COVID-19, Terminating a Lease in California, and Eviction Protections

Can I terminate my lease due to COVID-19?

➔ Although legal grounds to terminate a lease in California must be analyzed on a case by case basis, in general the COVID-19 outbreak is NOT a legal basis to terminate a lease. Similarly, UC Berkeley’s decision to offer online-only instruction during the 2020 spring semester, financial hardship, and mental distress generally are NOT grounds to terminate a lease.

➔ There may be other legal grounds to support the tenant’s ability to terminate a lease:

● If there is a condition in the apartment that renders it uninhabitable, the landlord has been notified of the condition, and has failed to repair it within a reasonable time, termination for legal cause may be possible under California Civil Code section 1942. You should consult an attorney before attempting to terminate your lease using this statute, as this legal ground is not available for most repair issues.

● Some leases, although not most, have a provision that allows termination if the tenant agrees to pay an early termination fee. Landlords are required to provide a copy of the lease to tenants pursuant to CA Civil Code section 1962.

● “Force majeure” clauses are extremely rare in residential leases. They are more commonly found in commercial leases. If your lease has a force majeure clause, it would need to specifically list pandemic as one of the reasons to trigger the clause and a right to terminate. You should consult an attorney before attempting to terminate your lease on force majeure grounds.

➔ Tenants who have rental insurance should review their policy to see if it offers any relief in circumstances like a pandemic or where a national emergency has been declared.

What are my options if I do not have legal grounds to terminate my lease?

➔ With few exceptions, California law requires a tenant to pay rent through the end of the term of the lease. You can try to negotiate with your landlord to relieve you of the burden of paying rent, but most landlords are not going to be open to an early termination as they count on rent to pay the mortgage, insurance, and property taxes on the property.

➔ When you negotiate with your landlord, be respectful and reasonable. Being angry, rude, or belligerent are not winning techniques. Explain your situation calmly and thoroughly, and explore any options that the landlord is willing to consider.

➔ If the landlord agrees to any changes in the lease terms, you MUST get them in writing. Technically, they are not enforceable unless they are in a writing signed by all parties to the agreement. An agreement reached via email, text, or social media is a workable alternative if the signed writing is not possible, but be sure to save it in a way that you can access easily if the landlord later backs out of the agreement.
One option is to ask the landlord if you can sublease your apartment. Most leases require tenants to get the landlord’s written consent to sublease. Under California law, landlords should act in good faith when determining whether to consent to the sublease. Some landlords require prospective subtenants to go through the application process and have a credit check.

What are the pros and cons of subleasing?

It is very important that you have a written sublease to set forth all of the terms of the agreement. UC Berkeley Student Legal Services has a form sublease agreement for tenants to use on its Web site at https://sa.berkeley.edu/legal/forms/sublease.

The biggest advantage of subleasing is that someone else is paying all or part of your rent. But given that many other tenants may be terminating their leases and seeking subtenants, you may need to reduce the amount of rent you will ask your subtenant to pay. You need to consider whether it is better to get some money to defray the cost of your rent or pay it all yourself. But there are risks:

- If you sublease either all or part of your apartment/house, you still remain liable under the terms of your lease with the landlord. So if your subtenant fails to pay rent or damages the unit, the landlord will expect you to pay the rent or the cost of repairing the damage. Hence, it’s a good idea to ask for a security deposit from the subtenant.

- Because the landlord has no direct contractual relationship with the subtenant, only you (as a master tenant) have the standing to evict a subtenant. Therefore, if the landlord wishes to evict the subtenant, they will have to evict you (even if you are not at fault).

- Another possible risk is that the subtenant may not leave the apartment when the lease ends. This is particularly problematic if the subtenant has stopped paying rent. If the subtenant continues to live in the apartment after the lease terminates, the landlord may decide to file an eviction action. See the FAQ section below for a discussion of the consequences of an eviction.

- If some of your roommates are staying in the apartment, there may be an issue if your roommates do not approve of your subtenant. If you have a roommate agreement, either written or oral, then the terms of the agreement would govern what type of permission may be necessary.

What are the consequences of not paying my rent?

