. 3d 903, 926 (1980)

C. Defenses to Eviction (‘Unlawful Detainer (UD) action)

- i. The Notice is Illegal
- ii. The Notice is Defective
- iii. Breach of Warranty of Habitability
- iv. Waiver
- v. Retaliation
- vi. Discrimination, incl. due to request for ‘reasonable accommodation’ (RA)

[Fact Sheet: How to Answer an Eviction Lawsuit \(Source: Disability Rights California\)](#)

II. Case Studies. You might have a case – do not give up on it before getting a free consultation from a tenant law attorney.

A. Domestic Violence and Eviction

- i. Landlords must change the locks to rental units occupied by tenants who provide landlords with a copy of a restraining/protective order or police report within 24 hours. (CA Civil Code Section § 1941.5)

- ii. If landlords *fail* to change the locks within 24 hours, tenants under these circumstances may change the locks without the landlords' permission, *regardless of what the lease says.* (CA Civil Code Section § 1941.5)
- iii. It is illegal in California for landlords to evict tenants OR fail to renew a lease *because* they are victims of violence or abuse. (CA CCP § 1161.3).
 - **The abuse must be documented** by “A temporary restraining order, emergency protective order, or protective order lawfully issued within the last 180 days...A copy of a written report, written within the last 180 days, by a peace officer employed by a state or local law enforcement agency acting in his or her official capacity...[or] Documentation from a qualified third party” (§ 1161.3).
- iv. For tenants in federally-subsidized ‘public’ housing, the Violence Against Women Act (VAWA) makes this illegal anywhere in the United States. (hud.gov/vawa)
- v. In addition, victims of domestic violence cannot be denied admission, evicted, or have government assistance denied due to violence/abuse committed against them.
 - This includes incidents related to the abuse, such as an eviction record, criminal conviction, or bad credit history. *Please consult a lawyer for the details of any case.*

B. Immigration Status and Eviction

- i. Attorneys cannot ask about immigration status. (*See* CA Evidence Code §351.2)
- ii. It is illegal for a landlord to disclose to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, for the purpose of, or with the intent of:
 - harassing or intimidating a tenant or occupant;
 - retaliating against a tenant or occupant for the exercise of his or her rights;
 - influencing a tenant or occupant to vacate a dwelling;
 - or recovering possession of the dwelling (CA Civil Code §1940.35(a); Tenant Law Group)
- iii. **If the landlord is found liable for doing this, the court can award as damages: actual costs resulting from the landlord’s disclosure, as well**

as six to twelve months of rent for the rental unit. Additionally, the Court must award attorney's fees to whoever wins, among other remedies.

C. “Reasonable Accommodation” in landlord-tenant relationship (Source: Fair Housing Advocates of Northern CA)

- i. It is illegal for a housing provider to:
 - Refuse to rent or sell a home to a person because that person has a disability;
 - Refuse to make a ‘reasonable accommodation’ in policies or practices for a disabled person; or
 - Refuse to permit a ‘reasonable modification’ for a disabled person.

D. Consider hiring an attorney ‘on contingency’

- i. Many tenant attorneys will take your case **‘on contingency’**: this means they will earn a percentage of any damages they are able to recover for you from the landlord in court; if they cannot recover, you pay nothing.
- ii. You may have local legal protections in your city (ordinances) over and above state and federal protections.

III. Brief thoughts for homeowners.

A. Beware of for ‘cash for keys’ offers when in financial distress. (See Appendix below)

B. Foreclosure is not the same as eviction, but you have rights as a homeowner just as you would have as a tenant.

- a. For example, homeowners have the right to reinstate their loan by bringing their payments up to date at any point *until 5 business days prior to the date set for the sale of the property.* (Cal. Civ. Code § 2924c)

Appendix / Resources

[Fact Sheet: How to Answer an Eviction Lawsuit \(Source: Disability Rights California\)](#)

[What is an illegal eviction? \(Source: Tenant Law Group\)](#)

[Housing Protections for Domestic Violence Victims \(Source: National Housing Law Project\)](#)

[Violence Against Women Act \(VAWA\) \(Source: HUD\)](#)

Rebecca Licavoli Adams, *California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems*, 9 Hastings Race & Poverty L.J. 1 (2012).
https://repository.uclawsf.edu/hastings_race_poverty_law_journal/vol9/iss1/1

[Reasonable Accommodations and Reasonable Modifications for People with Disabilities \(Source: Fair Housing Advocates of Northern CA\)](#)

[‘Cash for Keys’ – Tenant and Homeowner Protections \(Source: CA Dept. of Real Estate\)](#)

[A Homeowner’s Guide to Foreclosure \(Rev. 2020\) \(Source: CA Dept. of Real Estate\)](#)

Orange County Bar-Association (OCBA) – approved legal referral line:

[Irisoc.org](http://irisoc.org)

[\(949\) 440-6747](tel:9494406747) or [\(877\) 257-4762](tel:8772574762)

The OCBA’s Lawyer “Referral & Information Service (LRIS) is the only non-profit legal referral service in Orange County sponsored by the OCBA. It has been referring callers to some of Orange County’s finest attorneys for over 50 years. LRIS panel attorneys have expertise in 35 areas of the law. Each call is carefully screened by trained representatives to assure referral to the right attorney. Prospective clients receive a free brief consultation to review the legal issue and discuss fees.”