# TERMINATIONS AND EVICTIONS

**COVID-19 RENTAL RELIEF UPDATE:** On February 9, 2022, the Governor signed into law SB 115 to extend the availability of financial assistance provided by the Tenant Relief Act to protects tenants and landlords impacted by the COVID-19 pandemic. For tenants who were unable to pay their rent between March 1, 2020 through September 30, 2021 due to financial distress arising from or related to COVID-19, the Act provided a moratorium on evictions during that time period provided the tenants timely returned to their landlords a signed declaration of COVID-19-Related Financial Distress.[362] For tenants and landlords, the Act provided financial assistance for unpaid rent and utilities from April 1, 2020 to March 31, 2022.[363]

In addition to the Tenant Relief Act, tenants and landlords who experienced financial hardships due to COVID- 19 may also find assistance provided by their local jurisdictions. For more information about the availability of local relief and the Tenant Relief Act, please go to https://housing.ca.gov/.

On October 17, 2022, Governor Newsom announced that the COVID-19 State of Emergency will expire effective February 28, 2023. While state processes/procedures will return to their pre-state of emergency status, local jurisdictions may have their own states of emergency, which may or may continue beyond February 23, 2023.

Although the Tenant Relief Act influences discussions in this chapter, this chapter is written with a focus on the law governing tenancy terminations and tenant evictions occurring before March 1, 2020 and after September 30, 2021.

## WHEN CAN A LANDLORD TERMINATE A TENANCY?

In 2019, the California Legislature passed, and the Governor signed, the Tenant Protection Act of 2019 (the “Tenant Protection Act”). The Tenant Protection Act imposes statewide rent control and just cause eviction requirements. Landlords of residential real property covered by the Tenant Protection Act must notify their tenants of the act’s Protections.[364] For rental agreements in effect before July 1, 2020, the landlord must provide their tenants with written notice by August 1, 2020. For rental agreements entered into or renewed after July 1, 2020, landlords must include the notice as an addendum to the lease or provide the notice to the tenant and obtain the tenant’s signature acknowledging receipt. The notice must contain the following language:

> “California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.”

The sections of the Tenant Protection Act relevant to just cause evictions are summarized below.

The landlord’s ability to terminate the tenancy and evict the tenant is based on whether or not the rental unit is subject to local just cause for eviction laws or the State of California’s Tenant Protection Act. If a rental unit is subject to both local and state just cause for eviction laws, the Tenant Protection Act’s just cause protections do not apply if the local ordinance was adopted on or before September 1, 2019, or it was adopted or amended after September 1, 2019 and provides stronger protections to the tenant.[365] The Tenant Protection Act’s just cause protections apply statewide and cover rental units where the tenant has resided at the unit for

more than 12 months or 24 months if an additional adult tenant was added to the rental agreement less than 12 months ago.[366] Certain types of housing units are exempt from the Tenant Protection Act, including:

- transient and tourist hotel occupancy;
- housing accommodations in a nonprofit hospital, religious facility, extended care facility or licensed residential care facility for the elderly;
- dormitories owned and operated by an institution of higher education or a school for grades kindergarten through 12th grade;
- housing accommodations in which the tenant shares bedroom or kitchen facilities with the owner who maintains their principal residence at the property;
- single-family owner-occupied residences;
- a duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy and continues to occupy that unit;
- housing that has been issued a certificate of occupancy within the previous 15 years; or
- residential real property that is alienable separate from the title to any other dwelling unit provided that the landlord has notified the tenants that the rental unit is exempt from the Tenant Protection Act.[367]

If the Tenant Protection Act applies, then the landlord cannot terminate the tenancy or evict the tenant without just cause. The Tenant Protection Act defines just cause as either "At-fault just cause" or "No-fault just cause."[368] At-fault just cause includes: failure to pay part or all of the rent; a breach of a material term of the rental agreement; engaging in criminal activity or committing nuisance or waste at the rental unit; the tenant's refusal to execute a written extension or renewal of the rental agreement with the same or similar provisions as the original agreement after the landlord's written request or demand; assigning or subletting the rental unit in violation of the rental agreement; the tenant's refusal to permit the landlord to enter the rental unit as required by law or the terms of the rental agreement; using the rental unit for an unlawful purpose; failure to vacate when the tenant's employment with the landlord terminates; and failure to deliver possession of the rental unit to the landlord after providing the landlord with written notice of tenant's intent to do so.[369] No-fault just cause includes: landlord's intent to occupy the rental unit for him/herself or his/her spouse, domestic partner, children, grandchildren, parents, or grandparents if the tenant agrees in writing to the termination or the rental agreement permits the landlord to terminate under these circumstances; withdrawal of the rental unit from the rental market; an order by a court or government agency for the tenant to vacate the rental unit due to habitability issues; or landlord's intent to demolish or substantially remodel the rental unit.[370]

If the landlord is relying on at-fault just cause as the basis to terminate the tenancy and evict the tenant, then the landlord must provide the tenant with an opportunity to correct the violation if the violation is curable.[371] In such cases, the landlord must give the tenant notice of the violation and an opportunity to cure or correct it. Only if the tenant does not cure or correct the violation within the timeframe set forth in the notice may the landlord serve a three-day notice to quit without an opportunity to cure to terminate the tenancy.[372]

If the landlord is relying on no-fault just cause as the basis to terminate the tenancy and evict the tenant, then the landlord must provide the tenant with relocation assistance irrespective of the tenant's income.[373] The relocation assistance is an amount equal to one month of the tenant's rent that was in effect when the owner issued the notice to terminate the tenancy and, at the landlord's option, the landlord may pay this amount directly to the tenant or waive the tenant's obligation to pay their final month's rent. The landlord's termination notice must notify the tenant that the landlord is terminating the tenancy based on no-fault just cause and inform the tenant of the landlord's election between paying relocation assistance to the tenant or waiving the tenant's final month rent. If the tenant fails to move out and return possession of the rental unit back to the landlord within the timeframe set forth in the termination notice, the landlord may recover the amount of relocation assistance paid to the tenant as damages in an action to recover possession.[374]

Separate and apart from the Tenant Protection Act, landlords are prohibited from evicting a tenant (or refusing to renew a tenant's lease) based on acts of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse committed against

the tenant where the tenant (1) has obtained a restraining order or police report that is not older than 180 days and (2) does not live with the abuser.[375] The landlord may evict the perpetrator of the acts, but not the victim, under California law.

If the rental unit is not protected by just cause eviction protections, a landlord can terminate (end) a periodic tenancy by giving the tenant advance written notice of 30 days, 60 days, or, in some instances, 90 days.

If the rental unit is covered either by a local or state just cause eviction law and the landlord has provided the tenant with a notice to cure a violation as discussed above, the tenant must cure the violation within the timeframe set forth in the notice. If the tenant fails to cure the violation, the landlord may serve a three-day notice to quit without providing the tenant an opportunity to cure for rental units covered by the Tenant Protection Act. Within three days of the date that the landlord serves the notice to quit, the tenant must move out of the rental unit and return possession of it back to the landlord or face possible eviction by the landlord. If the rental unit Is not covered either by a local or state just cause eviction law and the landlord has given the tenant a 30-day, 60-day, or 90-day notice, the tenant must move out of the rental unit and return possession of It back to the landlord within the timeframes set forth in the notice or face possible eviction by the landlord. If the landlord wishes to proceed with evicting the tenant then the landlord must file with the Superior Court in the county where the property is located an unlawful detainer complaint, obtain from the court a summons, and serve the summons along with a copy of the court-filed complaint on the tenant.

