

# THE C & D NEWSLETTER



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## LANDLORD'S REMEDIES AFTER TENANT'S BREACH OF LEASE

A tenant may desire to breach a real property lease for many reasons. For example, the tenant may suffer a business reversal and be unable to continue in business. Conversely, a tenant may be very successful and outgrow the leased premises, so that the tenant is forced to relocate to larger facilities. Unless the tenant can assign or sublet the lease, or the landlord and the tenant can mutually agree on a buy-out of the remaining lease term, the lease and California statutory law will govern the landlord's rights and the tenant's liability. This Newsletter shall discuss California law governing the landlord's rights after the tenant's breach of a real property lease.

*Terminate Tenant's Right to Possession and Maintain Action for Damages.* The landlord has the right to terminate the tenant's right to possession of the premises and to sue the tenant immediately for present and future damages. The landlord may seek recovery of (a) unpaid rent earned at the time of lease termination, plus interest at the maximum legal rate permitted by law from the date each installment became due to the date of the judgment, (b) unpaid rent earned from the time of lease termination through the time of entry of the judgment, plus interest at the maximum legal rate permitted by law from the date each installment became due to the date of the judgment, but only to the extent the unpaid rent exceeds the amount the tenant proves the landlord could have reasonably avoided, (c) under certain circumstances, future rents for the entire lease term, and (d) any other amount necessary to compensate the landlord for all detriment caused by the tenant's breach of the lease (for example, expenses in recovering possession of the premises, expenses in repairing or maintaining the premises, expenses of reletting, real estate commissions, and attorneys' fees in connection with the foregoing). The right to recover future rent is available only if the lease has a specific provision to this effect or the landlord relet the property prior to the time of the judgment and proves that he acted reasonably and in a good faith effort to mitigate damages. The amount of future rent is computed by discounting the total amount recoverable by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent.

*Maintain Tenant's Right to Possession.* Even if the tenant has breached the lease and abandoned the premises, the landlord may continue the lease in effect and sue to collect each installment of the rent when it becomes due. This remedy is subject to two conditions: the lease must specifically provide for this remedy; and the lease must permit the tenant to mitigate his damages by subletting or assigning his interest in the lease. This remedy permits the landlord to avoid the obligation to mitigate damages by attempting to relet the premises.

*Conclusion.* The landlord has two remedies after a tenant breaches a lease: to continue the tenant's right to possession of the premises and sue to collect each installment of rent as it becomes due; or to terminate the tenant's right to possession of the premises and sue the tenant for present and future damages. In the latter case, the landlord must attempt to mitigate its damages by reletting the premises.

*This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.*