San Francisco Landlord-Tenant Issues

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by Ashley E. Klein

At KDV Law, our San Francisco real estate attorneys represent landlords, homeowners' associations and other property owners in landlord-tenant disputes.

Does a lease need to be in writing to be legally valid and enforceable?

Written leases are preferable, but oral rental agreements are generally valid and enforceable under California law (and more common than you might think).

If I only have an oral lease with my tenant, can I make them sign a written lease?

Probably not—and even if they agree to sign a written lease, any new terms may be unenforceable if not properly drafted.

In San Francisco — in accordance with applicable San Francisco Rent Board Rules and Regulations — landlords may not impose new tenancy terms without first obtaining the express consent of the tenant. Even if a landlord believes that they have reached an implicit understanding with the tenant, that may not be sufficient to take action against the tenant. As such, it is critical that the rental agreement is carefully drafted at the inception of the tenancy to ensure that all desired terms are included at the time of execution. Should contract modifications be necessary, formal procedures should be followed so that the tenant's express consent is secured.

You should speak with an attorney about the proper protocol for creating new, enforceable lease provisions.

Is there an advantage to using a written rental agreement?

Yes. Although an oral rental agreement is typically valid and enforceable, it is still worthwhile to put the agreement in writing. Written rental agreements establish a clear set of rules, responsibilities and expectations for each party — landlord and tenant. By codifying the terms of the rental agreement in writing, there is a significant reduction in ambiguity when landlords and tenants find themselves embroiled in litigation. The existence of a written rental agreement means that the content of the underlying contract can be evaluated directly.

For example, a residential tenant who has entered into a short-term oral lease might subsequently refuse to make rent payments. During his eviction proceedings, the tenant might then argue that their rent was only $1,000 per month, not $1,250 per month. Without a written record of the rental agreement terms (and perhaps the negotiations leading up to the final payment amount), teasing apart the "truth" demands a detail-oriented investigation into the secondary evidence surrounding the dispute, such as witness testimony, emails and writings discussing the rental agreement and more.

What should a rental agreement include?

Rental agreements should include, at a minimum, the following:

- Lease term (commencement date and termination date of the tenancy)
- Rental amount
- Due date for rent payments, grace periods and other pay-related issues
- Who is responsible for rent payments (e.g. joint and several liability)
- Persons who may occupy the property pursuant to the lease
- Maximum number of occupants allowed
- Assignment/Subletting limitations – although these may be modified by local law.
- Rights and obligations of the tenant in using common areas (if any)
- Rights and obligations of the tenant concerning the rental unit itself

- Landlord duties for maintenance
- Circumstances justifying eviction
- Eviction procedures
- A “No Waiver” provision

The above provisions alone may not be sufficient to fully protect your rights and fully document your understanding and expectations with your tenant. See one of our attorneys to determine what the best written lease agreement for your tenancy should include.

Does my HOA have the power to prevent me from renting my unit?

Whether your HOA is entitled to impose restrictions on your ability to rent out a unit depends on the circumstances surrounding your acquisition of title. As a rule, HOAs are prohibited by law from imposing new rental restrictions after a unit owner has acquired title (that was previously unencumbered by such restrictions). If the unit owner is made aware of the restriction before acquiring title, however, then the rental restriction may be deemed valid and enforceable.

For example, if you acquire title to a unit that has no rental restriction, and a year later the HOA attempts to introduce a new rule prohibiting rentals, then you will not be subject to the new restriction. On the other hand, if you acquire title to a unit, and there is a pre-existing rental restriction imposed by the HOA, then that restriction will continue to be valid and enforceable by law in San Francisco.

Can I increase the rent for tenants currently occupying one of my units?

Yes, though your ability to do so may be limited by rent increase regulations enshrined in the San Francisco Rent Ordinance.

In San Francisco, most landlords are allowed to impose rent increases on month-to-month tenants just once a year. Further, the annual increase in rent typically may not exceed the amount established by the San Francisco Rent Board.

