

# TRAINING BULLETIN

## LANDLORD-TENANT DISPUTES

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Landlords, Disputes with Tenants

Lock-outs

Self-Help Evictions

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## INTRODUCTION

Recent research conducted by the Conflict Management Detail has revealed that more than 20% of the landlord-tenant disputes handled by the Oakland Police Department involved a violation of Penal Code statutes and that one of every 15 disputes escalated to violence. Thus, as most police officers (particularly those in Patrol Division) are well aware, landlord-tenant disputes have posed a significant peace-keeping problem for the Police Department.

The handling of landlord-tenant disputes is only one segment of the wide range of the highly complex peace-keeping functions that the patrol officer must perform. The officer's role as a keeper of the peace requires that he deal with human conflict ranging from large scale rioting to the more frequent and often more complex disputes between merchants and their customers; between taxi-cab drivers and their riders; between husbands and wives; and between landlords and their tenants.

Recognizing the need to equip officers to contribute to the immediate and equitable solution of such conflicts - solutions that will eliminate the need for repeated police involvement - the Oakland Police Department embarked upon research designed to explore effective methods for the mediation of such calls and landlord-tenant disputes in particular. In late 1969, the Legal Unit undertook a limited experimental dispute-settlement program designed to prevent the escalation of minor landlord-tenant grievances into serious offenses, through the mediation of disputes and the accomplishment of settlements that were lawful and equitable to both parties. These efforts attracted federal funding for an expanded program, and in 1971 the Landlord-Tenant Intervention Unit began operations within the Conflict Management Detail, then the Conflict Management Section. The federally funded experiment ended in February, 1972.

This bulletin is a result of the research and experiences of the Landlord-Tenant Intervention Unit during the experimental phase. It describes the common patterns of Landlord-Tenant disputes, the methods that have been successful in their solution, and the relevant practical and legal considerations that should assist you in the settlement of disputes and in providing a service that is believed to be the first of its kind in the nation.

During the six-month experimental period, the Landlord-Tenant Intervention Unit handled over 340 requests for police service. More than 260 of these cases were requests by citizens for information concerning various aspects of landlord-tenant law. The officer trained in landlord-tenant law could answer their questions often in no more time than would have been required, under traditional Departmental policy and procedures, to have explained that he didn't know the applicable civil laws. The other cases concerned situations where it was necessary for direct police intervention to resolve the conflict. Some of these situations included the landlord's removal of doors or windows; the landlord's termination of gas, water or electrical services; the tenant's willful destruction of the premises; or the tenant's refusal to return the keys after having vacated the premises. Using their knowledge of the laws and the procedures outlined in this training bulletin, the Landlord-Tenant Intervention Unit was able to effect an immediate and equitable solution in each of these potentially violent situations.

The Landlord-Tenant Intervention Unit was phased out as a specialized unit in October, 1972. In-Service training in Landlord-Tenant Disputes was then conducted for Communications Dispatchers and will continue to be conducted for officers in the recruit academy and advanced officers schools in order to maintain the high level of service rendered citizens during the experimental stage.

### Departmental Policy

The Communications Section is responsible for the initial handling of all landlord-tenant calls. When any request for police services concerns a situation that has reached a violent stage<sup>3</sup> or one that seems perilously close, a field unit will be dispatched to the scene. When the situation is more routine, Communications personnel will advise citizens over the phone. The primary objective in mediating a landlord-tenant dispute is to bring about a peaceful and lawful settlement of the dispute without making arrests. Of the numerous disputes handled by the experimental unit, only one required an arrest. In the other cases, either the landlord complied or was vindicated by the production of extenuating or justifying circumstances, the controversy ended because the tenant moved, or the complainant was referred peacefully to another agency. By offering information and assistance to landlords and tenants, the Department can defuse potential violence and afford more harmonious living conditions for all citizens.

### COMMON CASES

Although the circumstances may be quite varied, the most commonly perpetrated abuses by landlords fall into five general categories.

1. Lockout of the tenant, usually accompanied by the lock-in of the tenant's possessions. A lockout is a misdemeanor prohibited by Section 418 of the Penal Code. ("Forcible Entry or Detainer of Land: Every person using or procuring, encouraging or assisting another to use any force or violence in entering upon or detaining any lands or other possessions of another, except in cases and in the manner allowed by law, is guilty of a misdemeanor.")
2. Seizure of the tenant's property. Seizure of the tenant's property as security for unpaid rent or other alleged debts, similarly, is prohibited by Section 418, unless the seizure is made pursuant to a court order. See CAL. CIV. CODE Section 1861a (Supp.'71).<sup>1</sup>
3. Removal of doors or windows. Removal of doors or windows, or any other destruction of property, is considered to be malicious mischief, because the tenant's interest (a leasehold interest) is a real property interest<sup>2</sup> within the meaning of Penal Code Section 594.
4. Trespass. Occasionally a landlord will enter the tenant's premises without permission. If the entry is reasonable--for example, to inspect a leaking water pipe or to investigate smoke--it is not considered a trespass. Nor is it a trespass if authorized by the terms of the lease. Some entries, however, are made for purposes of harassing

the tenant, snooping around, or other unreasonable purpose. These are trespasses. CAL. PEN. CODE Sections 602.5 and 602 (1) (unauthorized entry of a dwelling).

