CHAPTER FIFTEEN

LANDLORD-TENANT LAW

■ KEY TERMS

assignment  lease  surrender
constructive eviction  nondisturbance clause  tenancy at sufferance
Costa-Hawkins Rental  periodic tenancy  tenancy at will
Housing Act  quiet enjoyment  tenancy for years
demise  rent control  30-day notice
exculpatory clauses  retaliatory evictions  three-day notice
habitability  security deposit  unlawful detainer action
implied warranty  sublease  writ of possession

■ TYPES OF TENANCIES

A leasehold interest (also known as a demise) is a nonfreehold estate in real property.

Tenancy for Years

A tenancy for years, or estate for years, is a leasehold interest with a definite termination date. The tenancy does not renew itself, and no notice is required to end it. A tenancy for years could be a rental of a summer cabin for a weekend or a multiyear lease.

Agricultural land in California cannot be leased for more than 51 years. Other property leases and mineral leases cannot exceed 99 years. (Mineral leases differ from mineral rights, which are grants or reservations of a fee interest and can go on forever.) Leases that provide for renewal options that could exceed these statutory limits are unenforceable.
**Periodic Tenancy**

A periodic tenancy renews itself automatically from period to period unless notice of termination is given. Customarily, the period would be the rent-paying period, and the most common periodic tenancy is a month-to-month tenancy.

Either the lessor (landlord) or the lessee (tenant) can give notice to terminate. Notice of up to the length of the rent-paying period is generally required to terminate, but for month-to-month tenancies, it is usually 30 or 60 days. The parties to a periodic tenancy can agree to a notice period of less than 30 days, but notice always must be given at least 7 days before termination. If the tenant has lived in the property at least 12 months, then the landlord must give a 60-day notice to terminate. If a tenant is under a rental agreement with a government agency, such as Section 8 Housing, then a 90-day notice is required.

In California, the notice to terminate does not have to coincide with the rent-paying period. For example, on a month-to-month tenancy that ends on the first of the month, notice could be given to end the tenancy on the tenth of a month if the notice were given at least 30 days prior to the termination (30-day notice).

Rent increases and changes in the terms of a periodic tenancy also require notice for the length of the rent-paying period, but generally, notice need not be given more than 30 days in advance. However, if a rent increase is greater than a 10% increase over rent charged within the prior 12 months, then a 60-day notice of the rent increase is required.

In the absence of any agreement, housing units and nonresidential properties are presumed to be rented on a month-to-month basis when no local custom to the contrary exists. However, agricultural rentals are presumed to be for one year unless another period was indicated.

**Tenancy at Will**

A tenancy at will is held at the pleasure of the lessor for an unspecified period of time. Under a tenancy at will, there is possession without an agreement on the rent payment. If rent was paid or rent was agreed on, the tenancy would convert to a periodic tenancy. An example of a tenancy at-will might be a tenant given possession while a lease was still being negotiated, before any agreement on rent has been reached. Under common law, no notice was required to terminate a tenancy at will, and it could be terminated by the lessor or lessee. Because California requires a notice by statute, California does not have a true tenancy at will.

**Tenancy at Sufferance**

In a tenancy at sufferance the lessee is a holdover tenant. For example, one who retains possession beyond the expiration of a tenancy for years, or a homeseller who fails to vacate by the agreed move-out date, is a holdover tenant.

California regards a tenant at sufferance as a trespasser rather than a tenant and considers an ejectment action or an unlawful detainer action (discussed later in this chapter) to oust the trespasser a proper remedy.

When a lessor consents to the holdover or accepts rent from the tenant at sufferance, a periodic tenancy, which would require statutory notice to terminate, results.
THE LEASE

A lease is an agreement that transfers a right of exclusive possession for a stated term from a landlord (lessor) to a tenant (lessee). The lessor under the lease subordinates his or her rights of occupancy to the rights of the tenant. The lessor retains a reversionary interest; the lessor is entitled to possession when the tenancy has ended.

Leasehold interests are considered personal property (chattels real) rather than real property. The laws of personal property, therefore, apply.

Because a lease is a contract, all the requirements of a valid contract are required for a valid lease.

Leases can be oral or written agreements. However, an oral lease is enforceable only if it can be fully performed within one year of being agreed on. For example, a one-year oral lease beginning on the date of agreement is enforceable, but a one-year lease starting one month after the agreement must be in writing to be enforceable.

Leases may be recorded, but recordation is not necessary between the parties. Recording does give constructive notice of a tenant’s interest, and this could be important in defining priority of interests when there is a subsequent trust deed or purchaser. A subsequent purchaser is not required to honor a lease for more than one year unless a memorandum of the lease is recorded, or the purchaser has constructive notice. Possession is deemed constructive notice, so a tenant’s rights could be challenged by a subsequent purchaser only if the tenant had vacated or had not yet occupied the premises at the time of transfer and also had failed to record the lease.

To be recorded, a lease must be acknowledged by the lessor.

No particular language is required to create a tenancy as long as the intent is clear. However, the language must include the names of the parties and clearly describe the premises, the amount of rent, and the term of the lease.

Commercial leases can be complex documents of dozens of pages, while residential leases are normally simpler contracts, as is the lease in Chapter 6.

If the lease is in writing, the lessor must sign the lease. A tenant who moves in or pays rent after receiving a copy of the lease will be viewed as having accepted the lease even when the tenant has not signed it.

If jointly owned property is leased by a husband and wife for more than one year, both spouses must sign the lease.

Unless use is restricted by the lease, the tenant can use the premises for any lawful purpose.
In the absence of any agreement or practice to the contrary, for leases of one year or less, rent is due at the end of each rent-paying period. The parties to a lease generally agree, however, that rent will be paid in advance.

A residential landlord can prohibit the smoking of tobacco products in the premises if stated in the lease. For existing tenants, a notice of change of terms of tenancy must be given.

Lease provisions that call for forfeiture of the premises upon some default must be stated clearly. The courts generally will construe agreements to avoid forfeiture if the result will be inequitable. For forfeiture, a demand must be made for performance unless such demand would be futile. Failure to pay rent does not justify forfeiture.

If a tenant breaches a provision of the lease that calls for forfeiture and the landlord accepts rent knowing of the breach, the landlord could be said to have waived his or her right to declare forfeiture. This would not be the case if the lease specifies that acceptance of rent will not waive the landlord's rights to declare a forfeiture in the event of a continuing or subsequent breach.

Civil Code Section 1670.5, which prohibits the enforcement of unconscionable contracts, also applies to leases. Clauses that are so harsh as to be considered unconscionable will not be enforced by the courts. For example, courts will not enforce acceleration clauses in leases where the entire rent for the term of the lease becomes due if the lessee fails to make a payment by a specified date.

Leases often provide that they are renewed automatically if either party fails to give notice. An automatic renewal under such a lease would be voidable by the lessee if the lessee did not prepare the lease, or if the automatic renewal clause was not printed in at least eight-point type and a reference to the automatic renewal was not placed in at least eight-point type just above where the lessee signs.

**Notices and Management**

The owner or agent of every multiunit dwelling of more than two units must disclose and keep current the name and address of each person authorized to manage the premises and to receive notices and demands on behalf of the owner.

Every residential property containing 16 or more units must have a resident manager.

**Fair Housing**

All the federal and state fair housing acts apply to discrimination in rentals. For a detailed discussion of these rights, see Chapter 4.

**Fixtures**

The lease may provide the tenant with rights to remove improvements. In the absence of such an agreement, fixtures stay with the property.

Because forfeiture is a harsh penalty, courts often will find tenant improvements to be personal property when they clearly would be justified in declaring the items fixtures. When there is doubt about whether an improvement can be defined as a fixture, courts generally will find in favor of the tenant.
As mentioned in Chapter 7, a tenant has the right to remove the annual crops that are the fruit of his or her labor, even after the tenancy has ended.

**Trade Fixtures.** Trade fixtures, also discussed in Chapter 7, generally must be removed prior to the expiration of the lease. In the case of a month-to-month lease, the courts usually allow a reasonable period for removal of the fixtures; this period could extend beyond the termination date.

As discussed in Chapter 11, the lessor should record and file a notice of nonresponsibility to be protected from mechanics’ liens when a tenant makes improvements or repairs. If the lease obligates the tenant to make alterations, improvements, or repairs, a lien could be placed against the property even when the notice of nonresponsibility was filed. The tenant may become an agent of the owner in authorizing the work required by the lessor.

**Options**

Leases frequently contain options to purchase or options to renew. Part of the rent is generally regarded as consideration for the option. Ordinarily, time is considered to be of the essence for options; that is, they must be exercised within the period provided.