## WRITTEN NOTICES OF TERMINATION

### 30-day, 60-day, or 90-day notice

A landlord who wants to terminate (end) a periodic tenancy can do so by properly serving a written 30-day, 60-day, or, in certain instances, 90-day, notice on the tenant

### How to respond to a 30-day, 60-day or 90-day notice

If your rental unit is not covered by local or state just cause for eviction requirements and the landlord has properly served you with a notice to terminate the tenancy you may either prepare to move out or try to make arrangements with the landlord to remain past the deadline in the notice. If you want to continue to occupy the rental unit, ask the landlord what you need to do to make that possible. Most landlords will provide you with an explanation although not required to do so unless the rental unit is covered by a local or state just cause for eviction requirement. If the landlord will permit you to stay, you should memorialize the agreement in writing, retain a signed copy for your records, and the landlord should withdraw their notice to terminate in writing.

If the reason the landlord has given for terminating your tenancy is an act of domestic violence, sexual assault, human trafficking, stalking or elder/dependent abuse committed against you, explain that to the landlord. For instance, if there was a loud argument and broken window that disturbed other tenants, and the cause of it was an act of domestic violence, the tenant should not have to leave if they take steps to remove the abuser and do not allow the abuser to return to the property. If you live in a federally assisted property covered by the Violence Against Women Act, survivors of domestic violence, dating violence, sexual assault, and stalking are protected from eviction for reasons based on the abuse. Federally assisted landlords or public housing authorities (where appropriate) are required to provide a notice outlining VAWA rights when a household is being evicted, as well as a self-certification form.[376] Survivors can use that form to demonstrate abuse occurred and seek VAWA protections. A lawyer, legal aid organization or tenant advocate can help you determine if VAWA applies in your case.

If the landlord and you are unable to reach agreement on you remaining past the deadline set forth in the notice to terminate, then you will be required to move out and must do so by the end of the time period set forth in the notice. If the last day of the landlord's notice is more than 30-days in the future you can choose to give your own 30- day notice that will expire before the landlord's notice if you desire to move out before the deadline set forth in the landlord's notice to terminate. Just be certain that you can actually move according to your

own notice, because failing to do so could subject you to a court eviction action. When you move out, take all of your personal belongings with you, and leave the rental unit at least as clean as when you rented it. This will help with the refund of your security deposit (see "Refund of Security Deposits").

If you have not moved at the end of the notice period, you will be unlawfully occupying the rental unit after that day, and the landlord can file an unlawful detainer (**eviction**) lawsuit to evict you.

If you believe that the landlord has acted unlawfully in giving you the notice, or that you have a valid defense to an unlawful detainer lawsuit, you should consult with a lawyer, legal aid organization, tenant advocate, or housing clinic (see "Getting Help From a Third Party,").

## Three-day notice

Prior to giving the tenant a three-day pay or quit notice, for rental units covered by local or state just cause eviction requirements, including the Tenant Protection Act, the landlord must give a tenant an opportunity to cure or correct any violations presuming the violations can be cured or corrected. Only after the tenant fails to cure or correct the violations within the timeframes set forth in the notice may a landlord give the tenant a three-day notice to quit without an opportunity to cure. For rental units not covered by local or state just cause eviction requirements, a landlord may give a tenant a three-day notice either to pay or quit or cure or quit if the tenant has done, among other things, any of the acts specified above.[377] As stated above, landlords are prohibited from evicting a tenant based on acts of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse committed against the tenant where the tenant (1) has obtained a restraining order or police report that is not older than 180 days and (2) does not live with the abuser. [378] The landlord may evict the perpetrator of the acts, but not the victim, under California law. If the tenant lives in a property covered by the Violence Against Women Act (as discussed above), the housing provider or public housing authority (where appropriate) must ensure that the tenant receives a notice outlining VAWA rights when a household is given the three-day notice, as well as a VAWA self-certification form.[379]

If the landlord gives the tenant a three-day notice because the tenant has not paid the rent, the notice must accurately state the amount of rent that is due. In addition, the notice must state:

- The name, address and telephone number of the person to whom the rent must be paid.
- If payment may be made in person, the usual days and hours that the person is available to receive the rent payment. If the address does not accept personal deliveries, then you can mail the rent to the owner at the name and address stated in the three-day notice. If you can show proof that you mailed the rent to the stated name and address (for example, a receipt for certified mail), the law assumes that the landlord received the rent payment on the date that the payment was mailed.
- Where the notice does not require payment in person, the notice may state the name, street address and account number of the financial institution where the rent payment may be made (if the institution is within five miles of the unit). If an electronic fund transfer procedure was previously established for paying rent, payment may be made using that procedure.[380]

With some exceptions, the landlord cannot require that the tenant pay the past-due rent in cash or by electronic funds transfer without offering other options.

If the three-day notice is based on a reason other than non-payment of rent, the notice must either describe the tenant's violation of the rental agreement, or describe the tenant's other improper conduct. The three-day notice must be properly served on the tenant.

Depending on the type of violation, the three-day notice demands either (1) that the tenant correct the violation or leave the rental unit (quit) or (2) that the tenant leave the rental unit (quit) because the law deems the violation "non-curable". For curable violations, the notice must be clearly written in the alternative (i.e. pay or quit; perform a covenant of the agreement or quit). If the violation involves something that the tenant can correct (for example, the tenant has not paid the rent, or the tenant has a pet but the rental agreement does not permit pets), the notice must give the tenant the option to correct the violation.

Most violations can be corrected, such as failing to pay rent. In these situations, the three-day notice must give the tenant the option to correct the violation. However, the other acts *cannot* be corrected, and the three-day notice can simply order the tenant to leave at the end of the three days.

If the violation is correctable, it is important to cure the violation within three court days of receiving the three-day notice and keep proof that you have done so. If you pay the rent that is due or correct a correctable violation of the rental agreement during the three-day notice period, the tenancy continues and the landlord cannot legally evict you.[381] Please note that the landlord is not required to accept partial rent payment.

The time period covered in the three-day notice to pay or quit is important. If you attempt to pay all the past-due rent demanded after the three-day period expires, the landlord either can refuse to accept the payment and file a lawsuit to evict you or accept the rent payment. If the landlord accepts the rent, the landlord waives (gives up) the right to evict you based on late payment of rent.[382]

## How to respond to a three-day notice

Suppose that your landlord properly serves you with a three-day notice because you have not paid the rent. You must either pay the full amount of rent that is due or vacate (leave) the rental unit by the end of the third court day, unless you have a legal basis for not paying rent or the amount of rent that the landlord is attempting to charge you is incorrect, either because you have been overcharged or because there are bad conditions in your unit, such as conditions that your landlord has failed to repair. You might see if the landlord will accept a partial payment and/or give some additional time to “cure” the non-payment. If you get such an agreement be sure to get it in writing with the landlord’s signature. Your failure to later pay and/or quit as agreed will likely still be grounds for the landlord to begin an eviction action at court. Remember the landlord is not obligated to make any such agreement, however they may see it as a more practical resolution than having to actually evict you.

If you decide to pay the rent that is due, it is recommended that you call the landlord or the landlord’s agent immediately. Tell the landlord or landlord's agent that you intend to pay the amount demanded in the notice (if it is correct) and arrange for a time and location where you can deliver the payment to the landlord or agent. *You must pay the rent by the end of the third day.* You should pay the unpaid rent by cashier’s check, money order, or cash (if allowed by the rental agreement). Whatever the form of payment, be sure to get a receipt signed by the landlord or agent that shows the date and the amount of the payment. If the landlord does not answer your call, you still only have three days to mail or deliver the payment to the address listed in the notice.

With some exceptions provided by state law, the landlord cannot require that you pay the unpaid rent in cash or by electronic funds transfer without offering other options.

If the amount of rent demanded is not correct, it is recommended that you discuss this with the landlord or landlord's agent immediately and offer to pay the amount that is actually due. Make this offer orally and in writing and keep a copy of the written offer. The landlord’s notice is not legally effective if it demands more rent than is actually due, or if it includes any charges other than for past-due rent (for example, late charges, unpaid utility charges, dishonored check fees, or interest). [383]

If the amount of rent demanded is correct and does not include any other impermissible charges, and if you decide not to pay, then you must move out or remain in your rental unit and defend against the eviction lawsuit.