(Landlords may not increase the rent for a tenant who is on a fixed term lease, unless the rental agreement expressly provides otherwise). Currently, the maximum allowable annual rent increase is 2.6% for the period March 1, 2019 through February 29, 2020.

Landlords may “bank” past annual rent increases if they did not impose the maximum annual rent increase each year during the tenancy. However, if the “banked” rent increase results in a rent increase of more than 10%, based on the current rental rate, then the landlord must provide a minimum 60 days’ notice. (The standard rent increase notice requires a minimum 30 days’ notice).

Landlords may have the right to impose rent increases for capital improvement work, utilities, such as excess water use, or property taxes, but landlords must first file a petition to seek these additional rent increases, and the petition must be approved by the San Francisco Rent Board.

Landlords may have the right to impose unlimited rent increases (keeping the unit at market value) if the property is exempt from the rent control provisions of the Rent Ordinance, i.e. through the Costa Hawkins Act, for fully converted condominiums, or if the unit is “new construction.”

Finally, Landlords may have other options where a tenant is no longer in occupancy of the property, or where the rental rate for a unit was set very low at its inception because of a special relationship between the landlord and tenant. Speak with one of our attorneys to see whether you may be able to petition for a rent increase above the otherwise allowable amount.

Can I increase the rent for tenants currently occupying one of my units?

As per section 37.3(a)(11) of the San Francisco Rent Ordinance, landlords are not generally entitled to impose rent increases solely because a tenant has added an additional occupant to an existing tenancy. In fact, this prohibition applies even where the rental agreement itself includes a provision establishing a maximum occupancy for a given rate.

For example, if a tenant couple has just given birth to a newborn child, then the landlord may not impose a rent increase solely because there is now an additional occupant in the rental unit.

By contrast, landlords may increase the rent for new tenants if and when all recognized tenants have permanently vacated a unit — at that point, the rent may be increased to the market rate.

Is my tenant allowed to sublet my unit out without my consent?

Amendments to the San Francisco Rent Ordinances, rules, and regulations have given tenants significant new rights concerning subletting. The law generally empowers master tenants by entitling them to add subtenants to rental units, even if the rental agreement has a maximum occupancy limit and adding a subtenant would violate the maximum occupancy limit. The master tenant must follow specific procedures, however; and the city of San Francisco does establish occupancy limits (that cannot be circumvented) depending on the size of the rental unit. For example, a one-bedroom apartment cannot be occupied by more than three individuals, regardless of the rental agreement terms.

Landlords do have approval rights for new subtenants and occupants, though these are heavily restricted. Landlords have approval rights when there is a written rental agreement that sets a maximum occupancy limit, and that establishes procedures for requesting and obtaining the landlord's approval.

Even when approval is necessary, the landlord does not have unlimited discretion to approve or deny the request — in San Francisco, landlords must have a reasonable basis to deny the tenant's request for a new occupant. There are many factors that may be used to justify the denial, including but not limited to:

- The new occupant is expected to pay a portion of the rent and does not have adequate financial resources to do so;
- Existing tenant did not provide information necessary for a background check of the new occupant in a timely manner;
- New occupant intentionally misrepresented facts that interfered with the landlord's ability to perform a proper background check;
- The new occupant would present a direct threat to the health, safety, or security of others on the property or to the property itself;
- The new occupant is not a family member of the existing tenant and:
    - The landlord lives in the same unit as the current tenant;
    - The landlord would have to adapt their facilities to accommodate the new occupant to such an extent that it would create a financial hardship; or
    - The total number of occupants in the unit would exceed regulatory maximums.

A word of caution, however: accepting a new subtenant's application and vetting them through the above process may consequently raise them to the level of "master tenant" and preclude your ability to later raise their rent should the other original occupants vacate. We recommend meeting with an attorney to determine what communications, if any, with a new subtenant make sense for your future plans.