**Exculpatory Clauses**

Leases frequently contain exculpatory clauses, which purport to relieve the landlord of all liability for injury to the tenant and others as well as damage to the tenant’s property. Despite the language of these clauses, a lease cannot excuse the landlord for acts, fraud, or violations of the law that are either willful or negligent. The tenant cannot waive the landlord’s duty. Civil Code Section 1953 declares that exculpatory clauses in residential leases executed after January 1, 1976, are invalid.
Case Study
a commercial lease that included an exculpatory clause, which stated, “Not-
withstanding lessor’s negligence or breach of this lease, lessor shall under
no circumstance be liable for injury to lessee’s business or for any loss of
income or profit therefrom.”
The complaint alleged excessive moisture and the growth of mildew and
mold on the leased premises. The defendant was notified of the problems
and allegedly refused to remediate them. The tenant was unable to conduct
business on the premises and sued for damages. The Santa Barbara Supe-
rior Court granted judgment to the landlord on the pleadings (a demurrer)
based on the exculpatory clause, and awarded $101,600 attorney fees to the
owner and $38,020 attorney fees to the property management firm.
The Court of Appeal reversed, ruling that the exculpatory clause only shielded
the landlord from passive negligence, not from active negligence. Chimney
Sweep was allegedly actively negligent in refusing to remediate the problem
caused by excessive moisture and mold infestation.
Note: This decision shows the disdain courts hold for exculpatory clauses in
which landlords attempt to avoid all liability for causes that are under their
control.

Security Deposits
A security deposit is any payment, fee, deposit, or charge (not limited to the
advance payment of rent) required by the lessor to secure the performance of a
rental agreement. The maximum allowable security deposit for unfurnished units
is two months’ rent. For furnished units, it cannot exceed three months’ rent
[Civil Code Section 1950.5(c)].
The lessor may appropriate necessary amounts from the deposit to remedy rent
default, to repair damage done by the tenant, or to clean the premises upon ter-
mination of the tenancy if the deposit was made for those purposes [Civil Code
Section 1950.5(e)].
The landlord must notify a tenant in writing of the tenant’s right to request and be
present at a pre-vacancy inspection of the tenant’s rental unit. The purpose is to
allow the tenant to correct any deficiencies so that the landlord does not deduct
the correction costs from the tenant’s security deposit. The tenant’s right to a pre-
vacancy inspection does not apply where the tenant is evicted for failure to pay
rent or for violating conditions of the lease.
Security deposits do not apply to normal wear and tear. They apply to negligence
and failure to maintain the premises in a reasonable manner.
No later than three weeks (21 days) after the tenant has vacated the premises, the
landlord must furnish the tenant with an itemized written statement of the basis
for, and the amount of, any security deposit retained, as well as the disposition of such security, and must return any remaining portion of such security [Civil Code Section 1950.5(e)]. If documentation is not provided as to actual costs incurred by the landlord to repair or clean the rental unit, the landlord may not retain any portion of the deposit. The landlord need not provide this documentation if the deductions are $125 or less.

When the landlord transfers the property, the security deposit must be either transferred to the new owner with notice given to the tenant, or returned to the tenant. In either case, the landlord can deduct sums due for rent, repairs, or cleaning. If the security deposits are not transferred to the new owner, the new owner and the former owner are jointly liable for the repayment of security deposits to the tenants [Civil Code Section 1950.5(i)].

An amendment to Civil Code Section 1950.5 makes the landlord liable for interest on unreturned security deposits at 2% per month. Any successor in interest of the landlord also will be liable.

The bad-faith retention by the landlord (or transferee in interest) of any portion of the deposit may subject the landlord to twice the amount of the security deposit plus actual damages to $600 in damages in addition to actual damages [Civil Code Section 1950.5(j)].

The tenant’s right to the return of the security deposit is a priority claim above those of any creditor of the landlord other than a trustee in bankruptcy.

In the absence of any agreement to pay interest or a local statute requiring interest, a landlord need not pay interest on security deposits. (Berkeley and San Francisco had ordinances requiring such interest.)

Case Study
The case of Korens v. Zukin Corp. (1989) 212 C.A.3d 1054 was a $1.5 million class-action suit for interest on security deposits. In dismissing the lawsuit, the court pointed out there was no state law requiring landlords to pay interest on security deposits. “Any requirement that interest be paid should be enacted explicitly by the legislature, not developed through doctrinal manipulation by the courts.”

If a lessor takes a security deposit in the form of the last month’s rent, it is taxable to the lessor as regular income in the year received. If, however, the deposit is intended strictly to secure the payment of rent, cleaning, and possible damages, the deposit will be taxable only if and when it is forfeited.
Case Study
In the case of People v. Parkmerced Co. (1988) 198 C.A.3d 683, the district attorney sued the owner and management company of a 3,400-unit apartment complex. Tenants were charged $65 more for the first month’s rent on a one-year lease than for the other 11 months and were also charged a $50 transfer fee if they wished to change apartments.

The Court of Appeal affirmed the trial court’s decision that these fees were security deposits within the meaning of Civil Code Section 1950.5. Because the fees were not intended to cover repairs or tenant defaults, the defendants were not allowed to keep them. Defendants were ordered to reimburse past tenants for fees charged, notify current tenants of their right to receive a refund, and pay $222,000 in civil penalties and $40,000 in attorney fees.

A landlord can require a nonrefundable applicant screening fee for tenants (up to $49.50). Upon request, the landlord must supply the rental applicant a copy of a credit report paid for by the applicant (Civil Code 1950.6).

Civil Code Section 1950.7 sets forth rights and obligations as to security deposits for commercial tenancies.

■ ASSIGNMENTS AND SUBLEASES

An assignment of a lease transfers the entire leasehold interest. The assignee becomes the tenant of the original lessor. The assignee is primarily liable on the lease, while the assignor retains secondary liability. (The assignor remains as a surety on the lease.)

Instead of assigning, the lessee would be better off surrendering the premises to the lessor and letting the assignee become a tenant on a new lease. If the lessor agrees to this, the original lessee will be free from any liability on the lease.

In a sublease, the lessee becomes a lessor (sublessor), and the sublessee is the tenant of the original lessee, not the tenant of the original lessor.

Figure 15.1 illustrates the differences between an assignment and a sublease.
Under a sublease, the lessee remains primarily liable on the lease. A sublease can be for the same term or less than the term of the original lease, and can be for all or part of the leased premises.

No privity of contract between the sublessee and the lessor exists. If the original lessee is evicted or the lease otherwise terminates, the rights of the sublessee also terminate.

The sublessee cannot have any greater rights than the original lessee had, because the sublessee’s rights were granted by the sublessor.

Besides the ability to sublet only part of the premises, an important advantage of subleasing is that a rent differential is possible.

An option to purchase in a lease would go with an assignment, or it even can be separated from the lease unless the transfer of the option is prohibited by its terms. An option to purchase does not go with a sublease.

If a lease fails to restrict assignment or subleases, the lessee can freely transfer the lease interest. A lease may prohibit transfer of a tenant’s rights (Civil Code Section 1995.230), but if transfer is allowed with the lessor’s consent, consent cannot be refused unreasonably. The lease can require that the landlord share in some or all of the profits from an assignment or sublease (Civil Code Sections 1995.240 and 1995.250).


An assignment or sublease made when prohibited by the lease may be voidable, but is not void. A lessor who accepts rent after having knowledge of the assignment or sublease, however, has consented to it.

### TERMINATION OF LEASES

A lease can be terminated by or for the following reasons:

- Destruction of the premises—some leases, however, provide that the rent is merely tolled (temporarily suspended) and the landlord has a stated period of time to rebuild.

- Action of a public body (eminent domain)—the tenant is released if the entire property is taken, but in cases of partial condemnation, where the portion remaining continues to meet the needs of the lessee, the lessee could be required to continue to pay rent (or a reduced rent). For example, the taking of several feet to widen a road probably would not allow the tenant to terminate the lease. A tenant could have a claim of loss against the public body for condemnation. In some cases, commercial tenants have received as much compensation in condemnation cases as the owners of the structures.
■ Commercial frustration—this applies to unforeseen events, the non-occurrence of which was a condition precedent of the contract (see Chapter 5).

■ Merger—where the same party acquires the lessee’s and the lessor’s interests, the lesser interest is lost by merger. For example, when a tenant under a long-term lease purchases the premises from a landlord and later sells the property, the former tenant will have lost the rights under the lease. When the tenant purchased the property, the tenant became the owner and no longer was a tenant.

■ Bankruptcy of the tenant—the bankruptcy court could, however, determine that the lease was an asset of the bankrupt and assign it to another.

■ Expiration or notice—estates for years terminate automatically by their terms. Notice ends a periodic tenancy.

■ Foreclosure—the foreclosure of a trust deed recorded prior to the lease terminates the lease. (The cancellation is not automatic, as the new owner can elect to accept the existing lease.) A tenant who is entering a lease that requires a great expenditure of labor and/or capital on the premises should consider obtaining the agreement of any prior trust deed beneficiary to recognize the lease in the event of foreclosure (nondisturbance clause).

■ Failure to pay rent.

■ Failure to give possession.

■ Violation of any material condition of the lease.

■ Use of the premises for an illegal or unauthorized purpose.

■ Abandonment of the premises by the lessee.

