

Cannabis (Marijuana) Issues: Rental of Residential Property

Can a residential landlord prohibit smoking of marijuana for personal use by a tenant in the rented premises?

Yes, if the lease prohibits smoking of marijuana or tobacco. Even if the lease does not have an explicit prohibition on smoking, the landlord can probably still prohibit smoking marijuana as it is an illegal use under federal law. C.A.R. Residential Lease and Month-to-Month Rental Agreement (C.A.R. Form LR) prohibits smoking of any substance in paragraph 14.

Is a residential tenant with a medical need for marijuana entitled to smoke marijuana in a property, as a reasonable accommodation for a disability, even though there is a prohibition in the lease or rental?

Probably not. Use of marijuana is a violation of federal law. There is no exception for medicinal purposes to accommodate a disability. Further, under federal statute, a user of illegal drugs is not considered an individual with a disability. Also, case law has upheld an employer's right to restrict marijuana use, even if the use is needed for a disability. While no case has been decided in the housing context, the Fair Employment and Housing Act, which was at issue in the employment case, applies to both employment and housing. Lastly, there may be alternatives to smoking, such as the use of edibles, that can be a reasonable replacement for smoking.

Does a residential landlord have a right to evict a tenant for smoking or growing marijuana for personal use by a tenant in the rented premises?

Yes, if lease prohibits use of marijuana. Even if the lease does not have an explicit prohibition, the landlord can probably still evict on the basis of using the premises for an illegal purpose since both smoking and growing cannabis are illegal under federal law.

Will a California court permit a landlord to evict based on federal law even if such use is legal in California?

There is no case law on that issue in California, so it is unknown.

Can a landlord require a tenant, even one with a disability, to pay for reasonable modifications to the physical improvements (such as increased ventilation requirements) as a necessary accommodation as a precondition to allowing smoking of marijuana in the premises?

Most likely yes. Tenants with disabilities are required to pay for reasonable modifications to the physical structure needed to accommodate a disability.

May a residential landlord deny a lease or rental to a tenant who has a valid medical marijuana card?

Probably not, especially if tenant agrees to be bound by any restrictions on smoking.

May a residential landlord deny a lease or rental to a tenant who works for a dispensary?

Probably not. In California it is illegal to discriminate based on source of income. However, this law presumes legal income. The sale of marijuana is legal in California. However, since it is not under federal law, the answer is unclear.

If one person's lease/rental does not prohibit smoking, can other tenants object?

Probably not BUT if another tenant has a disability aggravated by smoke, and the smoking tenant has a medicinal reason for smoking, the landlord must engage in dialogue to try and reach an accommodation that is satisfactory to the needs of all persons with disabilities.