Law Offices of Bill Ford

Oakland ❑ San Francisco ❑ San Rafael ❑ Sacramento
❑ Tel: 415.306.7840 ❑ Fax: 415.358.0460
www.billfordlaw.com

Seminar – Mercy Housing – 2/3/2020: Process of terminating tenancies in California and the most common defense to eviction – Breach of the Warranty of Habitability

I. TERMINATING THE TENANCY AND RELATED REMEDIES

A. Self-Help Prohibited

1. **Overview—Eviction Pursuant to Proper Legal Process Required:** The summary possession statutes (unlawful detainer, and forcible entry and detainer, CCP § 1159 et seq.) set forth the procedural mechanism for effecting a lawful eviction. These procedures replace the common law "self-help" repossession remedy, which often led to violence between landlords and tenants. [*Daluiso v. Boone* (1969) 71 C2d 484, 495, 78 CR 707, 714; *Jordan v. Talbot* (1961) 55 C2d 597, 605, 12 CR 488, 492]

Real property tenants are *not* "trespassers"—even if they are unlawfully detaining! They are entitled to peaceful possession until *proper legal process*, by settlement or judgment, *awards possession to the landlord* (and even then, actual dispossession of the tenants must be effected by statutorily authorized eviction procedures). [*Four Seas Investment Corp. v. International Hotel Tenants' Ass'n* (1978) 81 CA3d 604, 612, 146 CR 531, 535; *Bedi v. McMullan* (1984) 160 CA3d 272, 276-277, 206 CR 578, 581; see *Glass v. Najafi* (2000) 78 CA4th 45, 48-49, 92 CR2d 606, 608-609—writ of possession improperly issued absent judgment *for possession*]

2. **Landlord's Unlawful Actions to Influence Tenant to Vacate:** The law also forbids what might be viewed as "constructive" self-help eviction. Specifically, it is unlawful for a landlord to do any of the following for purposes of *influencing a tenant to vacate* a dwelling (Civ.C. § 1940.2; see *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 CA4th 1281, 1300-1301, 173 CR3d 159, 172 & fn. 10 (citing text)):

- Engaging in theft (Pen.C. § 484(a)) or extortion (Pen.C. § 518). [Civ.C. § 1940.2(a)(1), (2)]
- Using, or threatening to use, force, willful threats or menacing conduct constituting a course of conduct that interferes with the tenant's quiet enjoyment of the premises in

violation of Civ.C. § 1927) "that would create an apprehension of harm in a reasonable person." The tenant need not be actually or constructively evicted to obtain relief pursuant to this provision. [Civ.C. § 1940.2(a)(3)]

- Committing a "significant and intentional" violation of the landlord's right of entry under Civ.C. § 1954). [Civ.C. § 1940.2(a)(4)]
- Threatening to disclose information regarding the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant. The tenant need not be actually or constructively evicted to obtain relief. [Civ.C. § 1940.2(a)(5)]
- Causing a tenant or occupant to quit involuntarily or bringing an action to recover possession because of the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, unless the landlord is complying with a legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant. [CCP § 1161.4(a)]

a. **Civil penalty:** A tenant who prevails in a civil action (including a small claims action) to enforce his or her rights under this statute "is entitled" to a civil penalty of up to *$2,000* for *each* violation. [Civ.C. § 1940.2(b); see *Larson v. City & County of San Francisco* (2011) 192 CA4th 1263, 1282, 123 CR3d 40, 56—local rent control ordinance providing tenants with civil remedies for landlord's harassing conduct deemed facially invalid under judicial powers clause.

3. **Other Interference With Tenant Occupancy Rights as Prohibited "Self-Help":** Civ.C. § 789.3 (barring utility interruption with intent to cause tenancy termination) also prohibits any of these "willful" acts committed with the intent to terminate a residential tenant's occupancy (Civ.C. § 789.3(b)):

- Preventing a tenant from gaining reasonable access by *changing the locks* or using a *bootlock* or similar method or device. [Civ.C. § 789.3(b)(1); see *Spinks v. Equity Residential Briarwood Apts.* (2009) 171 CA4th 1004, 1050-1051, 90 CR3d 453, 490—§ 789.3 applied to apartment resident, who was alleged third-party beneficiary of lease between her employer and landlord, where landlord, acting on employer's instructions, changed locks on unit]
- Removing outside doors or windows. [Civ.C. § 789.3(b)(2)]

- Removing the tenant's personal property, furnishings "or any other items" without the tenant's prior written consent, except when done pursuant to the procedure authorized by Civ.C. § 1980 et seq. after the tenant has vacated (*see ¶ 9:579 ff.*). [Civ.C. § 789.3(b)(3)]

  a. **Remedies:** The remedies for tenants aggrieved by such wrongful conduct are the same as those available under Civ.C. § 789.3 to redress an unlawful interruption or termination of utility services (damages and injunctive relief, attorney fees to prevailing party) [Civ.C. § 789.3(c) & (d)]

  b. **Compare—landlord's statutory duty to change locks upon request of tenant victim of domestic violence, sexual assault or stalking:** Notwithstanding Civ.C. § 789.3(b)(1) (¶ 7:72), at the written request of a tenant who has been the victim of domestic violence, sexual assault or stalking, the *landlord is required to change the locks* of the tenant's dwelling unit. [Civ.C. §§ 1941.5(b), 1941.6(b); see also Civ.C. §§ 1941.5(d) (defining "court order," "locks," "police report," "protected tenant" and "tenant"), 1941.6(f) (defining "court order," "locks," "protected tenant" and "tenant")]

  (1) **Where restrained person *not tenant of same dwelling unit:*** Where the restrained person (i.e., the perpetrator) is *not* a tenant of the same dwelling unit as the protected tenant, the landlord must change the locks upon the tenant's written request no later than 24 hours after the protected tenant provides a copy of a court order lawfully issued within the last 180 days (pursuant to Civ.C. § 527.6, Fam.C. §§ 6240 et seq., 6300 et seq. or 6400 et seq., Pen.C. § 136.2, CCP § 527.6 or Welf. & Inst.C. § 213.5) or written police report, written within the last 180 days, by a state or local law enforcement officer, stating that the protected person or household member has filed a report alleging that the protected tenant or household member is a victim of domestic violence, sexual assault or stalking. The landlord shall give the protected tenant a key to the new locks. [Civ.C. § 1941.5(b), (d)(1), (3)]

  (2) **Where restrained person tenant of same dwelling unit:** Where the restrained person (i.e., the perpetrator) is a tenant of the same dwelling unit as the protected tenant, the landlord must change the locks upon the tenant's written request no later than 24 hours after the protected tenant provides a copy of a court order lawfully issued within the last 180 days (pursuant to Civ.C. § 527.6, Fam.C. §§ 6240 et seq., 6300 et seq. or 6400 et seq., Pen.C. § 136.2, CCP § 527.6 or Welf. & Inst.C. § 213.5) that excludes the restrained person from the dwelling unit. The landlord shall give the protected tenant a key to the new locks. [Civ.C. § 1941.6(b), (d)(1), (3)]

  Notwithstanding Civ.C. § 789.3, a landlord who changes the locks pursuant to Civ.C. § 1941.6 is *not liable* to a person excluded from the dwelling unit under this provision.