■ Surrender of the premises by the lessee (accepted by the lessor).

■ The landlord’s violation of the implied warranties of quiet enjoyment and habitability.

■ The landlord’s failure to make needed or agreed-on repairs.

■ Domestic violence, sexual assault, or stalking.

■ The tenant is a victim of human trafficking.

In the absence of an agreement to the contrary, the death of neither the lessor nor the lessee will terminate a lease.

■ **RIGHTS AND RESPONSIBILITIES OF LANDLORDS**

**Right of Entry**

In the absence of any agreement, the landlord can enter leased premises only when

■ an emergency requires entry;
■ the tenant consents to an entry;
■ the entry is during normal business hours after reasonable notice (24 hours is considered reasonable) to make necessary or agreed repairs, alterations, or improvements, or to show the premises to prospective or actual purchasers, mortgagees, tenants, workers, or contractors, and the notice must specify date and approximate time as well as purpose of entry (Civil Code Section 1954);
■ the tenant has abandoned or surrendered the premises; or
■ the landlord has obtained a court order to enter.

The tenant cannot waive or modify his or her rights to privacy (Civil Code Section 1953).

**Habitability**

A residential lease has an **implied warranty** of **habitability**. The landlord must put a building intended for human habitation in a condition fit for occupancy and repair subsequent dilapidation. The landlord does not have this duty when the problem relates to a tenant’s cleanliness, willful damage, or use in a manner other than intended. Under English common law, the landlord had no responsibility for any repairs, and the tenant had a duty to make only minor repairs.

The landlord must ensure at least that

■ the plumbing is in proper working order;
■ hot and cold water supply will be maintained;
■ the heat, lights, and wiring work and are safe;
■ the floors, stairways, and railings are in good condition;
■ when rented, the premises are clean, with no pests;
■ areas under lessor control will be maintained;
■ the roof does not leak and no doors or windows are broken; and
■ adequate garbage receptacles must be supplied.

Effective in 2014, all pre-1994 residential and commercial property, as a condition for building permits or certificate of completion for alterations or improvements, must replace noncompliance plumbing fixtures with water conservancy fixtures. Issuance of a building permit also triggers an owner’s responsibility to update smoke alarms.

The landlord is required to notify residential tenants in advance of pest control treatment, including repeat treatment.

A tenant cannot waive his or her rights under the landlord’s implied warranty of habitability; however, the landlord and tenant can agree that the tenant will make the required repairs based on a rent reduction.
A landlord who demands or collects rent for an untenable dwelling as defined in Civil Code Section 1942.4 is liable for actual damages sustained by the tenant and special damages of not less than $100 or more than $5,000. The special damages also apply to landlords who raise rent or issue a three-day notice to quit or pay rent when the premises are untenable.

Landlords of substandard uninhabitable properties can be required to pay relocation costs for displaced tenants.

Civil Code Section 1174.2 provides that where a tenant prevails in an unlawful detainer action due to the landlord’s breach of the warranty of habitability, the court will set the rent. The tenant must pay the rent set by the court within five days. The Code of Civil Procedure Section 1174.21 provides that a landlord shall be liable for tenant costs and attorney fees when the landlord initiated an unlawful detainer action for nonpayment of rent when the premises are not tenantable.

Case Study
In the case of Hyatt v. Tedesco (2002) 96 C.A.4th Supp. 62, a tenant raised the affirmative defense of habitability to an unlawful detainer action. The superior court appellate division in reversing the trial court held that the trial court is required to determine if a substantial breach has occurred. (Substantial breach is a failure of the landlord to comply with applicable building and housing standards that materially affect health and safety.) If so, the trial court should reduce the rent to reflect the breach, give the tenant right to possession conditioned upon paying the reduced rent, order the rent reduced until repairs are made, and award costs and attorney fees to the tenant. The landlord can also be ordered to make the repairs.

Case Study
In the case of Espinoza v. Calva (2008) 169 C.A. 4th 1393, a tenant defended an unlawful detainer action, claiming inhabitability and the fact that the rental was an illegal unit.

The court held that the landlord could not collect for the back rent. The landlord failed to obtain a certificate of occupancy for the unit. Therefore, the lease was an illegal contract and unenforceable. The landlord could, however, obtain possession.
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**Case Study**
The case of *City and County of San Francisco v. Sainez* (2000) 77 C.A.4th 1302 involved landlords who failed to maintain their premises. Building inspection found no or inadequate heat; deterioration of walls, ceilings, and windows; lack of fire extinguishers; hazardous wiring; hazardous plumbing; lack of smoke detectors, etc. The superior court imposed fines of $767,000. The Court of Appeal ruled the fines were proper but reduced them to $663,000 because of a miscalculation. The Court of Appeal ruled that fines were not excessive because the landlords own at least 12 properties with net equity of $2,300,000. While the landlords had the ability to do so, they had refused to bring the building up to a safe standard.

*Note:* This case shows court frustration with landlords who refuse to correct serious health and safety problems.

Municipalities are prohibited from requiring landlords to disclose, report, or take eviction action based on a tenant’s (or prospective tenant’s) citizenship status.

**Liability for Injuries**

If a landlord is negligent and that negligence results in injury to another, the landlord is liable for those resulting injuries. If defects at the time of leasing could have been discovered by a reasonable inspection, then the failure to cure the defect would be negligence. If a dangerous condition occurs after leasing and the landlord has a duty to repair, then failure to repair after notice of the problem could subject the landlord to liability for injury.

For a period of time, California courts were following a rule of strict liability, holding landlords liable for injuries to others, even when there was no negligence by the owner. The following case illustrates the present view as to landlord liability; now proof of negligence is required.

**Case Study**
The case of *Peterson v. Superior Court* (1995) 10 C.4th 1185 involved a hotel that was sued by a guest for an injury caused by a slippery bathtub. The court pointed out that because the innkeeper did not build the structure or its components, strict liability should not be imposed without proof of negligence. The court decided it was in error when it previously held landlords strictly liable in tort for personal injuries caused by defective components. The court pointed out that landlords still are liable under general tort principles for injuries caused by defects in their premises if the landlord is negligent.
Case Study
The case of Penner v. Falk (1984) 153 C.A.3d 858 indicated that punitive damages would be proper if the landlord knew of an existing dangerous condition and failed to correct it.

Commercial leases customarily require that tenants carry liability insurance coverage, which also protects the landlords from claims resulting from the condition of the premises.

A landlord who knows of a dangerous situation has, at the very least, a duty to warn a tenant.


Case Study
A child was bitten by a pit bull owned by a tenant in a neighboring property not owned by the plaintiff’s landlord. In Wylie v. Gresch (1987) 191 C.A.3d 412, the parents sued the landlord because they had not been warned of the dog’s dangerous propensities. The court held the landlord was not liable because the duty of disclosure applied to the landlord’s own property but should not extend to the neighborhood.

A landlord, in some instances, could be liable for injuries occurring off the premises.

Case Study
The case of Barnes v. Black (1999) 71 C.A.4th 1473 involved a child who died from injuries received when his Big Wheel veered off the sidewalk to the play area, down a steep driveway into a busy street where he was hit by an automobile. The parents sued the apartment owners for negligence, premises liability, and negligent and intentional infliction of emotional distress. Several residents had complained to the apartment manager, who informed the owner of dangers to children passing the steep driveway.

Because the injury occurred in the street, not on the premises, the superior court granted summary judgment for the landlord.

The Court of Appeal pointed out that the fact that the injury was on a public street was not controlling.

The scope of the landlord’s duty of care is related to the foreseeability of harm and the closeness of connection between the defendant’s conduct and the injury. The Court of Appeal reversed.
Case Study

The case of Tan v. Annel Management Co. (2008) 162 C.A. 4th 621 involved a tenant who upon returning to his apartment around midnight could only find a parking space in the ungated leasing office parking lot (the tenant parking lot was gated). As he was parking, the tenant was attacked and shot in the neck, and his car was stolen. The tenant was rendered a quadriplegic. In a lawsuit against the apartment owners and property manager, it was alleged that there was failure to protect the tenant against foreseeable criminal acts of third parties. In the two years before the attack, three violent attacks occurred in the ungated areas of the project. The trial judge dismissed the action because the shooting was not foreseeable. There had been no prior carjackings involving a gun.

The Court of Appeal reversed and sent the case back for a jury trial, reasoning that the three prior criminal attacks put the parties on notice of foreseeable future criminal acts. The court noted that the cost of a security gates was minimal, about $14,000 for the 620-apartment project. The duty to act is determined by balancing foreseeability against the burden of security measures.

Case Study

The case of Madhani v. Cooper (2003) 106 C.A.4th 412 involved a plaintiff who complained to the landlord about an aggressive and verbally abusive new tenant. Continued problems were met by continued assertions by the building manager that they would take care of the problem. The problem tenant caused further problems. He allegedly shoved the plaintiff’s mother. There were at least six complaints to the manager. The abusive tenant then allegedly followed the plaintiff into her apartment, pulled her out, hit her, and threw her down the stairs. Plaintiff suffered numerous injuries. When plaintiff sued the landlord for negligence, the superior court granted summary judgment for the landlord.