Can I rent out my unit through Airbnb, and what is the legality of my Master Tenant subletting short-term to tourists through Airbnb and other services?

San Francisco law gives both landlords and master tenants the right to lease qualified rental units to short-term tenants and subtenants, such as those utilizing services like Airbnb, depending in part, however, upon the lease terms regarding short term subletting. There are a number of restrictions impacting those who are interested in renting out their unit to short-term tenants and subtenants.

- Each short-term tenant/subtenant is limited to a 30-day maximum rental period (otherwise they may qualify as a tenant under the Rent Ordinance, granting them additional rent and eviction protections);
- If the host is living in the same rental unit, then there is no yearly maximum cap on short-term rental days;
- If the host is not living in the same rental unit while the short-term tenant/subtenant is present, then a 90-day maximum cap on short-term rental days will apply for the year;
- The landlord or master tenant has to register with the city of San Francisco and follow necessary procedures and rules while remaining in good standing;
- The landlord or master tenant who is doing short-term leases must carry liability insurance coverage that is adequate for the unit, and must ensure that all hazards (and other safety issues) are properly disclosed to the short-term tenant/subtenant;
- The unit must be the principal residence of either the landlord or the Master tenant;

- On an annual basis, the total days used for short-term rentals may not exceed 25 percent of the total days that the unit is used as the principal residence of the landlord or Master tenant; and
- Landlords may not generally evict Master tenants that sublet their units in accordance with these short-term rental regulations, though eviction may be possible if there is a contract-based prohibition that has been violated.

Currently, the registration fee for short-term home rentals is $250, and the unauthorized use of one's residence as a short-term rental unit (i.e., without having registered) could lead to significant daily fines.

The fundamental intention of these regulations is to avoid the sort of year-round home sharing that leads to price inflation on the rental market (and that could reduce the supply of rental units for those who require a place in the city for living/working).

For the enterprising landlord and/or Master tenant, however, there are regulatory-avoidant solutions that allow for yearlong short-term rentals — specifically, San Francisco residents are entitled to rent out bedrooms within their home. For example, a landlord could live on the second floor of a duplex, and rent out the first floor yearlong as a short-term rental space. By contrast, if the landlord were to rent out the entire duplex, then they could only do so for a maximum of 90 days per year (or 25 percent of the time they have the unit as their primary residence, whichever is fewer).

I am the master tenant of a property and have the right (laid out in the rental agreement) to sublet the unit to others. Can I charge the sublet tenants more rent than I currently pay to my landlord?

In San Francisco, master tenants do not generally have a right to charge their subtenants more rent than they are currently paying to the landlord. This subletting policy is meant to curb price inflation. Subtenants who are charged more than their proportional share of rent may petition the Rent Board to order the master tenant to refund overpayments.

Let us take a brief look at some specific circumstances and how they impact the restriction:

Sharing the Unit with Subtenants

Master tenants may not charge rent that is greater than the subtenant's proportional share. "Proportional share" is a somewhat vague concept that is based on the value of the subtenant's exclusive use of certain spaces in the rental unit (i.e., their bedroom or a private bathroom), and the value of the subtenant's use of certain communal spaces (i.e., the living room or kitchen). The proportional share must also take into account the use of utilities, amenities and other services relevant to the lease. So, for example, a Master tenant may be illegally profiting if they are charging a subtenant (who is renting a proportionally smaller bedroom within the unit) a rental amount equivalent to their own share of the rental payment.

There are limited exceptions. Master tenants may charge more (than the proportional share that the subtenant would normally owe) if they are providing additional value in lieu of the landlord. For example, if a Master tenant has an agreement with a subtenant whereby the Master tenant will provide cleaning services for the entire rental unit and will allow subtenants to come into their room and utilize their appliances/furniture, then the Master tenant may charge that subtenant a higher rate.

Under all circumstances, the amount the subtenant pays may never be more than the amount owed to the landlord by the Master tenant.