If you stay beyond the three court days without paying the rent that is properly due, you will be occupying the rental unit unlawfully. The landlord then has a single, powerful remedy: a court action (called an “unlawful detainer [eviction] lawsuit” ) to evict you and obtain a judgment for the unpaid rent, and possibly other amounts, such as court costs, attorney’s fees and “holdover” rent damages.

If the three-day notice is based on something other than failure to pay rent, the notice will state whether you can correct the problem and remain in the rental unit. If the problem can be corrected and you want to stay in the rental unit, *you must correct the problem by the end of*

*the third court day*. You should retain records substantiating the repairs or corrections for your records. Once you have corrected the problem, you should promptly notify the landlord or the property manager.

If you believe that the landlord has acted unlawfully in giving you a three-day notice, or that you have a valid defense to an unlawful detainer lawsuit, you should consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic (see "Getting Help From a Third Party,").

### How to count the three days

For 3-day notices with an opportunity to cure, begin counting the three days on the first day that is not a weekend or court holiday after the day the notice was served. Continue counting all days that are not weekends or court holidays and stop on the third day. That is the day by which you must pay unpaid rent in a notice to pay or quit or cure the violation in a notice to cure or quit. For example if the notice is served on the Friday before Labor Day, do not count Saturday, Sunday or Monday because these days are weekends or court holidays. Day one will be Tuesday, day two will be Wednesday and day three will be Thursday.[385] For non-curable 3-day notices the counting is different. Day one is the day following the service, no matter if that day is a weekend or a court holiday. Only if the third day falls on a weekend or court holiday will you get until the next day that is not a weekend or court holiday to quit (see the next section for a discussion of service of the notice and the beginning of the notice period).[386]

## PROPER SERVICE OF TERMINATION NOTICES

A landlord's three-day, 30-day, 60-day, or 90-day notice to a tenant must be "served" properly to be legally effective. The terms "**serve**" and "**service**" refer to procedures required by the law to give a tenant notice that the landlord seeks to end their tenancy and recover possession of the rental unit. These procedures are designed to increase the likelihood that the person to whom notice is given actually receives the notice.

A landlord can serve a *three-day eviction notice* on the tenant in one of three ways: by personal service, by substituted service, or by posting and mailing. The landlord, the landlord's agent, or anyone over 18 can serve a notice on a tenant.

- **Personal service** - To serve you personally, the person serving the notice must hand you the notice (or leave it with you if you refuse to take it).[387]
- **Substituted service on another person** - If the landlord cannot find you at home, the landlord should try to serve you personally at work. If the landlord cannot find you at home or at work, the landlord can use "substituted service" instead of serving you personally.

  To comply with the rules on substituted service, the person serving the notice must leave the notice with a person of "suitable age and discretion" at your home or work and *also mail* a copy of the notice to you at home.[388] A person of suitable age and discretion normally would be an adult at your home or workplace, or a teenage member of your household.

  Service of the notice is legally complete when ***both*** of these steps have been completed. The three-day period begins no sooner than the day after both steps have been completed, but it could begin several days later (see "How to count the three days" above).
- **Posting and mailing** - If the landlord cannot serve the notice to you personally or by substituted service, the notice can be served by taping or tacking a copy to the rental unit in a conspicuous place (such as the front door of the rental unit) *and* by mailing another copy to you at the rental unit's address.[389] This service method is commonly called "posting and mailing" or "nailing and mailing."

  Service of the notice is not complete until both the notice has been posted and the copy of the notice has been mailed. The three-day period begins on the later of the day on which the notice was posted *or* mailed, but it could begin several days later (see "How to count the three days" above).[390]

A landlord can use any of these methods to serve a 30-day, 60-day or 90-day notice to terminate a tenancy on a tenant, or they can send the notice to the tenant by certified or registered mail with return receipt requested.[391] For these notices, the timeframes begin on the day when service is made and continue for the number of days stated in the notice. If the last day falls on a weekend or court holiday, that deadline rolls over to the next day that is not a weekend or court holiday.

## THE EVICTION PROCESS (UNLAWFUL DETAINER LAWSUIT)

**COVID -19 EVICTION MORATORIUM UPDATE:** On February 9, 2022, the Governor signed into law SB 115 to extend the availability of financial assistance provided by the Tenant Relief Act to protect tenants and landlords impacted by the COVID-19 pandemic. For tenants who were unable to pay their rent between March 1, 2020 through September 30, 2021 due to financial distress arising from or related to COVID-19, the Act provided a moratorium on evictions during that time period provided the tenants timely returned to their landlords a signed declaration of COVID-19-Related Financial Distress.[392] For tenants and landlords, the Act provided financial assistance for unpaid rent and utilities from April 1, 2020 to March 31, 2022.[393]

In addition to the Tenant Relief Act, tenants and landlords who experienced financial hardships due to COVID- 19 may also find assistance provided by their local jurisdictions. For more information about the availability of local relief and the Tenant Relief Act, please go to https://housing.ca.gov/.

Although the Tenant Relief Act influences discussions in this chapter, this chapter is written with a focus on the law governing tenancy terminations and tenant evictions occurring before March 1, 2020 and after September 30, 2021.

### Overview of the eviction process

If the tenant does not voluntarily move out after the landlord has properly given the required notice to the tenant, the landlord can begin the court eviction process. In order to evict the tenant, the landlord must file an unlawful detainer lawsuit in Superior Court in the county where the rental unit is located and then properly serve you with a summons and a copy of the unlawful detainer complaint. In general, proper service requires that someone personally hand you the summons and complaint.[396] There are circumstances where they can be handed to someone else, but in that instance you will be given more days in which to respond.[397] In certain instances a court may allow a landlord to serve you by posting copies at the rental unit and mailing copies to you via certified mail.[398]

In an eviction lawsuit, the landlord is called the “plaintiff” and the tenant is called the “defendant.”

Laws designed to stop drug dealing[399] and unlawful use, manufacture, or possession of weapons and ammunition,[400] permit a city attorney or prosecutor in selected jurisdictions[401] to file an unlawful detainer action against a tenant based on an arrest report (or other action or report by law enforcement or regulatory agencies) if the landlord fails to evict the tenant after 30 days' notice from the city. The tenant must be notified of the nature of the action and possible defenses.

An unlawful detainer lawsuit is a “summary” court procedure. This means that the court action moves forward very quickly, and that the time given the tenant to respond during the lawsuit is very short. For example, in most unlawful detainer cases, the tenant has only five court days (i.e., days that are not Saturdays, Sundays, or judicial holidays) to file a written response to the lawsuit after being properly served with a copy of the landlord’s summons and complaint.[402] Normally, a date for a trial in front of a judge or jury will be set within 20 days after the tenant or the landlord files a request to set the case for trial.[403] These time periods are substantially shorter than the time periods for non-summary cases. Given the expedited treatment given to summary court procedures, should you seek assistance from someone knowledgeable in landlord/tenant law, you should not delay seeking guidance from an attorney, legal aid organization, or tenant advocacy group because your written response (e.g. an Answer) must be filed within five days of the date that you were served unless the fifth day is a weekend or court holiday, in which case the answer must be filed on the next day that is

not a weekend or court holiday. Note that obtaining a jury trial requires additional steps and, as with any trial, it is highly recommended a tenant retain legal representation especially if the case will be tried to a jury.

The court-administered eviction process assures the tenant of the right to a trial if the tenant believes that the landlord has no right to evict the tenant. The landlord *must* use this court process to evict the tenant; the landlord *cannot* use self-help measures to force the tenant to move. For example, the landlord cannot physically remove or **lock out** the tenant, cut off utilities such as water, gas or electricity, remove outside windows or doors, or seize (remove) the tenant's belongings in order to carry out the eviction. The landlord *must use the court procedures*.