The Court of Appeal reversed stating, “It is difficult to imagine a case in which the foreseeability of harm could be more clear.” The court held that there was a close connection in landlord’s failure to react to at least six reports of the violent and threatening behavior of the tenant and the harm suffered by Madhani.

This case basically held that a landlord who knows of a dangerous situation under the landlord’s control has a duty to prevent harm to a tenant.
Case Study
The case of *McDaniel v. Sunset Manor Co.* (1990) 220 C.A.3d 1 indicates any landlord who undertakes to protect a tenant can be liable if he or she does so negligently. The plaintiffs resided in a large, federally subsidized complex having approximately 300 children. The defendant had constructed a wood fence 857 feet on one side and 400 feet on the other. Evidence was given that holes in the fence would develop, and sometimes a week would pass before a hole was repaired. The plaintiff’s two-year-old child was found floating in the creek on the other side of the fence. She suffered brain damage and quadriplegia, having apparently crawled through a large hole in the fence. The Court of Appeal noted that simply because the injuries occurred on adjacent property did not automatically bar recovery. In constructing the fence, Sunset Manor Company affirmatively assumed a duty.

*Note:* This case sends a message to landlords that they shouldn’t build a fence because if they do so and the fence is not kept in good repair, they could be liable for injuries on adjacent property.

Case Study
In the case of *Barber v. Chang* (2007) 151 C.A. 4th 1456, the owner of an apartment building, Chang, was notified by certified letter by a tenant that Daniel, another tenant, had threatened her and aimed a shotgun at her. About three weeks later, Barber, a former tenant, visited the property and Daniel accused him of stalking his family. He produced a shotgun and shot Barber in the leg; he then kicked out one of Barber’s teeth and again shot Barber in the leg. Barber sued Chang for negligence alleging he owed Barber a duty of reasonable care.

Chang moved for summary judgment on the grounds that he owed no duty of care to a visitor and it would be unreasonable to expect him to hire security guards.

The Court of Appeal reversed ruling the assault was foreseeable. There was a matter of fact for the jury as to whether Chang reasonably responded to the notice by not evicting Daniel. Forseeability is a crucial factor in determining not only the existence of the landlord’s legal duty, but its scope. The case was remanded for trial.
Case Study
The case of *Davis v. Gomez* (1989) 207 C.A.3d 1401 involved Ms. Townsend, a tenant in the defendant's building who began to "deteriorate." Besides being observed talking to herself, she allegedly attempted to cast spells on other tenants. Other tenants alleged they had seen a gun in her apartment. Tenants complained to the manager about her behavior. Subsequently, she shot and killed another tenant. The parents of the victim sued the landlord for damages.

The court held that the landlord had no duty to check Townsend's background before renting. The landlord was also not qualified to judge whether she was psychotic. If the landlord had evicted Townsend, the landlord might have been subject to liability. While her conduct was bizarre, it had not been violent. Townsend was more of a nuisance than a danger. A landlord's failure to eliminate a nuisance is not the same as a failure to prevent a serious criminal act. In this case, it was not foreseeable that she would shoot another tenant.
Case Study

In the case of Castaneda v. Olsher (2007) 41 C. 4th 1205, Castaneda was shot by a stray bullet during a gang fight in the mobile home park where he lived. Castaneda sued the park owners alleging they breached a duty not to rent to known gang members or to evict them when they harassed other tenants. Vitoria, who lived across the street in Space 23, had fired the shots. Several months prior to the shooting, a complaint was made about the occupants of Space 23 to the manager. The manager notified the owner about gang-related problems and was told, “Their money is as good as yours.”

At trial, testimony was given that persons dressed like gang members congregated at Space 23. Castaneda’s attorney argued that the park should not have rented to gang members, should have evicted the gang members after the complaint, should have hired security guards, and should have repaired shot-out street lights. The Superior Court granted a nonsuit because plain-tiff failed to show prior similar incidents such that a shooting was highly foreseeable.

The Court of Appeals reversed and remanded for trial stating plaintiff presented evidence that the park was aware they were renting to gang members and that there was a duty to undertake security measures to protect residents. On appeal, the California Supreme Court reversed the decision stating a landlord owes a tenant a duty, arising out of their special relationship, to take reasonable measures to secure areas under the landlord's control against foreseeable criminal acts of third parties. The court then explained a landlord does not have a duty to refuse to rent to or evict gang members without evidence of foreseeability of harm to other tenants or guests. The court noted that the mobile home residency laws limit park owners to only two grounds for refusing to approve a tenant. 1. Lack of ability to pay park rent and charges; 2. a reasonable determination based on prior tenancies that the tenant will not comply with park rules and regulations.

The court also stated that, because of lack of foreseeability, the owner had no duty to hire security guards or install brighter lighting. A shootout between two rival gangs was not highly foreseeable.

Note: A refusal to rent to a suspected gang member could be discriminatory based on race or ethnicity, dress, appearance, or reputation, which could subject a landlord to liability.
Case Study
The case of Myrick v. Mastagni (2010) 185 C.A. 4th 1082 involved two women who were killed when a building collapsed in an earthquake. The trial court found the owners negligent for failing to perform seismic retrofitting and awarded $1.9 million damages.

On appeal, the defendants contended they had no duty to retrofit. A city ordinance did not require retrofitting until 2018. The Court of Appeal indicated that compliance with an ordinance is not a defense as to negligence. The ordinance set the minimum standard of conduct. The owners must use ordinary care that a reasonable person would use in view of the probability of injury. The trial judgment was upheld.

Security
A landlord who represents a building to be secure or indicates it is protected by a security service or device and then fails to maintain security could subject the landlord to liability.

Failure of a landlord to take reasonable measures to correct a security problem after the landlord has become aware of the problem also could subject the landlord to liability. Civil Code 1941.3 requires that landlords install and maintain security devices in residential structures, which include deadbolt door locks, security or locking devices on windows and sliding doors, and specified locks on doors to common areas.

■ RIGHTS AND RESPONSIBILITIES OF TENANTS

Quiet Enjoyment
There is an implied warranty in a lease that the landlord will not interfere with the tenant’s quiet enjoyment of the premises. Civil Code Section 1927 requires that the lessor secure quiet enjoyment of the lessee against all persons lawfully claiming the premises. A landlord who harasses a tenant by making unnecessary repairs, or encourages other tenants to disturb the tenant, has breached the tenant’s right to quiet enjoyment.

Tenant Repairs
If, after a reasonable period of receiving written or oral notice, the landlord fails to make needed repairs, the tenant can make the repairs necessary to make the premises habitable, spending up to one month’s rent. The tenant then can deduct the expenditures from rent payments. The tenant can use this remedy no more than twice during any 12-month period (Civil Code Section 1942). As an alternative, the tenant may consider the landlord’s failure to make the premises habitable a breach of the lease and vacate the premises, relieved of all further lease obligations.

A tenant who acts to make repairs after the 30th day following a notice to repair is presumed to have acted after a reasonable notice. California courts have allowed another remedy: they will allow a tenant to remain in possession and pay a reduced rent, based on the reduction of usefulness of
the premises, when the landlord fails to maintain a habitable dwelling [Hinson v. Delis (1972) 26 C.A.3d 62].

Case Study
In the case of Schulman v. Vera (1980) 108 C.A.3d 552, a commercial tenant raised as a defense in an unlawful detainer action that the owner had breached a covenant to repair. The court held that the tenant could not remain without paying rent. The court refused to extend the breach of an implied warranty of habitability as a defense available to commercial tenants.

Duties of Tenants
The tenant's duties include

- paying rents and other charges as agreed;
- the landlord may not require that rent be paid in cash unless the tenant had previously failed to pay the rent;
- keeping the premises under control in a clean and sanitary manner and disposing of garbage and trash properly (unless the lessor by agreement has taken this responsibility);
- exercising reasonable care in the use of plumbing, electrical and gas fixtures, and appliances.
- not permitting others to damage or deface the premises and not doing so himself or herself;
- using the premises for the purpose for which they were intended to be used; and
- using the leased premises for a lawful purpose.

Case Study
The case of Sachs v. Exxon Co., U.S.A. (1992) 9 C.A.4th 1491 involved refusal by the tenants to allow the landlord to conduct soil-contamination tests.

The landlord contended that leakage from tanks could damage the soil for which the landlord could be liable under state and federal laws. The trial court determined in favor of the lessee, but the decision was reversed by the Court of Appeal.

The lease required the tenants to comply with all laws and ordinances. The court pointed out that there is an implied covenant of good faith and fair dealing in the lease that provides a reasonable means for the landlord to get assurance of protection as to environmental hazards.
Case Study
The case of Brown v. Green (1994) 8 C.4th 812 involved a dispute between a landlord and a tenant as to responsibility for compliance with an order for asbestos abatement in a commercial building.

