



BEFORE YOU AGREE TO RENT

Before you decide on a rental unit, there are several other points to consider. For example: Is an oral rental agreement legally binding? What are the differences between a lease and a rental agreement? What are some of the advantages and disadvantages of each? This section answers these and other questions.

RENTAL AGREEMENTS AND LEASES

General information

Before a tenant can rent a rental unit, the landlord and tenant must enter into a **rental agreement** or **lease**. A "lease" generally refers to a written agreement while a "rental agreement" generally includes both oral and written agreement. However, these terms are synonymous and can be used interchangeably. For purposes of this guide, the term "rental agreement" is used to describe both a "rental agreement" and a "lease".

The tenant's right to use and possess the landlord's rental unit is called a **tenancy**. The rental agreement includes the terms and conditions that will govern the tenancy, including the length of the tenancy, the amount of the rent, the timing when the rent payments are due, and the amount of the security deposit. Although the different types of rental agreements and tenancies are discussed below, before entering into an agreement with a landlord, the tenant may want to seek advice from an attorney, legal aid organization, housing clinic, or tenant-landlord program to make sure that they understand all of the rental agreement provisions, each party's obligations, and any risks that either party may face.

Oral and Written Agreements

The rental agreement may be oral or written, however, it is strongly recommended that the parties have a written rental agreement. The landlord is required to provide the tenant with a signed copy of the rental agreement within 15 days of its execution. The landlord and tenant should retain copies of the signed rental agreement for their records.

An oral agreement is an agreement where the terms are agreed upon by spoken communication. This is in contrast to a written agreement where the terms are set forth in a written document. A tenancy term of more than one year must be in writing.⁷² Oral agreements for a tenancy term of more than a year are unenforceable.⁷³

If you have an oral agreement, the landlord must give you a written statement regarding the name, street address, and phone number of the landlord or agent for receipt of legal notices; the contact information for the person who will accept the rent; and how the rent is to be paid (for example by cash, check or money order).⁷⁴ One disadvantage of an oral agreement is that parties will have no written proof of the terms of their rental agreement if they get into a dispute with the other party. Also, once the oral agreement is made, any change of its terms by a landlord, or its termination by either party, must still be made by a properly served and legally sufficient written notice.⁷⁵

Tenants with special circumstances may especially want to avoid an oral agreement. For instance, tenants may prefer a written agreement if they plan to reside at the rental unit for an extended period (i.e., several months up to one year), the landlord permits the tenant to have pets or water-filled furniture (i.e., waterbed), or the landlord has agreed to pay any of the expenses (i.e., utilities or garbage removal) or provide any services (i.e., gardening).

Again, a written agreement is preferred and is in the best interest of both parties. The key problem with an oral agreement is that the obligations of the landlord to the tenant, and vice-a-versa, are not spelled out in an easily verifiable form.

Fixed Term and Periodic Tenancies

Whether the parties choose an oral or written agreement, either agreement must address the length of the tenancy or rental period. There are two types of tenancies, a tenancy for a fixed term and a tenancy for a periodic term. **Fixed-term tenancies** are tenancies that last for a set amount of time and have a defined expiration date, such as six months or one year. It is important to understand that the tenant is bound by the agreement until the agreement expires, which means that the tenant must pay the rent and perform all of the tenant's obligations under the agreement during the entire tenancy.⁷⁶ There are some advantages to having a fixed-term tenancy. For instance, the landlord cannot raise the tenant's rent during the tenancy, unless the rental agreement expressly allows rent increases. Also, the landlord cannot terminate the tenancy while the rental agreement is in effect unless the tenant breaches a term in the rental agreement (for example, the tenant fails to pay rent, damages the property, or commits illegal activity on the premises). A fixed-term tenancy gives the tenant the security of a long-term agreement at a known cost. Even if the rental agreement allows rent increases, the rental agreement should specify a limit on how much and how often the rent can be raised. One disadvantage of a fixed-term tenancy is that the rental agreement may be more difficult to break, especially if another tenant cannot be found to take over your tenancy, if you need to move before the end of the fixed-term. If you move before the fixed-term ends, you could be liable for the rent for the rest of the term or until such time as the landlord rents the unit to a new tenant.⁷⁷

