



Fair Housing is Your Right Under The Law

This guide is provided by the City of Lake Forest in partnership with the Fair Housing Council of Orange County

Residential landlords and tenants have legal rights and responsibilities. The following information explains basics of the law in a question/answer format. It is only a very basic overview and is not meant to take the place of legal advice. Many aspects of landlord-tenant law are not covered. If you have a question or problem regarding a rental residence, it is best to contact the Fair Housing Council of Orange County directly at **714-569-0823** or via **info@fairhousingoc.org**, or a private attorney or another organization serving tenants and landlords.

Discrimination Under Fair Housing Laws

In California fair housing laws provide protection against discriminatory housing practices, as defined, that are based on **race, sex, religion, color, disability, familial status, national origin, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, source of income, veteran or military status, or genetic information of a person.**

Security Deposits

Civil Code Section 1950.5

Q. How much security deposit may a landlord require?

In an unfurnished rental unit the landlord can require up to two times the monthly rent as security. In a furnished unit, the landlord can require up to three times the monthly rent as security. Everything paid to a landlord at move-in, other than first month's rent is considered security and is potentially 100% refundable. It does not matter what a landlord may call portions of it (i.e. pet deposit, remote deposit, etc.), it is all treated as a single deposit from which legitimate deductions can be taken,

Habitability of Rental Units

Civil Code Sections 1941, 1941.1, 1941.2, 1941.3; Health & Safety Code Sections 17920.3 and 17920.10

Q. Is a landlord obligated to make repairs in a rental unit?

California Civil Code section 1941 makes a landlord responsible for maintaining a rental unit in livable condition, unless the tenant caused the damage.

What is a livable (habitable) condition?

A rental unit is **NOT** livable if it substantially lacks any of the following:

- Roof, walls and windows that do not leak
- Working plumbing or gas facilities
- Water supply of hot and cold running water connected to a sewage disposal system
- Heating system that works
- Electrical lighting and wiring in working order
- Building and grounds kept clean, sanitary, and free from garbage, rodents, and vermin
- Adequate number of garbage cans or dumpsters in good condition
- Floors, stairways and railing in good condition

Q. What can a tenant do if their unit is unlivable?

A tenant should communicate the need for a habitability-related repair to the landlord in writing. If the landlord fails to make a repair within a reasonable time, where reasonable depends on the specific facts, Civil Code Section 1942, gives a tenant two options described below. But, the tenant must first meet certain requirements. The landlord must have been given notice of the needed repairs, preferably in writing. Also, the landlord must have been given a reasonable time to make the repairs. Generally, this is 30 days, but it might be less or more depending on the facts.

Once these requirements are met the tenant may:

1) Repair and Deduct: Make the necessary habitability-related repairs and deduct the cost from the following month's rent. The cost cannot exceed one month's rent and the tenant can only use this method twice a year.

or

2) Move Out: A tenant can move out and no longer be liable for rent or any other conditions of the rental agreement.

Other options include contacting your local code enforcement department, contacting the County Health Department, making the needed repairs, and suing the landlord in Small Claims Court for the cost of repairs.

Caution to Tenants: You should contact the Fair Housing Council or a private attorney **BEFORE** using any of the above methods to insure you protect yourself and your tenancy.

Rent

Q. How often and how much can a landlord raise a tenant's rent?

If a property is covered by the **Tenant Protection Act of 2019 (TPA)**, rent may not be raised more than twice in a 12-month period, and the percentage increase of the rent cannot exceed the amount set by the TPA. That percentage, set annually by the TPA, is based on inflation and can never exceed 10%. See Civil Code Section 1947.12. Covered properties are generally apartments that are over 15 years old, but you should consult the Fair Housing Council for details to understand whether your rental is covered or not.

For properties not under the TPA a landlord can raise a tenant's rent as much and as often as they wish, so long as they give proper notice for month-to-month tenancies or follow proper steps for fixed-term lease renewals. Proper notice for a month-to-month tenancy means 30 days written notice before the increase takes effect if the new rent is not more than 10% above any rent the tenant paid on that unit in the last 12 months. Increases of more than 10% require 90 days written notice before the increase takes effect. See Civil Code Section 827.

Q. What should a tenant do if they cannot pay rent?

If a tenant knows in advance that they will be unable to pay their rent, due to a temporary situation, they should communicate with their landlord immediately to work out an arrangement with the landlord. If the tenant is unable to make arrangements with the landlord to delay the rent payment then the tenant should make arrangements to vacate the unit as soon as possible, giving the landlord written notice. A month-to-month tenant may be held responsible for paying the rent for a full 30-day notice period whether or not they are in the unit. A landlord may be willing to waive the 30-day notice if in doing so they can avoid a possible legal eviction proceeding. A landlord is not required to provide housing for those who do not pay

the rent. Generally, it is better for the landlord and tenant to avoid legal eviction proceeding, if at all possible.