5. Termination of services. Interference with the tenant's ability to attain services, such as gas, electricity, and water, is also a common practice, but these cases, although misdemeanors under Section H1001 (i) of the Oakland Housing Code, fall within the primary Jurisdiction of the Oakland Building and Housing Department and are generally referred to that agency unless other offenses are involved as well.<sup>3</sup> A termination may, as a last resort, be treated as malicious mischief since it is an interference with a property right.

Abuses most commonly perpetrated by tenants are:

1. Destruction of the landlord's property. Such conduct, of course, constitutes malicious mischief. CAL. PEN. CODE Section 594.
2. Refusal to pay rent. Failure to pay rent is not a crime. Any person, however, "who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of...real...property...is guilty of theft..." CAL. PEN. CODE Section 484.
3. Accumulation of garbage. When a tenant allows garbage to accumulate, the matter is referred to the Oakland Building and Housing Department for disposition under the Oakland Housing Code.

## METHODS OF SETTLING DISPUTES

Effective handling of landlord-tenant disputes requires an understanding of applicable Penal Code provisions. The objective, as we have said, is not to make an arrest but to achieve a lasting solution of the dispute by explaining to the parties what conduct is not lawful and by suggesting alternative solutions that are lawful. Thus, if a tenant is locked out, the officer should explain to the landlord that a lockout is unlawful (even if the tenant is behind in his rent), explain why it is unlawful, and suggest that the landlord either consult his attorney or go directly to Small Claims Court, which has jurisdiction to evict in almost all cases that come to the attention of the Department.

Cordial persuasion has been the most effective method of resolving lockout cases. Indeed, most landlords are unaware that their actions are illegal. When it is explained that the conduct is a breach of both civil and criminal provisions, the landlord will usually cooperate and follow the proper procedures. When the landlord cannot be located, it is lawful for the tenant to use whatever force is reasonably necessary to gain access to the premises. You should never, however, assist the tenant in accomplishing the re-entry.

When the landlord is present and unwilling to terminate the offense, make it clear to him that criminal proceedings can be initiated by the tenant if the landlord does not comply. Experience demonstrates that this tactic will usually induce the landlord to unlock the premises.

The Landlord-Tenant Unit found that a working knowledge of relevant civil laws proves invaluable in settling disputes. Thus, you should have in mind all the pertinent considerations to bring to bear in achieving a solution. Included in this bulletin is a general section on the rights and responsibilities of landlords and tenants. You are not expected to remember all the legal rules discussed hereafter; this discussion, rather, is intended to provide some resources that you may need in settling landlord-tenant disputes. Accordingly, this bulletin is indexed at the end for ready reference. All Patrol sergeants should carry a copy while on duty.

## RIGHTS AND RESPONSIBILITIES OF LANDLORDS AND TENANTS

### 1. The Rental Negotiation

Before a person rents an apartment or a house, he should examine it carefully. This can be done only by a personal inspection--looking for evidence of leaks in the roof, turning on lights and water (hot and cold), flushing the toilet, opening windows, and the like. If something is wrong, the landlord will sometimes agree to fix it; if the defect makes the premises unfit for occupancy, he has a duty to fix it. It makes good practice to have any agreements made by the landlord to make certain repairs put in writing, if possible, or to have a witness present when the agreement is reached. After the premises are checked, the landlord should be asked whether there is anything wrong that is not apparent. He has an obligation to disclose serious problems.

If the tenant is asked to sign a written lease, he should read it carefully before signing. If someone signs something he is later sorry he signed, his failure to have read the document is no defense in a lawsuit. He is bound by the terms, assuming they are lawful. Most rental agreements in Oakland, however, are verbal.

Deposits. The landlord or the manager may ask for a deposit before a lease is signed or a verbal agreement is entered into. After a deposit is given, if the landlord refuses to enter into an actual rental agreement for no legally acceptable reason, the tenant may get his deposit back and may, in addition, be entitled to money damages. If the tenant refuses to enter into the agreement for no legally-acceptable reason, the landlord may keep some portion of the deposit to make up for his loss. The amount that may be kept is normally a decision for a civil court. Amounts are usually small enough that parties can be referred to Small Claims Court (up to \$500).

If the tenant rents the apartment and later moves, the landlord usually has a right, depending on the terms of the agreement, to keep as much of the deposit as is reasonably necessary to make up for the tenant's nonpayment of rent, to repair damages caused by the tenant, or to clean the premises. If any amount is left over, the landlord must give it back to the tenant. A bad faith retention of deposit money by a landlord subjects him to a possible \$200 punitive damage judgment. CAL. CIV. Section 1951 (c) & (f) (Supp. '71). In both cases above, a refund, if any, and its amount, are governed by principles of civil law. A lawyer or Legal Aid should be consulted if a dispute arises, or the parties should be referred to Small Claims Court.

8. The Rental Agreement

There are two basic kinds of rental agreements: written leases and verbal agreements.

A) Written Lease

A written lease must include a description of the property, a specified rental period, and the amount of rent to be paid. A tenant has the following rights under a lease: (1) The tenant cannot be legally evicted as long as he complies with the terms, and (2) the landlord must obey the requirements of the lease. For example, the amount of rent cannot be raised. The tenant also has responsibilities under the lease: (1) he must follow the terms of the lease, and (2) pay rent when it is due.

B) Verbal Agreement

- 1) A verbal monthly or weekly rental agreement is legally binding, even though not in writing. Under such an agreement, the tenancy can be monthly or weekly. When the period is one month, the tenancy is called a "month-to-month" tenancy; when one week, "week-to-week." Rights and responsibilities under verbal agreements will be discussed below.

9. Rent

A) When is rent due?

