



Rent Stabilization Board

## Subletting and Replacing Roommates

### Subletting generally

To sublet or sublease is to rent part of the premises to another person for all or part of the lease term, or to rent all of the premises to another for a portion of the lease term. Thus, a sublet exists where the original (or "master") tenant takes in a roommate whose name is not on the lease and who pays rent to the master tenant, or where the master tenant rents the unit to another during the master tenant's absence. A master tenant remains obligated to the landlord to comply with the lease requirements. A master tenant taking in a roommate may not charge more than an amount substantially proportional to the space occupied by the subtenant (Regulation 1003(C)), and a master tenant subletting the entire premises may not charge a subtenant more than the rent lawfully due and payable to the landlord (Regulation 1003(B)).

A tenant may sublet a unit if the lease does not specifically prohibit subleasing. If the lease provides that subletting is allowed subject to the landlord's approval, the landlord may withhold consent only when he or she has a reasonable objection to the proposed subtenant. The proposed subtenant's financial responsibility or prior rental history are examples of reasonable objections. Caution: Where specifically prohibited by the terms of the lease, subletting may be a violation of the lease and grounds for eviction. If you have questions about whether a lease allows subletting, you should seek legal advice.

## **Replacement tenants**

A landlord generally must allow an original tenant to replace a roommate whose occupancy was authorized under the lease. If the lease requires the landlord's approval of a sublet, the landlord may object to a replacement tenant only if the landlord has a reasonable basis for doing so. If a landlord objects to replacement of a vacating roommate, the remaining tenant may petition the Board for a rent reduction. (See Regulation 1270(C).) A landlord who forces remaining tenants to vacate the unit by refusing to allow a replacement roommate is not entitled to a vacancy increase, because the vacancy was not voluntary.

## **Partial turnovers in tenancies -- when a vacancy increase may be imposed**

A question often arises regarding when a landlord may implement a vacancy increase under Costa-Hawkins where several tenants rent a unit together, and are gradually replaced over time. The unit may never be entirely vacant during these changes in tenancies. A landlord may implement a vacancy increase (i.e., establish a new initial rent) by giving 30 days' written notice if: (1) there has been a complete turnover of original occupants; (2) none of the remaining occupants lawfully resided in the unit before January 1, 1996; and (3) the landlord has not accepted rent after receiving written notice from the last original occupant that he or she has moved out or will be moving out permanently. (Regulation 1013(O).) (Thus, if tenants hide the fact that the last original occupant has permanently vacated the unit, the landlord's acceptance of rent does not constitute a waiver of the right to implement a vacancy increase.) The landlord may defer the imposition of a vacancy increase for up to six months after receiving written notice of the last original occupant's departure, by agreeing in writing with the remaining tenants to do so.

The new group of tenants becomes a new set of "original" occupants to which the same rules regarding a vacancy increase will apply.

Under Regulation 1013(O)(5), where a landlord rents a unit and places only one tenant's name on the lease, but authorizes more than one tenant to occupy the unit, all tenants who occupy the unit within one month, with the landlord's express or implied permission, are considered "original occupants". This covers situations where a landlord interviews several prospective tenants, orally accepts a group of them, but has only one tenant sign the lease; and where a landlord has a lease with a single master tenant, who is allowed to sublet to several roommates. In either case, the landlord is not entitled to raise the rent simply because the signing tenant or master tenant moves out permanently.

**2125 Milvia Street, Berkeley, California 94704**

**TEL: (510)644-6128 • TDD (510)644-6915 • FAX (510)644-7723**

**E-MAIL: [rent@ci.berkeley.ca.us](mailto:rent@ci.berkeley.ca.us) • INTERNET: [www.ci.berkeley.ca.us/rent/](http://www.ci.berkeley.ca.us/rent/)**