

June 30, 2010

Realtor Access to Rental Units

Showing tenant-occupied rental property is awkward. Realtors don't want to invade anyone's privacy. The tenant doesn't want people coming through their home. But the prospective buyer wants to see what they are purchasing – or may be moving into.

It is a difficult situation when a tenant denies access to Realtors and prospective purchasers. Some renters deny access to protect privacy, to hide who really lives in the unit, or to kill deals. The problem falls in the lap of the Realtor.

Sometimes a denial of access is due to a mis-communication. Other times it is deliberate. If you feel a tenant is interfering with a sale of the property, and there is nothing more you can do, have the seller consult with an attorney. A denial of access might be grounds for eviction.

Law of Access

Landlords have a right to enter a tenant's rental unit in order to show it to prospective or actual purchasers. Presumably, agents for the landlord have the same right. But these rights are not unfettered. And the limits on these rights remain untested in the courts.

The landlord may only enter the property during normal business hours. But what is a normal business hour? For Realtors, this means Sunday afternoons during open houses. For buyers, it also means weekends and evenings when they are off work and available to view property. But for tenants, it might mean Monday through Friday, from 9 am to 5 pm.

There are no court decisions defining "normal business hours" for purposes of showing property. This gives some opportunistic tenants an opening to refuse evening access or weekend showings. Realtors should hold their ground and insist on early evening and weekend showings. Most tenants will not risk losing their tenancies over this issue.

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Tenants are entitled to prior written notice of entry. In general, this notice must be served at least 24 hours before entering. Service is proper by personally delivering a copy to the tenant, leaving a copy with an adult at the premises, leaving a copy on, near or under the door to the premises, or by mailing a copy. If mailed, the notice must be mailed at least 6 days prior to entering.

Service by email is also permitted so long as the tenant has authorized this method of service. Even without authorization, service by email is proper if the tenant acknowledges receipt with a response to the emailed notice. The response can be a simple "ok". Just so long as it is logically connected to the emailed notice.

The notice may be given orally if the owner has notified the tenant in writing within 120 days of the oral notice that the property is for sale and that the owner or owner's agent may contact the tenant orally for access. Twenty-four hours is presumed reasonable notice.

The notice to enter must state a precise date and time of entry. Only PGE, telephone and cable companies have a right to make a tenant wait all day for someone to show up. Realtors need to state a precise time.

No One Home?

When the time comes to show the unit, knock on the door and ring the bell. If no one is home, let yourself in with the key the landlord provided. The tenant isn't required, or has a right, to be home during the showing. If the tenant isn't home and you don't let yourself in, there has been no denial of access.

If neither you nor the landlord has a key to the unit, ask the tenant for a copy. The tenant may have changed the locks. This is permitted unless prohibited by the rental agreement. If the tenant refuses to provide a key, this is considered a denial of access.

If the tenant is there when you arrive at the premises and says "you can't come in," this is a denial of access. Try to talk your way in, but don't become confrontational. If the police are called, they will most likely side with the tenant and tell you to leave.

And if your tenant demands conditions on entering, such as disclosing personal information about the buyers, or that you not look into certain rooms and closets, this is also a denial of access.

The owner or Realtor must leave written evidence of entry inside of the unit if the tenant isn't present at the time of access.

Eviction Based on Denial of Access

Denying access is grounds for eviction in San Francisco. But the denial of access has to be clear and unequivocal. And the denial must follow a proper notice requesting access.

The San Francisco Rent Ordinance permits a landlord to evict a tenant who denies access after being given written notice to cease. There are three different notices involved with this type of eviction: (1) the notice requesting access, (2) the notice to cease denying access, and (3) the 30/60 day notice of termination of tenancy. This last notice could be a 3 day notice to perform or quit depending upon the circumstances of the denial or language of the rental agreement.

If after receiving the notice to cease, the tenant continues to deny access after being properly served with a proper notice to enter, an eviction notice may be served.

The eviction process takes about 2 - 4 months. Not very comforting when you want to get the property sold and your listing is about to expire. However, the property will show much better once the recalcitrant tenant is permanently removed.

Paying for Tenant Cooperation

Some tenants are sloppy and will refuse to clean up before a showing. While not a denial of access, it certainly can have the effect of turning away a prospective buyer.

Landlords or Realtors might want to consider paying the tenant, or a house cleaner, to tidy up a bit before a showing. Most tenants would be happy to have the extra cash or for you to pay for a house cleaning.

You can even pay a tenant to get lost during a Sunday afternoon open house. This is perfectly legal. It also helps avoid tenant interference during showings.

Your job is to get the property sold. Paying a few bucks for a tenant's cooperation with the showing of the property is a small price to pay to get the property sold. A tenant's failure to cooperate can drive away prospective purchasers.

Mr. Fried is a partner at Fried & Williams in San Francisco, California and can be reached at (415) 421-0100. The foregoing does not give legal advice or establish a landlord's standard of care for a specific situation. Consult an attorney for advice on particular matters. ©2010 by Fried & Williams LLP. All Rights Reserved.