If the landlord uses unlawful methods to evict a tenant, the landlord may be subject to liability for the tenant's actual damages, such as needing to stay in hotel, additional cost of paying to eat away from home, etc., as well as penalties of up to $100 per day for the time that the landlord used the unlawful methods.[404]

In an unlawful detainer lawsuit, the court holds a trial where the parties can present their evidence and explain their case. If the court decides in favor of the tenant, the tenant will not have to move out (but may still be liable for unpaid rent), and the landlord may be ordered to pay court costs (for example, the tenant's filing fees). If the tenant's defense involves alleging the landlord failed to provide a habitable premises, which justified their non-payment of rent, the court may order the landlord to make repairs. The landlord also may have to pay the tenant's attorney's fees, if the rental agreement contains an attorney's fee clause and if the tenant was represented by an attorney.[405]

If the court decides in favor of the landlord, the court will issue a **writ of possession**.[406] The writ of possession orders the sheriff to remove the tenant from the rental unit, but gives the tenant five days from the date that the writ is served to leave voluntarily. If the tenant does not leave by the end of the fifth day, the writ of possession authorizes the sheriff to physically remove and lock the tenant out. When a tenant is locked out, if the tenant leaves behind personal property, the tenant's personal property must be processed in accordance with California law, specifically Civil Code section 1951.3. *The landlord is not entitled to possession of the rental unit until after the sheriff has removed the tenant.*

The court also may award the landlord any unpaid rent if the eviction is based on the tenant's failure to pay rent. The court can also award additional rent damages (so-called "holdover damages") for days of rent, for which the landlord would not otherwise be paid, for the time the tenant has remained in the unit up to the day the court's judgment is entered. The court also may award the landlord court costs, and attorney's fees (if the rental agreement contains an attorney's fee clause and if the landlord was represented by an attorney). If the court finds that the tenant acted maliciously in not giving up the rental unit, the court also may award the landlord up to an additional $600 as a penalty.[407] The judgment against the tenant will be reported on the tenant's credit report for seven years.[408] Any amount of money awarded to the landlord may be garnished from the tenant's wages, the tenant's bank account, and/or by other judgment enforcement means.

## How to respond to an unlawful detainer lawsuit

If you are served with an unlawful detainer complaint, you should get legal advice or assistance *immediately* because unlawful detainer actions are summary proceedings and have shortened deadlines. Tenant organizations, tenant-landlord programs, housing clinics, legal aid organizations, or private attorneys can provide you with advice, and assistance if you need it (see "Getting Help From a Third Party"). Keep in mind that only licensed attorneys can give you legal advice, but other organizations can help with the process of responding to an unlawful detainer. Many courts also have "self-help" centers where you can get access to resources and assistance to help you respond. Again, these centers cannot provide legal advice, but they can help you navigate the process.

You usually have only *five court days* to respond in writing to the landlord's complaint.[409] You must respond during this time by filing the correct legal document with the Clerk of Court in which the lawsuit was filed. Typically, a tenant responds to a landlord's complaint by filing a written "answer" (you can get a copy of a form to use for filing an answer from the Clerk of Court's office or online at www.courts.ca.gov/documents/ud105.pdf). There is a substantial

filing fee for each defendant submitting an answer. However, if you are very low income or paying the fee would be a hardship you can file additional forms to ask that the fee be waived (these forms are available from the court or online at https://www.courts.ca.gov/forms.htm?query=fee%20waivers) at the same time you file your answer.

You may have a legal defense or defenses to the landlord's complaint. If so, you must state the defense(s) in a written answer and file your written answer with the Clerk of Court by the end of the fifth court day following the day you were properly served the summons and complaint. Otherwise, the landlord can ask the court for a 'default judgment' because you failed to answer, and you may lose any chance to state any defenses that you may have. Some typical defenses that a tenant might have are listed here as examples:

- The landlord's three-day notice requested more rent than was actually due.
- The rental unit violated the implied warranty of habitability by failing to provide safe and habitable conditions at the property.
- The landlord filed the eviction action in retaliation for the tenant exercising a tenant right or because the tenant complained to the building inspector about the condition of the rental unit.
- The landlord filed the eviction action because an act of domestic violence, sexual assault, stalking, elder abuse or human trafficking that disturbed the other tenants, but the victim has not allowed the perpetrator to return to the unit.
- The landlord filed the eviction because police or emergency assistance were called by or on behalf of a victim of crime, victim of abuse, or person in an emergency where assistance was believed to be necessary.

The answer form has check boxes that allow you to select "affirmative defenses" that you believe apply to your case. You then should provide in the answer an explanation of the facts that support any selected defense(s). You may also attach relevant documents to answer as "Exhibits" that help state and/or prove the facts you are relying upon.

Depending on the facts of your case, there are other legal responses to the landlord's complaint that you might file instead of an answer. For example, if you believe that your landlord did not properly serve the summons and the complaint, you might file a **Motion to Quash Service of Summons**. If you believe that the complaint has some technical defect or does not properly allege the landlord's right to evict you, you might file a document called a "**demurrer**" requesting dismissal of the complaint. You might also file a Motion to Strike to ask the court to invalidate some portion, or even all, of the landlord's complaint. It is strongly recommended that you obtain advice from a lawyer before you attempt to use these procedures. It is also recommended that you obtain advice from a lawyer before you file your answer. However, keep in mind that you do not want to miss the deadline, so seek legal assistance the same day you are served an unlawful detainer complaint.

In addition to filing any form of response to the landlord's summons and complaint you must properly serve a copy of that response to the landlord, or more likely to the attorney who represents the landlord. Most often this is done by mail. However, you, as a party to the case, are not permitted to be the one carrying out that service. You must get an adult (i.e., someone who is over the age of 18) who is not a party to the case to perform the service and sign a "proof of service" form that you will file with the court.

If you do not file a written response to the landlord's complaint by the end of the fifth day, assuming that the landlord properly served the summons and complaint, the court may approve the landlord's request to enter a **default judgment** in favor of the landlord after the landlord submits a request to the court to enter a default against you. A default judgment allows the landlord to obtain a writ of possession and may also lead to an award to the landlord for unpaid rent, damages and court costs. A default judgment means that you lose the case and will be evicted.

The Clerk of Court will ask you to pay a filing fee for each answering defendant named in the landlord's complaint when they file a written response. As of January 1, 2020, the filing fee typically is about $385 per answering defendant, but it may be waived based on income or hardship .[410]

After you file your written answer to the landlord's complaint, and serve a copy of that answer to the landlord or their attorney, the landlord will submit a request to the court for a trial date for the case called a "Request to Set Case for Trial" (form UD-150). The landlord is supposed to

also mail you a copy of this request, however that often does not happen. You can also file the same form as a "Counter Request to Set Case for Trial." Once the court clerk has received the landlord's request, and possibly your counter request, they will mail to both you and the landlord a notice of the time and place of the trial. If you fail to appear in court, the trial may occur without your presence, which will mean you will have no ability to contradict any evidence or testimony presented by your landlord.

**Service of tenant's written answer:** You must also serve your landlord (or the landlord's attorney, if the landlord is represented by legal counsel) with a copy of the written answer to the landlord's complaint. This must be done by someone over the age of 18 who is not a party to the case. Service is usually completed by mailing or personally serving a copy of the written answer on/to the landlord (or the landlord's attorney, if the landlord is represented). The person who completes this service should then fill out and sign a Proof of Service. The tenant should file the Proof of Service, along with his/her answer, with the Clerk of the Court.

