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FLOOD RELATED DAMAGE TO RESIDENTIAL RENTAL HOUSING: WHAT TENANTS AND LANDLORDS NEED TO KNOW

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The contents of this document do not have the force and effect of law. This document is intended only to provide clarity for the public regarding existing requirements under the law or agency policies. This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to housing in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, Legal Aid Society of San Diego, Inc. cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation. Please do not hesitate to call us to obtain the most up to date information regarding your situation.

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1. What to do if you have experienced flood damage?

If you think the condition of the home is unsafe due to the flood damage and your life could be in danger, leave the house immediately and call 911. Examples of life threatening conditions would be structural damage, collapsed roof, leaking gas lines, people being swept in the current, and exposed and live electrical wires (not an exhaustive list).

If your utilities are not operational, please contact and report the issue to your utility provider. If your utility provider indicates that your home is not being impacted by outage of services, inform your landlord immediately, as it may be an issue with the property and not the utility services. If your landlord refuses to make repairs or ignores your request, please see FAQ #4 below.

2. Who is responsible for repairs related to flood damage?

Residential tenants in California are protected by the [Health and Safety Code](#), which outlines how a home should be maintained. Under State law, the landlord has a duty to maintain the premises in a condition fit for human habitation and in substantial compliance with health and safety laws, including making needed repairs in response to natural causes, including floods. It is the landlord's sole responsibility to make repairs caused by flood damage. A landlord cannot contract around this responsibility and is still responsible to make repairs even if a tenant signed a lease indicating they would assume the responsibility for making repairs.

3. How and when should I inform my landlord of the flood damages?

Notify your landlord imminently, preferably in writing, regarding the extent of the flood damage and request an inspection as soon as possible. If you speak to your landlord on the phone, it is recommended you follow up the conversation with what was discussed in writing via email or text. In the written communications include pictures of the damage to the unit if possible.

It is also important to document all damage to personal property. (More in FAQ #7 on personal property damage)

Do not hesitate to inform your landlord of the damage out of fear. Water damage in enclosed areas often leads to mold, which can negatively impact health and safety of residents and potentially spread throughout the home. The sooner you inform your landlord, the sooner the repairs could begin.

If flooding is localized in one area of the unit, move your personal property to the unaffected areas to avoid further damage. Avoid using any electrical outlets that have been affected by the flood.

Sample Communication:

Dear [Landlord],

Thank you for speaking with me today. I wanted to remind you that we talked about the following:

OR

[I tried to contact you ___ times by _____. I could not reach you]

[FOLLOWED BY]

The rains have caused serious problems at my home at [your address]. These issues include

1) [insert specific issue]

2) [insert specific issue]

3) [insert specific issue]

Also, please see attached pictures of the damage described above.

Please contact me immediately to tell me how you plan to resolve these issues.

Sincerely,

4. What should I do if my landlord is refusing to make repairs?

First make sure to document all your request for repairs and save any written communications from your landlord in which they are refusing to make repairs. Next, you can file a complaint with your local code enforcement department regarding the damage caused by the flood. Code enforcement will inspect the unit and issue a citation to the landlord for health and safety code violations in the home. Code enforcement can impose daily fines and reinspection fines if the landlord fails to make the repairs by the deadlines imposed in citations.

Although under state law, you have the right to withhold rent until your landlord makes repairs. We do not advise you to withhold rent as it can lead to an eviction lawsuit (Unlawful Detainer). Evictions move quickly and are not a favorable venue for tenants to raise habitability issues. The less risk adverse approach is to continue to pay your rent and file a complaint with code enforcement.

5. If I have to leave my home in order for my landlord to make repairs, who is responsible for paying for my alternative housing/hotel?

Your landlord is normally responsible for paying for your hotel. As mentioned above, your landlord has an un-waivable duty to provide habitable housing. This duty continues even if there is damage to the unit that requires the tenant to temporarily vacate in order to safely repair the unit. The damage to the unit DOES NOT automatically terminate the tenancy. As such, your landlord has a continued duty to provide alternative habitable housing until the termination of a tenancy which cannot happen until a court order is entered against the tenant in favor of the landlord.

