

Legal Rights of Tenants Displaced by Flooding in San José

- **Do tenants have the right to return to homes that were damaged by the flood?**

Yes. Tenants have a right to return to their homes, and landlords cannot evict tenants without going through the legal eviction process. If the landlord has to make repairs that require the tenant to be out of the unit, the tenant should be able to go back to the unit after the repairs are done (unless the landlord has gone through a legal eviction process).

- **My home was damaged by the flood. Do I still have to pay rent?**

It depends on how serious the damage was and whether a government agency has “red-tagged” or “yellow-tagged” the unit. If the City has red-tagged a unit, it means the unit is not safe to go inside. If the City has yellow-tagged a unit, it means people can go inside the unit but that it is not safe to live in because of ongoing conditions like structural issues or lack of utilities. If the damage to the unit is so bad that the tenant cannot live there, then the tenant should not have to pay rent until the unit has been cleared for occupancy. You can find out the status of properties by looking at the maps on this website: <http://sanjoseca.gov/index.aspx?NID=5404>.

If the tenant is able to live in the unit, then the landlord can require the tenant to pay rent. If there are still serious problems that need to be repaired, the tenant might be entitled to pay less rent—or to get a partial refund of rent—until the problems are fixed. However, if the landlord doesn’t agree to a lower rent, it can be risky for the tenant not to pay the full rent, because the landlord might start the eviction process. If your landlord gives you an eviction notice, or if you are served with an eviction lawsuit, contact legal services for help right away.

- **What if I live in a rent controlled apartment?**

Buildings with three units or more built prior to September 1979 are covered by the City’s Rental Rights and Referrals Program. Tenants who live in rent controlled buildings have additional legal protections and can petition for rent reductions if there are code violations, health and safety issues, or “service reductions.”

If you file a petition, there will likely also be an opportunity to have a mediation with your landlord. This is a time to sit down with a City official and your landlord and try to work out an agreement about what will happen with your tenancy going forward. For more information, or to file a petition for a rent reduction, call or visit the City’s Rental Rights and Referrals Program (information below) or visit their website at: <http://www.sanjoseca.gov/index.aspx?NID=743>.

Rental Rights & Referrals Program (Located at San Jose City Hall)
Housing Department, City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

Phone: (408) 975-4480

Hours: Monday-Friday, 8:00 a.m. – 5:00 p.m.

- **I don't want to go back to my apartment. Can I break my lease with my landlord?**

If your unit is red-tagged (see above), you can break your lease and you do not owe money to your landlord. If your unit is not red-tagged, then your lease still exists. If you have a year lease and want to break your lease early, you should try to negotiate a move out agreement with your landlord. If you simply move out, your landlord could try to make you pay for the remaining months on the lease until he or she finds a new tenant. If you are on a month-to-month tenancy, and you want to break your lease, you should give your landlord 30 days' notice in writing. You still would owe rent for that 30 day period.

- **I need money to be able to move. Does my landlord have to pay me relocation benefits?**

No. City and state relocation laws do not apply to natural disasters such as floods. However, the San José Flood Victims Relief Fund will provide funding through Silicon Valley Community Foundation to identified non-profit organizations to offer emergency financial assistance to support housing stability and other immediate needs for displaced flood victims. Types of direct financial assistance may include temporary rental subsidies, hotel vouchers, work-related tools or equipment, vehicle repairs or replacement, home furnishings, or other immediate needs support, and priority will be given to vulnerable households that have been either temporarily or permanently displaced from their homes.

To register for assistance, displaced victims should go to the Local Assistance Center (LAC) at Shirakawa/Vietnamese American Community Center on 2072 Lucretia Avenue.

This is a multi-agency support center to provide help and resources to residents affected by flooding. Residents registering at that LAC will be contacted within the next several days by a non-profit financial assistance partner to conduct a full assessment for aid. Impacted residents should also clearly indicate if they are currently unhoused or living in an unstable or unsafe environment.

- **How can I get my security deposit back?**

A landlord does not have to return your security deposit until after you move out. After you move out, your landlord has 21 days to return your security deposit or give you a list of deductions. Your landlord can deduct any unpaid rent or any damage to the property you caused from the security deposit. Your landlord cannot deduct from your security deposit any repairs related to the flood. If you are moving out, make sure your landlord has your forwarding address to send the security deposit.

- **What can I do to make sure my legal rights are protected?**

Keep records of everything you can. Take pictures of damage to the unit and to your personal property; get receipts for rent payments; write down any agreements you make with your landlord. If your landlord does not want to sign an agreement, send him a letter, e-mail, or text message confirming your agreement. Communicate with your landlord—if you have to move out temporarily for repairs to be made and want to move back when the repairs are done, make sure that your landlord knows that you want to return and how to reach you. If you have a Section 8 voucher, be sure to let the Housing Authority know what's going on.

- **Where can I go for help with legal issues related to my housing?**

The following organizations provide free legal services to tenants in Santa Clara County. However, each organization has its own resource limitations and eligibility criteria. Contact organizations individually to see if they can help you.

Law Foundation of Silicon Valley (408) 280-2424

Asian Law Alliance (408) 287-9710

Bay Area Legal Aid (800) 551-5554

Senior Adults Legal Assistance (408) 295-5991

Disclaimer: this sheet is provided for information only and should not be construed as legal advice. For advice about a particular situation, please consult with an attorney directly.