**Special Rules for Tenants in the Military:** A servicemember may be entitled to a stay (delay) of an eviction action for 90 days. This rule applies to the servicemember and his or her dependents (such as a spouse or child) in a residential rental unit with rent of $2,400 per month or less, as adjusted by the housing price inflation adjustment beginning in 2004. In 2018, the rental ceiling was $3,717. The servicemember's ability to pay rent must be materially affected by military service. The judge may order the stay on his or her own motion or upon request by the servicemember or a representative. The judge can adjust the length and terms of the delay as equity (fairness) requires.[411] Landlords that violate the court-ordered eviction process in regards to a servicemember may face a fine and/or imprisonment for up to one year.[412]

## Eviction of "unnamed occupants"

Sometimes, adults who are not parties to the rental agreement move into the rental unit with the tenant or after the tenant leaves, but before the unlawful detainer lawsuit is filed. When a landlord thinks that these "occupants" might claim a legal right to possess the rental unit, the landlord may seek to include them as defendants in the eviction action, even if the landlord does not know who they are. In this case, the landlord will serve the tenant and "all other occupants" with a **Prejudgment Claim of Right to Possession** at the same time that the eviction summons and complaint are served on the tenants who are named defendants.[413] Note that when service includes this form it may only be performed by a marshal, sheriff, or a process served registered with the state. See additional discussion of "unnamed occupants" and the Claim of Right to Possession. Unnamed occupants should consider whether it is prudent to complete and submit the Prejudgment Claim form, which effectively adds their name as a defendant in the eviction lawsuit. While being a defendant may allow a person to state their own defense it may come at the price of having a record of a court eviction. However, without making such a submission, the unnamed occupants' fate with respect to being evicted will depend on what happens to those already named in the lawsuit. If those tenants lose at court the sheriff will evict everyone at the unit, as the opportunity to submit a (post-judgment) Claim of Right to Possession is foreclosed by the service of the Prejudgment Claim form.

## Before the court hearing

Before appearing in court, if you are not able to be represented by an attorney, you must carefully prepare your case, just as an attorney would. If you elect to retain an attorney, you should try to find an attorney as early as possible. Among other things, you should:

- Be mindful that when you are served with the summons and complaint, you have only five court days after you have been properly served the summons and complaint in which to file an answer. You should carefully read the summons, which contains very specific information on how to answer the complaint and the strict timelines.
- Talk with a housing clinic, tenant organization, attorney, or legal aid organization as early as possible. This will help you understand the legal issues in your case and the evidence that you will need.
- Request **discovery** of the evidence that may be helpful to your case or to preparing a defense (see "Discovery in Unlawful Detainer Cases").

- Decide how you will present the facts that support your side of the case. What documents, letters, photographs or videos will you attempt to offer into evidence? What witnesses do you intend to call to testify on your behalf.
- Have at least five copies of all documents that you intend to use as evidence—an original for the judge and copies for the court clerk, the opposing party, your witnesses and you.
- Ask witnesses who will help your case to testify at the trial. You can **subpoena** a witness who will not testify voluntarily. A subpoena is an order from the court compelling a witness to appear. The subpoena must be served upon (handed to) the witness within a reasonable time before the hearing (for example, two weeks prior to the hearing), and can be served by anyone, other than yourself, who is over the age of 18. You can obtain a subpoena from the Clerk of Court. You must pay witness fees at the time the subpoena is served on the witness, if the witness requests them.

The parties to an unlawful detainer lawsuit have the right to a jury trial, and either party can request one.[414] After you have filed your answer to the landlord's complaint, usually the landlord will file a document called a **Memorandum to Set Case for Trial** (officially called a "Request/Counter-Request to Set Case for Trial - Unlawful Detainer" form [Judicial Council Form UD-150].)[45] You can get a copy online at www.courts.ca.gov/documents/ud150.pdf. This document will indicate whether the plaintiff (landlord) has requested a jury trial. Whether or not you should request a jury trial will depend on the individual facts and circumstances of your case. Jury trials may be more beneficial under the certain circumstances and less beneficial under other circumstances. However, you may want to list in your answer that you request a jury trial, and you can later decide to waive your right to a jury, if you so choose. But if you do not request a jury timely, then later you will not have the right to a jury.

There are several good reasons for this recommendation. First, presenting a case to a jury is more complex than presenting a case to a judge, and a non-lawyer representing himself or herself may find it very difficult. Second, the party requesting a jury trial will be responsible for depositing the initial cost of jury fees with the court, unless a supplemental fee waiver request is granted. Third, the losing party will have to pay all of the jury costs.[416]

At any time prior to entry of final judgment, either party may initiate settlement discussions to resolve the parties' dispute. There are a number of reasons why landlords and/or tenants may find settlement preferable to proceeding through trial, including if any party has doubts about the merits of their case, the prospect that a material witness may not testify or testify adversely against their case, and/or concerns about the litigation costs and time associated with preparing and trying their case to conclusion before a judge or jury.

If the parties reach a settlement, the settlement typically is made official by a document called a "stipulated judgment." The agreement may be that the tenant pays the landlord a certain amount, possibly in installments instead of one lump sum, the tenant agrees to move out by a certain date, or the landlord agrees to make certain repairs. **It is very important that both parties fully understand all provisions of any settlement before signing the stipulation**, which then will be presented to the judge. Do not let yourself be rushed into agreeing to a stipulation without understanding it and make sure that you can perform the promises that you are agreeing to.

If at all possible, as part of the negotiation in arriving at the settlement, the defendant (i.e., the tenant if the landlord filed the lawsuit or the landlord if the tenant filed the lawsuit) should demand that in exchange for the defendant's promised actions the plaintiff will agree to dismiss the case. Be aware that such settlements typically are structured so that if a party fails to do any one of things he/she agreed to (a default) the non-defaulting party will immediately have the right to enter a judgment against the defaulting party and receive certain relief as part of that judgment. If the tenant is the defaulting party, that may lead to the landlord obtaining an immediate issuance of a writ of possession to remove the tenant from the rental unit. However, if the defendant performs as agreed, and the agreement calls for it, the plaintiff will dismiss the case and there will be no adverse judgment against the defendant.

## Discovery in Unlawful Detainer Cases

Parties to a lawsuit, including an unlawful detainer (eviction) lawsuits are entitled to conduct discovery to learn about another party's facts, defenses or the bases for their legal positions. Any party may avail him/herself of any one or all four of the available discovery vehicles, which consist of written interrogatories,[417] requests for production of documents,[418] requests for admissions,[419] and depositions[420] of another party to the lawsuit or third parties not involved in the lawsuit. Interrogatories are written questions that the responding party must answer under oath. Requests for production seek to obtain copies of the responding party's documents. Requests for admissions seek to have the responding party admit or deny the truthfulness of a particular statement. Depositions are live, in-person opportunities for one party to ask another party or a third-party questions that that party must answer under oath. Each of the four available discovery vehicles requires a minimum of five days' notice to the other party before that party is required to respond.[421] This timeline applies if the discovery requests are personally delivered either to the office of the other party or the office of his/her attorney if they are represented. The responding party is afforded an additional 5 days (10 days total) if service is performed by mail. Under these rules, the responding party must comply with the requesting party's request for discovery within five days.[422] **All discovery must be completed on or before the fifth day before the date set for trial.**[423] Because the landlord can request the court to set a trial date as soon as an answer is filed, it is imperative that any discovery action is commenced within a few days of filing and serving the answer, or even before that occurs.

- If the tenant intends to defend his or her case, and intends to use the discovery process as a tool, the tenant must follow strict timelines applicable to evictions in California.
- The discovery process works in five-day increments. Once the landlord serves the tenant with the unlawful detainer complaint, the tenant may begin discovery by personally serving or mailing any discovery requests. The responding party must respond within five days of the date that they received it if personally served or within ten days of the date that they received it if mailed. All of the discovery must be completed at least five days before the date of the trial.[424]

## After the court's decision

If the court decides in favor of the tenant, the tenant will not have to move out, and the landlord may be ordered to pay the tenant's court costs (for example, filing fees) and the tenant's attorney's fees if that is a provision of the rental agreement and the tenant was represented by an attorney at trial. However, the tenant may have to pay any rent that the court orders within 5 days, which if not paid within that timeframe could result in the court issuing a judgment in favor of the landlord instead.[425] If the tenant's defense to the landlord's unlawful detainer action was based on a breach of the warranty of habitability the rent to be paid will likely be reduced from that called for by the rental agreement. The court may order a continued reduction in rent until certain necessary repairs are made.