You can ask your landlord to pay for the hotel when you tell them that you need to leave your home because of bad conditions. In the alternative, your landlord can temporarily let you move into another vacant unit if one is available, at their discretion.

If your landlord refuses to pay for the hotel and you must pay for it yourself, keep all your receipts. This includes all receipts for your hotel stay and any food you buy or other expenses you have while you are out of your home. You should ask your landlord to reimburse you for all these costs. If your landlord refuses, you can bring a [small claims action](#) (if the amounts are \$10,000 or less), or contact an attorney to assist in filing a civil action.

If you have renters' insurance, please refer to FAQ #8.

6. Do I still need to pay my rent if I am out of the home while repairs are being done?

This depends on the situation and the other resources that are being provided by your landlord. If your landlord is paying for your hotel and all other out-of-pocket expenses, then it is likely that you should pay rent while you are out of the unit.

If your landlord has unlawfully refused to provide you alternative housing, or your alternative housing is being paid by renters' insurance, you likely do not have an obligation to pay your rent. It is possible your landlord may still serve you a nonpayment of rent eviction notice. If you receive an eviction, please contact an attorney as soon as possible for advice or give us a call for assistance. See FAQ #13

7. What do I do if my personal belongings are damaged by the rain?

Generally, your belongings should not be damaged when it rains. This is usually a sign that your landlord has failed to maintain the property, such as having inadequate waterproofing, a roof leak, overflowing and clogged rain gutters, or a collapsed roof. When landlords negligently maintain the property, they must pay for the harm caused by their failure to maintain.

It's possible the flood was an issue outside of your landlord's control, such as the flooding of an entire city block. In this situation it is less likely your landlord is responsible for your personal property damages. Whether your landlord is responsible will really depend on the extent of the damages and how they were caused. If you have renters' insurance, see FAQ #8.

Your first step should be to document any damage to your belongings by taking pictures or videos. If you believe your landlord is responsible due to their failure to maintain the property, you should send your landlord a letter or email asking them to reimburse you.

8. What role does insurance play during a storm?

Landlord Insurance

Most landlords have at least some insurance that covers their property. This insurance may, but does not always, cover issues such as damage to tenants' personal property. Many landlords do not want to file claims on behalf of tenants as they fear their insurance rates will go up. If you have suffered significant financial harm that your landlord has not reimbursed, you should contact a private tenant attorney who can help you access the landlord's insurance policy.

Additionally, landlord's insurance policy may likely cover damages to the property due to the flood. If your landlord says they do not have money for repairs, they should contact their insurance provider to see if they are covered. If not, the landlord is still responsible for the repairs and cannot say "I can't afford the repairs" as an excuse not to make repairs. Prudent and responsible landlords make sure to have insurance and budget for unexpected repairs such as this. The tenant should not bear the burden of an irresponsible landlord.

Renters' Insurance

You might also have renters' insurance. Renters' insurance can be a valuable tool if you are displaced, or your personal property is damaged in a storm. If you have a renter's insurance policy, you should file a claim with your policy as soon as possible.

If your renters' insurance is covering your hotel stay, confirm with your insurance carrier the limit of your policy. Some renters' insurance only covers a certain number of days, or the coverage may be capped at a certain dollar amount. It is important to communicate to your landlord what the limits of your policy are in advance. This way your landlord knows after what date they will be responsible for the hotel costs if the repairs have not been completed for the tenant to move back in. If your insurance is paying for your hotel, you generally do not have to pay rent to your landlord. I would communicate this to your landlord in advance to avoid miscommunications.

9. What if I don't have renter's insurance, and my landlord says they are not responsible for reimbursing me?

If you ask your landlord to reimburse you for your belongings and they refuse, you should contact a private tenant attorney. If you cannot find an attorney, you can file a case in [small claims court](#). If you file an action in small claims court, you should be prepared to explain why the damage was your landlord's fault. For example, "my apartment flooded because the windows were in bad condition" or "my apartment flooded because it is at the bottom of a hill and my landlord did not install a drainage system."