Most rental agreements provide that rents are due in advance. Rents paid at the beginning of January are for January, and so on.

B) When can the landlord raise the rent?

In a month-to-month tenancy, a landlord may not raise the rent without giving the tenant written notice of the raise at least 30 days in advance. In a week-to-week tenancy, one week's written notice is sufficient. If the amount of rent is stated in a written lease, of course, the landlord is bound by the terms of the lease.

C) Does the tenant need receipts?

The tenant should be sure to get a written rent receipt whenever he pays the rent. Unless he pays by check, it is almost impossible to prove payment without the receipts. The tenant should likewise obtain a receipt for any deposit he is required to leave. The receipt should state exactly what the deposit is for and whether it is refundable. The tenant has a right to receive a receipt whenever he pays.

10. Length of the tenancy

A) Written Lease

Under a written lease, the length of the tenancy is set by the lease.

B) Without a written lease

If there is a month-to-month tenancy, and if the tenant has not violated the terms of the agreement, the landlord may end the tenancy for almost any reason,<sup>4</sup> as long as he gives the tenant 30 days' written notice to move. If the tenant has violated the agreement, however, the landlord needs to give only three days' written notice, stating his intention to initiate eviction proceedings and noting exactly what the tenant did wrong. For example, if the tenant is behind in his rent, the three days' notice must state that rent is due and must state the exact amount. If the problem has not been corrected by the tenant within three days and if the tenant has not moved, the landlord may start eviction proceedings.

11. Evictions

The only legal way to evict a tenant is through the courts. The entire thrust of the civil law is contrary to the forcible assertion of private rights that might lead to breaches of the peace. Recognizing the immediacy of their needs, landlord-tenant disputes are given preference on civil court calendars.

There are several steps in the legal proceedings. Often it is not necessary for the landlord to go beyond the first or second step, because the tenant moves. It is usually in the tenant's best interests, however, to move as soon as possible after receiving a lawful notice, because the more legal steps that have to be taken, the more expensive it might be. But if the tenant believes the eviction is illegal, he may wish to challenge it by staying on the premises and going to court at the appointed time. Under these circumstances, he has a duty to continue the rental payments.

## EVICTIONS

These are the steps in an eviction proceedings.

### A. Notice

The landlord must give written notice. A 30 days' notice must be given if the tenant has not violated the agreement and three days' notice if the tenant has violated the agreement.

A copy of this notice should be given to every adult to whom the premises were rented, not to every adult occupying the premises. Thus, if a landlord wished to evict a husband and wife, he would need two separate forms -- one addressed to the husband and one addressed to the wife. Moreover, the landlord should keep three copies of each of these forms for his files and the court's files.

Any written notice will not do, for its contents are legally prescribed. Sample three days' notice and thirty days' notice forms are set forth on the following page. Notice forms are available at any large stationery store.

If the notice is a three days' notice for nonpayment of rent and tenant offers full payment before the three days have passed, the landlord must accept it. Partial payment need not be accepted.

### **SAMPLE THREE DAYS NOTICE** **(Landlord should keep three copies)**

To (Tenant):

You are hereby required to pay the rent of the premises hereinafter described and which you now hold possession of, pursuant to \_\_\_\_\_ (a written lease or a verbal agreement) Of \_\_\_\_\_ (date) unpaid rent amounting to the sum of \$ \_\_\_\_\_ being the amount now due and owing to me by you for \_\_\_\_\_ (number of months or weeks) rent, from \_\_\_\_\_ to \_\_\_\_\_ (dates rent has gone unpaid), or deliver up possession of the same to \_\_\_\_\_ (me or my agent), who is hereby authorized to receive possession thereof, within three days from receipt of this notice, as by the statute in such cases made and provided, or I shall institute legal proceedings against you.

You are further notified that unless you pay said rent, as aforesaid, I do hereby elect to declare a forfeiture of said \_\_\_\_\_ (lease or verbal agreement).

Said premises are situated in \_\_\_\_\_ County, State of California, and are described as follows: \_\_\_\_\_ (give exact address and apartment number, if any).

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(Signature of Landlord)



**SAMPLE 30 DAYS NOTICE**  
**(Landlord should keep three copies)**

To \_\_\_\_\_ (Tenant):

You are hereby notified that on \_\_\_\_\_  
\_\_\_\_\_ (at least 30 days from date of this notice), your tenancy for the premises of which  
you hold possession, said premises being: \_\_\_\_\_  
\_\_\_\_\_ will terminate and end and you are requested and required to deliver possession  
to \_\_\_\_\_ on said \_\_\_\_\_ day of \_\_\_\_\_, 199

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Landlord)

A. Choice of court

After the thirty or the three days are up, the landlord must then file an unlawful detainer complaint with either the Municipal Court or the Small Claims Court. How he decides upon the court is described on the following pages.

Small Claims Court. The purpose of Small Claims Court is to allow people to bring cases to court for an inexpensive legal settlement. It can both evict a tenant and give a judgment of up to \$500 when (1) the tenant is behind in the rent; (2) the property is residential; and (3) the tenancy is not greater than month-to-month. Parties must represent themselves, for no lawyers are allowed to appear in the court except on their own behalf. If the plaintiff loses, he cannot appeal.

