

PASADENA RENTAL BOARD

FEBRUARY 21, 2024

Agenda Item No. 4: Overview of the California Eviction Process

AGENDA ITEM NO. 4: PURPOSE

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Receive a training from Staff summarizing the eviction process in California.

BACKGROUND

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- Self-help evictions are **prohibited** in California
 - ▣ A “self-help eviction” refers to attempts by the landlord to evict a tenant without going through the proper legal process
 - ▣ Example: Removing tenant’s personal property and changing the locks
- A landlord who engages in a self-help or other wrongful eviction may be liable to a tenant, including for:
 - ▣ Actual damages
 - ▣ Punitive damages of up to \$100 per day of violation
 - ▣ Attorneys’ fees and costs

WHAT IS UNLAWFUL DETAINER?

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- An expedited process by which a landlord is able to oust a tenant, licensee (e.g., an employee), or a former owner
- Because an unlawful detainer is a summary legal process, the landlord must **strictly** adhere to all requirements for bringing this type of action

STEP ONE: EVICTION NOTICES

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- Landlord must provide **written** notice, verbal notice is invalid
- Types of Eviction Notices
 - ▣ **Three-Day Notices** (CCP § 1161)
 - Three-Day Notice to Pay Rent or Quit
 - Three-Day Notice to Cure or Quit (e.g., subletting, smoking)
 - Three-Day Notice to Quit (e.g., nuisance, waste, unlawful/illegal activity)
 - ▣ **Termination Notices** (Civ. Code § 1946.1)
 - 30-Day Notice of Termination (less than one year)
 - 60-Day Notice of Termination (more than one year)
 - 90-Day Notice of Termination (Section 8 and post-foreclosure)

EVICTION NOTICES, CONT'D.

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- Eviction notices must be served in one of three ways:
 - ▣ Personal Service (CCP 1162(a)(1))
 - ▣ Substitute Service (CCP 1162(a)(2))
 - ▣ Service by Posting and Mailing (CCP 1162(a)(3))
- Failure to properly serve an eviction notice serves as a defense to unlawful detainer
- Notice period
 - ▣ For three days notices, calculation does not include weekends and holidays
 - ▣ For termination notices, calculation is just calendar days

TENANT RESPONSE TO EVICTION NOTICE

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- Notice to pay rent or quit
 - Pay the amount of rent due within three days
 - Move out before notice expires
 - Do nothing and wait for unlawful detainer complaint
- Notice to cure or quit
 - Cure the lease violation within three days
 - Move out before the notice expires
 - Do nothing and wait for unlawful detainer complaint
- Notice to quit & termination (30, 60, 90-day) notices
 - Move out before the notice expires
 - Do nothing and wait for unlawful detainer complaint

STEP TWO: FILE AN UNLAWFUL DETAINER

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- If the tenant fails to cure the violation listed in the notice or fails to move out, the landlord can file an unlawful detainer case in court
- The landlord should not file an eviction case until after the written eviction notice expires

STEP THREE: SERVICE OF SUMMONS AND COMPLAINT

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- Landlord must serve the Tenant with summons and complaint in the unlawful detainer action
 - ▣ Failure to properly serve the tenant is a defense
- Time to respond to the Complaint depends on how the tenant was served:
 - ▣ Personal Service: 5 **business** days (i.e., not including weekends or court holidays)
 - ▣ Substitute Service: 15 calendar days after Complaint is mailed
 - ▣ Posting and Mailing: 15 calendar days after Complaint is mailed (only valid if Plaintiff has a court order)

STEP FOUR: TENANT RESPONSE

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- Tenant must file a response with the court
- If the tenant does not respond on time, the landlord can get a default judgment
 - ▣ This means the tenant can be evicted in as little as 5 days
- There are several ways to respond:
 - ▣ Motion to Quash
 - ▣ Demurrer
 - ▣ Motion to Strike
 - ▣ Answer

STEP FOUR, CONT'D.

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- Filing an answer is the most common response
 - ▣ Tenant must respond to the allegations in the complaint
 - ▣ Tenant must also assert any affirmative defenses
- Common affirmative defenses include:
 - ▣ Tenant does not owe amount demanded (**NP**)
 - ▣ Landlord accepted rent after service of notice (**NP**)
 - ▣ Landlord has failed to maintain property in habitable condition (**NP**)
 - ▣ Waiver (e.g., accepted rent for period beyond notice, cancelled/rescinded)
 - ▣ Retaliation (e.g., requesting repairs, reporting code violations)
 - ▣ Discrimination (e.g., failed to provide reasonable accommodation)

STEP 5: SETTING TRIAL DATE

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- Landlord must request a trial date with the court
 - ▣ The case will not move forward unless landlord files a request to set the case for trial with the superior court
 - ▣ If the landlord does not file this request within 60 days after filing the complaint, tenant can move for dismissal of the case for lack of prosecution
- Once the request to set is filed, the case will be set for trial within 20 calendar days of the request
 - ▣ Some courts also require parties to engage in mandatory pre-trial settlement conference

STEP SIX: RESOLUTION OF THE CASE

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- The case will either settle or go to trial
- Common settlements:
 - ▣ Pay & stay: tenant pay the landlord and case is dismissed
 - ▣ Waive & go: tenant agrees to move out by certain date in exchange for full or partial waiver of what is due to landlord
- Possible outcomes at trial:
 - ▣ Tenant wins: the tenant can remain in their home, but will be ordered to pay any rent that is owed within certain amount of time
 - ▣ Landlord wins: court will issue an eviction judgment authorizing both or either monetary amount owed to landlord and authorizing sheriff to remove tenant

STEP SEVEN: POST-TRIAL POSSIBILITIES

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- After the landlord gets an eviction order from the court, the tenant will receive notice of a lockout date from the Sheriff
 - ▣ Notice of lockout must be posted at least 5 days before
 - ▣ How soon lockout occurs depends on how back up sheriff's office is
 - ▣ Only the Sheriff can forcibly evict the tenant
 - ▣ Landlord still cannot change locks, remove tenant's possession or threaten tenant even with eviction order

STEP SEVEN, CONT'D.

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- Tenant's options post-judgment
 - ▣ **Stay of eviction:** court can grant up to 40 additional days for good cause, but tenant must deposit rent for that period with court
 - ▣ **Motion for relief from forfeiture:** usually based on some hardship
 - ▣ **Appeal** of trial court decision

LIMITATION ON PRHB AUTHORITY

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- Provisions of local law that seek to impose additional procedural requirements are invalid because they conflict with state statutes that provide landlord with summary procedure for exercising their rights of repossession of a unit against a tenant. ***Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 150-153.**
 - ▣ Permitted
 - Notice to Cease prior to Notice to Quit
 - ▣ Not Permitted
 - Extending the notice periods
 - Requiring participation in mandatory mediation
 - Imposing any additional hearings before rental board to “authorize” eviction