

# Understanding Residential Lease Agreements

**City of Richmond Rent Program**

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# TOPICS COVERED

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# **WHAT CONSTITUTES A RESIDENTIAL LEASE**

# WHAT CONSTITUTES A RESIDENTIAL LEASE (GENERAL)

- A residential lease agreement is a contract. Leases may sometimes be called other things like “rental housing agreements,” “rental contracts,” or other similar names. These contracts lay out the rights and responsibilities of the parties.
- “Contract” in Law – There are numerous definitions and ways to describe a contract but according to Black’s Law Dictionary, one of the broader definitions of a “contract” is “where a promise is made on one side and assented to on the other; or where two or more persons enter into engagement with each other by a promise on either side.” Thus, a contract, in its most basic terms, is an exchange of promises to perform.

# WHAT CONSTITUTES A RESIDENTIAL LEASE (RICHMOND)

- According to the Richmond Rent Ordinance, a “Rental Housing Agreement” is defined as “An agreement, oral, written, or implied, between a Landlord and Tenant for use and occupancy of a Rental Unit and for Housing Services.”
  - “Rental Unit” - Any building, structure, or part thereof, or land appurtenant thereto, or any other rental property rented or offered for rent for residential purposes, together with all Housing Services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the Tenant.
- Agreements for more than one year must be in writing. (Cal. Civil Code 1624).

# WHAT CONSTITUTES A RESIDENTIAL LEASE

- Residential Leases are unique in that the presence of the original parties to the agreement do not necessarily determine if the agreement is still enforceable. This means that lease agreements are potentially transferable either by choice, or by operation or natural consequence of the law.
  - This means that a Landlord who originally rented a Unit can, for example, sell the Property to a new owner and that lease will remain enforceable and the new owner cannot claim there is no agreement or change its terms without consent of the Tenant.
  - This also means that a Tenant who originally rented the Unit may move out but the remaining original Tenants/Occupants, even if not named on the original lease agreement, will still likely be able to use and enforce this original agreement.

# VERBAL VS. WRITTEN LEASE AGREEMENTS

- As stated in Slide 4, a lease agreement may be **written, oral, or implied**.
- In California, an oral lease agreement carries the same enforceability as a written one. (See Cal. Civil Code 1622). (However, if for more than one year, must be in writing as stated in Slide 5).
- Written leases are recommended as this written document would clarify any rules, requirements, responsibilities, limitations, or agreements for renting the Rental Unit.
- If the Lease is written, a copy must be provided in the language negotiated. **California Civil Code 1632** requires this translation for, “A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.”



# **JUST CAUSE: BREACH OF LEASE**

# JUST CAUSE – BREACH OF LEASE

- Rent Ordinance – “The Tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement . . .” (See R.M.C. 11.100.050(a)(2)).
- It is important to understand that this says the Tenant must “substantially” violate any of the “material” terms of the rental agreement. Thus, minor violations will likely be insufficient to act as a basis to allege material breach.
- Under the same section of the Rent Ordinance, there are express requirements to this particular Just Cause such as:
  - Terms must be reasonable, legal, and have been accepted in writing by the Tenant or made part of the Rental Agreement;
  - If the terms were made subsequent to the initial creation of the tenancy, the Landlord needs to have informed the Tenant in writing that they need not agree to such terms. If the Tenant agrees, they become enforceable parts of the Lease Agreement.
- Claims of Breach of Lease due to **subleasing a unit** have special rules and may not commence if:
  - Tenant continues to reside in Unit as primary residence;
  - Sublease replaces one or more departed tenants on a one-to-one basis; and
  - The Landlord has unreasonable withheld the right to sublease following a written request by the Tenant.

# JUST CAUSE – BREACH OF LEASE

- The Rent Ordinance requires that a written warning be issued to the Tenant prior to any further action is taken when Breach of Lease (R.M.C. 11.100.050(a)(2)) is being alleged. The Ordinance states,
  - **Written Warning Notice Requirements:** Any written notice as described in Subsections 11.100.050(a)(2), (3) or (4) shall be served by the Landlord within a reasonable period prior to serving a notice to terminate tenancy and shall inform the Tenant that a failure to cure may result in the initiation of eviction proceedings, of the right to request a reasonable accommodation and the contact number for the Board. The notice shall also include sufficient details allowing a reasonable person to comply. The notice shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reason for the notice. (R.M.C. 11.100.050(d)).