Municipal Court. The Municipal Court can evict and give a judgment of up to \$5,000 in any case where the rental value is \$600 or less per month. Here, representation by counsel is essential. Whereas Small Claims Court hears eviction cases only when the tenant is behind in the rent, Municipal Court can evict for any violation of the rental agreement, or for no violation at all if the tenancy is month-to-month and a 30 days' notice is given. Though more expensive because of attorney's fees, Municipal Court is quicker; eviction may take as little as 15 days. Small Claims actions may take up to 49 days if the tenant stays until the last possible moment.

It should be noted that Legal Aid does not represent tenants in eviction proceedings unless the tenant's rights have been violated. Thus, if the landlord is evicting for nonpayment of rent, Legal Aid will not represent the tenant. If in addition, however, the landlord has locked the tenant out or seized his belongings, Legal Aid may represent the tenant if he is otherwise eligible for services. In rare cases, Legal Aid will represent a landlord.

If the landlord is in doubt about which court to use, he should consult his attorney.

## B. Filing the complaint

Small Claims Court. The person wishing to sue (plaintiff) goes to the court at Room 4000, 600 Washington Street (874-5082) and fills out some short forms. He must bring two copies of the eviction notice if he has one tenant; if he is evicting two from the same premises (e.g., a husband and wife) he must bring three copies of the notice. A filing fee of \$2.00 is required. The clerk will then set a trial date.

Municipal Court. The attorney takes care of filing the complaint.

## C. Serving the complaint and summons

Small Claims Court. Just after filing the complaint, the landlord must have the tenant served with a copy of the relevant court papers (<sup>11</sup>Declaration and Order"). Perhaps the easiest, though not the most certain, method of serving the papers is to have the court clerk send them by certified mail. The cost is \$1.50 for each defendant being sued; the problem is that occasionally a defendant will refuse to accept or sign for the mail. The plaintiff thus might wish to hire a process server, or have the Sheriff's Office or a disinterested friend serve the documents.

Service cannot be made by anyone "interested in" the case, such as the landlord, manager, or members of their families, or by anyone under 18 years of age. Service must take place at least five days before the assigned court date.

Municipal Court. The attorney takes care of serving the complaint and summons.

## D. Tenant's response

Small Claims Court. If the proceedings were brought in Small Claims Court, an answer is not necessary; the tenant will receive notice of the date of the court hearing. If he has any questions, he should call the Small Claims Court clerk.

Municipal Court. The tenant has five days to file an answer, which is a legal document and should be prepared by a lawyer. If no answer is filed, the landlord may claim a "default", which means the landlord will automatically receive an eviction plus a judgment for back rent.

## E. The trial

Small Claims Court. On the day of the trial, the parties must go to the court and bring all their evidence (usually receipts, copies of receipts, a copy of the lease, if it was written) and their witnesses. They must represent themselves, since lawyers are not allowed to appear. What they do is simply go before the judge and tell him their story.

Municipal Court. The parties should follow the directions of their attorneys.

## F. Post-trial proceedings

Small Claims Court. If the tenant loses the case, the Small Claims Court gives him a 20-day "stay of execution" in which to appeal or to move. If he fails to move within the 20 days, the sheriff or marshal may remove him from the premises".<sup>5</sup> Any of his property left on the premises must be stored by the landlord. The tenant has a right to get the property back, but only if he pays the reasonable storage costs. He is not required to pay the owed rent in order to obtain his property. After 30 days, the landlord has a right to auction off the property.<sup>6</sup> Therefore, the tenant usually moves as soon as possible after he loses the case in court.

The SMALL CLAIMS COURT procedures sound very complicated, but they are actually quite simple. The court will assist the parties through the entire process. Have them telephone the court at 874-5082.

## 6. Criminal Violations

As stated earlier, the only lawful way for a landlord to evict a tenant is by going to court. Sometimes landlords will try to evict a tenant by force or other unlawful means. These actions, as a general rule, are violations of both criminal and civil laws. The landlord is subject to criminal prosecution, as well as to a civil action for damages.

A landlord may not, for any reason short of self-defense, lock a tenant out, remove the doors or windows, or move the tenant's possessions into the yard or street. The landlord must follow the legal procedures outlined above.

Illegal actions by landlords have been referred to by the courts as "self-help" evictions. In *Jordan v. Talbot*, 55 Cal. 2d 597, 12 Cal. Rptr. 488, 351 P. 2d 20 (1961), the California Supreme Court summarized the law applicable to "self-help" evictions: "(A)bsent a voluntary surrender of the premises by the tenant, the landlord (can) enforce his right of reentry only by judicial process, not by self-help...(A) provision in the lease expressly permitting a forcible entry would be void as contrary to the public policy...Regardless of who has the right to possession, orderly procedure and preservation of the peace require that the actual possession shall not be disturbed except by legal process." 55 Cal. 2d at 604-05. The statute prohibiting forcible entries "was intended to prevent bloodshed, violence and breaches of the peace, too likely to result from wrongful entries into the possession of others..." (607)

Sometimes a landlord will give a tenant a second chance on the rent. If the landlord gives a tenant three or four extra weeks to pay and still the tenant does not, it is not difficult to understand why the landlord might be angry about having to go to court at that point. Landlords, of course, should operate in a businesslike manner: they should check the credit of their prospective tenants, and they should serve eviction notices as soon as a tenant is a few days delinquent in the rent. If the tenant is able to pay a few days later, the eviction proceedings can be dropped; thus it is not a heartless act to serve notice promptly.

Landlords may also be bitter about the expense or the time required to go to court. It is well established, nonetheless, that requiring a resort to the courts is far preferable to the private and sometimes violent settlement of disputes.