Subletting the Entire Unit

Master tenants may not charge a higher rent to subletters than they pay proportionally to the landlord. This includes short-term rentals to tourists and others made through vacation rental services (such as Airbnb).

Same as with subtenant-shared units, there are limited exceptions to this pricing restriction. In accordance with San Francisco rent laws, the master tenant may charge their subtenant(s) for out-of-pocket expenses that the landlord does not cover, such as utilities and cleaning services.

My unit is a rent-controlled property. What sort of restrictions am I subject to as a landlord of this unit?

In San Francisco, the term "rent control" may be misleading, as some properties are restricted by rent increase limitations ("rental rate control"), and other properties may be subject to both eviction restrictions ("eviction control") as well as "rental rate control". Whether your property is subject to "eviction control" and/or "rental rate control" depends on the type of property you own.

Generally, a property in San Francisco that was first built prior to June 30, 1979 is subject to "eviction control" and "rental rate control." That means you may not evict a tenant, even upon termination of the lease, unless you have "just cause" for eviction. Further discussion of allowable "just causes" for eviction is set forth below. It also means your rental increases are limited to once per year, and no more than the maximum percentage allowed by the San Francisco Rent Board.

One exception, in which rental rate control does not apply, is for single-family homes and some qualified condominiums. In these cases, the property is still subject to eviction control, but not rental rate control.

If the property was built on or after June 30, 1979, then the property is typically not subject to either eviction control or rental rate control.

What are the lawful bases for eviction in San Francisco?

In San Francisco, tenants in rent-controlled units cannot be asked to leave without "just cause" (except where the tenant shares the same rental unit as the landlord, such as in a prototypical roommate scenario, or where the landlord rents one floor of a house and another floor to their tenant). Leaving aside situations where the landlord shares the unit with the tenant, most landlords must have "just cause" to evict their tenants.

The San Francisco Rent Ordinance requires that landlords seeking eviction prove that there is one of 16 acceptable causes justifying the eviction. This "just cause" requirement applies to entire rental unit, as well as portions of a rental unit — for example, if you wish to evict a tenant from use of certain common facilities, you will have to show just cause.

Just causes for eviction of a tenant in a rent-controlled unit are as follows:

- Nonpayment of rent
- Multiple late payments in a single year
- Failure to cure a substantial breach of lease
- Nuisance
- Unlawful purpose
- Refusal to renew a lease on substantially the same terms
- Failure/refusal to provide landlord access to the unit
- Holdover by an unapproved subtenant after the master tenant has vacated
- Landlord is moving in
- Landlord's relative is moving in
- Sale of a newly-converted condominium
- Impending demolition of the rental unit
- Capital improvements
- Remediation of lead paint issues
- Withdrawal of the unit from rental use.
- Removal of a rental unit under a development agreement with the City
- Expiration of a Good Samaritan tenancy (created for up to two years following a certified disaster)

Master tenants are not necessarily subject to the same eviction restrictions if they choose to sublet their unit, although they may need to provide certain disclosures to their subtenants at the onset of their tenancies in order to preserve this exemption from eviction restrictions.

What procedures do I have to follow in order to evict my tenant?

If you are planning to evict your tenant, then you will have to give the tenant a written notice to quit the property (which can vary between 3 days, 30 days, 60 days or 120 days, or in some cases, up to one year, depending on the circumstances underlying the eviction). After written notice has been given, then you must file an unlawful detainer case. The tenant will have five days to respond to the unlawful detainer after they have been served— if they respond, then the case will proceed through litigation to trial, and if they do not respond, then you will be able to seek a default judgment in your favor.

If you successfully obtain a court order for eviction, then the tenant must vacate the unit voluntarily — otherwise, the Sheriff will forcibly remove them upon appointment.

Do I have to pay for my tenant's relocation if I evict them?