# JUST CAUSE – BREACH OF LEASE

- Additionally, **Rent Board Regulation 1002** states, in relevant part:
  - “. . . if a Tenant violates the material terms of a rental agreement, the Landlord must provide the Tenant with a Written Warning Notice to Cease. The Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (A), a reasonable time period shall mean either **not less than five business days** or, if it is not reasonable that the time period to cure the violation can be accomplished within five business days, the Tenant has started to cure the violation within five business days and thereafter diligently pursues the cure of the violation . . . If the Tenant violates the same or substantially the same material terms of the rental agreement within 12 months from the date the Tenant received the initial Written Warning Notice to Cease, the Landlord need not serve a further Written Warning Notice to Cease but may then take action to terminate the tenancy.

# JUST CAUSE – BREACH OF LEASE

- **Protections for Families** - Notwithstanding any contrary provision in this Section, a Landlord shall not endeavor to recover possession of a Rental Unit as a result of the addition to the Rental Unit of a Tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or domestic partner (as defined in California Family Code Section 297) of such relatives, or as a result of the addition of the spouse or domestic partner of a Tenant, so long as the number of occupants does not exceed the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code 17922.
- As a Reminder: Landlords are capable of breaching (violating) the lease agreement as well. Should there be a breach on the part of the Landlord (or their agents), the Tenant would be relieved of any further obligations under the Lease and could vacate the Property.
- Claims for breaches of written lease agreements have a four-year Statute of Limitations, while claims for oral lease agreements have a two-year SOL.

# MODIFYING THE LEASE AGREEMENT

- Because a Lease Agreement is a contract, generally, it cannot be changed without express, written agreement by both of the parties.
- When a Landlord wants to change a part of the Lease, they must first propose the change in writing and the Tenant needs to accept the changes.
  - According to R.M.C. 11.100.050(a)(2), “where such terms have been accepted by the Tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the Landlord shall have first notified the Tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.”
- There is an exception to the above requirements for changing the Lease agreement and that is when the Landlord has a lawful right to increase the rent. For example, after the first year of a Lease, a Landlord may be able to increase the rent with proper written notice.



# **CALIFORNIA LAW – IMPLIED PROVISIONS**

# IMPLIED PROVISIONS IN A LEASE

**“Implied warranty of habitability”** - A legal term which has been developed and defined through various court cases. The California Supreme Court has expressly held that the “implied warranty of habitability” exists in all residential rental agreements. (See *Green v. Superior Court*, 10 Cal. 3d 616 (1974)). This means that it is the Landlord’s duty and promise to provide Tenants with safe and sanitary housing – as defined in Civil Code 1941.1 and Health and Safety Code 17920.3 – in exchange for collecting rent.

**“Implied Covenant of Quiet Enjoyment”** - In every California residential lease there is an implied covenant of quiet enjoyment, guaranteeing that tenants will be able to peacefully enjoy their homes. See Cal. Civil Code 1927. This “quiet possession” includes two requirements. First, the Landlord may not take an action that substantially interferes with the Tenant’s lawful use of their home. Second, the Landlord must take action to provide a Tenant with the “quiet enjoyment” or “quiet possession” of the Tenant’s home if the Landlord is aware that the Tenant’s lawful use of the property is jeopardized.

# ATTORNEY FEE PROVISIONS

- CA Civil Code 1717 – “In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs.”
- This means that both Landlords and Tenants should review their Leases to determine if an Attorney Fee provisions exists in the Lease.
  - If it does, then EITHER party may be responsible for the other side’s attorney fees if they lose a lawsuit based on the contract. This could be an unlawful detainer (eviction) or an affirmative lawsuit against the Landlord by the Tenant.
  - If it does not, then neither party is responsible for any attorney fees the other side may have incurred.
  - If the lease limits the amount of recovery for attorney fees, then that is the maximum either party may be charged if they are found liable for the other side’s attorney fees.

# CIVIL CODE 1951.2: LEASE BREAKING

If a Tenant breaks a lease, they may be liable for unpaid Rent remaining on the lease, but only if:

- The Landlord attempts to mitigate unpaid Rent damages by making a reasonable effort to re-rent the unit and the unit remains without a sitting tenant.
- In other words, if a Tenant breaks a lease, the Landlord cannot make the Tenant pay for the remaining unpaid Rent unless the Landlord can show that they made a reasonable effort to re-rent and were still unable to find a replacement/new Tenant.
- Once a new tenant occupies the unit, the previous tenant's liability for rent is over.
- Some events do not allow a Landlord to charge for a Tenant breaking a lease. Some examples of this include, being called military duty (See Service Members Civil Relief Act) or being a victim of domestic violence, elder abuse, or human trafficking (See Civil Code 1946.7).

