

TENANT LANDLORD ISSUES FOR CHILD CARE PROVIDERS

TEMAS RELATIVOS A LA RELACIÓN INQUILINO/PROPIETARIO PARA PROVEEDORES DE CUIDADO PARA NIÑOS EN ESTABLECIMIENTOS FAMILIARES

CRC BULLETIN #412

As of January 1, 1997, family child care providers are required by law to notify their landlord that they have or are planning to start licensed family child care in their home. In some cases, landlords have told their tenants they will not permit a licensed family child care program to be conducted on their property.

This handout explains the legal rights for both tenants and landlords; and offers suggestions on how to handle some of the more common conflicts and concerns when conducting a family child care in the home.

Q: Do I have to tell my landlord that I have a family child care program in my home?

A: YES. You are required to give your landlord notice of operation, or the intent to start a family child care home on the premises.

Q: Do I need permission from my landlord to operate a family child care home?

A: NO, with one exception. There is no law that requires you to get permission from your landlord to operate licensed family child care in your home. The exception is if the family child care provider is using, or planning to use, the "Plus 2 Option". The "Plus 2 Option" allows you to care for 2 schoolage children. It allows you to care for 8 children instead of 6 (small family child care license), or 14 children instead of 12 (large family child care license). You need your landlord's permission in either situation.

Q: Can a landlord prohibit family child care in a tenant's home?

A: YES & NO. In California, your landlord does not have the authority to stop you from operating licensed family child care in your home **unless** you are using or planning to use the "Plus 2 Option." Otherwise, refusing permission, or serving an eviction notice because of operating or intent to operate a licensed family child care program, is illegal in California.

The landlord may have some questions or concerns about liability and added wear and tear to the property, but none of these concerns can legally justify refusal for permission or eviction.

Q: Can the rental or lease agreement prohibit family child care?

A: NO. A rental or lease agreement cannot prohibit family child care. Rental or lease agreements that read, "home is only to be used as a residence," or "not to be used as a place of business" cannot be used to prohibit family child care.

Some landlords may argue that the operation of a family child care home is a commercial activity, Health and Safety Code Section 1597.43(a) is clear that the use of the pre-mises for family child care does not change the residential nature of the use.

Q: What if I live in an apartment?

A: It does not matter if you live in a house, apartment, condominium, town house, or a duplex, your rental or lease agreement cannot prohibit family child care in your home. It has been argued the terms "single-family residences" or "real property" used in Health and Safety Code Section 11597.40 only applies to detached houses. However, statute SB163, Statutes of 1983, Chapter 1233 includes child care providers where there are multiple dwellings.

Q: What if my landlord is concerned with liability?

A: The landlord may be concerned that he or she could be sued if a child gets injured while in the child care home. You can, and probably should, get liability insurance for your program, although the law does not require it. Your landlord can provide you with a written request to be added as an additional insured on your policy. You must honor this request as long as the addition does not result in a cancellation or non-renewal of your policy.

Some insurance companies charge an additional premium for the addition. If that is the case, the added cost is to be covered by your landlord. If you choose not to get insurance, the parents you serve must sign an affidavit provided by Community Care Licensing stating that they know your program does not have Liability insurance. However, having the signed affidavit does not limit your liability.

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Q: Can my landlord decide the hours of operation for my family child care program?

A: NO. The hours of care provided may not be limited by your landlord. You are free to decide whether you want to provide evening or weekend care. Your landlord could be concerned about disturbing the other tenants. To avoid this, while developing your child care policy, you could include no honking horns, parking in the guest spaces, and no loud or long conversations in the hallways. You should plan activities for the children that consider and respect the needs of other tenants.

Q: Can my landlord increase my rent to cover any additional wear to the home or increased utility costs?

A: NO. You are under no legal obligation to cover these added costs. If your landlord raises his/her concern about the added wear and tear, you can stress that a safe, clean environment must be maintained according to licensing regulations. It is in their best interest to keep the home well maintained, and prompt repair may reduce the risk of liability.

You should speak frankly about any increase for electricity or gas. You may come up with some agreement on how such costs, if any, can be met or shared. You could practice energy conservation to show your concern for these issues.

Q: What can my landlord do?

A: Your landlord is permitted to charge up to two months rent for a deposit on an unfurnished home, whether it is called a cleaning deposit or security deposit.

ADDITIONAL RESOURCES

The Child Care Law Center – (415) 495-5498

Napa County Rental Information & Mediation Services, Inc. – (707) 253-2700

Community Resources for Children – (707) 253-0376

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