Yes, if you have engaged in certain "no-fault" evictions (i.e., an eviction based on the owner moving in, capital improvements, remediation of lead paint issues, etc.). Under such circumstances, you will have to make relocation payments to the evicted tenant.

What are my rights as a landlord when the lease expires for a tenant in my rent-controlled unit?

With rent-controlled units that have eviction restrictions, the tenant has a right to continue renting the unit on a month-to-month basis even after the term of their lease has ended. Asking a tenant to leave after a lease term, without just cause, or implying that they have to leave may subject a landlord to substantial liability. As a landlord, you have the right to offer the tenant a lease renewal (the terms must be substantially similar to those of the previous rental agreement). If the tenant refuses to agree to the renewal of the previous lease terms, then you may evict them based on such refusal.

If you do not make the renewal offer, then the lease will convert into a monthly tenancy (with the same terms as the previous rental agreement). There are advantages and disadvantages to these choices, and as such, it is worth consulting an experienced San Francisco real estate attorney for guidance on how to proceed with the eviction of a tenant who intends to stay after their lease term expires.

Is it possible to pay my tenant to vacate the unit?

Yes, these are known as tenant "buyout" agreements, though it is worth noting that tenant buyout agreements need not necessarily be cash-based. For example, a landlord may negotiate a tenant buyout agreement in which no cash is exchanged, but instead, the tenant is given a temporary rent waiver, or the tenant is allowed to rent a different unit owned by the landlord.

Tenant buyout agreements can be an excellent tool for minimizing hostilities between the landlord and the tenant and resolving a serious dispute that might otherwise cost either party significantly (in legal fees, time, effort and attention). Landlords in San Francisco should be aware, however, that their tenants may have significant leverage and protections during the buyout negotiation process.

Only once the landlord has followed proper protocol (provided the tenant with necessary disclosure forms and filed a declaration regarding their buyout disclosures) can they begin to negotiate the terms of the buyout. Once a compromise is reached, and certain terms agreed upon, then a written document will have to be drafted in compliance with the San Francisco Rent Ordinance. There are a number of procedures that the landlord must keep in mind as they move forward — for example, the landlord must file a copy of the buyout agreement with the Rent Board within the defined limitations period (46 days after the agreement is signed). The agreement itself must contain certain disclosures and even certain font sizes. Failure to comply could give the tenant a right to sue the landlord for damages and fees. We recommend you consult with an attorney before attempting to draft a buyout agreement.

After the necessary disclosures are made and a buyout agreement is negotiated and accepted, the tenant may still choose to rescind within 45 days of signing. Rescinding the agreement does not carry with it any consequences for the tenant.

Do landlords have a right to access a tenant-occupied unit?

Landlords have an absolutely right to access a tenant-occupied unit, but only under certain conditions — so their right to access the unit is somewhat restricted. Historically, there have been issues with landlords making excessive use of their right to access a unit, thus interfering with the tenant's enjoyment of the property, invading their privacy unnecessarily and possibly even harassing them.

San Francisco landlords may enter a residential unit, after appropriate notice is given, if:

a. the tenant has consented to such entry;
b. a Court Order entitles them to enter the unit;
c. there is an emergency (i.e., tenant is having a sudden heart attack);
d. repairs and improvements must be made;
e. contracted services must be rendered;
f. the unit is being showed for the purposes of a sale;
g. a move-out inspection must be conducted; or
h. the tenant has abandoned the unit.

Even if the landlord has a right to access the unit, however, they may not enter until they have followed the required procedures. Except in emergencies, a landlord must typically only enter the unit after having provided a minimum 24-hour notice of such entry. Further, the entry should usually occur during normal business hours (this definition may vary depending on the nature of the entry and its justification). There must also be written evidence of each entry.

How do I address issues with tenants who are creating a nuisance?

Tenant nuisances are of critical importance to a landlord. The creation or allowance of a nuisance at a property can upset other tenants and may depress the value of a rental unit (and surrounding units) either temporarily or permanently. Landlords, therefore, have a legitimate reason to address a nuisance as soon as possible.