10. Can my landlord tell me my tenancy is terminated and I must move immediately because of flood damage to the unit.

NO! Your tenancy does not terminate due to flood/water damage to your unit. To terminate your tenancy your landlord must still follow the normal eviction process:

- Serve you a written eviction notice for a no-fault eviction (30 days for tenancies less than a year or 60 days for tenancies over a year)
 - Landlord may be required to provide a specific reason for your no-fault eviction and provide relocation assistance under [AB 1482](#), [San Diego Tenant Protection Ordinance](#), or [Chula Vista Tenant Protection](#)

Ordinance.

- The notice must expire before a landlord can file an eviction lawsuit (unlawful detainer);
- File and serve the eviction lawsuit;
- Tenant has 5 court days to file a response to the lawsuit;
- Prosecute the eviction and if they prove their case, obtain a court order terminating the tenancy; and
- The court order is executed by the Sheriff's department who removes the tenants if they are still living in the unit.

ONLY THE SHERIFF, WITH A COURT ORDER, CAN REMOVE THE TENANTS FROM A PROPERTY. ONLY AFTER CAN THE LANDLORD CHANGE THE LOCKS TO THE PROPERTY. This process can take 2-3 months and does not happen overnight.

11. What protections do I have against illegal lockouts?

California law requires that tenancies be terminated in accordance with the law. Tenancies must be first properly terminated, usually requiring the service of a termination notice on the tenant. If the tenant remains on the property after the notice's expiration, the landlord must then file an action for unlawful detainer. Under no circumstances are landlords permitted to circumvent the legal process and engage in 'self-help' eviction methods. California Code of Civil Procedure section 1159 states, in relevant part, "[e]very person is guilty of a forcible entry . . . who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession."

Further, Civil Code section 789.3(b) prohibits a landlord "with the intent to terminate the occupancy under any lease or other tenancy or estate at will, however created, of property used by a tenant as his or her residence" from doing any of the following: *(1) preventing the tenant from gaining reasonable access to the property by changing the locks or other similar method*, *(2) removing outside doors or windows*, *(3) removing the tenant's personal property from the premises*. The remedies available under Civ. Code § 789.3 include actual damages, damages up to \$100 per day or part thereof in which the landlord/provider remains in violation, attorney fees, litigation costs, and immediate injunctive relief. In addition to the remedies provided for under Civ. Code § 789.3, "a landlord who violates section 789.3 of the Civil Code, if the tenant has provided a declaration of COVID-19 financial distress . . . shall be liable for damages in an amount that is at least one thousand dollars (\$1,000), but not more than two thousand five hundred dollars (\$2,500) [. . .]." Additionally, a significant and intentional violation of this statutory section limiting a landlord from improperly influencing a tenant to vacate can result in a statutory civil penalty up to \$2,000. Civ. Code § 1940.2(b).

In addition to civil liability, forcible entry is a crime. "Every person using or procuring, encouraging or assisting another to use any force or violence in entering upon or

detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.” Penal Code § 418. Commission of this criminal act is punishable by up to one (1) year in jail and a fine of up to \$1,000.

12. What can I do if my landlord illegally lockouts me out of the property?

You can call your local law enforcement department, on the non-emergency line, to report that your landlord has illegally locked you out of your home.

[In July 2022](#) , California Attorney General Rob Bonta [issued legal guidance](#) about steps law enforcement officers should take to prevent and respond to unlawful lockouts and self-help eviction. In the guidance, the Attorney General explained that Landlords trying to “evict” tenants by changing the locks on rental properties, shutting off water or electricity, or removing tenants’ personal property is a violation of California law. The Attorney General reiterated that the only lawful way to evict a tenant is to file a case in court, prevail, and a sheriff lockout occurs. Attorney General Bonta emphasized that, when called to resolve a dispute between a landlord and tenant, law enforcement have a legal responsibility to intervene to prevent illegal evictions.

Additionally, you should contact a private tenant attorney to assist you in filing a wrongful eviction lawsuit due to the illegal lockout. If you cannot find an attorney, you can file a case in [small claims court](#). You should maintain records of any communications between you and the landlord regarding the illegal lockout.

13. I still have questions, who can I contact for assistance?

The Legal Aid Society is open for in person or over the phone intakes Monday - Friday, 9:00 a.m. to 5:00 p.m. Call us at: **877-LEGAL-AID (877-534-2524)**