

RENT INCREASES BASIC INFORMATION FOR TENANTS

October 2006

Whether your landlord can raise your rent depends on whether you have a lease or a rental agreement, and what it says.

Some tenants have leases. If you have a lease, your rent cannot be increased during the term of the lease, unless the lease allows rent increases.¹

Many tenants have periodic rental agreements -- for example, a week-to-week or a month-to-month rental agreement. If you have a periodic rental agreement, your landlord can increase your rent, unless the agreement does not allow rent increases. The landlord must give you proper advance written notice of the rent increase. The written notice tells you how much the increased rent is and when the increase takes effect.

How much advance notice must the landlord give the tenant?

If you have a month-to-month (or shorter) periodic rental agreement, the landlord must give you **at least 30 days'** advance written notice of a rent increase.

- The landlord must give you at least **30 days'** advance notice if the rent increase is 10 percent (or less) of the rent charged at any time during the 12 months before the rent increase takes effect.
- The landlord must give you at least **60 days'** advance notice if the rent increase is greater than 10 percent of the rent charged at any time during the 12 months before the rent increase takes effect.²

The amount of notice required depends on the percentage of the rent increase. In order to calculate the percentage of the rent increase, you need to know the lowest rent that your landlord charged you during the preceding 12 months, and the total of the new increase and all other increases during that period.

EXAMPLES: Assume that your rent is \$500 per month due on the first of the month and that your landlord wants to increase your rent \$50 to \$550 beginning this June 1. To see how much notice your landlord must give you, count back 12 months to last June.

30 days' notice required: Suppose that your rent was \$500 last June. In this case, the rent increase is 10 percent. This is calculated as follows:

Current rent increase = \$50
\$500 rent last June
x 10 percent
\$50

The current rent increase (\$50) equals 10 percent of the lowest rent charged in the past 12 months (\$50). Therefore, your landlord must give you at least 30 days' advance written notice of the rent increase.

60 days' notice required: Suppose that your rent was \$475 last June, and that your landlord had raised your rent \$25 to \$500 last November. In this case, the total rent increase is more than 10 percent. This is calculated as follows:

\$25 rent increase last November
+ \$50 current rent increase
\$75 total rent increase in the past 12 months
\$475 rent last June
x 10 percent
\$47.50

\$75 (the total rent increase in the past 12 months) is greater than \$50 (10 percent of the lowest rent charged in the past 12 months). Therefore, your landlord must give you at least 60 days' advance written notice of the rent increase.

Now suppose that your rent was \$500 last June, but that instead of increasing your rent \$50, your landlord wants to increase your rent \$75 to \$575 beginning this June 1. In this case also, the rent increase is more than 10 percent. This is calculated as follows:

Current rent increase = \$75
\$500 rent last June
x 10 percent
\$50

\$75 (the total rent increase in the past 12 months) is greater than \$50 (10 percent of the lowest rent charged in the past 12 months). Therefore, your landlord must give you at least 60 days' advance written notice of the rent increase.

Normally in the case of a periodic rental agreement, the landlord can increase the rent as often as the landlord likes. However, the landlord must give proper advance written notice of the increase. Also, the rent increase cannot discriminate against you or retaliate against you for exercising a right as a tenant.³

Increases in rent for government-financed housing are usually restricted. If you live in government-financed housing, check with your local public housing authority to find out whether there are any restrictions on rent increases. Local rent control ordinances may also limit rent increases, or impose additional requirements on landlords. If you live in an area with rent control, check with your local rent control board or your local elected representative to find out whether there are any restrictions on rent increases.

How may a landlord deliver a notice of rent increase?

A landlord's notice of rent increase must be in writing. The landlord may deliver a copy of the notice to you personally.⁴ In this case, the rent increase takes effect in 30 or 60 days, as just explained.

Instead, the landlord may give you a notice of rent increase by first class mail. In this case, the landlord must mail a copy of the notice to you, with proper postage, addressed to you at the rental unit. The landlord must give you an additional five days' advance notice of the rent increase if the landlord mails the notice. Therefore, the landlord would have to give you 35 days' notice from the date of mailing if the rent increase is 10 percent or less. If the rent increase is more than 10 percent, the landlord would have to give you 65 days' notice from the date of mailing.⁵

Example of a rent increase

Most notices of rent increase state that the increase will go into effect at the beginning of the rental period. For example, if you have a month-to-month rental agreement and your landlord wishes to increase your rent by 10 percent effective on October 1, the landlord must make sure that the notice of increase is delivered to you personally by September 1. (If the landlord mails the notice to you, the landlord must give you an additional 5 days' notice, so the notice must be mailed to you by August 27.)