The trial court determined that the language of the lease required the tenant to remove and clean up the asbestos and the superior court affirmed. The 15-year lease was a net lease for an entire warehouse building. The tenants were sophisticated business partners with substantial experience in leasing commercial property. Prior to the execution of the lease, they were on written notice of a potential for asbestos contamination; however, they failed to conduct any investigation. The court pointed out that the cost of the asbestos removal only amounted to 5% of the total rent due on the lease.

*Note:* The court’s consideration of the term of the lease, cost of repair, and sophistication of the tenant leaves the impression that if the tenant were less sophisticated, the lease were for a shorter term, and the cost to comply was great, then a different decision might have been made.

### THE EVICTION PROCESS

“Self-help” evictions, such as removing doors, changing locks, seizing tenants’ property, and engaging in extreme harassment could subject the landlord to damages, as well as require the landlord to return the premises to the tenant (Code of Civil Procedure Section 1174).

Evictions usually start with a **three-day notice** to quit, to quit or cure, or to quit or pay rent.

Notice to quit must be served in the following manner:

1. A copy of the notice must be delivered to the tenant personally.
2. If the tenant is absent, a copy must be left with a resident over the age of 18, and a copy must be sent through the mail to the tenant’s place of residence.
Case Study
The case of *Camacho v. Shaefer* (1987) 193 C.A.3d 718 involved a self-help eviction action. The tenant had withheld rent because only one electrical outlet functioned, there were holes in the bathroom ceiling, there was no hot water or gas, and the apartment was infested with roaches and rats. The owner came to the apartment and removed the sofa, beds, table, and chairs. The tenant then obtained a restraining order against the landlord, but the landlord returned, forced the door open, breaking the chain, and removed the refrigerator. The Court of Appeal upheld compensation and punitive damages as well as attorney fees totaling $32,600 for the defendant’s failure to follow unlawful detainer procedures.

3. If the tenant’s place of residence or business cannot be found, or if a person of suitable age or discretion cannot be found, a copy of the notice may be affixed in a conspicuous place on the property; a copy should be given to a person residing on the property, if applicable; and a copy must be mailed to the property address by first-class mail. This process is informally called “nail and mail.”

If the tenant does not quit, cure, or pay rent, the lessor may initiate an unlawful detainer action to evict the lessee. An unlawful detainer action can be used not only against a tenant who fails to pay rent or to perform conditions or covenants of the lease, but also against a tenant at sufferance.

For an unlawful detainer action, the landlord must allege that

- proper three-day notice was given and the tenant is still in possession, and
- rent is due or a condition of the lease has been breached.

The summons issued requires that the defendant (tenant) appear and answer the charges within five days after service.

If the tenant fails to respond within five days, a default hearing is set, and the court can issue a writ of possession. After service of the writ on the tenant, the tenant has five days to vacate, or the tenant can be evicted physically by the sheriff.

A tenant who does respond can appear and claim a defense, such as a denial, or that the landlord breached a condition or covenant, that the landlord failed to keep the premises in a habitable condition, that the landlord failed to cure lead defects, that the rent has been paid as agreed, that the tenant made an appropriate deduction from the rent, and so forth. The court then will decide on the facts and enter either a judgment for the landlord, entitling the landlord to a writ of possession, or a finding for the tenant, in which case the eviction will fail.

If the tenant delivers possession prior to trial or before judgment, the unlawful detainer action can be allowed to continue as a civil claim for damages.
Because of drug-related crime in Los Angeles County, the legislature authorized a pilot program allowing several city attorney and prosecutor offices to bring unlawful detainer actions to abate drug-related nuisances if the landlord did not act. The landlord was charged fees and costs.

Because the landlord is an unsecured creditor of the tenant, the landlord has no lien against the personal property of the tenant for rent.

Inventory of property left on the premises must be taken and verified by an enforcing officer. A tenant’s personal property remaining on the premises after they are restored must be stored by the owner for 30 days and may be reclaimed by the tenant during that period upon payment of reasonable storage costs.

Any property not redeemed by the tenant within 30 days may be sold at a public sale, and the proceeds may be used by the owner to pay the costs of storage and sale. Any balance remaining after payment must be returned to the tenant.

A landlord can sue on each rent installment as it becomes due. Usually, however, the landlord retakes possession through eviction proceedings and sues the tenant at the end of the term for damages in the amount of the difference between the lease rental and any lesser amount obtained by reletting.

A landlord has a duty to mitigate damages after retaking possession. The landlord must use reasonable efforts to rerent to keep the damages as low as possible.

**Foreclosure**

Under the federal Protecting Tenants at Foreclosure Act, tenants in foreclosed property have the right to remain in possession until their lease expires unless the owner will be occupying the property as a principal residence. If so, the tenant is entitled to a 90-day notice to vacate. If the tenant is on a month-to-month tenancy, there must be a 90-day notice to terminate tenancy after foreclosure.

Additionally, Civil Code Section 2924.85 requires that rental applicants be given notice that an owner has received a notice of default and that there is a pending foreclosure.

**Unlawful Detainer Assistants**

A number of persons have gone into business offering assistance to persons being evicted. They would help tenants file questionable counterclaims and come up with, in some cases, defenses based on other than facts. Because of these abuses, Business and Professions Code 6400 et seq. requires that such assistants be registered and post a $25,000 bond. The advertisements of these assistants require disclosures, and if landlords or managers are awarded damages for acts of a registered assistant, they can recover their damages from the bond.

**Retaliatory Eviction**

A landlord cannot decrease services, increase rent, or evict within 180 days after a tenant exercises a protected right, including

- complaining to the landlord about the habitability of the premises,
- complaining to a public agency about defects, and
- lawfully organizing a tenant association.
A tenant cannot waive his or her rights of defending against such retaliatory evictions. If a landlord can be shown to have acted maliciously, the tenant will be entitled to receive from $100 to $1,000 in punitive damages.

Case Study
The case of Vargas v. Municipal Court (1978) 22 C.3d 902 concerned farm workers who received free housing as part of their compensation. The workers were fired for organizing a union and given notice to vacate their premises. The tenants raised the defense that their employment had been wrongfully terminated. The California Supreme Court held that, even though the employees had redress through labor legislation, wrongful discharge was a valid defense against eviction. The employees were not deprived of the defense of retaliatory eviction.

Domestic Violence
A landlord cannot terminate or refuse to renew a lease because the tenant was a victim of domestic violence. Protection is waived if the victim allowed the perpetrator to visit the property. The landlord must rekey at the tenant's request within 24 hours of written proof that a court protection order is in effect.

Menace
While a landlord may properly offer a tenant an inducement, such as cash, to vacate, it is unlawful for a landlord to attempt to influence a tenant to vacate a rental unit by force, threat, extortion, other menacing acts, or by interfering with a tenant's quiet enjoyment of the premises. A tenant may recover up to $2,000 from the landlord for each unlawful act.

Constructive Eviction
An act of the lessor that is inconsistent with the quiet enjoyment of the lessee or the implied covenant of habitability can be treated by the lessee as being constructive eviction, that is, equivalent to eviction. The tenant may vacate and will be released of all further obligations under the lease. If a tenant fails to vacate within a reasonable period after a noncontinuous act by the lessor, the tenant may waive his or her rights to declare the act to be constructive eviction.

Examples of acts, or failure to act, that could constitute constructive eviction include
- failing to make required repairs,
- failing to maintain the premises in a habitable condition,
- making needless or unnecessary repairs that interfere with the tenant’s peaceful possession,
- interfering with the tenant’s access to the premises,
- harassing the tenant,
- leasing the premises to another party,
- wrongfully entering the premises by the landlord, and
- cutting off utilities to the tenant.
A landlord who cuts off utilities, removes doors, removes tenant property, or prevents access to the premises will be subject to a penalty of $100 per day, but, in no event, less than $250 for each cause of action (Civil Code Section 789.3).

Case Study
The case of Segalas v. Moriarty (1989) 211 C.A.3d 1583 involved a landlord who sued for unpaid rent. The tenant cross-complained, alleging constructive eviction because remodeling in another part of the building had produced disruptive noise and inconvenience. The court held that a tenant who fails to vacate within a reasonable time after the breach waives the right to claim constructive eviction, with the exception of a tenant who commits to leasing other space before the breach is cured. In this case, Moriarty did not commit for other space until three months after the remodeling was finished, so the court held that he had no valid claim for constructive eviction.

Surrender
A surrender terminates all further obligations under the lease. Surrender is the turning over of possession by the tenant with the understanding that all future obligations are canceled. A new lease is considered a surrender of the obligations of the old lease.

When a tenant moves out and the landlord retakes possession, the landlord should inform the tenant that the tenant is still liable under the lease, that the landlord will attempt to rerent the premises to mitigate damages, and that taking possession is not an agreement to surrender of the premises.

■ MOBILE HOME TENANCIES

While the sale or lease of five or more lots in a mobile home park falls under the jurisdiction of the real estate commissioner under the Subdivided Lands Law, the rental of two or more lots in a mobile home park falls under the jurisdiction of the state Department of Housing and Community Development.