There is only one very narrow means that a landlord may lawfully use to hold baggage or certain personal property belonging to the tenant when charges are due that have not been paid by a tenant who remains on the rented premises. Civil Code Section 1861a, applicable to apartment houses, apartments, and cottages, authorizes the court to issue an order allowing the landlord to take possession of certain property only if the landlord can prove in an affidavit that the property will be otherwise <sup>9</sup>'destroyed, substantially devalued or removed from the premises.'" The landlord, acting under a specific court order allowing him to do so, must enter peaceably during daylight hours and may take possession of property, sufficient to satisfy the charges, other than the following:

1. Musical instruments, tools, books, and clothing used by the tenant to earn a living.
2. Orthopedic or prosthetic appliances or devices, or medicine used by the tenant or a member of his family.
3. Table and kitchen furniture, including one refrigerator, washing machine, sewing machine, stove; bedroom furniture, one davenport, one dining table and chairs, and one overstuffed chair.

The tenant must be given 10 days notice of a hearing on the affidavit and may present his arguments against such an order at the hearing. A landlord taking possession of property under the order does not affect a change in ownership, but is merely holding the property until a final judgment is received. The lien may or may not be enforced depending upon the judgment. (See footnote 1, and Cal. Civ. Code § 1861a)

#### 8. Keeping the dwelling in good repair

As a general rule, the landlord bears the costs of ordinary wear and tear, and the tenant must pay for damages he causes that are greater than ordinary wear and tear, that is, damages due to the tenant's carelessness.

- A) Particular Responsibilities of the Tenant The tenant is required by law to do the following things:
- 1) Keep the dwelling clean and sanitary.
  - 2) To properly use and operate all electrical, gas, and plumbing facilities and keep them as clean and sanitary as their condition permits.
  - 3) Exterminate insects, rodents, and other pests if his unit is the only one in the residential building infested and the owner has provided a reasonably insect and rodent-proof building.

- 4) Dispose of all garbage in an approved garbage receptacle.
- 5) Keep off the premises any material that would cause a danger of fires or pests.
- 6) Use each portion of the premises (kitchen, bedroom, dining room, etc.) only for the purpose for which it is designed (cooking, sleeping, eating, etc.)
- 7) Do not intentionally destroy, deface, or damage any part of the premises, or permit anyone else to do so.

Any person who violates or causes or permits another person to violate any of the above responsibilities is guilty of a misdemeanor, although such offenses are normally referred to the Building and Housing Departments, which has primary jurisdiction.

B) Responsibilities of the Landlord and Tenant

The landlord has a general legal obligation to keep the premises in a condition fit for human occupancy and to repair all "subsequent dilapidations" that make the premises "untenantable."<sup>7</sup> (Also see footnote 8)

The landlord and tenant have a legal obligation to maintain the premises in compliance with the Oakland Building and Housing Codes, Oakland Municipal Code, California Civil Code, and the California Health and Safety Code. The following is a summary of what the law requires:

- 1) **BATHROOM.** The landlord must provide: (1) A toilet (flush water closet) in a room that gives privacy; (2) a lavatory basin located in the same room as the toilet; (3) a bathtub or shower in a room that gives privacy, whether or not it is in the same room with the toilet; (4) hot and cold running water at all times in lavatories and bathtubs or showers; (5) an electric light fixture in each bathroom; (6) an openable window or a ventilating system in each bathroom; (7) a waterproof bathroom floor with a good surface for easy cleaning.
- 2) The tenant must keep the bathroom and its equipment in clean and sanitary condition and must use it with care.
- 3) **KITCHEN.** The landlord must provide a kitchen sink in good, usable condition with drain boards of non-absorbent material. The tenant must keep the sink clean and use it with care. Cooking equipment may be supplied by either the landlord or the tenant. Whoever supplies it must see that it is properly installed, works safely and effectively and is maintained in sound working condition. The tenant must use cooking equipment with care and must keep it clean and sanitary.

- 4) WATER. Hot and cold running water facilities must be provided for every hand basin, bathtub, shower, and kitchen sink, and water to every water closet. All plumbing equipment must be connected to city water and sewerage systems. Water service may be supplied by either the landlord or the tenant and must be maintained at all times to prevent unsanitary plumbing fixtures.
- 5) HEAT. The landlord must provide heating equipment, which must be safe, properly installed, and adequate to heat one room other than the kitchen to 700 Fahrenheit. If the heating system is central to the entire building, the landlord must provide heat. If the equipment is separately installed in each apartment and under the control of the tenant, the landlord does not have to supply the heat. Where the tenant has control over supplied heating equipment, he must use the equipment with care and must keep it clean. This section applies to dwelling units built after September 17, 1957,
- 6) LIGHT AND VENTILATION. The landlord must provide light and ventilation for every habitable room by one or more windows facing directly to the outdoors. The required windows must be one-half openable in order to provide ventilation except where there is an approved ventilation system for toilet or bathrooms. Artificial light must be provided by supplying electricity to every house or apartment located near a power line. Every habitable room must have at least two electrical outlets or one ceiling light fixture. Every bathroom, laundry room, furnace room, and public hall must have at least one light fixture. Every public hall and stairway in buildings with three or more apartments must be adequately lighted at all times.
- 7) CROWDING. The law prohibits the overcrowding of rooms used for sleeping purposes. The landlord must not permit overcrowding. The tenant must not overcrowd. Both landlord and tenant may be found guilty of a misdemeanor if overcrowding is found to exist. For the exact space requirements, see Section 503B of the Oakland Housing Code or call the Oakland Building and Housing Department at 273-3381.
- 8) FIRE SAFETY. The landlord must provide safe exits leading to a street or alleyway for each dwelling unit that he offers for rent. Both tenant and landlord must keep hallways, stairways, and exits clear at all times. Storage rooms or storage lockers may not be used for storage of combustible material. Storage of any kind under stairways is prohibited.
- 9) GARBAGE AND TRASH. Effective July 1, 1914, City law will require the landlord to provide approved garbage receptacles with tight-fitting covers. The tenant must place all garbage in the receptacles and keep them clean and sanitary. The rental agreement between the landlord and