If the landlord wins, the tenant will have to move out. In some circumstances, the court may order the tenant to pay the landlord's court costs and attorney's fees if the landlord was represented by an attorney at trial and the rental agreement contains an attorneys' fees clause. The court also may order the tenant to pay rent during the holdover period (i.e., the period of time between the end of the rental term and the date of trial).

The court has discretion to stay the execution of any judgment.[426] A losing tenant can request the court to exercise that discretion to delay when they will have to move out. That request would typically be made through an 'ex parte' application, before the trial judge, for more time to surrender the premises due to hardship or other good cause. Proper notice of this 'ex parte' application needs to be provided to the landlord or the landlord's attorney, and the hearing needs to happen quickly, and prior to the sheriff's **lockout**. The sheriff will post a 5-day notice to vacate at the property before the lockout can occur (see "Writ of Possession").

The application to stay the execution of the Court's judgment should be supported by the tenant's written declaration (i.e., a statement by the tenant made under penalty of perjury) that states detailed facts regarding the hardship or other good cause. If the court agrees to stay the execution of the judgement it will condition it on payment of rent for the period of the stay, but not upon paying any past due rent. The extra time likely will be limited, as the judge might deem equitable, perhaps as little as a week or up to a month. Most likely this type of stay would not be granted for any period past 10 days after the time limit to appeal the judgment, which could be around 40 days.[427] for any further stay it would be necessary to seek or already have sought a stay pending appeal pursuant to Code of Civil Procedure Section 1176, further discussed below.

It is possible, but very rare, for a losing tenant to convince the court to allow the tenant to remain in the rental unit. This is called **relief from forfeiture** of the tenancy. The tenant must convince the court of two things in order to obtain relief from forfeiture: (1) that the eviction would cause the tenant severe hardship, and (2) either that the tenant is able to pay all of the rent that is due or that the tenant will fully comply with the rental agreement.[428]

A tenant can obtain relief from forfeiture even if the tenancy has terminated (ended), so long as possession of the unit has not been turned over to the landlord. A tenant seeking relief from forfeiture must apply for relief at any time prior to restoration of the premises to the landlord, but such a petition should be made as soon as possible after the court issues its judgment in the unlawful detainer lawsuit. To do this, the tenant must file a motion for relief from forfeiture.[428] A tenant who is not represented by an attorney at trial can even make an oral motion for relief from forfeiture immediately following the court's decision or by speaking with the judge in an ***'ex parte'* hearing**.

A tenant who loses an unlawful detainer lawsuit may **appeal** the judgment if the tenant believes that the judge mistakenly decided a legal issue in the case. However, the tenant will have to move out of the rental unit before the appeal is decided by the court, unless the tenant petitions for a stay of enforcement of the judgment or applies for relief from forfeiture (described immediately above). The court will not grant the tenant's request for a stay of enforcement unless the court finds that the tenant or the tenant's family will suffer extreme hardship, and that the landlord will not suffer irreparable harm. If the court grants the request for a stay of enforcement, it will order the tenant to make rent payments to the court in the amount ordered by the court and may impose additional conditions.[430]

A landlord who loses an unlawful detainer lawsuit also may appeal the judgment as well.

## Writ of possession

If a judgment is entered against the tenant and becomes final (for example, if the tenant does not appeal or loses on appeal), and the tenant does not move out, the court will issue a **writ of possession** to the landlord.[431] The landlord can deliver this legal document to the sheriff, who will then forcibly evict the tenant from the rental unit if the tenant does not leave within the time allowed.

Before evicting the tenant, the sheriff will serve the tenant with a copy of the writ of possession along with a Notice to Vacate.[432] If the tenant is not at home, the sheriff may post it on the tenant's door. The writ of possession instructs the tenant that he/she must move out by the end of the fifth day after the writ is served, and that if the tenant does not move out, the sheriff will remove the tenant from the rental unit and place the landlord back in possession.[433] The cost of serving the writ of possession will be added to the other costs of the suit that the landlord can collect from the tenant.

After the tenant is served with the writ of possession, the tenant has five days to move. If the tenant has not moved by the end of the fifth day, the sheriff will return and physically remove the tenant.[434] If a tenant's belongings are still in the rental unit, they will initially be locked in. The landlord must exercise reasonable care of your belongings and store them in a place of safekeeping. The landlord has the option of continuing to store your belongings in the unit or removing them to another storage space for safekeeping. The landlord cannot unreasonably deny you the right to reclaim your belongings.[435] However, before the tenant can reclaim his/her belongings the landlord may require the tenant to pay for the reasonable storage costs and moving costs, if any. If they are stored in the rental unit the landlord can ask the tenant to pay the reasonable daily rental value for the unit for each day they are stored. If the tenant

does not reclaim these belongings within 15 days, the landlord can mail the tenant a notice to pick them up, and then can either sell them at auction or keep them (if their value is less than $700).[436] If the sheriff forcibly evicts you, the sheriff's cost will also be added to the judgment, which the landlord can collect from you, e.g. through wage garnishment, bank garnishment, or other judgment enforcement means.

## Stay of Execution

Once you are served with a writ of possession, you may be able to file something called a Stay of Execution to stay in your home for a short while longer. A Stay of Execution asks the court to delay the eviction for a certain period of time not longer than 40 days. In return, you must pay rent to the court for each extra day that you remain once the Stay is granted. A Stay does not change the eviction judgment or reinstate your tenancy, but it can grant you more time to file a motion seeking to do so. Different courts may use different procedures for requesting a Stay, but each one will require you to notify your landlord and file a written request.[437]

## Setting aside or vacating a default judgment or trial judgment

If the tenant does not file a written response to the landlord's complaint, the landlord can ask the court to enter a default judgment against the tenant. Upon the court entering default, the tenant will receive a notice of judgment, and a writ of possession as described above.

There are many reasons why a tenant might not respond to the landlord's complaint. For example, the tenant may have received the summons and complaint, but was not able to respond because the tenant was ill or incapacitated, or for some other very good reason. There are also circumstances where the landlord failed properly to serve the tenant with the summons and complaint, hence the reason why the tenant may have been unaware of the legal proceeding or the need to appear at trial. In situations such as these, where the tenant has a valid reason for not responding to the landlord's complaint, the tenant can ask the court to set aside the default judgment.

Setting aside or "vacating" a judgment can be a complex legal proceeding, so be sure to retain an attorney as early as possible if you plan on having an attorney represent you in your efforts to set aside or vacate a judgment. Common reasons for seeking to set aside a default judgment are the tenant's (or the tenant's lawyer's) mistake, inadvertence, surprise, or excusable neglect.[438] A tenant who wants to ask the court to set aside a judgment must act promptly. The tenant should be able to show the court that they have a satisfactory excuse for not filing a response or missing the trial, acted promptly in making the request, and had a good chance to win at trial.[439] This last item is crucial, and is achieved by submitting a 'proposed answer' that states a seemingly plausible affirmative defense to the eviction, along with the other required documents when requesting a default be set aside. If possession of the unit has been returned to the landlord (i.e. the tenant has been locked out) the tenant can still seek to set aside the default, but it may not result in the tenant being restored to the unit.

**Special rules for tenants in the military** may make it more difficult for a landlord to obtain a default judgment against the tenant, and may make it possible for a tenant to reopen a default judgment and defend the unlawful detainer action.[440]

## A word about bankruptcy

Some tenants think that filing a bankruptcy petition will prevent them from being evicted. This is not always true. Even if it delays an eviction, filing for bankruptcy without having a legitimate need for other economic relief is generally a poor idea.

Filing bankruptcy is a serious decision with many long-term consequences beyond the eviction action.

A tenant who is thinking about filing bankruptcy because of the threat of eviction, or for any reason, should consult a bankruptcy attorney and carefully weigh their advice. While it is possible for a person to file for bankruptcy without the use of an attorney's services, it is ill-advised at best.