Mobile homes are not really mobile. Double-wide and triple-wide units generally are not intended to be moved after they are set in place. The addition of awnings, porches, and even permanent foundations makes removal extremely costly. Because of the special nature of mobile homes, the rights of landlords and tenants differ from those in other tenancy situations.

Tenants in mobile home parks are entitled to a 60-day notice to terminate. This 60-day notice also applies to rental increases and tenants who wish to terminate their leases.

Tenants in a mobile home park are entitled to a 12-month lease upon request at the prevailing month-to-month charge. A copy of the Mobile Home Residency Law must be attached to all rental agreements.
Park management must provide a written disclosure form that discloses any park defects in common facilities or utilities to lessees at least three days prior to signing the park’s rental agreement. A signed copy of the rental agreement must be given to the tenant within 15 days.

Leases entered into after January 1, 2001, cannot prohibit a homeowner from keeping at least one pet subject to reasonable park rules.

A mobile home park can require that a single-wide mobile home 17 years old or older be removed from the park when sold. Other mobile homes must be 25 years old or older to require removal upon sale. (Mobile home park management is limited in requirements as to exterior repairs upon a sale or transfer of a mobile home.)

Park rental agreements may not include a right of first refusal for the park management to buy the mobile home unless there is a separate agreement with separate consideration paid.

**Eviction**

Tenants can be evicted from mobile home parks only under the following circumstances:

- A tenant who fails to comply with a local or state law within a reasonable time after being notified of his or her violation can be evicted.

- A tenant who fails to comply with reasonable park rules and regulations that were either in the rental agreement or agreed to later by the tenant can be evicted. If, however, the rules were established without tenant permission, the tenant is entitled to a six-month notice to terminate. To change park rules, other than for recreational facilities, the park owner first must give six months’ notice. Any rule violation must be spelled out, and the tenant must be given seven days to comply prior to notice to terminate tenancy.

- When the tenant’s use interferes with the quiet enjoyment of (causes substantial annoyance to) other tenants, the tenant can be evicted.

- A tenant who fails to pay rent or other reasonable charges can be evicted.

- A park owner can evict the tenant from a mobile home park with a 60-day notice if the tenant has received more than three 3-day notices within a 12-month period for nonpayment of rent, utility charges, or reasonable incidental expenses. However, the legal owner, as well as junior lienholders, have a 30-day window to cure (this applies to individual lienholders, not financial institutions or mobile home dealers).

- A tenant convicted of prostitution, assault with a firearm, possession of illegal firearms or munitions, battery resulting in serious bodily harm, or of a felony-controlled substance offense, if the offense was committed on the mobile home park premises, can be evicted.

- If the park is condemned, its tenants can be evicted.
When the use of the park is changed by the owner, tenants can be evicted. For changes in park use, the tenant is, however, entitled to 15 days’ notice for appearances before local governing boards, and 6 months’ notice of termination after approval of the changes. If no local approvals are needed, the park owner must give tenants 12 months’ notice.

The lessor cannot terminate a tenancy to accommodate other mobile homes sold by the park owners.

Mobile home parks cannot require a cleaning deposit or liability insurance from tenants for use of the clubhouse or recreational facilities for meetings of residents and invited guests.

If a tenant in a mobile home park has made timely payments of rent, utilities, and other charges for a period of 12 months, the security deposit must be returned to the tenant within 60 days of request.

Mobile home parks cannot unreasonably refuse to approve a new purchaser for lease assignment or a new lease. The park may reject a new purchaser who has financial ability only on the basis of prior tenancy problems or failure to obey park rules.

Parks may not charge a fee for the sale or transfer of a mobile home if no services are performed.

Mobile home parks cannot charge a move-in fee unless a service is rendered for the fee (Civil Code Section 798.72).

Mobile home parks cannot require that sale listings be given to the park management or prohibit outside agents from listing for sale a mobile home in a park (Civil Code Section 798.71).

Parks cannot charge any fee for a lessee’s guests who stay for 14 days or less (annually, not consecutively).

Mobile home parks cannot require submission of an applicant’s income tax returns; however, an applicant can be required to document gross monthly income (Civil Code Section 798.74).

Parks cannot charge extra for larger families or discriminate based on family size.

Tenants in mobile home parks cannot waive any of their rights under the law. Any tenant in a mobile home park is entitled to a 12-month lease on request. The park cannot charge more for the lease than is charged for a month-to-month tenancy.

Park owners cannot enter mobile homes without the written permission of the owner, except in emergency situations.
A park owner who enters into a listing agreement to sell the park must provide written notice to the residents’ association not less than 30 days or more than one year before entering into the agreement or making an offer to sell.

Homeowners’ groups must be permitted to hold meetings in recreation halls during reasonable hours.

**CONDOMINIUM CONVERSIONS**

For conversion of existing residential units to a condominium project, a community apartment project, or a stock cooperative, certain actions are required of the subdivider:

- At least 60 days prior to the filing of a tentative map, written notification of this intention must be provided to the tenants.
- Tenants also must receive at least ten days’ notice of application for a public report.
- Each tenant must be notified within ten days of approval of the final map for the proposed conversion.
- Each tenant must be given 180 days’ written notice of intent to convert prior to termination of tenancy.
- Each of the tenants must be given at least 90 days’ notice from the date of issuance of the public report of an exclusive right to purchase the unit the tenant occupies, on the same terms and conditions under which the unit initially will be offered to the public.

A subdivider who wishes to convert a mobile home park to another use must file a report about the impact of the conversion on the displaced residents of the mobile home park. The report must address the availability of adequate replacement space in mobile home parks. The subdivider must make a copy of the report available to each resident of the park at least 15 days prior to the hearing on the map by the advisory agency (planning commission).

**RENT CONTROL**

Rent control has been held to be a legitimate government purpose. The argument that rent control violates an owner’s due process rights because tenants are in the majority and always will vote in favor of rent control was rejected by the court in *Birkenfield v. City of Berkeley* (1976) 17 C.3d 129. In the same case, a prohibition on evicting a tenant in good standing at the end of the lease unless the property is withdrawn from the rental market, or the tenant refuses a new lease, was considered a reasonable means to enforce rent control.

The Ellis Act, Government Code Section 7060.7, allows a landlord to go out of business and withdraw property from the rental market.
Case Study
The case of *Channing Properties v. City of Berkeley* (1993) 11 C.A.4th 88 involved a landlord who wanted to remove 33 apartments from the rental market. Berkeley’s Municipal Code requires that (1) tenants be given 180-day notice to move, (2) the landlord pay $4,500 per unit for relocation costs, and (3) the city be notified at least 60 days prior to terminating the rentals. Section 7060 of the Government Code (the Ellis Act) requires only 60-day advance notice to tenants and requires relocation payments only to low-income hotel residents. The Court of Appeal held that the Ellis Act preempts local action with respect to landlords who wish to withdraw accommodations from the rental market. The court noted that the Berkeley ordinance would create insurmountable obstacles for removal of rental units, and that was contrary to the intent of the Ellis Act, which allows rental removal regardless of local laws.

Because of fixed rents, landlords under rent control often reduce maintenance and defer repairs. In the case of *Sterling v. Santa Monica Rent Control Board* (1984) 162 C.A.3d 1021, the court held that the rent control board could reduce rents for Health and Safety Code violations.

The **Costa-Hawkins Rental Housing Act** (Civil Code Section 1954.53) provides that landlords who are subject to rent control are free to establish new base rents for new tenants, as well as for subleasees and assignees, where the landlord’s consent is necessary for the sublease or assignment.
Case Study

The case of Guggenheim v. City of Goleta (2010) 638 F. 3d 1111 involved the rent control ordinance of the City of Goleta that allowed purchasers of mobile homes to assume the lease of the seller at the rent-controlled amount. The effect of the ordinance was that existing owners of units were able to sell their mobile homes for $100,000 more than they were worth, based on the ability to take over the unit at the existing rental rate. The park owners brought this action in federal court, claiming a taking of their park without compensation, a violation of their Fifth Amendment rights.

The trial court ruled against the park owners, but the Court of Appeal reversed. The court pointed out that the rent control ordinance resulted in a transfer of 90 of the value from the park owners to the tenants. Because the park rent was below market, buyers had to pay a premium price, which went to the tenant who sold the unit.

Note: The purpose of rent control was to protect the tenant and provide reasonable-cost housing, not to provide windfall profits to tenants. (The Costa-Hawkins Rental Housing Act [Civil Code Section 1954.50 et seq.] is not applicable to mobile home parks, so a new base rent could not be established with a new tenant.)

Note: The Supreme Court declined to review this decision.

Rent control can result in tenants getting the advantage of appreciation in value at the expense of the property owner.

Rent control regulations do not apply to mobile homes when the mobile home is not the owner’s principal residence.