Moreover, the excluded person remains liable under the lease with all other tenants of the dwelling unit for rent as provided in the lease. [Civ.C. § 1941.6(d), (e)]

B. Actions Available to Recover Possession

1. Unlawful Detainer: Unlawful detainer is a *summary proceeding* for the restoration of possession of real property in three statutorily-specified situations (CCP § 1161; see *Titus v. Canyon Lake Property Owners Ass'n* (2004) 118 CA4th 906, 914, 13 CR3d 807, 812 (citing text); *Rickley v. Goodfriend* (2013) 212 CA4th 1136, 1154, 151 CR3d 683, 699-700 (citing text))

For purposes of this presentation, we will focus on the unlawful detainer process because it is the one most used by landlords to restore possession of the property. But note, there are other summary proceedings like forcible detainer actions for trespassers, but they are usually put on the court's regular calendar with all other civil actions and, on average, take longer to pursue.

a. **UD statutes applicable only to *real property and other specified rentals:*** The statutory summary possession remedies (CCP § 1159 et seq.) apply only to *real property* occupants (CCP § 1161—renters or occupants under employment, agency or license agreement; CCP § 1161a—occupants holding over after sale) or holdovers in a *manufactured home*, *mobilehome* or *floating home* (CCP § 1161a(a), incorporating statutory definitions, Health & Saf.C. §§ 18007, 18008, 18075.55). Plaintiffs cannot use the summary UD procedures to evict persons who occupy other types of property. [*Smith v. Mun.Ct. (TMI Growth Properties '83)* (1988) 202 CA3d 685, 689, 245 CR 300, 302]

b. **Possession must be in issue:** The other significant limitation is that an unlawful detainer will *not* lie against a defendant who is *not in possession* of the premises at commencement of the lawsuit. Possession is the fundamental issue in unlawful detainers and, if the question of possession is moot, no other "collateral" relief may be obtained in a UD action. [*Markham v. Fralick* (1934) 2 C2d 221, 224-225, 39 P2d 804, 805; *Briggs v. Electronic Memories & Magnetics Corp.* (1975) 53 CA3d 900, 906, 126 CR 34, 37]

C. Bases for Terminating Tenancy

1. **In General:** Broadly, a real property may be terminated by any number of events. The Tenant Protection Act of 2019 requires certain enumerated "just cause" grounds be specified in a written notice of termination. Additional statutory bases also operate to terminate a tenancy.

a. **Grounds for just cause termination of tenancy—**The Tenant Protection Act of 2019 (AB 1482; adding Civ.C. §§ 1946.2, 1947.12 and 1947.13; eff. 1/1/20) was recently passed in the Legislature.

The Tenant Protection Act of 2019 requires that a residential real property owner *must not* terminate the tenancy of a tenant who has *continuously and lawfully* occupied a residential real property for *12 months* without "just cause," as stated in the written notice to terminate. [Civ.C. § 1946.2(a), (j) (1/1/30 "sunset" date) see also Civ.C. § 1946.2(i) (defining "owner," "residential real property," "tenancy")]

Civ.C. § 1946.2 applies to additional adult tenants added to the lease before an existing tenant has continuously and lawfully occupied the property for 24 months if *either* (1) all of the tenants have continuously and lawfully occupied the property for 12 months or more *or* (2) one or more tenants have continuously and lawfully occupied the property for 24 months or more. [Civ.C. § 1946.2(a)]

"Just cause" includes "at-fault just cause" or "no-fault just cause."

(1) **"At-fault just cause":** "At-fault just cause" includes the following:

- Default in the payment of rent;
- Breach of a material term of the lease (CCP § 1161(3)), including, but not limited to, violation of a lease provision after being issued a written notice to correct the violation;
- Maintaining, committing, or permitting the maintenance or commission of a nuisance (CCP § 1161(4);
- Committing waste (CCP § 1161(4);
- The tenant had a written lease that terminated on or after January 1, 2020, and after the owner's written request or demand, the tenant refused to execute a written extension or renewal for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law;
- Criminal activity by the tenant on the property, including any common areas, or any criminal activity or criminal threat (as defined in Pen.C. § 422(a)), on or off the property, that is directed at any property owner or owner's agent;

- Assigning or subletting the premises in violation of the tenant's lease (CCP § 1161(4);
- The tenant's refusal to allow the owner to enter the premises as authorized by Civ.C. §§ 1101.5 and 1954 and Health & Saf.C. §§ 13113.7 and 17926.1;
- Using the premises for an unlawful purpose (CCP § 1161(4);
- The employee, agent, or licensee's failure to vacate after their termination as an employee, agent or licensee (CCP § 1161(1).);
- When the tenant fails to deliver possession after providing the owner written notice as provided in Civ.C. § 1946 of the tenant's intention to terminate, or makes a written offer to surrender that is accepted in writing by the landlord, but fails to deliver possession at the time specified in the written notice as described in CCP § 1161(5). [Civ.C. § 1946.2(b)(1)]

(a) **Opportunity to cure violation:** Before issuing a notice to terminate for just cause for a curable lease violation, the owner must first give the tenant notice of the violation with an opportunity to cure pursuant to CCP § 1161(3). If not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may be served. [Civ.C. § 1946.2(c)]

(2) **"No-fault just cause":** "No-fault just cause" includes the following:

- Intent to occupy the property by the owner or their spouse, domestic partner, children, grandchildren, parents or grandparents (for leases entered into *on or after July 1, 2020*, applicable *only if* the tenant agrees in writing to the termination, or if a lease provision allows the owner to terminate the lease if the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents unilaterally decides to occupy the property; adding a provision allowing the owner to so terminate to a new or renewed rental agreement or fixed term lease constitutes a similar provision for purposes of Civ.C. § 1946.2(b)(1)(E);
- Withdrawal of the property from the rental market;
- The owner complying with (i) an order issued by a government agency or court order relating to habitability that necessitates vacating the property, (ii) an order issued by a government agency or court to vacate the property, or (iii) a local ordinance that necessitates vacating the property (if it is determined by any government agency or court that the tenant is at fault for the habitability conditions, the tenant shall not be entitled to relocation assistance);

- Intent to demolish or substantially remodel the property ("substantially remodel" means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, that cannot be reasonably accomplished in a safe manner with the tenant in place and requires the tenant to vacate for at least 30 days; cosmetic improvements alone do not qualify). [Civ.C. § 1946.2(b)(2)] Relocation payments required.