A nuisance is behavior (either committed by a tenant or permitted by the tenant to exist at the property) which creates a substantial interference with the comfort, safety, and enjoyment of the landlord or other tenants at the building. To constitute a nuisance, the activities must be severe, continuing, or recurring in nature. For example, if one of the tenants blasts music over a loudspeaker every night (disturbing other tenants in the same building), then that may constitute a nuisance, even if there is no explicit prohibition on such behavior in the rental agreement.

What rules apply to San Francisco landlords with respect to garbage and recycling?

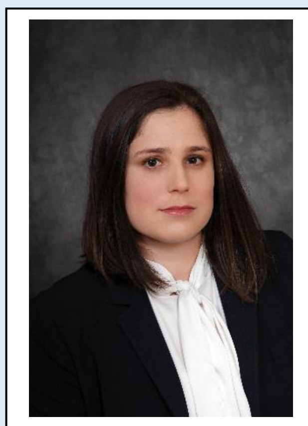
The City of San Francisco is quite serious about implementing progressive environmental policies, and landlord-tenant laws reflect this commitment. In San Francisco, landlords — both residential and commercial — must ensure that there are three different garbage bins accessible to tenants, each properly color-coded and categorized differently (one for recyclables, one for compost and one for other trash). If the landlord fails to provide these separate garbage bins, they could be subject to significant fines.

It is also worth noting that landlords must provide a recycling service to residential buildings with five or more units (along with a subset of multi-family dwellings and commercial properties).

Is there anything I can do to prevent my tenants from smoking in their rental unit? I'm worried about the impact it will have on the unit, and that it might bother other tenants.

Whether you can prevent your tenants from smoking tobacco in their rental unit (or even in the common spaces) depends on the terms of the applicable rental agreement. Rental agreements that include a smoking prohibition are valid and enforceable. Not all tenants will have necessarily signed the same rental agreements, however. If one tenant's rental agreement does not restrict them from smoking in their rental unit, then the landlord cannot impose such a restriction without the consent of that tenant. If a tenant's smoking habits are interfering with the comfort, safety and enjoyment of the landlord or other tenants, and if the smoking is recurring, then the landlord may have a claim that the smoking constitutes a nuisance.

Why should I choose KDV to handle my eviction matter?



We operate a sophisticated real estate legal practice out of our San Francisco office, with attorneys who have extensive experience handling complicated eviction matters on behalf of landlords, management companies, developers and many others.

All too often, individual owners believe that they are equipped to engage with the eviction process unaided, but San Francisco ranks among the most regulated real estate markets in the country, with a complex web of local ordinances and competing interest groups that can interfere with whatever plans you may have originally had for the property.

Simply put, we have demonstrated expertise in the City. Our attorneys have woven themselves into the very fabric of San Francisco real estate law and are particularly well-equipped to represent your interests in difficult eviction matters. Practice Group Attorney Ashley Klein was appointed by Mayor London Breed to serve as one of just two lawyers on the San Francisco Rent Board. This Board plays a major role in influencing eviction law and gives us a front-seat ticket to understanding the future of regulation in the City and what it means for our clients.

When representing clients, we believe that the most effective way to secure a favorable result is to truly understand their goals and limitations. We engage closely with clients as collaborative partners and aim to identify the many different avenues through which they can obtain a favorable result — some of which may not require hostilities with the tenant. Of course, in the event that litigation is necessary, our team is ready and able to try the dispute in the courtroom.

Ashley E. Klein is currently a partner at Kaufman Dolowich Voluck, LLP and can be reached at 415-926-7600 or by email: aklein@kdvlaw.com

Kaufman Dolowich & Voluck
San Francisco
425 California Street
Suite 2100
San Francisco, CA 94104
Tel: (415) 926-7600
Fax: (415) 926-7601

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