Q. What can a landlord do if a tenant fails to pay the rent on time?

A landlord should communicate with tenant to determine if suitable arrangements can be made. If arrangements cannot be made, the landlord can give tenant a **3-day notice to pay rent or quit**. This notice gives the tenant 3 business days to pay the rent or vacate. The day after the tenant is properly served the notice is Day 1. Court-observed holiday days are not counted. If the tenant fails to pay within the 3 days, landlord can file an Unlawful Detainer complaint (or eviction) against the tenant in court. If tenant offers payment within the 3 days, the landlord must accept it. If tenant quits, they are still liable for rent, but landlord must begin a good faith effort to promptly replace the tenancy to limit losses. A landlord cannot collect rent from two different parties for same period (so-called "double rent").

Q. Can a landlord lock a tenant out for not paying rent?

No. A landlord may never lock a tenant out of their apartment or take other "self-help" measures, such as shutting off utilities or other services, for failure to pay rent or any other reason. Actions such as these will give the tenant the right to sue the landlord (see Civil Code Section 789.3). A tenant may be locked out by the Sheriff if the landlord gets a judgment for possession in an Unlawful Detainer action in court.

Rental Agreements

Q. Can an oral agreement be enforced?

Yes. A tenant is responsible for paying rent even if no written agreement exists. The terms of the agreement would be controlled by the California Civil Code. However, it is strongly advised that there be a written rental agreement, as only terms that can be clearly established can be relied upon and enforced. Also, fixed-term rental agreements for more than a year must be in writing.

Q. Can a landlord change the terms of a rental agreement?

Yes, with proper notice for month-to-month agreements provided the change is not otherwise prohibited by law.

For a fixed-term lease, generally terms can only change upon renewal of the lease or by a mutual agreement of the tenant and landlord. A landlord may change any of the terms of the agreement such as: rent amount, security deposit amount, services or amenities included, provided it is done with proper notice, when required, and complies with all other legal requirements.

Q. What is proper notice?

Proper notice must be in writing (ink on paper) and served as required by law. To change terms, other than increasing rent, the notice period must be at least as long as the time between rent payments (7 days for week-to-week, 30 days for month-to-month). See Civil Code Section 827.

Q. Once a fixed-term lease expires, can a landlord change the terms?

Yes. If the parties do not enter into a new fixed-term agreement, the old lease can become a month-to-month rental agreement and can be altered with proper notice.

Termination of Tenancy

Civil Code Sections 1946.1 and 1946.2

Q. How may tenancies be terminated?

A periodic tenancy (i.e., month-to-month) must be terminated by a properly served written (ink on paper) notice from the landlord to the tenant or vice versa, unless they mutually agree otherwise. A tenant need only give notice equal to the time between rent payments, but a landlord must give a 30-day or 60-day notice depending on how long the tenancy has been in place. At the one-year point, the notice changes from 30 to 60 days. The notice may be given at any time, meaning termination can occur between the times for rent payments. Rent will be prorated to account for a mid-period termination. Fixed-term leases will terminate pursuant to their own terms

If a property is covered by the **Tenant Protection Act of 2019 (TPA)**, the landlord needs a **'just cause'** to terminate the tenancy. It could be an **'at fault'** reason for a tenant violation of the agreement or a **'no fault'** one for an allowed business reason. For the latter, the tenant is entitled to relocation assistance equal to one month's rent. The law has many nuances, so you should consult the Fair Housing Council for details, but in general, it will apply once a tenancy passes the one-year point. See Civil Code Section 1946.2.

Landlord's Right of Entry

Civil Code Section 1954

Q. Can a landlord or manager enter a tenant's rental unit?

Yes, but generally entry must be preceded by a properly served written (ink on paper) notice. In cases of an emergency (for example, a burst pipe), a tenant having abandoned the unit as defined by law, pursuant to a court order, or after tenant has surrendered the unit, a landlord or manager may enter a rental unit without notice. Otherwise, landlord must provide reasonable written notice for a legally specified valid reason, where reasonable means at least 24 hours in advance. Valid reasons are to make necessary repairs or to show the unit to a third party for a legitimate business purpose.

A landlord may NOT enter a rental unit simply to inspect, even if the rental agreement claims to allow it. Noticed entry must be during normal business hours. However, a tenant may consent to entry at any time. The notice should be personally delivered, left with someone at the premises of suitable age and discretion, or left at, near or under the usual entry door where it is likely to be discovered. It can be mailed, but landlord should allow 6 days between mailing and entry. A tenant can never waive their rights under Civil Code section 1954, no matter what the rental agreement says.

Harassment

Q. Can a landlord harass a tenant?

No. It is illegal for a landlord to harass a tenant in an effort to force tenant to move. If a tenant experiences landlord harassment, they should keep a record of each incident, including the date, time and place of the incident and other important facts, as well as the names, addresses and phone numbers of any witnesses. Next, the tenant should write a letter to the landlord demanding that the harassment stop. If this does not work, the tenant may be able to sue the landlord in Small Claims Court or get a restraining order from the Superior Court. The tenant should seek legal advice in this type of situation.

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