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- Remember, Landlords are also capable of “breaking” (or in other words violating) the lease.

# EXPIRATION OF A LEASE

- Please note, under the Richmond Rent Ordinance, **mere expiration of a Lease is not a Just Cause to evict.**
- Also, failure to sign a new Lease Agreement upon expiration of the previous one is not a Just Cause to evict.
- In fact, once rent is accepted after the expiration of the initial term, and no new Lease is signed, the tenancy automatically becomes a month-to-month tenancy.
  - Civil Code 1945 states: “If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.”
- Thus, even if a Lease expires, the enforceability of its terms, besides the<sup>18</sup> term’s length, remain intact.

# UNENFORCEABLE LEASE PROVISIONS

- Any provision in a Lease which removes a Tenant's right is void as against public policy. According to the Richmond Rent Ordinance: "Any provision, whether oral or written in or pertaining to a Rental Housing Agreement whereby any provision of this Chapter for the benefit of the Tenant is waived, shall be deemed to be against public policy and shall be void."
- These may include provisions such as:
  - Any provision which self-exempts the property from rent control or eviction protections.
  - Any provision which allows the Landlord to terminate a tenancy with 30 or 60-days notice.
  - Any provision which deems a security deposit as non-refundable.
  - Any provision which conflicts with the law.
- If a Rental Agreement does have a provision which is illegal, the rest of the contract is not necessarily void. More likely, that single provision is void however, the remainder of the contract is likely to be enforceable.

# AUTOMATICALLY RENEWED LEASES

- For a lease (for example, a one-year term lease) to be extended automatically if the tenant is still in possession or did not give a notice of termination, the extension clause must follow the requirements of California Civil Code 1945.5, which states:
  - Notwithstanding any other provision of law, any term of a lease executed after the effective date of this section for the hiring of residential real property which provides for the automatic renewal or extension of the lease for all or part of the full term of the lease if the lessee remains in possession after the expiration of the lease or fails to give notice of his intent not to renew or extend before the expiration of the lease shall be voidable by the party who did not prepare the lease unless such renewal or extension provision appears in at least eight-point boldface type, if the contract is printed, in the body of the lease agreement and a recital of the fact that such provision is contained in the body of the agreement appears in at least eight-point boldface type, if the contract is printed, immediately prior to the place where the lessee executes the agreement. In such case, the presumption in Section 1945 of this code shall apply. Any waiver of the provisions of this section is void as against public policy.
- Thus, for an automatically renewing lease to be enforceable, the automatic renewal provision must:
  - Appear in the body of the agreement in at least 8-point bolded font; and
  - Appear immediately prior to the place where the lessee (Tenant) executes the agreement (meaning the signature line).

# REQUESTING A COPY OF THE LEASE

- **Civil Code 1962:** Section (a) states, “(a) Any owner of a dwelling structure specified in Section 1961 or a party signing a rental agreement or lease on behalf of the owner shall do all of the following: . . . (4) Provide a copy of the rental agreement or lease to the tenant within 15 days of its execution by the tenant. Once each calendar year thereafter, upon request by the tenant, the owner or owner’s agent shall provide an additional copy to the tenant within 15 days. If the owner or owner’s agent does not possess the rental agreement or lease or a copy of it, the owner or owner’s agent shall instead furnish the tenant with a written statement stating that fact and containing the information required by paragraphs (1), (2), and (3).”

# REQUESTING A COPY OF THE LEASE

- Further, **Civil Code 1962(b)** requires that, “In the case of an oral rental agreement, the owner, or a person acting on behalf of the owner for the receipt of rent or otherwise, shall furnish the tenant, within 15 days of the agreement, with a written statement containing the information required by paragraphs (1), (2), and (3) of subdivision (a). Once each calendar year thereafter, upon request by the tenant, the owner or owner’s agent shall provide an additional copy of the statement to the tenant within 15 days.”
- For any potential buyers of properties subject to the Richmond Rent Ordinance with sitting Tenants, make sure to request a copy of any lease agreements that may have been executed in the past. This is because the above law’s requirements transfers to the new owner(s) after 15 days of ownership.
  - Civil Code 1962(c) states, “The information required by this section shall be kept current and this section shall extend to and be enforceable against any successor owner or manager, who shall comply with this section within 15 days of succeeding the previous owner or manager.”
- Finally, the Rent Program generally does not require or retain copies of lease agreements.



**THANK YOU!**

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