(3) **Exempt properties:** Civ.C. § 1946.2 does *not* apply to the following residential real properties or residential circumstances:

- Transient and tourist hotel occupancy (Civ.C. § 1940(b));
- Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly (defined by Health & Saf.C. § 1569.2) or an adult residential facility (as defined in Ch. 6 of Div. 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services);
- Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school;
- Housing accommodations in which the tenant shares bathroom and kitchen facilities with the owner who maintains their principal residence at the property;
- Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling or a junior accessory dwelling unit;
- A duplex in which the owner occupied one of the units as the owner's principal residence at the beginning of the tenancy, provided the owner continues in occupancy;
- Housing that has been issued a certificate of occupancy within the previous 15 years;
- Residential real property that is alienable separate from the title to any other dwelling unit, provided that *both* (i) the owner is not a real estate investment trust (IRC § 856), a corporation, or a limited liability company in which at least one member is a corporation *and* (ii) the tenants have been provided with a prescribed written notice stating that the property is exempt (this notice must be included in

the rental agreement for tenancies commenced or renewed on or after July 1, 2020);

- **Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families or very low, low or moderate income (as defined in Health & Saf.C. § 50093), or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low or moderate income (as defined in Health & Saf.C. § 50093 or comparable statutes). [Civ.C. § 1946.2(e)]**
    - **Because of this provision, the just cause provision and no fault just cause provision does not appear to apply to low-income housing tax credit ("LIHTC") properties. However, it is important to note that for LIHTC properties, IRC Section 42 already requires good cause for termination of tenancy to LIHTC tenants. Also, it appears that Governor Newsom is set on eliminating this loophole and wants to apply these provisions to all housing in California. Additionally, owners should be familiar with the provisions as there will likely be confusion as tenants, tenant right organizations, government agencies and others work through implementing the new law and they provide guidance for termination purposes. Moreover, LIHTC legislation requires strict compliance with state law for eviction. For purposes of §42(h)(6)(E)(ii)(I), good cause is determined by the state or local law applicable to the location in which the project is located. The IRS will never take a position relative to what constitutes good cause in any specific situation. This is purely a state and local law issue. So, in effect, the new good cause laws do apply to LIHTC properties.**

b. Other bases for termination

- **Expiration of fixed term:** At the end of the fixed term, the tenancy expires automatically, without any notice (barring, of course, exercise of an express option to renew or extend). [Civ.C. § 1933]
- **Tenant's death:** An "at will" or month-to-month tenancy terminates by notice of the tenant's *death* (or contractual incapacity). [Civ.C. § 1934; *Miller & Desatnik Mgmt. Co., Inc. v. Bullock* (1990) 221 CA3d Supp. 13, 18-19, 270 CR 600, 603-604]
- **Destruction of leasehold:** Absent agreement to the contrary, a lease terminates by operation of law if the premises are *completely destroyed*. [Civ.C. § 1933(4)]

- **Mutual consent:** The parties may mutually agree to a termination (express termination by "surrender" or implicit termination by established "abandonment"). [Civ.C. § 1933(2)]
- **Tenant's acquisition of superior title:** A tenancy terminates by operation of law if the tenant acquires title superior to that of the landlord. [Civ.C. § 1933(3)]
- **Tenant victim of domestic violence, sexual assault, stalking, human trafficking or elder/dependent adult abuse:** A *tenant* may terminate his or her tenancy on written notice to the landlord that the tenant, or a household member, is a victim of domestic violence, sexual assault, stalking, human trafficking or elder or dependent adult abuse. [See Civ.C. § 1946.7]
- Additionally, the *landlord* may terminate (or decline to renew) a tenancy after the tenant has provided written notice that the tenant, or a household member, is a victim of domestic violence, sexual assault, stalking, human trafficking or elder or dependent adult abuse where (a) the tenant allows the restrained person or person who was named in a police report or Tenant Statement and Qualified Third Party Statement to visit the property *or* the landlord reasonably believes the presence of the restrained person or person who was named in a police report or Tenant Statement and Qualified Third Party Statement poses a physical threat to others or to a tenant's right to quiet possession *and* (b) the landlord previously gave three days' notice to the tenant to correct the violation. [See CCP § 1161.3(b) (amended Stats. 2018, Ch. 190; eff. 1/1/19)]
- **Tenant in military service:** Pursuant to state and federal law, a tenant in military service may terminate his or her real property lease any time after entry into the service or as of the date of the military orders. [Mil. & Vet.C. § 409 (added Stats. 2018, Ch. 555; eff. 1/1/19); 50 USC § 3955]
- **Other:** Improper or illegal use of the premises ordinarily is cause for termination and so is public acquisition under power of eminent domain).
- *Cross-refer:* Unlawful detainers may also lie to recover possession from property *owners* after sale of the property.

2. Three-Day Notice to Terminate (CCP § 1161)

a. General considerations re three-day notice

(1) Tenant's right to notice

(a) ***Residential* tenant's nonwaivable right:** Residential tenants have a *nonwaivable* right to legally-required three-day notice to terminate their tenancy pursuant to CCP § 1161. Any

provision in the rental agreement to the contrary is unenforceable. [Civ.C. § 1953(a)(3) & (4); and see *Gersten Cos. v. Deloney* (1989) 212 CA3d 1119, 1128, 261 CR 431, 436—§ 1953(a)(3) nonwaivable right to 3-day notice applies to federally-subsidized (HUD) rental housing]

(2) Default in payment of rent: Tenants are subject to eviction if they or their subtenants continue in possession after defaulting on agreed-upon rent. [CCP §§ 1161(2), 1161.1]

(a) Notice requirements

1) Statement of amount due in § 1161(2) notice—residential property: A CCP § 1161 (2) three-day notice must state *no more than* the amount of rent due; and it must be served *after* the stated amount becomes due. [CCP § 1161(2); *Lydon v. Beach* (1928) 89 CA 69, 74, 264 P 511, 513]

a) **Overstatements invalid:** A three-day notice for *noncommercial* (residential) property that *overstates* the amount of rent due is wholly *ineffective* and will *not* support an unlawful detainer action. [*Levitz Furniture Co. of the Pac., Inc. v. Wingtip Communications, Inc.*, supra, 86 CA4th at 1038, 1040, 103 CR2d at 658, 659]

