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Legal Questions & Answers

Stephen Duringer

QUESTION

I've sent out my former tenant's security deposit refund twice. Each time, the former resident claims to have not received the check. I know we all complain about the post office, but this is getting ridiculous. The envelopes have not been returned to me, and I've verified the address, still he claims to have not received them. I guess I'll just stop payment on the other checks and mail out another check, or should I handle it differently?

ANSWER

Be careful, this is a common scam being played out on landlords. Stop payment instructions to your bank are only valid for six months. Unless you renew the stop payment order every six months, the Payee can freely cash the checks. That means that in six months and a day, your former resident can cash both of those 'lost' checks that you placed a stop payment order on and your bank will blindly honor them. Stale dated you say? With the changes in bank check processing automation, banks rarely enforce the six-month stale dated rule, and routinely process checks, regardless of the date issued. Instruct your former tenant to send you written confirmation that he has never received the two lost checks, and that in the event they turn up, he will immediately write void on the checks and return them to you, without attempting to negotiate them. You may want to arrange a face to face meeting to swap the confirmation with a replacement check so that there will be no further 'lost checks.' A good business practice would be to establish a disbursement checking account that is separate and distinct from your primary, general or operating accounts. Many banks offer 'positive pay' services that allow you to specifically clear a check before it hits your account. In the event you suspect that your disbursement account may be a target for fraudulent debits, you can simply close the account without affecting your general or your operating accounts. The scary little secret is that the banking system, and the methods that are currently used to electronically clear checks, is ripe for fraud and abuse. Watch your accounts closely for any sign of fraudulent activity and notify your bank immediately.

QUESTION

Most of my rentals are single-family homes here in Southern California. I use a standard apartment association rental agreement, and I require the resident to be responsible for all utilities, including water. Lately, I've seen many of my residents neglecting to water the lawns. They all claim the same thing, that the water rates and fees are getting so expensive that they can't afford to water the lawn. They also claim that local cities have implemented restrictions on the days and times that they are allowed to water. I'm worried that continued neglect, will cause my lawns to die out and require re-sodding or re-seeding. What do I do?

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ANSWER

Your rental agreement identifies the responsibilities and obligations of the resident. Ensure that the duties to maintain the landscape and grounds are clearly stated as the resident's responsibility. Most rental agreements will require that the resident maintain the 'premises' in good order. Premises are typically defined as the rental unit, and any yard or grounds that are for the resident's exclusive use. Allowing the landscape to fall into disrepair or allowing the grass to die, provided the resident is responsible to maintain, would be a material, but curable breach of the rental agreement. You should prepare a Three Day Notice to Perform Condition or Covenant or Quit. You must clearly state the breach in specific terms, and you must instruct the resident as to what is necessary to cure the breach, i.e. water the lawn, re-seed or re-sod, etc. If the resident complies with the notice and makes a good faith effort to cure the breach, then the tenancy will not be terminated and he may remain in possession provided he continues to comply with the terms of the agreement. In the event he chooses to ignore the notice and allows the lawn to wither, you are entitled to immediately commence an unlawful detainer action against the tenant to recover possession. Upon your recovering possession, the former resident will be responsible for your costs to restore the landscape to its original condition. With the increasing water restrictions here in Southern California, there will undoubtedly be a transformation of landscape materials from the lush green grasses of years past, to the use of lower maintenance, drought tolerant plant materials. Keep these trends in mind when determining the severity of the breach and reasonableness of your resident's actions.

QUESTION

I have a resident who has not yet paid this month's rent. I know there are a few problems in his apartment, nothing major, except maybe the fact that the heater doesn't work. I really don't want to spend any money right now, especially since he isn't paying the rent, and he never lets me in anyway. I really want him out; can I just serve him a Three Day Notice to Pay Rent or Quit?

ANSWER

You could, but in the event you proceeded to file an eviction action, he would most certainly raise the affirmative defense of habitability. If he is able to establish that the heater is non-operative, and you knew and still refused to repair it, then he may prevail in the action. Better to serve a twenty-four hour notice of entry for your handyman to repair the heating system. Tomorrow, after the heater is repaired and in working order, serve your resident a Three Day Notice to Pay Rent or Quit. In the event the resident refuses access to your repairman, then his actions may negate your obligations to repair the heater, and will prevent him from raising the defense of habitability. In that case, prepare and serve a Three Day Notice to Perform Or Quit, instructing the resident to comply with your notice to enter, instructing the resident to allow access and co-operate with your attempts to make needed repairs within three days. At the same time, you can serve a Three Day Notice to Pay Rent or Quit. If he fails to pay the rent during the notice period, then you can proceed with an unlawful detainer action to recover possession.

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QUESTION

I attended one of your resident screening seminars a few months ago. I remember how important it is to require completely filled out rental applications and the necessity of running credit and eviction reports. You mentioned some techniques that you use on your properties, but I can't find my notes. Can you tell me some of the tools that you use?

ANSWER

There are many resident screening techniques that dramatically improve your screening abilities and help you weed out the riff raff. All landlords should require rental applications from all adult occupants, ideally completed and signed in your presence. Compare the signature on a government issued id, drivers license, or passport, with the signature on the application. Make a photocopy of the identification and keep a copy in your file. Run a credit report and an eviction report through your local apartment association or other industry provider, do not use the one provided by the prospect. Verify the information provided. The more thorough landlords will do a few things beyond the normal routine, which will greatly improve their screening effectiveness. Implement a policy of taking a photograph of all authorized occupants at the time of signing the rental agreement, and inform all prospective tenants of this policy. It's amazing how many drug dealers, gang bangers and other ne'er do wells change their minds about moving in. At the time the prospect completes the application, walk them out into the parking lot and take a look at their car. The make and model aren't important; it's the condition, the cleanliness and the contents that you are interested in. If you see a mess, or the back seat is filled with clothing and other personal belongings, you just might be viewing their current sleeping quarters. If possible, make a surprise visit to the address listed as their current home, ideally about dinnertime. This single task is probably the most revealing and insightful tool in evaluating just who your prospective tenant is and how the he will care for your apartment when and if he moves in.

The foregoing is intended to provide general information, not specific legal advice. You should direct specific inquiries to your attorney. Stephen C. Duringer, Esq. is an attorney specializing in landlord tenant law, evictions, judgment enforcement, and asset preservation planning. His firm, the Duringer Law Group, PLC, with offices in Anaheim Hills and Lake Arrowhead, is one of California's largest and most successful landlord tenant law firms, representing landlords exclusively throughout Southern California. The firm may be reached at 714.279.1100 or 800.829.6994 or 877.387.4643. Visit www.DuringerLaw.com for more information.