tenant determines whether the landlord or tenant pays for the garbage collection. City law, however, places the responsibility on both landlord and tenant to keep the premises free of garbage. That is, anyone "owing, occupying, or having control" of the premises "shall maintain the same in a clean and sanitary condition, and free from accumulation of a garbage, filth, decayed matter, or any matter detrimental to health." OMC Section 4-5.11. Failure to comply may result in a criminal prosecution.

- 10) **CLEANLINESS.** In a single-family dwelling, the tenant must keep the entire house and yard clean and sanitary. Where there are two or more dwelling units in a building, the landlord must keep all shared or public areas of the building clean and sanitary, and the tenant must keep his own unit clean and sanitary.
- 11) **RATS, VERMIN, AND OTHER PESTS.** In single-family dwellings and in multiple-family dwellings where the tenant's unit is the only one infested, it is the tenant's duty to have rodents, insects, and other pests exterminated, IF the owner has provided a reasonably insect and rodent-proof building. Otherwise, the landlord must have such pests exterminated.
- 12) **REPAIRS.** The landlord must keep the building and all apartments in the building in good condition. This means that all foundations, walls, roofs, floors, ceilings, windows, doors, stairs and porches must be safe, weather-tight, waterproof, and rodent-proof. All plumbing and heating equipment must be kept in sound mechanical condition, and must be free from leaks and stoppages.
- 13) **SPECIAL NOTE:** In Oakland, applicable codes are varied depending upon when a dwelling unit was constructed. Specific questions on differences should be referred to the Housing Division, Building and Housing Department for clarification.

The City holds the landlord responsible for all repairs required by law regardless of any agreement or lease between the tenants and the landlord.

The tenant must permit the landlord or his employees to enter the house or apartment at reasonable times to make repairs.

- C) What can be done when a landlord or tenant fails to perform his responsibilities to keep the dwelling in good repair?
  - 1) **Failure by tenant.** If a tenant fails to perform his responsibilities toward keeping the dwelling in good repairs or in clean and sanitary condition as outlined on page 14, the landlord has several remedies. (a) The first course of action should always be to inform the tenant of his neglect. The tenant will then have an opportunity to correct it before public officials are

brought in. (b) If the tenancy is monthly, the landlord may give proper notice, and then proceed with eviction proceedings. (c) The landlord may also call the Oakland Building and Housing Department or the Alameda County Health Department's Bureau of Environmental Health Services (telephone numbers at end of bulletin). (d) The landlord has the right to file a suit for the recovery of damages.

- 2) Failure by landlord. If a landlord fails to perform his responsibilities toward keeping the dwelling in good repair, the tenant has several remedies.
- a) Inform landlord. The first course of action should always be to inform the landlord of the problem. The landlord will thus have an opportunity to correct it before public officials are brought in.
  - b) The tenant's self-help remedy. If the landlord refuses or fails to correct the problem, there are three different steps that a tenant can take. He is allowed to withhold the rent in rare and extreme cases (see footnote 8). In most cases, he is allowed only to fix the problem himself and then deduct the repair costs from the rental payment. The third step is to call a governmental agency. That possibility will be discussed below in paragraph (c), page 20.

California Civil Code Section 1941 says that a landlord must keep his apartments and houses in good repair and fit for human beings to live in. Another provision, Section 1942, allows the tenant to have the repairs done himself and deduct the cost from one month's rent. Thus, the repair bill may not exceed one month's rent. The rule does not apply, of course, if the damage was caused by the tenant. Any agreement by a tenant to waive or modify his 1942 rights is "void as contrary to public policy."<sup>9</sup>

How to exercise Civ. Code Section 1942 rights. If there is a defect in the tenant's dwelling that qualifies for self-repair, he should notify his landlord and ask him to fix it. If time permits, notice should be by letter. The tenant should make sure that: (1) the problem is serious; for example, the toilet fails to work, the roof leaks, the gas heater is unsafe.<sup>10</sup> It must be noted that in construing this statute, the courts take quite a narrow view of what constitutes a repairable defect. If the tenant has any questions about whether a particular problem qualifies for repair, he should contact his attorney or Legal Aid. (2) the problem was not his fault, i.e., not caused by his negligence, carelessness, failure to clean. (3) he carried out all of his responsibilities as described on page 14 of this bulletin. (4) he has not exercised his Civil Code Section 1942 rights within the last 12 months.



The tenant should give the landlord a reasonable amount of time to fix the problem. What is reasonable will vary from problem to problem. When the problem is not an emergency, the landlord should be allowed 30 days to make the repair. Examples of non-emergencies are broken light switches, stuck windows, etc. When the problem is an emergency, such as a failure of hot water or a leaking gas line, a much shorter notice is required before the tenant would be authorized to fix it himself.

