



ASK A LANDLORD ATTORNEY

For information purposes only and not a substitute for legal advice.

Q:

We noticed no activity in a particular rental unit and could not reach the tenant. It's as if he vanished, but his property is still inside. Come to find out, we learned he is incarcerated and facing a lengthy prison sentence. How can we legally dispose of his property? I heard there are rules concerning abandonment.

A:

There are rules concerning abandonment, but they apply when the tenant leaves of their own volition. The tenant left involuntarily and would likely be overjoyed to return home.

Generally speaking, whenever a tenant is incarcerated or institutionalized, we'll have to go through the traditional eviction process. The question then becomes how to serve notice.

If you know which correctional facility he is housed at, we can serve notice there; otherwise, we can obtain an Order to Post.

When the tenant is released from custody and discovers his former abode is being rented to someone else and learns his belongings have been discarded without any legal process, you are inviting a costly lawsuit. Please don't take advantage of the tenant's absence to go it alone and ignore the carefully choreographed steps of the eviction process.

Q: Tenants have left in April and I'm going through my security deposit deductions. In violation of my no-pets policy, there are clear signs that a dog was there. Can I charge extra for "cleaning" because of the pet? I want to do a more thorough cleaning.

A: Conceptually, your understanding of cleaning is off-base. There are no set fees for cleaning, whether a pet was present or not.

Cleaning expenses could be a little, it could be a lot, it could be nothing if the vacant unit is in pristine condition, but in no event is there a fixed fee.

It may be helpful to [download our security deposit deduction guide](#) to put this in context.

Q:

I own a fourplex in San Francisco, with one vacant unit that has been renovated. One of my tenants is on Section 8 and has lived in her unit for 20+ years. Can I move her into the newly updated unit at a higher rent? If so, do I have to pay relocation payments if they decide to move?

A:

Relocation payments would not apply if your tenant decides to move from one unit to the next because it's a voluntary vacancy. Our bigger concern, however, is how your tenant can make this transition unless she opts out of the program.

You can't conveniently move a Section 8 tenant into a neighboring unit just because it's next door. In the eyes of the San Francisco Housing Authority, it is a brand-new unit that needs to be inspected and certified - everything begins anew. Moreover, any rent increases must be approved.

Q:

I heard that I will not be able to sell my property if I don't comply with a balcony inspection law. Can you tell me what this is about?

A:

After a tragic 2015 balcony collapse in Berkeley that led to fatalities and injuries, the "Balcony Bill" (SB-7212) was passed and goes into effect January 1, 2025. This law applies to multifamily buildings with three or more units and requires the inspection of exterior elevated elements and associated waterproofing elements.

The compliance deadline date is January 1, meaning that the first round of inspections and any necessary repairs identified during those inspections must be completed by that date, with additional inspections to occur every six years thereafter.

We recommend that housing providers not wait until the last minute to reach out to an architect, civil or structural engineer, or a licensed contractor who meets specific qualifications. [Get an overview here](#)



To avoid stiff penalties, rental housing providers need to prepare themselves for a fast-approaching deadline to inspect balconies.

Q:

I served a 3-day Notice to Pay Rent or Quit on my tenant but a week later, he paid the rent through Zelle. The tenant is problematic and I still want to remove them. What should I do?

A: This is occurring more frequently with online payment portals where tenants are sending money electronically and money is being deposited with no action on the part of the landlord. Of course, after the expiration of the 3 days (excluding weekends and judicial holidays), the landlord has no obligation to accept rent and if they do, the tenancy begins anew and we have to start the eviction process all over again.

In your case, you haven't accepted the payment and we can call this transaction an unauthorized payment. If you could Zelle the rent money back to your tenant, that would be ideal. If not, mail the tenant a check for the same amount you received through Zelle with a note kindly informing them that the rent payment was unauthorized and that you are not accepting it. After you've done that, the tenant or their attorney would be hard-pressed to argue that you've damaged your case.

Preserve any documentation surrounding this correspondence and get proof of mailing.

It's been said that the Internet is the biggest experiment in anarchy humankind has conducted, but landlord-tenant laws do not change.



Q:

My tenant doesn't keep the bathroom clean and doesn't ventilate it. Sometimes, I will help him clean it to avoid any mold issues and damage, but it's getting to be too much for me. What can I do?

A:

Maintaining the rental unit in a habitable condition is a dual responsibility on the part of both parties. In every lease, there should be a covenant that states the tenant must keep the premises safe and sanitary. If you have brought your concerns to the tenant and he fails to correct them, this may be a theory for eviction.

In certain instances, however, tenants living in unacceptable conditions will argue that there is an underlying mental illness entitling them to protections under fair housing laws, [a topic we took on here](#).