2) **Advice re logistics for paying rent:** A CCP § 1161(2) three-day notice must also state the following information concerning the manner in which the rent is to be paid (CCP § 1161(2)):

a) **How, where and to whom paid:** The name, telephone number and address of the person to whom the rent payment is to be made must be stated in the notice. [CCP § 1161(2)]

If payment may be made personally, the notice must also state the usual days and hours the specified person will be available to receive the payments. [CCP § 1161(2)]

Alternatively, the notice may state:

- *Bank account for payment:* The name and address of a financial institution, and the account number at the institution, where the rent may be paid, provided it is within *five miles of the rental property;*
- *Electronic funds transfer:* That payment may be made pursuant to a previously-established electronic funds transfer procedure. [CCP § 1161(2)]

1/ **At least one form of payment other than cash or electronic deposit; limitation on requiring cash as exclusive form of payment:** The landlord (or agent) must allow a tenant to pay rent by at least one form of payment that is neither cash nor electronic funds transfer … *except* cash may be demanded as the exclusive form of payment where the tenant (i) previously attempted to pay with a check drawn on insufficient funds or (ii) put a stop payment on a check, draft or

money order. In the latter circumstances, cash may be required as the exclusive form of payment for no more than three months following the tenant's stop payment order or attempt to pay with an insufficient funds check. [Civ.C. § 1947.3(a)(1) & (2)]

The tenant and landlord (or agent) may mutually agree that rent payments may be made in cash or by electronic transfer, provided another form of payment is also authorized, subject to the above requirements. [Civ.C. § 1947.3(d)]

2/ **Payment by third party; limitations:** The landlord (or agent) must allow a tenant to pay rent through a third party, subject to specified limitations. [Civ.C. § 1947.3(a)(3)]

b) **Optional methods of delivering rent payment:** In the notice, the landlord may specify delivery of the rent payment in person *in addition* to payment by mail. A notice giving the option for personal payment must include the required information for personal delivery whereas payment by mail *only*, requires notice of the amount due, name and address of the person to whom payment must be mailed and that person's telephone number. [*Hsieh v. Pederson* (2018) 23 CA5th Supp. 1, 6, 232 CR3d 701, 705]

c) **Conclusive presumption that mailed payment received:** If the address provided by the landlord does not allow for personal delivery of the rent, it shall be *conclusively presumed* that upon the tenant's "*mailing* of any rent or notice" to the name and address provided, the rent or notice is *deemed received by the landlord on the date posted*, provided the tenant can show proof of mailing to that name and address. [CCP § 1161(2) (emphasis added)]

d) **Effect of noncomplying notice:** In keeping with the well-established rule that the unlawful detainer statutes are to be strictly construed (*WDT-Winchester v. Nilsson* (1994) 27 CA4th 516, 526, 32 CR2d 511, 516), a § 1161(2) three-day notice that *omits* the above information (specifying how and to whom the overdue rent payment is to be made) will be ineffective to support an unlawful detainer based on nonpayment of the specified rent.

3) **Ceiling on rent demand—one-year limitations period:** CCP § 1161(2) requires that the three-day nonpayment of rent notice be *served* on the tenant "at any time within *one year after the rent becomes due*." [CCP § 1161(2) (emphasis added)]

This provision is interpreted to mean that the three-day notice can *only demand rent accrued within one year prior to its service*. The underlying policy is to prevent a landlord from "sitting on his or her rights, when rent is unpaid at some point during the life of a lease, then using long-overdue rent (but no recently overdue rent) to effect an eviction." [*Levitz Furniture Co. of the Pac., Inc. v. Wingtip Communications, Inc.* (2001) 86 CA4th 1035, 1040, 103 CR2d 656, 659]

a) **Rent demanded beyond one-year limit not recoverable in unlawful detainer; breach of contract remedy:** Section 1161(2)'s one-year provision applies to both traditional three-day nonpayment of rent notices *and* § 1161.1 estimated rent demand notices. In either case, if the landlord waits over a year to sue for unpaid rent, he or she is limited to collecting that rent in a separate *breach of contract* action (which, of course, is not a "summary" remedy and results only in a money judgment without restitution of the leased premises). [*Levitz Furniture Co. of the Pac., Inc. v. Wingtip Communications, Inc.*, supra, 86 CA4th at 1038, 1042, 103 CR2d at 658, 661; *Bevill v. Zoura* (1994) 27 CA4th 694, 697, 32 CR2d 635, 637]

b) **Late charges:** Technically, "rent" excludes damages suffered or late charges and, thus, a § 1161(2) three-day notice ordinarily cannot demand these items.

However, the result may be otherwise if the rental agreement defines late charges, interest and the like as "additional rent" (possible as to residential tenancies only in *non*-rent control jurisdictions). [See *Canal-Randolph Anaheim, Inc. v. Moore* (1978) 78 CA3d 477, 492]

must be complied with.

4) **"Pay or quit":** A three-day nonpayment of rent notice must be stated in the *alternative*, demanding that the tenant either "*pay or quit*" (i.e., remit accrued back-due "rent" or return possession to the landlord). [CCP §§ 1161(2), 1161.1(a); *Hinman v. Wagnon* (1959) 172 CA2d 24, 27, 341 P2d 749, 752]

(Failure to state the notice in the alternative may amount to a waiver of the right to declare a forfeiture and evict the tenant.)

5) **Declaration of forfeiture (optional):** A three-day notice is valid even if it fails to elect a "forfeiture." However, if the landlord wants to be assured of the right to *evict* for nonpayment of rent, the three-day notice should *always* declare a forfeiture. Otherwise, the tenant may have the right to *retain* possession by paying rent and damages determined at the UD trial within five days after entry of judgment (see CCP § 1174(c)).

(b) Effect if landlord accepts rent tender *after* three-day notice period

1) **Residential tenancies—risk of waiving default and UD rights:** In traditional CCP § 1161(2) three-day notice cases, residential property landlords who *accept* a tenant's tender of rent due (whether partial or full) after expiration of the cure period may be deemed to have *waived* the tenant's default and the right to commence an unlawful detainer.

To avoid a potential waiver, the landlord should *unequivocally reject* the late tender!!!

(c) Limitation—damages liability for issuing three-day notice while premises "uninhabitable": Landlords risk significant damages liability if they serve tenants with a three-day nonpayment of rent notice before abating or repairing substandard (uninhabitable) conditions on the premises. [Civ.C. § 1942.4] (See below – breach of the warranty of habitability)

Specifically, residential tenants have a statutory damages cause of action against landlords who issue a CCP § 1161(2) three-day notice to pay rent or quit *while the premises are "uninhabitable"* as defined in, and under the conditions specified in, Civ.C. § 1942.4(a).