Periodic tenancies are tenancies that continue for successive periods until the landlord or tenant gives the other party proper notification that they want to end the tenancy. Examples of periodic tenancies are tenancies that run from week to week or month to month. A periodic-term tenancy does not state the total number of weeks or months that the rental agreement will be in effect. The tenant can continue to live in the rental unit as long as the tenant continues to pay rent and the landlord does not provide proper notice of termination in a manner provided by law.

If a tenant is protected by just cause eviction protections, a landlord cannot ask a tenant to leave for no reason even during a month-to-month tenancy. Many tenants have city or county just cause eviction protections or have tenancies that qualify for eviction protections under the recently enacted Tenant Protection Act of 2019 (AB 1482) (hereinafter referred to as the "Tenant Protection Act"). In these circumstances, a month-to-month tenancy will continue indefinitely unless a landlord has one of the good causes for eviction specified in the law and gives the tenant a valid termination notice.

As for rental payments, the landlord and tenant should agree on the timing of the rental payments. Where the term of a tenancy for a rental unit is not specified, it is presumed to have been for the time period between rental payments.⁷⁸ Thus, the term of a periodic-term tenancy with rent paid monthly is presumed to be for month to month.⁷⁹

State law provides for the **amount of advance notice** that the landlord and tenant must give to the other party to terminate the tenancy or change the terms (except the rental amount) of their rental agreement.⁸⁰ Special rules govern the amount of advance notice that a landlord must give to a tenant before the landlord can increase the rental amount, and by how much the rent can be increased.

SHARED UTILITY METERS

Some buildings have a single gas or electric meter that serves more than one rental unit. In other buildings, a tenant's gas or electric meter may also measure gas or electricity used in a common area, such as the laundry room or the lobby. In situations like these, the landlord must disclose that utility meters are shared *before* you sign the rental agreement or lease, or as soon as the landlord discovers the shared metering.⁸¹ When utilities are apportioned among multiple rental units, a tenant may consider asking the landlord to provide them with information about how the charges are apportioned. A landlord cannot charge more than the actual cost of the utilities.

The landlord and tenant should discuss and agree upon which party will be responsible for paying the shared utilities and memorialize their understanding in writing. The options available to the landlord and tenant include:

- The landlord can pay for the utilities provided through the meter for your rental unit by placing the utilities in the landlord's name;
- The landlord can have the utilities in the area outside your rental unit put on a separate meter in the landlord's name; or
- You can agree to pay for the utilities provided through the meter for your rental unit to areas outside your rental unit.⁸²

If the landlord fails to do this, the tenant may bring a legal action and ask for remedies such as an order that the utilities be put in the landlord's name, or that the tenant be compensated for the tenant's payment of utilities outside the dwelling unit.⁸³ If a public municipal utility company provides utility service to a rental dwelling, and the utility service is in the landlord's name, a tenant may be able to become the customer of record on the account in order to avoid utility shut-off if the landlord falls behind on payments.⁸⁴

Rental units in older buildings may not have separate water meters or submeters. Ask the landlord if the rental unit that you plan to rent has its own water meter or submeter. If it does not, and if the landlord will bill you for water or sewer utilities, be sure that you understand how the landlord will calculate the amount that you will be billed.⁸⁵ Under California law, a landlord is required to make specific disclosures to a tenant about the billing of water when there is a water submeter for the rental unit.⁸⁶

Translation of Proposed Rental Agreement

Although most lease negotiations are conducted in English, English may not be the primary language spoken by some landlords and tenants. Parties to a rental agreement may negotiate in another language. If the parties specifically negotiate in Spanish, Chinese, Tagalog, Vietnamese or Korean, the landlord must give the tenant a written translation of the proposed written agreement in the language used in the negotiation before the tenant signs the agreement.⁸⁷ This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for a period of one month or less. This rule only applies if Spanish, Chinese, Tagalog, Vietnamese or Korean is used. It does not apply if the parties negotiate in some other language, such as Russian.