Q:

I signed a lease with parties who gave me the full security deposit, but they were unable to come up with the first month's rent so I chose not to rent it to them. This created a hassle because I had to re-advertise the rental unit. What can I deduct from the security deposit?

A:

Since they signed a rental agreement, you can deduct for the time the rental unit was off the market because technically, they are liable for the full rental agreement.



It is not uncommon that when tenants live in substandard conditions, their attorneys will ask for a reasonable accommodation under fair housing laws.

Q:

I'm managing my mother's tenant-occupied duplex in Castro Valley. It's up for sale now, and I understand that I need a reason to evict if I want to give the new owners a vacant building. Can I just serve a 60-day notice letting the tenants know I will be renovating? I certainly don't mind changing the kitchen counter and making the bathroom look better.

A:

You are correct that you need a reason to transition the tenants out. In the absence of local rent and eviction controls, the property is subject to state law, namely AB-1482, which delineates "just cause" reasons to evict.

We know that when properly staged, a vacant unit will sell for much higher than one that is tenant-occupied, but the desire to sell property vacant is not a just cause.

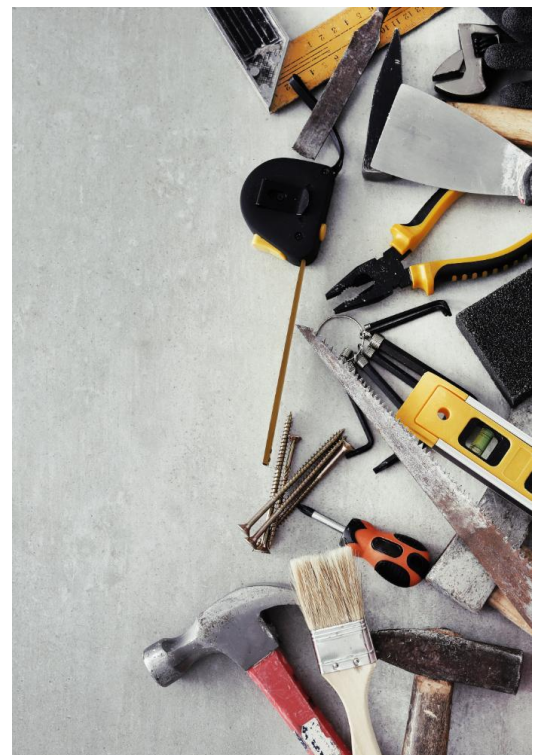
We're assuming that the tenants have been wonderful tenants and have not done anything wrong. A substantial rehabilitation is one no-fault reason for eviction, but we have to put an asterisk on the term "substantial."

Changing kitchen counters as you indicated, or other cosmetic improvements like painting, sanding hardwood floors, and the like, are not substantial enough. You need a major undertaking that requires a building permit to perform such work as electrical and plumbing.

It also requires that the premises be uninhabitable for at least a 30-day period. You would have to essentially "gut" the bathroom, kitchen, or both. You'll also need to pull permits first and have a contractor define the scope of work and explain why the tenant would have to be displaced for over 30 days; all of the plans must be drawn up before serving a 60-day notice.

It used to be that the mere intention to substantially remodel a rental unit was enough to evict a tenant, but distrustful lawmakers changed state law to ensure that the work would be performed. Those changes took effect April 1, 2024, and are the [subject of our earlier article](#).

Keep in mind, if you elect to proceed, you'll have to pay relocation payments equal to one month's rent. There are specialized notices that must be prepared and served, and our office can assist in that regard.



Q:

My tenant comes by the rental unit now and then, but I suspect that her daughter is living there on a more permanent basis. I'd like to learn more about the daughter, peel into her credit history, and maybe have her sign a rental agreement. Can I change the terms of the tenancy? The rent is paid on time and there are no other problems, but I'm getting a little nervous about having someone I don't know live in my property.

A:

The terms of the tenancy can't be changed when there is someone else living in the rental unit, without agreement of all parties; we would have to enter into a new rental relationship with the daughter who is using the rental unit as her primary residence. Our office can prepare a lease addendum where both parties sign it.

With the Master Tenant's consent, you can certainly approach the tenant's daughter with a rental application and hope that she fills it out but there is no obligation to do so.

If she refuses, in some jurisdictions, you can potentially commence an unlawful detainer action on the grounds of a breach of the lease because an unauthorized occupant is living in your unit, meaning you can evict everyone. However, in jurisdictions with restrictive "just cause" eviction requirements, you should tread carefully. I would strongly advise you contact an attorney for assistance in this situation.

Have a question of your own?

Daniel is happy to answer them and if it requires more involvement, you can schedule a consultation.

Email daniel@bornstein.law for informed advice.