The substandard (uninhabitable) characteristics contemplated by Civ.C. § 1942.4(a), and the conditions under which those characteristics effectively suspend a landlord's right to serve a CCP § 1161(2) nonpayment of rent notice.

1) **Actual damages plus statutory special damages:** Landlords violating § 1942.4 are liable to aggrieved tenants for *actual* damages, *plus* a *minimum $100/maximum $5,000 special damages*. [Civ.C. § 1942.4(b)(1)]

2) **Attorney fee/costs awards:** The prevailing party in a Civ.C. § 1942.4 action (tenant or landlord) "shall be entitled" to recover reasonable attorney fees and costs of suit in an amount fixed by the court. [Civ.C. § 1942.4(b)(2)]

Additionally, CCP § 1174.21 separately provides for a *mandatory* reasonable attorney fees and costs award to the tenant in an amount to be fixed by the court when the landlord institutes a nonpayment of rent unlawful detainer and is liable for a Civ.C. § 1942.4 violation. [CCP § 1174.21]

[See Exhibit A – Sample three-day notice to pay rent or quit]

(3) Breach of other rental agreement covenant: A three-day written notice to "perform or quit" is likewise proper to evict tenants who have violated any other material covenant of the rental agreement. [CCP § 1161(3)]

(a) Must not be a trivial breach. This is a question of fact.

1) Example: Breach of guest policy. Breach of duty to keep unit clean. Duty to keep service animal on leash. Duty to follow policies including noise issues, parking, issues, etc.

2) But consider – repeated violations may be cause for a notice to quit (see below – nuisance behavior.)

(b) Waiver and/or estoppel defense: No breach will support an unlawful detainer if the landlord has *waived* the breach or is otherwise *estopped* to enforce the covenant. [See CCP §

1161.5] Allowing the tenant to remain in the unit after the three days expires and tenant does not cure.

1) **Waiver by accepting rent:** Generally, unless the lease otherwise provides, landlords will be held to have waived a tenant's breach of covenant (and hence the right to terminate) by *accepting rent* with full knowledge of the facts constituting the breach.

[See Exhibit B – Sample three-day notice to perform covenant or quit]

(4) Assignment, sublease or commission of waste in breach of rental agreement; commission of nuisance or using premises for illegal purpose: Finally, a three-day notice to terminate may be served on tenants who:

- — breach a covenant prohibiting or restricting subletting, assignment or commission of waste;
- — permit a nuisance on the premises (expressly including illegal controlled substance activity, unlawful weapons or ammunition activity or illegal dogfighting or cockfighting at the premises; see Civ.C. §§ 3482.8, 3485, 3486); or
- — otherwise use the premises for an illegal purpose, whether or not the rental agreement expressly prohibits such conduct. [CCP § 1161(4)]
- - Any behavior that endangers the health and safety of other residents or employees.
- - Violent, abusive, or threatening language or conduct towards residents or staff or employees.
- Allowing the unit to become so unclean or unsanitary as to create a health hazard for the tenant or other residents (despite warnings)
- Repeated violations of material provisions in the lease agreement, like guest policy violations (despite warnings)

(a) **Nuisance:** Broadly, a "nuisance" supporting a three-day notice is an act injurious to health or indecent or offensive to the senses; or that obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property. A nuisance is deemed to have occurred when a person commits an unlawful controlled substance offense or uses the premises to further the purpose of such an offense. [CCP § 1161(4); Civ.C. § 3479; see also Health & Saf.C. § 11571.1; Civ.C. §§ 3486, 3486.5]

1) Cognizable "nuisances" come in varying degrees. Therefore, landlords should be leery of serving a three-day notice for *one-time* occurrences (such as an isolated loud, late party). Here, a *warning* to the tenant to refrain from such conduct in the future is probably the most appropriate landlord recourse. Then, if the particular misconduct reoccurs, a three-day notice declaring forfeiture of the lease will probably appear more justifiable to the trier of fact.

As a practical matter, despite CCP § 1161(4)'s authorization to terminate a lease for nuisances without prior opportunity to cure, many nuisances are in fact curable; and a trier of fact might be loath to declare a forfeiture in such event (where the wrongdoing tenants were not given prior warning).

[See Exhibit C – Sample three-day notice to quit

d. General form and content of three-day notice

(1) [7:144] **In writing:** A three-day notice must be *in writing*. [CCP §§ 1161(2), (3) & (4), 1161.1]

(Section 1161(4) does not expressly require written notice but presumably should be construed as if it did.)

(2) **Description of premises:** The notice must describe the premises in question with reasonable certainty—i.e., a description sufficiently precise so that the tenant is not misled. A street address and corresponding unit or suite number (as appropriate) is usually enough; the notice need not give a full legal description.

(3) Statement of amount due or nature of breach

(a) **General rules:** If the notice is worded in the alternative ("pay or quit" under CCP § 1161(2) or "perform or quit" under CCP § 1161(3)), the amount due or nature of the breach must be stated *precisely* so as to apprise the tenant of what is required to effect a "cure." Again, a § 1161(2) nonpayment of rent three-day notice may not overstate the amount due).

Further, a three-day notice to "pay or quit" must be served *after* the rent demanded becomes due. [*Lydon v. Beach* (1928) 89 CA 69, 74, 264 P 511, 513]

1) **Information re manner of payment in § 1161(2) notice to pay rent or quit:** A CCP § 1161(2) nonpayment of rent notice must also include information on how and to whom the back-due rent may be paid.

CAVEAT: Again note that CCP § 1161.1 does *not supersede § 1161(2)*. Thus, landlords serving a § 1161(2) nonpayment of rent notice *must* state the *exact* amount due, under risk of

invalidating the notice and hence any UD predicated thereon. [See *Jayasinghe v. Lee* (1993) 13 CA4th Supp. 33, 37, 17 CR2d 117, 119]

(4) Declaration of forfeiture: If the landlord intends to recover back rent *and possession* pursuant to a three-day notice (CCP § 1161(2)), the notice must declare a "forfeiture" of the lease. Otherwise, the tenant may have the opportunity to *regain* possession (reinstate the tenancy) by paying the rent owed even after expiration of the three-day period. [See CCP § 1174(c), ¶ 9:421 ff.—five days to pay after entry of judgment; *Briggs v. Electronic Memories & Magnetics Corp.* (1975) 53 CA3d 900, 905, 126 CR 34, 37]

(There is some ambiguity as to whether a declaration of forfeiture is essential in CCP § 1161.1 "estimated" three-day notice cases. But the prudent practice is to include a forfeiture provision, thus ensuring that the tenant will not have recourse under CCP § 1174(c).)

