Can I Cancel My Lease Early?

OPTIONS FOR CALIFORNIA TENANTS IMPACTED BY COVID-19

UC SAN DIEGO STUDENT LEGAL SERVICES
Disclaimers

Yes, we are attorneys, but **we are not your attorneys**, and this webinar does not create an attorney-client relationship with us.

We are licensed to practice law in California and have based the following on California and U.S. Federal law. This webinar is informational in nature. It does not constitute legal advice and should not be relied upon as such. You should consult with an attorney regarding your particular factual or legal circumstances.
No New or Proposed Legislation at This Time

MARCH 23, 2020

California Governor Gavin Newsom has used his executive authority to alleviate some financial concerns for Californians, but none so far have been designed to address tenants impacted by COVID-19.
## Current Developments Impacting San Diego Tenants

### UNLAWFUL DETAINER COURT

As of March 17, 2020 the San Diego Superior Court suspended all "Unlawful Detainer" actions, except for ones where the landlord is claiming they need "emergency relief." *through 4/3/2020*

### SMALL CLAIMS COURT

As of March 17, 2020:
- All Small Claims filings are suspended
- All Small Claims matters will be rescheduled.

*through 4/3/2020*

### FEDERAL OR STATE-MANDATED STAY ON EVICTIONS?

None (so far.)

### SAN DIEGO STAY ON EVICTIONS?

City Council will be voting on a new ordinance in the "coming weeks" that will halt evictions but will not relieve tenants of requirements to pay rent. (Mayor’s Press Release 3/17/2020)

### POTENTIAL RELIEF FOR MORTGAGE HOLDERS

Relief packages proposed by Congress seem to universally have relief for mortgage holders. Fingers crossed it trickles down to tenants?
PAY RENT TO THE END

If you sign a fixed-term / year-long lease, you are promising, and are thus legally obligated, to make monthly rent payments for the full year. Full stop.

LANDLORD DUTY TO MITIGATE

However, a landlord has a duty to "mitigate" (i.e., reduce/alleviate) any financial harm they suffer.

BEST STRATEGY?

Though no law requires you to help find a replacement tenant if you move out, it is generally a good idea if it means your unit gets a replacement tenant ASAP. Also, the lease contract may specifically require it.
<table>
<thead>
<tr>
<th>Options for California Tenants Impacted by COVID-19</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Potential Lease Cancellation Options</strong></td>
</tr>
<tr>
<td><strong>Informal Resolution</strong></td>
</tr>
<tr>
<td>A mutual agreement between you, your landlord, and your roommates to terminate your lease.</td>
</tr>
<tr>
<td><strong>Accommodations Requests Under Disability Law</strong></td>
</tr>
<tr>
<td>Primarily for those who may be personally physically impacted by COVID-19.</td>
</tr>
<tr>
<td><strong>Contract Law Defenses</strong></td>
</tr>
<tr>
<td>Circumstances where contracts may no longer be enforceable.</td>
</tr>
</tbody>
</table>
Informal Resolution

The parties to a contract are always free to attempt to end the contract and/or reach a new agreement.

In the landlord-tenant context, this means that as long as a landlord and tenant(s) agree to something different than what is contained in the lease, it may be a binding modification.

A new agreement upon which everybody agrees is always a preferable outcome to relying on the law or the courts to resolve a dispute.

Most leases require that any changes to it be made "in writing", and many require that changes be made in writing and signed by both/all parties; be sure to comply with these requirements.
INFORMAL RESOLUTION STRATEGIES

PAPER TRAIL, PAPER TRAIL, PAPER TRAIL!

Get all communications in writing. "Written" includes social media messages, texts, emails, etc. "Screen shot" is your best friend!

However, do not attempt to video or audio record someone without their consent - that's a crime in California!

CALM, PROFESSIONAL, AND ASSERTIVE

Be mindful of your own tone in all communications. Maintain a neutral, calm tone. Assert what you need without being demeaning or rude.

Please note: feelings of anger, frustration, fear, and confusion are completely normal. As a strategy for success, try not to channel any of those frustrations towards your landlord.

RELYING ON TRUSTED THIRD PARTIES' ADVICE

While there is no law requiring your landlord to negotiate with you, feel free to utilize any public safety and/or advocacy group messaging while communicating with your landlord.

Examples: CDC recommendations, CA Governor recommendations, CA Apartment Association press releases, etc.