Case Study

In Gross v. Superior Court (1985) 171 C.A.3d 265, a purchaser of a San Francisco condominium rented the units and subsequently defaulted on his trust deed. The beneficiary foreclosed and then filed an unlawful detainer action against the tenant. While the court conceded that a foreclosure wipes out junior liens, this is subject to modification by legislative action under police power. The court compared rent control to zoning. While the trust deed was given before rent control, the parties could not agree that future rent control would not apply. Nor could they agree that future zoning would not apply. The fact that the value of the premises for resale was diminished by having a tenant does not make the ordinance unconstitutional. The court held that a foreclosure purchaser should be regarded as a successor in interest.
Case Study
The case of Bisno v. Santa Monica Rent Control Board (2005) 130 C.A. 4th 816 involved the Costa-Hawkins Rental Housing Act (Civil Code 1954.50 -1954.545), which allows for market-rate rent increases when a rent controlled unit becomes vacant. Santa Monica adopted Regulation 3304, which permits a landlord to petition to increase rent to the market-rate vacancy rates when the unit is not the principal residence of the tenant.

The Bisnos rented their apartment in 1996, prior to Regulation 3304. After passage of the regulation, their landlord petitioned for a rental increase because the unit was not the principal residences of the tenants. A rental increase was granted from $1,111 per month to $4,295 per month, which was later reduced to $4,045 per month.

Bisno sued the Rent Control Board alleging that the Costa-Hawkins Act did not provide for rent increases based on principal residence criteria. The Los Angeles Superior Court ruled that Regulation 3304 was valid and the Court of Appeal affirmed, ruling that allowing rent increases for nonprincipal residences was consistent with the purposes of local rent control law and was, therefore, valid.

Note: The purpose of rent control was not to allow bargain rents for weekend retreats (the unit was at The Shores), but to protect renters from being forced out of their homes.

### SUMMARY

Leasehold interests include

- tenancies for years (leases for a definite period of time),
- periodic tenancies (leases that automatically renew themselves unless a notice to terminate is given),
- tenancies at will (tenancies at the pleasure of the lessor), and
- tenancies at sufferance (tenancies in which the lessee holds over, which also are not true tenancies in California because the lessor can treat the holdover tenant as a trespasser).

Leases are personal property (chattels real). Leases for one year or less need not be in writing. For written leases, the lessor must sign to be bound. The lessee can be bound without signing by moving in or paying rent after receiving a copy of the lease.

When a lease contains an option, part of the rent will be considered consideration for the option.
Nonrefundable security deposits are not allowed. The total security deposit cannot exceed three months’ rent for furnished rentals or two months’ for unfurnished units.

An assignment of a lease is a transfer of all interests by the lessee to a third party, who becomes a tenant of the original lessor. The assignee becomes primarily liable under the lease, while the assignor (original lessee) remains secondarily liable.

Under a sublease, the original lessee becomes a sublessor and leases the premises to a sublessee. The sublessee is the tenant of the sublessor (original lessee) and not the tenant of the original lessor (owner).

A lease can be terminated by or for destruction of premises, eminent domain, commercial frustration, merger, bankruptcy of tenant, expiration of term, notice, foreclosure of a prior encumbrance, failure to pay rent, failure to give possession, violation of a material lease provision, illegal use of the premises, abandonment, surrender, violation of implied warranty, or failure to make needed or agreed-on repairs.

The landlord has the right of entry in an emergency, when the tenant consents, after reasonable notice to make repairs or show the premises, when the tenant has abandoned or surrendered the premises, and under court order.

A residential lease has an implied warranty of quiet enjoyment and habitability. As a minimum, the landlord must ensure that

- plumbing is in proper working order;
- heat, lights, and wiring work and are safe;
- floors, stairways, and railings are in good condition;
- the premises are clean and free of pests when rented;
- areas under lessor control will be maintained; and
- the roof will not leak, and no doors or windows are broken.

Landlords are liable for injury to others because of the landlords’ negligence. Landlords also have been held liable for injuries to the tenant because of the condition of the premises, even when the lessor was unaware of the problem. Exculpatory clauses in residential leases do not protect the landlord.

Tenant duties include

- paying rent and other charges as agreed,
- keeping the premises in a clean and sanitary condition,
- exercising reasonable care in the use,
- not permitting others to damage or deface the premises, and
- using the premises for the purpose intended.
If a tenant fails to pay rent or violates a lease condition, the lessor can give a three-day notice to quit, quit or cure, or quit or pay rent. If the tenant does not vacate, cure, or pay rent, the lessor serves an unlawful detainer action on the tenant. The tenant must appear and answer the charges within five days or the court will issue a writ of possession that, after service, gives the tenant five days to vacate.

An eviction within 180 days of the tenant’s complaining about habitability of the premises to the landlord or a public agency or lawfully organizing a tenant organization will be considered a retaliatory eviction. The tenant can defend against an eviction action by claiming that it is retaliatory.

An act of the lessor that is inconsistent with the quiet enjoyment of the lessee or the implied covenant of habitability can be treated by the tenant as being equivalent to eviction (constructive eviction).

Because of the immobility of mobile homes, tenants can be evicted only for limited reasons. Special notices of any change in the use of the park must be provided to tenants. Tenants are entitled to a 12-month lease upon request. Mobile home parks cannot unreasonably refuse to approve a new purchaser for lease assignment or a new lease.

Tenants in apartments being converted to condominiums must be given statutory notices. They also must be given a 90-day exclusive right to buy their units at the price, terms, and conditions at which they initially will be offered to the public.

Rent control has been held by the courts to be a legitimate government purpose. Rent control also can control the right to evict or to change property use.

■ DISCUSSION CASES

1. A tenant complained to the police that the landlord had molested her minor daughter. The landlord later pleaded guilty to the charge. After the complaint was made, the landlord started eviction proceedings. The landlord claimed that the charge made it impossible to live together peacefully. Was the landlord’s action a retaliatory eviction?

   Barela v. Superior Court (1981) 30 C.3d 244

2. An exculpatory clause in a miniwarehouse lease stated that the warehouse operators would be free from all liability for damage to the property stored and that it was the customer’s obligation to obtain insurance coverage. Does this clause protect the lessor from damage caused by the lessor’s negligence?

3. A tenant defended an unlawful detainer action by claiming that the lessor breached the implied warranty of habitability. **Is this a valid defense? What is habitability?**

Green v. Superior Court (1974) 10 C.3d 616

4. The plaintiff was raped in her apartment. It was alleged that the owners and manager of the apartment complex (the defendants) knew of three previous rapes in the complex. The defendants had been given a composite drawing as well as a description of the suspect by the police.

The defendants did not disclose the information about the assaults to the plaintiff. It was alleged that the premises were represented as being safe and patrolled at all times by professional guards. The plaintiff alleged she was intentionally misled by the defendants to advance their own interests by renting the apartment. If the plaintiff’s allegations are correct, are the defendants liable? **If they are liable, what is their liability?**

O’Hara v. Western Seven Trees Corp. (1977) 75 C.A.3d 798

5. An owner had not raised rents on some units for 15 to 20 years. After she finally raised rents, a rent control ordinance rolled back the rents to a time when she was charging below-market rents. The owner filed for a rent increase and was denied. The owner filed for a writ of mandate challenging the base-year rent. **Is the owner subject to the base-year rent?**

Vega v. City of West Hollywood (1990) 223 C.A.3d 1343

6. A lease provided for a renewal option at fair market rental value. The property was used as a movie theater. Appraisals indicated that at the highest and best use (retail stores), the property would have its highest rental value. **For renewal purposes, what should be the basis of the rent?**


7. In leasing her condominium, an owner told the tenant that the premises were safe and security precautions for tenants had been taken. The condominium association also represented the safety of the complex. After being assaulted, the tenant sued, claiming that security precautions had not been taken. **If the tenant was correct, are the owner and condominium association liable?**

8. A tenant leased garage space for the purpose of replacing a truck engine. While the defendant made a down payment on the rent and was given possession, the defendant failed to pay the balance. The owner went into the garage and found auto parts strewn about the garage. The owner contacted law enforcement authorities to ascertain whether illegal activity was taking place. A government investigator found stolen truck parts. The garage was placed under surveillance, and the defendant was arrested when he returned several days later. **Did the landlord act properly?**

*People v. Roman* (1991) 227 C.A.3d 674

9. In checking a building prior to purchase, a buyer found several rooms were locked. After purchase, the buyer discovered these rooms were held by a lodge under an unrecorded ten-year lease that the purchaser had not been informed of. **Is the lease valid?**

*Scheerer v. Cuddy* (1890) 85 C. 270

10. A party injured in an auto accident claimed that a property owner was negligent in maintaining shrubs that obscured the view of motorists. The property had been rented for several years, and the lease required the tenant to maintain the landscaping. **If the tenant was negligent in failing to trim the shrubs, is the owner liable?**


11. Prior to the Santa Monica rent control ordinance, which also limited removal of units from the rental market, a developer expended $1,700 for condominium conversion approval, and the final subdivision map was approved. **Is the developer subject to the rent control ordinance?**

*Santa Monica Pines Ltd. v. Rent Control Board* (1984) 35 C.3d 858

12. The defendants owned six cabins rented to 16 persons. The defendants deliberately failed to pay the gas bill, knowing the gas would be cut off and the renters would be forced to leave.