The tenant may avoid forfeiture under a § 1161(2) or (3) or § 1161.1 notice by paying the rent or curing the breach *within* the three-day notice period; and a forfeiture is also "nullified" if the landlord has waived the breach after service of the notice. [CCP § 1161.5; *see also* § 1161.1 forfeiture nullified if landlord accepts full payment of "estimated" rent demand)]

(a) Express declaration of forfeiture required only in nonpayment of rent cases: CCP § 1174(a) states the lease "shall not be forfeited" *unless* the termination notice *states the landlord's election* to declare a forfeiture. However, this provision operates solely in *nonpayment of rent* UDs to permit the defaulting tenant to obtain relief from forfeiture by paying the rent owed, pursuant to § 1174(c), if the § 1161 notice did *not* expressly declare a forfeiture.

In other cases, a forfeiture (though not expressly stated) is *implicit* in the landlord's § 1161 notice that simply states the tenant's *right of possession* is terminated. [See Civ.C. § 1951.2(a)—lease terminates by operation of law when tenant's "right to possession is terminated by the lessor because of a breach of the lease" [*Walt v. Sup.Ct. (Clement)* (1992) 8 CA4th 1667, 1671-1672, 11 CR2d 278, 280]

Even so, cautious landlords who intend to pursue a notice of termination to judgment for recovery of possession (whether for nonpayment of rent or any other tenant breach) may wish always to state the forfeiture in *explicit* terms.

e. Service of three-day notice

(1) **Authorized methods of service (CCP § 1162):** [see *Losornio v. Motta* (1998) 67 CA4th 110, 114, 78 CR2d 799, 801—three-day notice valid and enforceable "only if the lessor has strictly complied with these statutorily mandated requirements for service"; see also *Boston LLC v.*

Juarez (2016) 245 CA4th 75, 88, 199 CR3d 452, 462—although "technically permissible," giving tenant three-day notice to obtain renters insurance on Friday preceding three-day weekend that included legal holiday "smacks of gamesmanship, or possibly even retaliatory motives"]

(a) **Personal service:** Service upon a residential or commercial tenant may be made by "delivering a copy to the tenant personally." [CCP § 1162(a)(1), (b)(1); see *Liebovich v. Shahrokhkhany* (1997) 56 CA4th 511, 516, 65 CR2d 457, 459-460—absent admission of receipt, mail service even by certified mail not equivalent to personal delivery]

(b) **Substitute service:** For *residential* tenancies, if the tenant is absent from his or her residence and usual place of business, service may be effected by leaving a copy of the notice with a "person of suitable age and discretion at either place" *and mailing* a copy to the tenant at his or her place of residence. [CCP § 1162(a)(2); see *Lehr v. Crosby* (1981) 123 CA3d Supp. 1, 5-6, 177 CR 96, 98-99—16-year-old deemed of "suitable age"]

1) **"Absence" from rental property or "usual place of business" required:** Substitute service on a residential tenant is not authorized unless the tenant is "absent" from his or her residence or a known "usual place of business" (CCP § 1162(a)(2)). [See *Lehr v. Crosby*, supra, 123 CA3d Supp. at 5, 177 CR at 98—residential tenant who contests substitute service on ground he or she was *not* "absent" from a "usual place of business" has burden of proving he or she *has* a "usual place of business" (and that landlord was aware of it)]

2) **Comment:** In practice, landlords generally require residential tenants to advise them of their place of business (occupation). (Indeed, for tenant "accountability" purposes alone, it is a prudent business practice for landlords to require annual confirmation or updating of this information.)

(c) **"Nail and mail":** For *residential* tenancies, if the tenant's place of residence and business cannot be ascertained, or a person of "suitable age or discretion" cannot be found there, service may be effected by affixing a copy of the notice in a *conspicuous place* on the property rented to the tenant, *and delivering a copy to the person residing there* (if such person can be found), *and mailing* a copy to the tenant at the residence. [CCP § 1162(a)(3)] – on the same day.

(d) **The bottom line**: Personal service is not required for the notice, but must be attempted first before resorting to the other forms of service. Also, just proof of service is required. The Landlord need not prove actual receipt at trial.

See Exhibit D – sample for proof of service.

(2) Service on subtenants: At least where a three-day notice is based on a "curable" breach (CCP § 1161(2) or (3), or § 1161.1), it will support eviction of a *subtenant* (as well as the tenant) only if the *subtenant is separately named and served* (subtenants may be served in the same manner as tenants). It is not enough simply to name the tenant and serve a copy on the subtenant. [CCP §§ 1162(a)(3), (b)(3), 1161.1; *Briggs v. Electronic Memories & Magnetics Corp.* (1975) 53 CA3d 900, 904, 126 CR 34, 36; and see *Kwok v. Bergren* (1982) 130 CA3d 596, 600, 181 CR 795, 797—test is whether landlord recognized subtenant as tenant in possession before bringing UD]

Rationale: Unless separately named in and served with the three-day notice, subtenants would have no reasonable opportunity to *cure* a "curable" default. [See *Four Seas Investment Corp. v. International Hotel Tenants' Ass'n* (1978) 81 CA3d 604, 612, 146 CR 531, 534]

The easiest way to comply with this requirement is to *name all parties*—tenants and their subtenants—in a *single* notice and serve copies on each.

(a) Compare—incurable defaults: On the other hand, a notice based on an *incurable* default apparently need not be served on subtenants. [See *Four Seas Investment Corp. v. International Hotel Tenants' Ass'n*, supra, 81 CA3d at 611-612, 146 CR at 534—subtenants proper parties in 30-day notice UD even though not served with notice]

(3) Service on cotenants: In contrast, proper service of notice to terminate on one *cotenant* named in the rental agreement is proper service on the other named cotenants. [*University of Southern Calif. v. Weiss* (1962) 208 CA2d 759, 769, 25 CR 475, 480]

(a) Compare—serving all apparent occupants with "prejudgment claim of right to possession" form: As a safeguard, all apparent occupants not served with a three-day notice and not named in the UD complaint should be served with a copy of the UD summons and complaint *and* a "prejudgment claim of right to possession" form pursuant to CCP § 415.46). Failure to do so may prevent the landlord from obtaining a complete and effective eviction pursuant to judgment in a subsequent unlawful detainer.