The landlord must give the tenant the written translation of the rental agreement whether or not it is requested by the tenant. The translation must include every term and condition in the rental agreement, but may retain elements in English such as names, addresses, numerals, dollar amounts and dates. It is never acceptable for the landlord to give the written translation of the rental agreement to the tenant *after* the tenant has signed the lease. Rather, the landlord must provide the tenant with the written translation of the rental agreement prior to the execution, or signing, of the rental agreement.

However, the landlord is not required to give the tenant a written translation of the lease or rental agreement if all of the following are true:

- The Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking tenant negotiated the rental agreement through his or her own interpreter; and
- The tenant's interpreter is able to speak fluently and read with full understanding English, as well as Spanish, Chinese, Tagalog, Vietnamese, or Korean (whichever language is used in the negotiation); and
- The interpreter is not a minor (under 18 years of age); and
- The interpreter is not employed or made available by or through the landlord.

If a landlord who is required to provide a written translation of a lease or rental agreement in one of these languages fails to do so, the tenant can rescind (cancel) the agreement.⁸⁸

⁷² Civ. Code §§ 1091, 1624(a)(1), 1624(a)(3), 1962(a) and 1962(b).

⁷³ *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 877.

⁷⁴ Civ. Code §§ 1091 and 1962(b).

⁷⁵ Civ. Code §§ 827, 1945, 1946, 1946.1 and 1946.2.

⁷⁶ Civ. Code §§ 1945, 1946 and 1946.1.

⁷⁷ Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 19th Ed., pages 400-401 (NOLO Press 2021).

⁷⁸ Civ. Code §§ 1945, 1946 and 1946.1.

⁷⁹ *Ibid.*

⁸⁰ Civ. Code §§ 827(a), 1946 and 1946.1.

⁸¹ Civ. Code § 1940.9, Public Utilities Code (“Pub. Util. Code”) § 739.5. California Practice Guide, *Landlord-Tenant*, §§ 2:170.1–2:170.10 (Rutter Group 2021). See discussion of utilities billing in Moskowitz et al., *California Landlord-Tenant Practice*, § 4.41A-4.41E (“Cont.Ed.Bar 2021”). There it is discussed that the California Public Utilities Commission (“CPUC”) has held that it has no jurisdiction in the vast majority of landlord-tenant billing relationships. Because there is no direct regulation or guidance from the CPUC or statute, it is important that all facets of the landlord-tenant billing relationship for utilities are agreed to in writing.

⁸² Civ. Code § 1940.9. This section also provides remedies for violations.

⁸³ Civ. Code § 1940.9(b).

⁸⁴ Pub. Util. Code § 10009.

⁸⁵ See discussion of utility billing in Moskowitz et al., *California Landlord-Tenant Practice*, §§ 4.41A-4.41E (Cont.Ed.Bar 2021). There it is discussed that the CPUC has held that it has no jurisdiction in the vast majority of landlord-tenant billing relationships. Because there is no direct regulation or guidance from the CPUC or statute, it is important that all facets of the landlord-tenant billing relationship for utilities be agreed to in writing.

⁸⁶ Civ. Code §§ 1954.201, 1954.204 and 1954.216.

⁸⁷ Civ. Code § 1632(b). The purpose of this law is to ensure that the Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking person has a genuine opportunity to read the written translation of the proposed agreement that has been negotiated primarily in one of these languages, and to consult with others, before signing the agreement.

⁸⁸ Civ. Code § 1632(k). Civ. Code § 1688 and following on rescission of contract.

[Previous Section: Looking for a Rental Unit](#)

[Next Section: When You Have Decided to Rent](#)

[Return To Table of Contents](#)

[Return to Homepage](#)

[Back to Top](#)

[Conditions of Use](#)

[Privacy Policy](#)

[Accessibility](#)

[Contact Us](#)

Copyright © 2023 State of California