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- BADLY WRITTEN LEASES - UNWANTED TENANTS - TRESPASSING LANDLORDS

QUESTION: *I signed a one year lease to rent a cottage. The lease has a provision that my rent has been lowered by \$100 per month in exchange for my promise to “maintain the front and back yards.” The provision states that my rent can be increased if I fail to perform this maintenance. I have been careful to comply with this requirement during the four months I have been living in the cottage. I have mowed the lawns, watered the plants and trimmed the bushes. Now the landlord has given me a letter stating that I have violated this provision and that he is now going to hire a professional gardener and charge me the \$100 per month that the gardener will be charging for his services. The lease does not specify the exact maintenance work I am supposed to perform; it just says that I will maintain the front and back yards. Is it legal to charge me for the gardening service?*

ANSWER: This story illustrates the danger of using language in rental agreements that does not clearly describe the rights and responsibilities undertaken by the party. Obviously, your definition of “maintenance” does not match the understanding that the landlord had in mind when you both signed the lease. The way to avoid this dispute would have been a clear itemization of the types of maintenance duties you were undertaking as well as time frames and some standards for judging performance. For example, a better agreement would have been that “tenant agrees to mow all lawns once a week and to trim the grass to a height of ½ inch.” One solution would be to now sit down with your landlord to mutually agree to a specific list of duties and standards for complying with them. Your local mediation program can help you arrange this type of meeting. With the general language currently in the lease, a court would be forced to make a judgment about the reasonable intentions of the parties if you and the landlord can’t agree on more definite language. The outcome would be difficult to predict in advance. Meanwhile if the landlord insists on raising your rent to the full amount by eliminating the discount, you would risk eviction for failing to pay the full rent if you don’t pay the full sun. The safer but more cumbersome alternative would be to pay the full rent and file a claim in small claims for a refund based on your documentation of performing reasonable maintenance. You should contact a fair housing agency in your area or call Project Sentinel at 1-888-324-7468 for more information.

Question: *I know I did something stupid but now I am wondering if you can help me. I have rented a two-bedroom apartment in the same apartment complex for two years and I am very happy living there. About four months ago, a*

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co-worker, who I will call "Fred," was laid off from our company. I felt sorry for Fred, so I offered to let him stay in my apartment until he could get back on his feet. Well, four months later he doesn't seem to have any motivation to improve his situation. We aren't getting along and I feel I have lost the use of my own apartment because he spends all day lounging around the living room. Fred promised to leave several times but then didn't. There is no written agreement between us and he has never paid any rent or any other expenses, so I don't think he is a tenant. Can I just call the police to have him removed?

Answer: Unfortunately, many housing residents learn the hard way that a friend, or "special friend," or adult family member who has been allowed to live in a house or apartment for more than thirty days has established tenant status under California law. There is no requirement that there be a written agreement or an agreement to pay rent, verbal or written, in order to establish tenant status. The only exception would be a genuine trespasser, someone living there without your express or implied permission. Assuming Fred has become a tenant, you have become his landlord. You cannot remove him by calling the police. You will be required to utilize the same written notice of termination and unlawful detainer court process that any landlord is required to use. There is more bad news for you. If your rental agreement limits the number of adults allowed to reside in your unit or there is a time limit on guests staying over, you may be in violation of your own rental agreement. If so, you must act to remove Fred as soon as possible. You should contact a fair housing agency in your area or call Project Sentinel at 1-888-324-7468 for more information.

Question: *I am a single female. I agreed to rent a single family home mainly because the house had a large back yard. Ever since I moved in three months ago, I have had a problem with my landlord showing up unannounced. More than once, I have opened the back door to go out into the yard and found him there. When I have asked him what he is doing, he will tell me something like "I am just checking up to make sure everything is ok." Finding him on the property is making me very uncomfortable. Is he allowed to just show up like this?*

Answer: Under California law, a tenant has contracted for "possession" of the rental property, which means its exclusive use and enjoyment. Many inexperienced or non-professional landlords don't understand this concept and think that they are still entitled to treat the rental property as theirs to use as they see fit and to enter when they wish. California Civil Code Section 1954 lists the very narrow grounds upon which a landlord is legally permitted to enter the rental property. In theory, if the landlord does not observe these limits, he is a trespasser when he enters the rental property. Section 1954 allows a landlord to enter to perform necessary or agreed repairs, or pursuant to a court order, or to exhibit the premises to potential renters or purchasers or to perform a "pre-departure" inspection two weeks before the current tenant vacates. Even if the landlord is entering for one of these permissible purposes, he must first give you 24 hours written notice and only enter

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during “normal business hours.” Section 1954 also allows entry at any hour after proper notice if the landlord believes the property has been abandoned and it allows entry without notice at any hour in the case of an emergency or when the tenant has give permission, at the time entry is requested. Assuming your landlord is innocently misunderstanding these rules you could give him a copy of Section 1954 or ask your local mediation program to explain these rules to him. Of course if the activity continues, you may need to pursue a civil or criminal claim for trespass. You should contact a fair housing agency in your area or call Project Sentinel at 1-888-324-7468 for more information.