1) Reason: Unless they were served with "prejudgment claim of right to possession" process in accordance with CCP § 415.46, occupants not named in the judgment of possession who occupied the premises when the unlawful detainer was filed are entitled to contest enforcement of the judgment against them by filing a timely *postjudgment* "claim of right to possession." [CCP § 1174.3(a), (h); cf. CCP § 415.46(e)(1)]

Moreover, if the unlawful detainer was for a "curable" breach, the complaint cannot simply be amended to name the formerly unnamed occupants (who were not served pursuant to CCP §

415.46). Rather, the landlord will have to serve the unnamed occupants with a proper three-day notice and give them appropriate time to cure before any further unlawful detainer and eviction action against them can proceed. [See CCP § 1174.3(e)(1)]

d. Computation of three-day notice period: An unlawful detainer predicated on a properly-served three-day notice is premature unless the three-day notice period has first expired without a "cure." [*Downing v. Cutting Packing Co.* (1920) 183 C 91, 95-96, 190 P 455, 457; *Hsieh v. Pederson* (2018) 23 CA5th Supp.1, 7, 232 CR3d 701, 705; *Lamanna v. Vognar* (1993) 17 CA4th Supp. 4, 6, 22 CR2d 501, 502] Thus, proper *computation* of the three-day period is essential.

The three-day period begins to run the day *after* proper service is effected. [See CCP § 12—time computed by "excluding the first day, and including the last …"; *Walters v. Meyers* (1990) 226 CA3d Supp. 15, 20, 277 CR 316, 319—3-day notice served by "nail and mail" effective on date of posting and mailing.]

(1). Extension for holidays and weekends: Saturdays, Sundays, and other judicial holidays are *not* calculated as part of the three-day notice period. [CCP § 1161(2), (3) (subds. amended Stats. 2018, Ch. 260; eff. 1/1/19; operative 9/1/19); see CCP §§ 12, 12a &12b]

Consequently, if a three-day notice is served on the Friday preceding a three-day weekend, the notice period will not begin to run until the following Tuesday and will not expire until the end of Thursday. The unlawful detainer action can be brought no sooner than the Friday following service of the notice. Not applicable to CCP section 1161(4) nuisance cases – regular three-day computation. However, if the last day of the notice period falls on a weekend day or holiday the day for the tenant to quit is the next business day.

3. 30/60-Day Notice to Terminate

Only to be used for no cause just cause evictions. 30-day notice of tenancy less than one year. 60-day notice if tenancy greater than one year. Cause must be stated in the notice. Relocation assistance required. Neither the landlord nor the tenant may withdraw a 30 or 60-day notice without the other's consent (unlike the 3-day notice which may be unilaterally withdrawn by the landlord); however, there is an implied withdrawal if the landlord accepts rent of a period beyond the termination of the 30 or 60-day notice period.

4. Termination by Tenant Abandonment: A tenancy may also be terminated, extinguishing the rental obligations, pursuant to tenant "abandonment" of the premises. [Civ.C. §§ 1951.2, 1951.3, 1951.35 & 1951.4; *Millikan v. American Spectrum Real Estate Services Calif., Inc.* (2004) 117 CA4th 1094, 1100, 12 CR3d 459, 461-462; see *In re Lomax* (9th Cir. BAP 1996) 194 BR 862,

864-865—termination of lease by tenant abandonment converts landlord's real property right to rent into contract right of damages for breach of lease]

a. **Conditions for establishing abandonment:** An abandonment terminates the tenancy only if the landlord acts properly to *establish* the abandonment. This requires compliance with *statutory* "abandonment" procedures (Civ.C. §§ 1951.3(b), 1951.35(b)):

• The landlord must give *written notice* of his or her belief that the tenant has abandoned the unit (see *Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC* (2011) 192 CA4th 1183, 1196-1197, 122 CR3d 417, 427 (no abandonment where landlord failed to provide notice of belief of abandonment)); *and*

• The tenant must have *failed* to give the landlord written notice, prior to the date of termination, that both (1) states he or she does *not* intend to abandon, and (2) provides an address at which the tenant may be served in an unlawful detainer action. [Civ.C. §§ 1951.3(b), 1951.35(b); see *250 L.L.C. v. PhotoPoint Corp. (USA)* (2005) 131 CA4th 703, 730, 32 CR3d 296, 316—absent proof that tenant responded to landlord's Notice of Belief of Abandonment, lease deemed terminated as of date stated in notice]

Sections 1951.3 and 1951.35 permit landlords to repossess rented premises without obtaining an unlawful detainer judgment and writ of possession. Therefore, the procedure may be time- and cost-effective. However, repossessing a rental unit without the protection of an unlawful detainer judgment is also risky—a landlord mistaken about an apparent abandonment could be held liable for "wrongful eviction" (see, e.g., *Kassan v. Stout* (1973) 9 C3d 39, 43, 106 CR 783, 785). Absent a consensual "surrender", the *only way* to avoid the risk, short of filing a UD action, is to *strictly follow* the §§ 1951.3 or 1951.35 procedures.

b. **Notice procedure:** First, the landlord must notify the tenant of a perceived "abandonment" and of intent to terminate the tenancy on that ground, in compliance with §§ 1951.3 or 1951.35.

See Exhibit E – sample for Notice of Belief of Abandonment.

(1) **Content of notice:** The notice must state:

(a) **Minimum unpaid rent:** For *residential properties*, that rent on the premises has been due and unpaid for at least *14 consecutive days*. [Civ.C. § 1951.3(c); see *Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC*, supra, 192 CA4th at 1196-1197, 122 CR3d at 427—tenancy not abandoned where tenant continued to pay about $50,000 in rent and other payments under lease terms and spent at least $250,000 in repairs; and see Civ.C. § 1951.3(f)(1)

& (4)—tenancy *not* abandoned if tenant proves rent was not due and unpaid for 14 consecutive days *or* if tenant proves that, during period commencing 14 days before landlord's notice was given and ending on date lease would have terminated pursuant to the notice, lessee paid all or a portion of the rent due and unpaid]

(b) **Believed abandonment:** Also, that the landlord reasonably believes the tenant has abandoned the premises. [Civ.C. §§ 1951.3(c), § 1951.35(c); see also Civ.C. §§ 1951.3(f)(2), 1951.35(f)(2) —tenancy *not* abandoned if tenant proves that at time landlord's notice was given it was "not reasonable" for landlord to believe tenant abandoned (fact that landlord knew tenant left personal property on the premises "does not, of itself, justify a finding that the lessor did not reasonably believe" an abandonment had occurred)]

(c) **Termination date:** And, the date of termination of the lease. [Civ.C. §§ 1951.3(c), 1951.35(c); see also Civ.C. §§ 1951.3(e) or 1951.35(e) for statutory form of notice]

(2) **Service of notice:** The notice of belief of abandonment must be delivered *personally* to the tenant; *or* sent by postage prepaid first-class mail to the tenant's last known address. If there is reason to believe notice sent to such address will not be received by the tenant, it must also be sent to any other address where the tenant may "reasonably be expected to receive" it. [Civ.C. § 1951.3(d)]

Although not required by the statute, cautious landlords effect service by *registered or certified mail with return receipt requested.* This procedure offers a ready method of proving the notice was in fact served and received.