A landlord may make the increase effective at any time in the month if proper advance notice is given. If the rent increase becomes effective in the middle of a rental period, the landlord is entitled to receive the increased rent for only the last half of the rental period. For example:

Rental period -- month-to-month, from the first day of the month to the last day of the month.

Rent -- \$500 per month.

Rent increase -- \$50 (from \$500 to \$550) per month (a 10 percent increase).

Date that the notice of rent increase is delivered to the tenant personally -- April 15 (that is, the middle of the month).

Earliest date that the rent increase can take effect -- May 15.

If the landlord delivers the notice on April 15, since the rental period is for one month, the increase becomes effective on May 15, and the landlord is entitled to the increase from that date. On May 1, the tenant would pay \$250 for the first half of May (that is, half the month at the old rent of \$500), plus \$275 for the last half of May (that is, half the month at the new rent of \$550). The total rent for May that is due on May 1 would be \$525. Looking at it another way, the landlord is only entitled to one-half of the increase in the rent during May, since the notice of rent increase became effective in the middle of the month. Of course, the landlord could deliver a notice of rent increase on April 15 which states that the rent increase takes effect on June 1. In that case, the tenant would pay \$500 rent on May 1, and \$550 rent on June 1.

Can the landlord require the tenant to pay the increased rent in cash?

The landlord normally cannot require the tenant to pay the rent (or the increased rent) in cash. However, the landlord can require the tenant to pay the rent in cash if, within the last three months, the tenant has paid the landlord with a check that was dishonored by the bank. (A dishonored check is one that the bank returns without paying because the tenant stopped payment on it or because the tenant's account did not have enough money in it.)

In order to require the tenant pay the rent in cash, the landlord must first give the tenant a written notice stating that the tenant's check was dishonored and that the tenant must pay cash for the period of time stated by the landlord.

This period cannot be more than three months after the tenant:

- Ordered the bank to stop payment on the check, or
- Attempted to pay with a check that the bank returned to the landlord because of insufficient funds in the tenant's account.

The landlord must attach a copy of the dishonored check to the notice.⁶ The landlord can personally deliver the notice to the tenant, or serve the notice on the tenant using "substitute" service (explained in endnote 7).⁷

The requirement that the tenant pay rent in cash may change the terms of the tenant's rental agreement. If so, the landlord must give the tenant proper advance written notice of this change (explained in endnote 8).⁸

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

¹*Colyear v. Tobriner* (1936) 7 Cal.2d 735, 742 [62 P.2d 741, 745]; Friedman et al., *California Practice Guide: Landlord-Tenant* (The Rutter Group 2004) 4:37.

²*Civil Code Section 827(b)*. Longer notice periods apply if required, for example, by statute, regulation or contract. (*Civil Code Section 827(c)*.) See generally, Friedman et al., *California Practice Guide: Landlord-Tenant* (The Rutter Group 2004) 4:42.5 - 4:44.4.

³*Civil Code Section 1942.5*. Brown, Warner and Portman, *The California Landlord's Law Book: Rights and Responsibilities*, pages 15/2-15/3 (Nolo Press 2005).

⁴*Civil Code Section 827(b)(1)(A)*.

⁵*Civil Code Sections 827(b)(1)(B),(2),(3)*; *Code of Civil Procedure Section 1013*.

⁶*Civil Code Section 1947.3*. Waiver of these provisions is void and unenforceable.

⁷*Civil Code Sections 827(a)*, *1974.3(a)(2)*, *Code of Civil Procedure Section 1162*. If the tenant is absent from home or work, the landlord can give notice by (1) leaving a copy of the notice with "a person of suitable age" and discretion at the tenant's home or work, and (2) mailing a copy to tenant's home. If the landlord can't give the tenant notice personally or as described immediately above, the landlord can (1) attach a copy of the notice in a conspicuous place on the rental property (such as the front door of the rental unit), and (2) leave a copy with any person living there, and (3) mail a copy to the tenant at the rental property address. (See discussion in Friedman, et al., *California Practice Guide: Landlord-Tenant* 7:157, 7:171-7:174 (The Rutter Group 2004).)

⁸When rent is paid monthly, the landlord can change the terms of the rental agreement by giving the tenant 30 days' advance written notice. When rent is paid weekly, the landlord can give the tenant 7 days' advance written notice of the change in terms. However, even if the rent is paid monthly, the landlord can give the tenant just seven days' advance written notice of the change if the landlord and tenant have agreed in writing to a seven-day notice period. (*Civil Code Section 827(a)*.)

Source: California Department of Consumer Affairs