Bankruptcy, which is handled in the federal bankruptcy courts, is a complicated legal specialty and explaining it is beyond the scope of this guide. However, here is some basic information about bankruptcy as it relates to unlawful detainer proceedings:[441]

- A tenant who files a bankruptcy petition normally is entitled to an immediate **automatic stay** (delay) of a pending unlawful detainer action. If the landlord hasn't already filed the unlawful detainer action, the automatic stay prevents the landlord from taking steps such as serving a three-day notice or filing the action.[442]
- The landlord may petition the bankruptcy court for permission to proceed with the unlawful detainer action (called "relief from the automatic stay")[443].
- The automatic stay may continue in effect until the bankruptcy case is closed, dismissed, or completed. On the other hand, the bankruptcy court may lift the stay if the landlord shows that they are entitled to relief.[444] It is fairly routine for the bankruptcy court to grant the landlord's petition, resulting in some delay of the eviction process, but any actual prevention of the eviction proceeding.
- The automatic stay normally does not prevent the landlord from enforcing an unlawful detainer judgment that was obtained before the tenant's petition was filed. In some cases, however, the tenant may be able to keep the stay in effect for 30 days after the petition is filed.[445]
- The automatic stay does not apply if the landlord's eviction action is based on the tenant's endangering the rental property or using illegal controlled substances on the property, and if the landlord files a required certification with the bankruptcy court. The stay normally will remain in effect, however, for 15 days after the landlord files the certification with the court.[446]
- A bankruptcy case can be dismissed for "cause"—for example, if the tenant neglects to pay fees or file necessary schedules and financial information, causes unreasonable delay that harms the landlord, or files the case in bad faith.[447]
- The bankruptcy court also can issue sanctions (i.e., penalties) against a person who files for bankruptcy petition in bad faith.

A landlord may try to evict a tenant because the tenant has exercised a legal right (for example, using the repair and deduct remedy) or has complained about a problem in the rental unit. Or, the landlord may raise the tenant's rent or otherwise seek to punish the tenant for complaining or lawfully exercising a tenant right.

In these situations, the landlord's action may be considered retaliatory because the landlord is punishing the tenant for the tenant's exercise of a legal right. The law offers tenants protection from retaliatory eviction and other retaliatory acts.[448]

If a landlord tries to evict a tenant within six months after the tenant has exercised certain rights, the law assumes the eviction is retaliatory.[449] The following are examples of rights that the tenant may lawfully exercise:

- Using the repair and deduct remedy or telling the landlord that the tenant will use the repair and deduct remedy.
- Complaining about the condition of the rental unit to the landlord, or to an appropriate public agency (such as local code enforcement) after giving the landlord notice.
- Filing a lawsuit or beginning arbitration based on the condition of the rental unit.
- Causing an appropriate public agency to inspect the rental unit or to issue a citation to the landlord.

In order for the tenant to defend against eviction on the basis of retaliation, the tenant must prove that they exercised one or more of these rights within the six-month period immediately preceding the landlord's attempt to evict the tenant, that the tenant's rent is current, and that the tenant has not used the defense of retaliation more than once in the past 12 months. If the tenant produces all of this evidence, then the burden is on the landlord to present evidence and prove that they did not have a retaliatory motive.[450] Even if the landlord proves that they have a valid reason for the eviction, the tenant may still prove retaliation by showing that the landlord's effort to evict the tenant is not in good faith (i.e. it is merely a pretext).[451] If both sides produce the necessary evidence, the judge or jury then must decide whether the landlord's action was retaliatory or was based on a valid reason.

A tenant can also assert retaliation as a defense to eviction if the tenant has lawfully organized or participated in a tenants' organization or protest or has lawfully exercised any other legal right, such as requesting repairs that the landlord is required to make or making a complaint about the landlord to a government agency. In these circumstances, the tenant must prove that they engaged in the protected activity, and that the landlord's conduct was retaliatory.[452]

In addition to citing illegal retaliation as a defense to eviction, a tenant can file an affirmative case seeking actual and statutory monetary damages if they believe they have been the victim of retaliation. A tenant can bring such a claim even if they move due to a landlord's retaliatory actions. A tenant does not have to 'stay and fight'. However, if a tenant unsuccessfully raises retaliation as a defense in an unlawful detainer, such an affirmative claim on the same or similar facts will likely be unsuccessful, as a court has already rule that there was no retaliation. In addition to actual damages, the anti-retaliation law provides for up to $2,000 in statutory damages for each actual or attempted retaliatory act by the landlord.

If you feel that your landlord has retaliated against you because of action you properly took against your landlord, talk with an attorney or legal aid organization. An attorney also may be able to advise you about other defenses.

## Retaliatory discrimination

A landlord, managing agent, real estate broker, or salesperson violates California's Fair Employment and Housing Act and the federal Fair Housing Act by harassing, evicting, or otherwise discriminating against a person in the sale or renting of housing when the "dominant purpose" is to retaliate against a person who has done any of the following:[453]

- Opposed practices that are discriminatory and unlawful under either Act;
- Told the police about a landlord's discriminatory or unlawful behavior; or
- Aided or encouraged a person to exercise rights protected by California laws prohibiting housing discrimination.

A tenant who can prove that the landlord's eviction action is based on a discriminatory motive has a defense to the unlawful detainer action. A tenant who is the victim of retaliatory discrimination also has a cause of action for damages under the Fair Employment and Housing Act.[454] If your landlord has been discriminating against you, you can contact your local legal services office found at lawhelpca.org and/or the Department of Fair Employment and Housing at www.dfeh.ca.gov.

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[362] Code Civ. Proc. § 1179.03.5.
[363] Health & Saf. Code § 50897.1.
[364] Civ. Code § 1946.2(f).
[365] Civ. Code § 1946.2(g).
[366] Civ. Code § 1946.2(a).
[367] Civ. Code § 1946.2(e).
[368] Civ. Code § 1946.2(b).
[369] Civ. Code § 1946.2(b)(1).
[370] Civ. Code § 1946.2(b)(2).
[371] Civ. Code § 1946.2(c).
[372] Civ. Code § 1946.2(c).
[373] Civ. Code § 1946.2(d).
[374] Civ. Code § 1946.2(d).
[375] Code Civ. Proc. § 1161.3.
[376] 34 U.S.C. § 12491(d). The notice and self-certification form should be made available in non-English languages. HUD has made the VAWA notice (Form 5380) and self-certification form (Form 5382) available online in multiple languages: https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a.
[377] Code Civ. Proc. § 1161(2)-(4).
[378] Code Civ. Proc. § 1161.3.
[379] 34 U.S.C. § 12491(d). The notice and self-certification form should be made available in non-English languages. HUD has made the VAWA notice (Form 5380) and self-certification form (Form 5382) available online in multiple languages: https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a.

See also DHI Cherry Glen Associates, L.P. v. Gutierrez (2019), 46 Cal.App.5th Supp. 1 (Ca. Sup. Ct. App. Div. Nov. 2019).

[380] Code Civ. Proc. § 1162(2); California Practice Guide, Landlord-Tenant, §§ 7:104.10-7:104.13 (Rutter Group 2021).

[381] Code Civ. Proc. § 1161(3).

[382] EDC Associates Ltd. v. Gutierrez (1984) 153 Cal.App.3d 167, 171.

[383] Weaver, California Tenants' Rights, 23rd Ed., pages 246-247. (NOLO Press 2022)

[384] Code Civ. Proc. § 1161(2) and (3), see also Code Civ. Proc. §§ 12, 12a, and 135 regarding the definition of legal and judicial holidays.

[385] Code Civ. Proc. § 1161(4).

[386] Code Civ. Proc. § 1162(1).

[387] Code Civ. Proc. § 1162(2).

[388] Code Civ. Proc. § 1162(3).