Some landlords even take the added precaution of serving the notice *both* by regular mail *and* registered or certified mail; this is done in the apparent belief that some individuals might avoid accepting registered or certified mail.

Requesting return receipt may be prudent even if the landlord believes that, because of the abandonment, the tenant will not be available to sign at the designated address. At a minimum, this step will demonstrate the landlord's efforts to effect required notice and offer some support for the contention that the tenant has in fact abandoned the premises. A signed return receipt will reflect the delivery address, the date of service and the name of the individual who signed.

c. Termination following landlord's notice

(1) **Termination date:** As stated, for *residential properties*, the landlord's notice of abandonment must specify the *date of termination* of the tenancy. That date must be *at least*

15 days from the date of personal service of the notice or *18 days* from the date the notice was deposited in the mail (where service effected by mail). [Civ.C. § 1951.3(c)]

5. Termination by Surrender

a. **Nature of "surrender"—consensual termination of tenancy:** Tenants may validly terminate their tenancy, extinguishing the obligation to pay rent, by making a written offer to surrender that is accepted in writing by the landlord (Civ.C. § 1933(2))—lease terminates by "mutual consent of the parties").

II. BREACH OF THE WARRANTY OF HABITABILITY

1. Conditions Covered by Warranty

a. Civil Code § 1941.1 "untenantable" dwellings: A dwelling unit "shall be deemed" to be "untenantable" (meaning "uninhabitable") if it (1) "substantially lacks" any of the "affirmative standard characteristics" prescribed by CC § 1941.1, *or* (2) is a "substandard unit" as described in Health & Saf.C. § 17920.3, *or* (3) contains "lead hazards" as described in Health & Saf.C. § 17920.10. [CC § 1941.1; see *Hyatt v. Tedesco* (2002) 96 CA4th Supp. 62, 67-68, 117 CR2d 921, 925]

An untenantable dwelling pursuant to CC § 1941.1 violates the landlord's duty to render and maintain a residential building "fit" for residential occupation (CC § 1941).

(1) [Affirmative standard "tenantability" characteristics: The specific affirmative standard "tenantability" characteristics are:

(a) Weather protection: Effective waterproofing and weather protection of the roof, exterior walls, windows and doors. [CC § 1941.1(a)(1); see *Sylvia Landfield Trust v. City of Los Angeles* (9th Cir. 2013) 729 F3d 1189, 1194—as tenantability characteristic, lack of roof weatherproofing justified placing property in Los Angeles' Rent Escrow Account Program.

(b) Plumbing and gas: Plumbing and gas facilities that conform to state and local law at the time of installation, maintained in good working order. [CC § 1941.1(a)(2); see *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 CA4th 1281, 1292, 173 CR3d 159, 165, fn. 5—rental property lacked § 1941.1(a)(2) tenantability characteristic where landlord turned off all utilities]

(c) Water: A water supply that produces hot and cold running water and that is approved under applicable law. [CC § 1941.1(a)(3); see *Erlach v. Sierra Asset Servicing, LLC*, supra, 226 CA4th at

1292, 173 CR3d at 165, fn. 5—rental property lacked § 1941.1(a)(3) tenantability characteristic where landlord turned off all utilities]

(d) Heating: Heat that conforms with applicable law at the time of installation, maintained in good working order. [CC § 1941.1(a)(4); see *Erlach v. Sierra Asset Servicing, LLC*, supra, 226 CA4th at 1292, 173 CR3d at 165, fn. 5—rental property lacked § 1941.1(a)(4) tenantability characteristic where landlord turned off all utilities]

(e) Electricity: An electrical system, including lighting, wiring and equipment, that conforms with applicable law at the time of installation, maintained in good working order. [CC § 1941.1(a)(5); see *Erlach v. Sierra Asset Servicing, LLC*, supra, 226 CA4th at 1292, 173 CR3d at 165, fn. 5—rental property lacked § 1941.1(a)(5) tenantability characteristic where landlord turned off all utilities]

(f) Clean and sanitary premises: Building grounds and appurtenances that, at the inception of and during the rental period, are clean, sanitary and free from all accumulations of debris, filth, garbage, rodents and vermin. [CC § 1941.1(a)(6)]

(g) Trash facilities: An adequate number of appropriate garbage and rubbish receptacles, kept clean and in good repair at all times, beginning with inception of the rental period. [CC § 1941.1(a)(7)]

(h) Floors, stairways and railings Floors, stairways and railings maintained in good repair. [CC § 1941.1(a)(8); see also *Knight v. Hallsthammer* (1981) 29 C3d 46, 58, 171 CR 707, 715, holding that it is proper for the court to give CC § 1941.1 as a *jury instruction*]

(i) Locking mail receptacles (residential hotels): In residential hotels, a locking mail receptacle for each residential unit. [CC § 1941.1(a)(9)]

(j) Compare—utility energy savings assistance program: Nothing in § 1941.1 shall be interpreted to prohibit a tenant or owner from qualifying for a utility energy savings assistance program, or any other program assistance, for heating or hot water system repairs or replacement, or a combination thereof, that would achieve energy savings. [CC § 1941.1(b)]

(2) "Substandard" dwelling (Health & Saf.C. § 17920.3): Any building or portion of a building, including any dwelling unit, guestroom or suite of rooms, is deemed *substandard* under the State Housing Law (and "untenantable" under CC § 1941.1) whenever a proscribed condition exists to the extent that it "*endangers the life, limb, health, property, safety, or welfare of the public or the occupants*." [Health & Saf.C. § 17920.3 (emphasis added); see *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 CA4th 1281, 1292, 173 CR3d 159, 164-165]

The conditions proscribed by § 17920.3 are exhaustive. By way of example, they include (but are not limited to) inadequate sanitation, structural hazards, any nuisance, wiring defects, plumbing or mechanical equipment not in compliance with applicable law at the time of installation, and faulty weather protection. [See Health & Saf.C. § 17920.3(a)-(o); see also *Erlach v. Sierra Asset Servicing, LLC*, supra, 226 CA4th at 1292, 173 CR3d at 165—foreclosed residence was substandard under § 17920.3 where landlord turned off gas, electricity and water]