If, after notice, the landlord does not make the repair, the tenant should write him another letter and tell him that he will "exercise his rights under California Civil Code Section 1942" if the landlord does not make the repair by a certain time. This letter should be sent by certified mail and the tenant should keep a copy. If there is an emergency, the tenant need not waste time with the second notice to the landlord. In emergencies, the second letter should simply inform the landlord that the tenant intends to exercise his Section 1942 rights. (See sample letter No. 3, below)

- c) **IMPORTANT:** Only the costs of repairs which do not exceed one month's rent are allowed to be deducted, and this measure may be taken only once in a twelve month period. The tenant should keep a copy of all repair bills so that he can prove the cost of repairs. Whenever it is possible, two written estimates of cost should be obtained before the repair is made.

**SAMPLE LETTER NO. 1:**

(date)

Dear Mr. \_\_\_\_\_ (landlord):

The (sink, lights, etc.) in my (apartment, house) at (complete address) is (leaking, broken, etc.). It looks as though it was caused by (old age, rust, faulty construction, etc.). Please fix it right away as it is causing my apartment to be uninhabitable.

Yours truly,  
(tenant's signature)

**SAMPLE LETTER NO.2:**

(date)

Dear Mr. \_\_\_\_\_ (landlord):

You have not yet repaired the (sink, lights, etc.) in my (apartment, house) at (complete address) as I requested in my (letter, phone call) of (date).

My apartment is uninhabitable in its present condition. Unless the (sink, lights, etc.) is repaired by (date), I shall exercise my rights under California Civil Code Section 1942 (by having it repaired and deducting the cost from my rent; by terminating our lease agreement on that date).

Yours truly,  
(tenant's signature)

**SAMPLE LETTER NO. 3:**

(date)

Dear Mr. \_\_\_\_\_ (landlord):

You have not yet repaired the (gas leak, hot water service, etc.) in my (apartment, house) at (complete address) as I requested in my (letter, phone call) of (date). Not only is my apartment uninhabitable in its present condition, but this is an emergency endangering the health and safety of my family.

Therefore, I find it necessary to exercise my rights under California Civil Code Section 1942 (by having it repaired and deducting the cost from my rent or by terminating our lease agreement immediately).

Yours truly,  
(Tenant's signature)

Whether the person is a landlord or a tenant, if he has any doubts or questions, he should contact his attorney or the Legal Aid Society. **WARNING:** There is a possibility that the landlord might evict a tenant in retaliation for the tenant's exercising his right to repair. He should take this risk into consideration before proceeding. If retaliation does result, the tenant should contact an attorney of his choice or the Legal Aid, society to determine whether or not the eviction is lawful.

- c) Governmental agencies. For many reasons the tenant may be unable or unwilling to exercise his rights to repair under Section 1942; his particular repair job may have cost more than one month's rent, or he may not wish to risk a retaliatory eviction.

If the particular defect in the dwelling is a violation of the Housing Code, the Oakland Building and Housing Department (hereinafter referred to as the Housing Department) has the power to investigate and compel the landlord or the tenant to correct it. If the violation is one that the tenant could fix by exercising his Section 1942 rights, he should probably try that first. The reason for this is that once the Housing Department has been called in, it must take action. This may mean that the building would be declared untenable and that the tenant would have to move, if the landlord refused to repair.

Another agency that can help is the Alameda County Health Department's Bureau of Environmental Health Services (hereinafter referred to as the Bureau of Environmental Health Services).

The Bureau of Environmental Health Services, formerly the Bureau of Sanitation, shares with the Housing Department the responsibility of enforcing laws and codes applicable to housing occupancy.

The following conditions are investigated by the Bureau of Environmental Health Services:

**Rats:** The Bureau will investigate to determine the sources and contributing causes for rats and will give notice to the persons responsible to eliminate and correct these conditions. (The Bureau does not perform extermination or trapping services, and will not pick up live or dead rats. Dead rats or mice should be wrapped in paper or a plastic bag and placed in a covered garbage can).

**Rat or Mouse Bite:** Any person bitten by a rat or mouse should receive medical attention. A report of the incident should be made to the Bureau.

**Animals or Fowl:** All complaints should be reported to the Bureau. Since restrictions apply to keeping of some animals, it is advisable for tenants to obtain approval from their landlord before acquiring pets or other animals.

**Broken Sewers:** Broken or malfunctioning sewer pipes may result in sewage discharge on the ground or in basements. In addition broken sewer pipes can provide escape for rats from the sewer mains. Plumbing problems inside the house should be directed to the Housing Department.

**Technical Advice on Insect Problems:** While the Housing Department has enforcement powers under the Housing Code to require abatement of insect problems inside the house, the Bureau of Environmental Health Services will provide technical advice for identification and control of an insect problem.

The Bureau's action depends upon a complaint and all information received with a complaint, including the name of the complaining party, is confidential unless disclosure is compelled by law. The Bureau's actions are never

intended to accomplish evictions of tenants; the actions of the Bureau are only directed toward correction of sub-standard conditions.

Where to Call: Use the following information when deciding whether to call the Housing Department or the Bureau of Environmental Health Services.

Call the Bureau of Environmental Health Services (874-6974) for rats only, or rats and garbage, but for garbage only or garbage and all other housing problems, call the Housing Department (273-3381).

8. REFERRAL AGENCIES (listed alphabetically)

- A) The Alameda County District Attorney's Office  
6th Floor, 600 Washington Street  
Oakland, California  
Phone: 874-5687

Upon receiving a formal complaint from the Oakland Police Department, a citation hearing shall be ordered. Both the landlord and tenant, as well as any other complaining party, will be cited to appear. At the hearing, a Deputy District Attorney will read the report and allow both parties to discuss the matter. Upon review of the case, the Deputy will make a decision either to prosecute the offender in the criminal courts under the applicable Penal Code section, to issue a warning to the offender, or to dismiss the matter.

