

OCCUPANTS VERSE TENANTS

A smart landlord will always conduct a thorough background check on all applicants that wish to rent a property. It is based upon the information conducted, including the applicant's credit that the landlord can make an informed decision as to whether to enter into a lease. However, the circumstances change, when the applicant has been approved, moves into the property, and then wants his girlfriend, who has bad credit, to move into the house. The same analysis should be used in qualifying the second applicant, even if the first person has already qualified.

Clients commonly ask our firm what obligations they have and how they should handle such applicants. To protect yourself and your property, the best thing to do is have the new applicant complete the entire application just as if they were renting the house themselves. See if they would qualify under the normal standards to rent the property, had they applied when the lease began.

If the new applicant would qualify to enter into a lease, you can modify the lease to add them as a named tenant or enter into a new lease with both tenants. In either case, you must make sure that you have both tenants sign. Additionally, if you enter into a new lease, you need to specifically address what happened to the old security deposit – whether it is to be transferred to the new lease and owed to both tenants or accounted for before the new lease starts. Many lawsuits have been filed where the landlord believed the security deposit was to be transferred and owed to both tenants, but the original tenant thought they were owed the full refund.

If the new applicant would NOT qualify to enter into a lease, they should not be added. From a legal perspective, they have no rights and can not reside on the Premises. Most leases restrict the people that can reside in the house and specifically provide that if a “guest” is residing in the property for an extended period of time, the tenant is subject to eviction for noncompliance for having an unauthorized occupant. (Its important that leases specify how long a “guest” may reside in the property before they become an unauthorized occupant.) Therefore, the landlord could refuse to allow the person to be added to the lease and could refuse to allow the person to remain on the property. Of course, this may not make the tenant very happy.

If the landlord wanted to work with the tenant because the tenant regularly paid the rent and took care of the premises, the landlord's interest would best be served by adding the girlfriend as an “authorized occupant” on the lease but not as a “tenant” or “leaseholder.” As an occupant, a person has no leasehold rights to the property, has no legal standing, but does have the right to occupy the premises which is derived from the tenant's rights. Therefore, as long as the tenant is in compliance with their lease, then occupant can stay in the property. If something happens to the tenant (death, abandoned the property etc), or if the tenant wants to the occupant removed, the occupant would

have no right to stay in the premises. In such situations, the landlord must remember that she only has contractual responsibilities and liabilities to the tenant, not the occupant. Therefore, the security deposit must only be refunded to the tenant.