OPTIONS FOR CALIFORNIA TENANTS IMPACTED BY COVID-19
"Reasonable Accommodations"
Requests under Disability Laws

**WHO MAY EXERCISE THIS OPTION?**
Only persons with disabilities as defined by law.

**POSSIBLE BARRIERS**
Landlords may not know the law and may not know their obligations and limitations.

**COMPLAINTS AND ENFORCEMENT**
State and federal agencies may investigate and, if appropriate, sue your landlord.

OPTIONS FOR CALIFORNIA TENANTS IMPACTED BY COVID-19
California state law prohibits discrimination by sellers, landlords, and those who provide housing-related services.

Housing policies, practices, terms, and conditions must allow people with disabilities equal access to apartments, houses, condos, and other dwellings.

Where necessary, reasonable accommodations in housing rules, policies, practices, or services are required to allow people with disabilities equal opportunity to use and enjoy dwellings.
California
Definition of "Disability"

Hint: It's much broader than the Federal definition.
<table>
<thead>
<tr>
<th>Grounds for Denying Accommodation Requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;NO DISABILITY&quot;</td>
</tr>
<tr>
<td>&quot;WOULD IMPOSE AN UNDUE FINANCIAL AND ADMINISTRATIVE BURDEN ON THE HOUSING PROVIDER&quot;</td>
</tr>
<tr>
<td>&quot;WOULD FUNDAMENTALLY ALTER THE NATURE OF THE HOUSING PROVIDER'S PROGRAM&quot;</td>
</tr>
</tbody>
</table>

Options for California Tenants Impacted by COVID-19
**BE CREATIVE & OPEN-MINDED**

What other options could you propose that will achieve the same outcome?
Are you willing to concede in any area or meet your landlord part way?
Remember that an acceptable outcome may not look like your ideal outcome.

**COOPERATE**

Disability laws assume you are negotiating in good faith and are trying to come to a resolution. Evidence of you not returning phone calls, resorting to name-calling, or otherwise being unreasonable in communicating may indicate your unwillingness to engage in the "interactive process."

**COMPARE!**

What have other landlords done for tenants in our community? Or for other similarly-situated tenants? What public guidance is being offered by any local political or university leaders?

**STRATEGIES DURING THE "INTERACTIVE PROCESS"**
Is the Landlord Still Violating Disability Laws?

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
dfeh.ca.gov

OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY
hud.gov

OPTIONS FOR CALIFORNIA TENANTS IMPACTED BY COVID-19
Contract Law Defenses to Avoid Enforcing a Lease

OPTIONS FOR CALIFORNIA TENANTS IMPACTED BY COVID-19
"Force Majeure" clauses

A force majeure (also "Act of God") clause is meant to protect the parties to a contract in the event that a contract cannot be performed because of things outside the control of the parties and that could not be avoided.

Example:

“In the event that either Party is delayed or prevented from the performance of any act by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.”

OPTIONS FOR CALIFORNIA TENANTS IMPACTED BY COVID-19
RARELY RESIDENTIAL

A "force majeure" clause is much more likely to appear in a commercial lease or contract than a residential lease.

ADDITIONAL PROVISION STILL REQUIRING RENT?

Even if there is a "force majeure" clause, leases may still require payment of rent.

MUST CONTAIN CAREFUL WORDING

Clauses that are too narrow or specific (e.g., do not mention "pandemic") may not even be enforceable.

LIMITATIONS TO FORCE MAJEURE CLAUSES
While California acknowledges a variety of instances where an otherwise validly formed lease can be deemed unenforceable, those legal theories only apply to the time the contract was entered into.
If You Have Renters Insurance, Dig out the Policy Now!

Insurance policies are custom contracts that vary from customer to customer.
Committed to Abandoning Your Lease?

At least take some risk-lowering precautions:

- Talk to your roommates first; you are most likely "jointly and severally liable", so anything you do affects the others, and vice versa!
- Notify your landlord if the unit will be vacant. This will help put your landlord "on notice" of any potential liability issues that may arise after you all move out.
- Return all keys ASAP. You will be deemed to be "in possession" of the unit until you return the keys.
- Cancel the utilities for that address for which you are responsible only if no one will continue living there.
- Check your lease- did you promise to notify the landlord if you would be gone for a certain number of days?
- Submit a mail forwarding request with the U.S. Postal Service.
LOCATE IMPORTANT DOCUMENTS

During this period of social distancing, take the time to locate your lease. Other documents that you should locate if you have them: renters insurance policies, roommate agreements, and any addenda or amendments to a lease.

PAPER TRAIL, PAPER TRAIL, PAPER TRAIL!

Carefully document - and keep records of - all communications with your landlord. The best way to do this is to keep communications in writing, e.g. snail mail, email, text messages, social messaging apps, etc.

PRIORITIZE YOUR HEALTH

You and your dependents' health should be the top priority in the coming weeks/months. Be the best tenant you can be without jeopardizing your health.
Questions?
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UC San Diego

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