The trial court awarded the plaintiffs compensatory damages of $7,901 plus $6,000 per cabin ($100 per day for 60 days), or a total of $36,000 in penalties. **Was the trial court's action proper?**

13. The City of Berkeley passed a tax relief ordinance that required a one-year reduction on commercial leases of 80% of the property tax savings resulting from the passage of Proposition 13. A landlord alleged the ordinance was unconstitutional because it violated the contract clauses of the state and federal constitutions. **Was the ordinance proper?**

*Rue-Ell Enterprises Inc. v. City of Berkeley* (1983) 147 C.A.3d 81

14. A tenant parked on the street because she was afraid to use her poorly lighted garage space. She was robbed and shot on the street outside her apartment. She sued the landlord alleging negligence for failure to install adequate garage lighting. **Should the landlord be held liable?**


15. A housing-authority lease had a zero-tolerance drug clause. During a lawful search, a tenant's son, who lived on the premises, was found to have four packets of narcotics on the premises. Even though the parents required their son to move out, the parents were evicted. **Was the eviction justified?**

*City of South San Francisco Housing Authority v. Guillory* (1996) 41 C.A.4th 13

16. Islay Investments managed many apartment complexes. Instead of charging new tenants a security deposit, Islay charged a higher rent for the first month than for the following months. **Did Islay charge an illegal nonrefundable security deposit?**


17. A commercial lessor conditioned consent to a lease assignment upon a $30,000 payment plus 75% of the profit from the sale of a business. **Was the requirement enforceable?**


18. A mobile home park imposed a new rule requiring occupancy of the registered owner of the mobile home. **Is this rule enforceable?**

*Rancho Santa Paula Mobile Home Park Ltd. v. Evans* (1994) 26 C.A.4th 1139

19. A two-year-old child was injured after falling through a hall window in an apartment building. The window was 28 inches above the floor. While it had a screen, tenants would remove the screen to throw garbage into a Dumpster. The lease stated, “Children are not allowed to play in hallways, stairways, or other common areas in the project.” **Did the landlord have a duty to ensure that a child would not fall through the window?**

20. Tenants were 12 months behind in rent. A fire broke out in the garage, and the tenants' personal property was destroyed. If the fire was the result of the landlord’s breach of warranty of habitability, should the landlord be responsible for the tenants’ loss?


21. A tenant persisted in annoying another tenant in a mobile home park despite many calls to park management. If the park fails to take action, can the park be liable in damages for emotional distress?


22. Landlords challenged a San Francisco ordinance requiring landlords to pay 5% interest on tenant security deposit. The landlords alleged that for 16 months, the highest interest paid on money market accounts was 2.2%. Do the landlords have to pay 5% on the deposits?

*Small Property Owners of San Francisco v. City and County of San Francisco* (2006) 141 C.A.4th 1388

23. California National Bank’s lease had a provision for a lease extension at the prevailing rate but no more than the rent paid for space by another bank. The other bank failed, and the space was broken up and leased for offices and retail use. Is there a cap on the rent for a lease extension?

CHAPTER QUIZ

1. Which estate is of definite duration?
   a. An estate at will  
   b. An estate for years  
   c. A freehold interest  
   d. A periodic tenancy

2. A tenancy for years MUST be created by
   a. express agreement.  
   b. adverse possession.  
   c. written agreement.  
   d. none of these.

3. What is the maximum term for which a home in a rural area may be leased?
   a. 51 years  
   b. 99 years  
   c. 100 years  
   d. None of these

4. A tenant who remains in possession after giving notice that she would vacate the premises becomes
   a. a tenant at will.  
   b. a tenant at sufferance.  
   c. an indefeasible tenant.  
   d. none of these.

5. To be enforceable, a written lease must
   a. describe the premises.  
   b. be signed by the lessor.  
   c. be both a and b.  
   d. be neither a nor b.

6. For a furnished apartment, the total security deposit cannot exceed
   a. one-half month’s rent.  
   b. one month’s rent.  
   c. two months’ rent.  
   d. three months’ rent.

7. The landlord MUST return the security deposit to the residential tenant within what time frame after regaining possession if there is no damage other than normal wear and tear?
   a. 7 days  
   b. 3 weeks  
   c. 30 days  
   d. None of these

8. Which statement is TRUE regarding the assignment of a lease?
   a. The original lessee is the sole party liable for the payment of rent.  
   b. It is the same as a sublease.  
   c. The original lessee would retain a right to use the property for a limited time.  
   d. The entire leasehold is transferred.
9. A tenant on a long-term lease at $500 per month wishes to go out of business. The premises are currently worth $1,000 per month. You would likely advise the tenant to consider
   a. surrendering the premises.  b. subleasing.
   c. assigning the lease.  d. doing none of these.

10. An assignee of a lessee has a relationship to the lessor of
   a. sublessee.  b. tenant.
   c. grantor.  d. none of these.

11. A tenant on a long-term lease purchased the premises from the lessor. Later, to raise cash, he sold the property to an investor, who gave the tenant a 30-day notice to vacate. What are the rights of the parties?
   a. The lease preceded the sale; therefore, the tenant prevails.
   b. Occupancy was constructive notice to the investor of the lease.
   c. The purchase by the tenant ended the lease.
   d. Tenant rights were lost by accord and satisfaction.

12. In the absence of a lease provision, when would a landlord have the right of entry?
   a. During normal business hours after reasonable notice to show to a prospective buyer
   b. In the event of an emergency
   c. Either a or b
   d. Neither a nor b

13. A landlord must ensure all of the following EXCEPT that the
   a. premises are air-conditioned.
   b. premises are clean and clear of pests at the time of rental.
   c. plumbing is in proper working order.
   d. roof does not leak and windows are not broken.

14. Under a residential rental, the tenant must do all EXCEPT
   a. use the premises for a lawful purpose.
   b. keep the plumbing in proper working order.
   c. pay rent as agreed.
   d. keep the portion of the premises under the tenant’s control clean and sanitary.
15. Which statement accurately describes the liability of the landlord of a residential building?
   a. The landlord is liable for injury only if he or she knows of a dangerous situation and fails to act.
   b. The landlord is not liable for any injury to a tenant if the lease has an exculpatory clause.
   c. The landlord is liable only for risks that could be foreseen.
   d. The landlord is liable for injury caused by a dangerous condition if the landlord was negligent in acting or failed to act.

16. The landlord was notified by the residential tenant that the water heater was inoperative and the roof had a bad leak. After reasonable notice, the tenant could
   a. treat the landlord’s failure to act as constructive eviction.
   b. spend up to one month’s rent and make the repairs.
   c. do either a or b.
   d. do neither a or b.

17. When one residential tenant attacks another tenant, is the landlord liable?
   a. Yes, the landlord is strictly liable for the injury.
   b. Yes, if a check on the tenant’s background would have shown aggressive behavior.
   c. Probably, if the attack was foreseeable.
   d. Yes, if the premises were represented as being safe.

18. A three-day notice to quit or pay rent could be used against a tenant who
   a. violated a lease provision.
   b. was delinquent in rent.
   c. used the premises for an illegal purpose.
   d. did all of these.

19. After a landlord has served an unlawful detainer action, the tenant
   a. is given 3 days to quit or pay rent.
   b. has 5 days to answer the charges.
   c. must vacate within 5 days.
   d. must vacate within 30 days.
20. When a tenant abandons the premises with three years remaining on the lease, the landlord CANNOT
   a. sue for the balance due on the lease.
   b. consider the abandonment a surrender.
   c. rent the premises.
   d. sue for the rent as it becomes due.

21. Which of the following would constitute constructive eviction?
   a. Expiration of a tenancy for years
   b. A notice to quit
   c. An unlawful detainer action
   d. The lessor’s leasing the premises to a third party

22. A landlord cut off a tenant’s electricity because the tenant was delinquent in rent. What would be the likely result of this action?
   a. The landlord could be subject to a $100-per-day penalty.
   b. The landlord could be subject to a $1,000 penalty.
   c. No penalty will be assessed if a proper three-day notice was served.
   d. There will be no penalty if there was a 24-hour notice of service cutoff.

23. When a lessor and lessee agree to terminate a lease three years prior to its termination, the lessee’s turning over possession to the lessor is known as
   a. accord and satisfaction.
   b. surrender.
   c. reformation.
   d. novation.

24. A tenant of a mobile home park CANNOT be evicted because of
   a. failure to comply with a reasonable park rule.
   b. use that interferes with the quiet enjoyment of other tenants.
   c. forming a tenant organization.
   d. failure to comply with local or state laws.

25. In a condominium conversion of an apartment building, the residents MUST be given an option to purchase their units for
   a. 90 days from issuance of the final public report.
   b. 30 days from the sale announcement.
   c. 180 days from public hearing.
   d. none of these.