[389] Walters v. Meyers (1990) 226 Cal.App.3d Supp. 15, 19-20 (service of a three-day notice by way of posing and mailing is effective from the date the notice is posted and mailed, not from the date the tenant received it). See also California Practice Guide, Landlord-Tenant, §§ 7:186-7:188.2 (Rutter Group 2021) (mailing three-day notice does not extend time to respond).

[390] Civ. Code § 1946; Code Civ. Proc. § 1162.

[391] Code Civ. Proc. § 1179.03.5.

[392] Health & Saf. Code § 50897.1.

[393] Code Civ. Proc. § 415.10.

[394] Code Civ. Proc. § 415.20.

[395] Code Civ. Proc. § 415.45.

[396] Civ. Code § 3486; Moskovitz et al., California Landlord-Tenant Practice §§ 4.44, et seq (Cont.Ed.Bar 2021).

[397] Civ. Code § 3485(a).

[398] California Practice Guide, Landlord-Tenant, § 7:306 (Rutter Group 2021) (For unlawful detainers based on weapons and ammunitions allegations, the cities are Los Angeles, Long Beach, Oakland, and Sacramento. For drug abatement unlawful detainers, the cities are Los Angeles, Long Beach, Sacramento and Oakland.).

[399] Code Civ. Proc. § 1167.3.

[400] Code Civ. Proc. § 1170.5(a).

[401] Civ. Code § 789.3(c).

[402] Civ. Code § 1717; Trope v. Katz (1995) 11 Cal.4th 274; California Practice Guide, Landlord-Tenant, §§ 9:391-9:391.7 (Rutter Group 2021).

[403] Code Civ. Proc. §§ 712.010 and 715.010.

[404] Code Civ. Proc. § 1174(b).

[405] Civ. Code § 1785.13(a)(2) and (a)(3).

[406] Code Civ. Proc. § 1167.

[407] The application form is Judicial Council Form FW-001. You may qualify for a fee waiver if you receive benefits under the Food Stamps, SSI/SSP, Medi-Cal, County Relief/Gen. Assist., HISS, CalWORKs/TANF, CAPI, or if your gross monthly household income for your household size is less than the amount shown in a table on the form. You also may qualify for fee waiver if your income is not enough to pay for your household's basic needs as well as the court fees.

[408] Servicemembers Civil Relief Act, 50 U.S.C §§ 3901 et seq.; California Practice Guide, Landlord-Tenant, § 7:80.10 (Rutter Group 2021).

[409] Servicemembers Civil Relief Act, 50 U.S.C § 3951(b)(2).

[410] Code Civ. Proc. § 415.46(a).

[411] The lease or rental agreement cannot require that the tenant waive the right to a jury trial before a dispute arises. However, the lease or rental agreement might be able to require that any dispute that arises be submitted to arbitration. (Grafton Partners LP v. Superior Court) (PricewaterhouseCoopers LLP (2005) 36 Cal.4th 944, 967.) The enforceability of arbitration requirements in a rental agreement is not a fully settled question (see Weiler v. Marcus & Millichap Real Estate Investment Serv

[412] California Practice Guide, Landlord-Tenant, §§ 9:4-9:11 (Rutter Group 2021).

[413] Weaver, California Tenants' Rights, 23rdt Ed., pages 303 (NOLO Press 2022).

[414] Code Civ. Proc. § 2030.260(b).

[415] Code Civ. Proc. §§ 2031.010, 2031.020(c), (d), 2031.030(c), and 2031.260(b).

[416] Code Civ. Proc. § 2033.020(c).

[417] Code Civ. Proc. § 2025.270(b).

[418] California Practice Guide, Landlord-Tenant, §§ 8:425-8:437.5 (Rutter Group 2021).

[419] California Practice Guide, Landlord-Tenant, §§ 8:425-8:437.5 (Rutter Group 2021).

[420] Code Civ. Proc. § 2024.040(b)(1).

[421] The time periods discussed assume that no orders are obtained shortening or extending time. See California Practice Guide, Landlord-Tenant, §§ 8:425-8:462 (Rutter Group 2021).

[422] Code Civ. Proc. § 1174.2(a).

[423] Code Civ. Proc. § 918(a).

[424] Code Civ. Proc. § 918(b).

[425] Code Civ. Proc. § 1179.

[426] California Practice Guide, Landlord-Tenant, §§ 9:440-9:446 (Rutter Group 2021). The tenant's written petition must be served on the landlord at least five days before the date of the hearing on the request for relief. If the tenant does not have an attorney, the tenant may orally apply to the court for relief, if the

landlord either is present in court or has been given proper notice. The court also may order relief from forfeiture on its own motion. The court may order relief from forfeiture o

[427] Code Civ. Proc. § 1176.

[428] Code Civ. Proc. § 715.010.

[429] Code Civ. Proc. § 715.020.

[430] Code Civ. Proc. § 715.010(b)(2).

[431] Code Civ. Proc. § 715.020(c).

[432] Civ. Code § 1965.

[433] Code Civ. Proc. §§ 715.030 and 1174(h); Civ. Code §§ 1965 and 1988.

[434] Code Civ. Proc. § 918(a).

[435] Code Civ. Proc. § 473(b); California Practice Guide, Landlord-Tenant, §§ 8:519.1-8:520.1 (Rutter Group 2021).

[436] Moskovitz et al., California Landlord-Tenant Practice, §§ 13.7-13.16A (Cont.Ed.Bar 2021). See also California Practice Guide, Landlord-Tenant, § 8:545 (Rutter Group 2021), relief pursuant to Code of Civ. Proc. § 473(b) must be made within a reasonable time, not exceeding six months after entry of the default.

[437] Servicemembers Civil Relief Act, 50 U.S.C § 3901; California Practice Guide, Landlord-Tenant, §§ 8:518.5-8:518.7 (Rutter Group 2021).

[438] California Practice Guide, Landlord-Tenant, Chapter 10, (Rutter Group 2021), and Moskovitz et al., California Landlord-Tenant Practice, Chapter 14 (Cont.Ed.Bar 2021).

[439] 11 U.S.C § 362(a)(1)-(3) and 11 U.S.C § 362(b)(22).

[440] 11 U.S.C § 362(d).

[441] 11 U.S.C § 362(c) and (d).

[442] 11 U.S.C § 362(b)(22) and (l)(1), which provide protection for the tenant if there are circumstances which would allow the tenant to cure the money damages or where the tenant has deposited with the clerk of the court any rent due after the filing of the bankruptcy.

[443] 11 U.S.C § 362(b)(23) and (m)(1).

[444] Moskovitz et al., California Landlord-Tenant Practice, § 14.32 (Cont.Ed.Bar 2021).

[445] Civ. Code § 1942.5.

[446] Civ. Code § 1942.5.

[447] Civ. Code § 1942.5(a) and (b); California Practice Guide, Landlord-Tenant, §§ 7:375-7:377 (Rutter Group 2021).

[448] Moskovitz et al., California Landlord-Tenant Practice, § 12.38 (Cont.Ed.Bar 2021).

[449] Civ. Code § 1942.5(d).

[450] Gov. Code §§ 12955(f) and 12955.7; 42 U.S.C § 3617.

[451] California Practice Guide, Landlord-Tenant, §§ 7:210 and 7:393 (Rutter Group 2021).

[452] Civ. Code § 1950.5(j). Exception: pursuant to Civ. Code § 1050.5(j)(3), If the new landlord acted in the good faith belief based upon an inquiry and reasonable investigation that the old landlord properly complied with the transfer or refund requirement, the new landlord is not jointly liable with the old landlord.

[453] Weaver, California Tenants' Rights, 23rd Ed, page 233 (NOLO Press 2022).

[454] Civ. Code § 1950.5(j).

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Previous Section: Moving Out
Next Section: Resolving Problems

Return To Table of Contents
Return to Homepage

Back to Top Conditions of Use Privacy Policy Accessibility Contact Us