The District Attorney's Office similarly handles complaints from the Housing Department and the Bureau of Environmental Health Services.

- B) The Alameda County Health Department  
Bureau of Environmental Health Services  
Phone: 874-6794

(See page 21 for what problems are handled by the Bureau of Environmental Health Services).

- C) The Alameda County Legal Aid Society  
Central Office  
1815 Telegraph Avenue  
Phone: 451-9261

North and West Oakland Office  
2357 San Pablo Avenue  
Oakland, California  
Phone: 465-3833

East Oakland Office  
8803 East Fourteenth Street  
Oakland, California  
Phone: 569-1133

The Alameda County Legal Aid Society is a non-profit corporation funded by the United States Office of Economic Opportunity to provide free legal services to those who are unable to afford private attorneys for civil cases. In the field of Landlord-tenant relations, Legal Aid attorneys can provide information about the law, as well as helping to protect a person's legal rights.

D) The Oakland Building and Housing Department Housing Division  
City Hall Oakland, California  
Phone: 273-3381

(See page 14-16 for what problems are handled by the Housing Division.)

E) The Oakland-Piedmont Small Claims Court  
Room 4000  
600 Washington Street  
Oakland, California  
Phone: 874-5082

(See page 10 for a detailed description of the Small Claims Court.)

F) The Oakland Police Department  
Landlord-Tenant Intervention Services  
Communications Section  
Room 709  
Police Administration Building  
Oakland Police Department  
455 Seventh Street  
Oakland, California  
Phone: 273-3481

## FOOONOTES

<sup>1</sup> In California, landlords are no longer permitted to hold a tenant's property as security for unpaid rent, except with a court order. CAL. CIV. CODE Section 1861, applicable to hotels, motels, inns, boardinghouses, and lodginghouses, was held unconstitutional by the United States District Court. Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970). CAL. CIV. CODE Section 1861a, applicable to apartment houses, apartments, and cottages, has been revised by the 1970 California legislature to require a court order before the landlord enters to take possession of the property.

<sup>2</sup> e.g., San Pedro, L.A. & S.L.R. Co. v. Los Angeles, 180 Cal. 18, 21, 179 P. 393 (1919). In Parker v. Superior Court of Riverside County, 9 Cal. App. 3d 397, 88 Cal. Rptr. 352 (4th Dist. 1970), the court states that a leasehold interest is an "estate in real property," "personal property," and "a contract between the lessor and the lessee..." (at 354).

<sup>3</sup> Section 789.3 has recently been added to the Civil Code, making a landlord liable for (1) actual damages, (2) \$100 per day punitive damages, and (3) possibly attorney's fees, if the landlord willfully interrupts utilities service with the intent to terminate the occupancy. CAL. LAWS, 1971 Reg. Sess., Ch. 1275.

<sup>4</sup> CAL. CIV. CODE Section 1942.5 prohibits certain evictions by a landlord that are in "retaliation" for a tenant's exercise of his legal rights. The statute should be consulted for details. See also Schweiger v. Superior Court of Alameda County, 3 Cal. 2d 507, 90 Cal. Rptr. 729 (1970).

<sup>5</sup> The landlord is charged a \$75 fee for Sheriff's eviction, whether the premises are furnished or unfurnished.

<sup>6</sup> In order to auction off the property, the landlord must follow the procedures set forth in CAL. CIV. CODE PROC. Section 1174 (supp. '71), as interpreted by Gray v. Whitmore, 17 Cal. App. 3d 1, 94 Cal. Rptr. 904 (1st Dist. 1971). (To wit, a court order.)

<sup>7</sup> For a more detailed discussion of "untenantability" in the context of whether a tenant may repair and deduct the cost of repairs, see page 18 and footnotes 9, 10, 11 below.

<sup>8</sup> A recent California Supreme Court decision, Green v. Superior Court, 10 Cal. 3d. 616 (1974), allows a tenant to withhold rent when the landlord does not maintain the premises, after rental, so that the "base living requirements" are met. In this particular instance, the building in question had defects amounting to 80 housing code violations. This decision held that landlords have an obligation to ensure that the premises are in "substantial compliance" with the applicable building and housing codes. If the tenant can prove that this requirement is not met, he would be justified in withholding rent. Thus, if the landlord is suing to evict, the court will determine the reasonable rental value of the premises in its present state. If there is no rental value, the tenant will owe no rent and the landlord will be obligated to repair the dilapidations. If the court determines that there is some rental value, the tenant must pay the determined amount to

continue living in the residence. If the court determines that the landlord has fulfilled his obligation, the tenant will be evicted. Note: None of the above remedies are available if the dilapidations are caused by the tenant.

<sup>9</sup> CAL. CIV. CODE Section 1942.1 (Supp. '71).

<sup>10</sup> CAL. CIV. CODE ~ 1941.1 (Supp. '71) lists a number of standards that must be met by dwellings in order to be deemed "tenantable". The statute is not clear, however, whether its list is all-inclusive or merely suggestive.

<sup>11</sup> See CAL. CIV. CODE Section 1942.5; Schweiger v. Superior Court of Alameda County, 3 Cal. 3d 507, 90 Cal. Rptr. 729 (1970).



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