If you fail to pay your rent in full, your landlord could decide to file an eviction action, which is referred to as an “unlawful detainer” (UD). The landlord can file a UD even if most of the rent has been paid. There are several negative consequences of having a UD filed against you. Although the UD filing is “masked” from the public record for the first 60 days after filing, it will appear in the public record if the landlord prevails in the UD proceeding within 60 days after filing. The UD will also appear in your credit report if the landlord gets a judgment against you.

An eviction does not necessarily relieve you of your obligations under the lease. In addition to a court order giving the landlord the right to regain possession of your apartment, the judge may order that you pay rent through the end of the lease or until the landlord finds a replacement tenant. The court may also order you to pay any costs the landlord incurs in trying to find a
replacement tenant. If your lease has an “attorney’s fees” provision (and most do), then the court can order you to pay the attorney’s fees, up to any limit noted in the lease, and court costs.

➔ You and all of your roommates who are on the lease and signed it are jointly and severally liable. Joint and several liability is a legal term that means that each of you is individually liable for the full amount of the rent, and the full amount of any damage to the apartment. This liability would also extend to any guarantors. So if one of your roommates fails to pay rent, the landlord can look to any or all of the other tenants (or guarantors) to pay that person’s share of the rent.

➔ Joint and several liability also means that the landlord would name all of the tenants and their guarantors in any lawsuit for nonpayment of rent or damage to the apartment or for eviction.

➔ Another consequence of joint and several liability is that one tenant cannot terminate the lease if other tenants are staying in the apartment. All tenants who signed the lease are considered to be one collective unit.

➔ Some landlords send accounts where the rent has not been paid in full to collection agencies. The collection agencies can report you to the credit reporting agencies and can potentially sue you for the alleged amounts owed.

Am I Protected by a Moratorium or Suspension of Evictions?

➔ On March 27, 2020, Governor Newsom announced a state-wide 60-day extension of the time that tenants have to respond to an unlawful detainer (eviction) lawsuit for nonpayment of rent until May 31, 2020 for tenants who are unable to pay rent due to COVID-19:
  ● If they have lost income due to COVID-19, the state of emergency, or related government response.
  ● If they are unable to work because they have COVID-19 or if they are caring for someone with the virus.
  ● If they are caring for children whose schools are closed.

➔ Under the Governor’s order, all tenants must notify the landlord in writing, no later than 7 days after rent is due, that they are unable to pay rent. Tenants must also and maintain documentation supporting the reason they are unable to pay. The 60-day extension also only applies to tenants who are not in arrears in rent (i.e., were paying rent until impacted by COVID-19). Tenants remain liable to pay the rent due, and eviction proceedings may resume after the 60-day period.

➔ The City of Berkeley has also enacted a moratorium on evictions for nonpayment of rent by residential tenants, if the tenant can demonstrate that their inability to pay was due to COVID-19, the State of Emergency regarding COVID-19, or from following government-recommended coronavirus precautions. The Berkeley moratorium also suspends all no-fault evictions, unless necessary for the safety of tenants, neighbors, or the landlord.

➔ The City of Oakland passed an emergency ordinance (1) imposing a moratorium on residential evictions, rent increases, and late fees during the local emergency proclaimed in response to the novel coronavirus (COVID-19) pandemic; (2) prohibiting residential and commercial evictions based on nonpayment of rent that became due during the local emergency when tenant substantial loss of income due to COVID-19; (3) prohibiting residential evictions for non-payment of rent where the
landlord impeded the payment of rent; and (4) calling on state and federal legislators and financial institutions to provide relief to low-income homeowners and landlords.

➔ The State of California Judicial Council adopted emergency rule changes regarding evictions for all courts throughout the state on April 6, 2020. These changes will remain in effect until 90 days after the Governor lifts the state of emergency related to the COVID-19 pandemic. The rules prevent the courts from commencing eviction actions unless the eviction is necessary to protect public health and safety. For eviction actions that were filed before April 6, 2020, the courts may not enter a default because the defendant has failed to appear or set a trial for less than 60 days after the request for a trial is made unless it is necessary to protect public health and safety.

Where can I get help?

➔ Currently registered UC Berkeley students may get legal assistance regarding any landlord-tenant matter from Student Legal Services. Appointments can be scheduled here: https://ucberkeley-sls.youcanbook.me/. During the shelter-in-place, SLS is offering appointments by phone or Zoom; there are no in-person services.

➔ There is substantial legal content on the SLS web site, including Tip Sheets, Sample Forms, and Community Legal Resources.