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Post Disaster Landlord Tenant Housing Issues Part 1

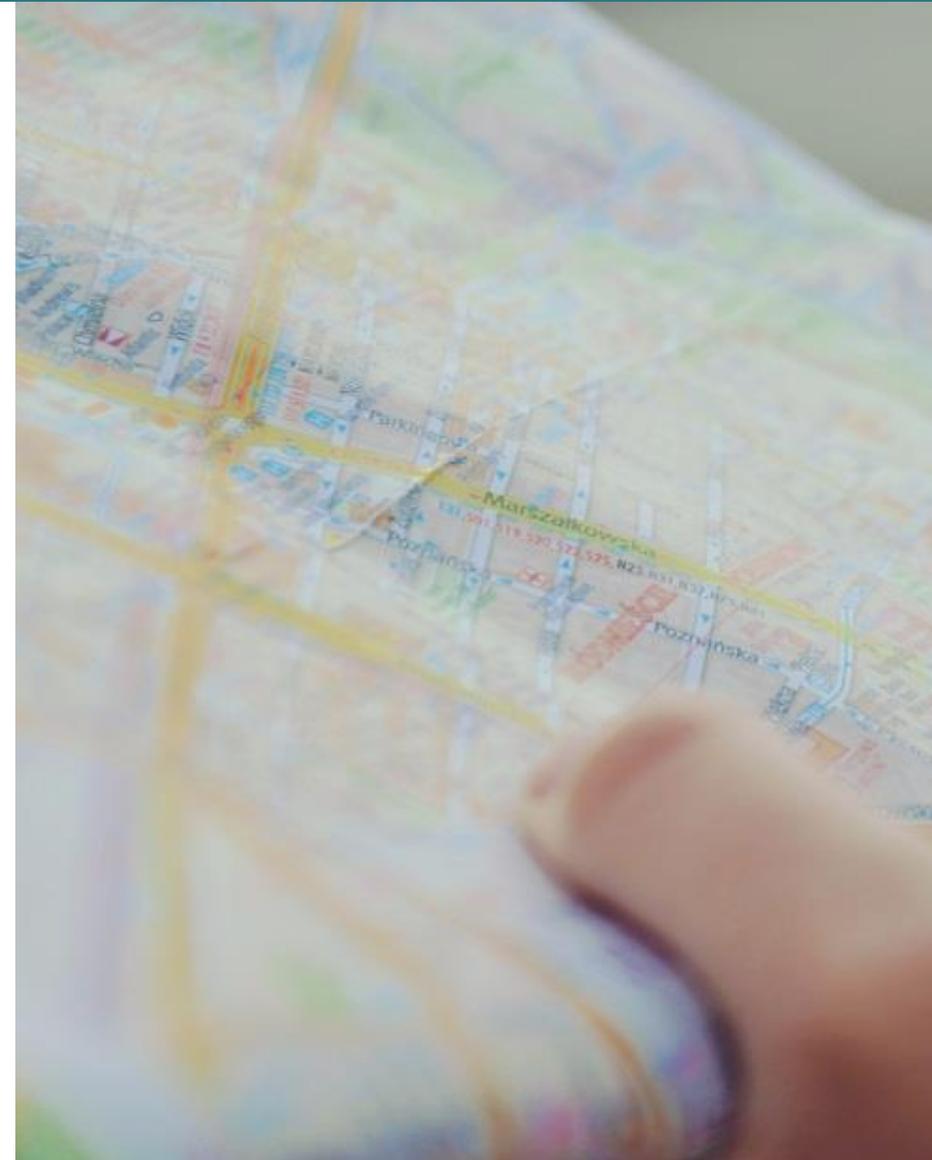
Presented by:
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After this learning experience, trainees will:

1. Understand the applicable law for keeping people housed after a disaster.
 - Continuing or resuming the tenancy
 - Safe and healthy conditions
2. Be able to secure resources for tenant households.
 - Relocation benefits
 - Maintaining subsidies



- Initial Determinations
- Landlord Duties
- Condition of Premises



Initial Determinations

- **What is the condition of the home?**
 - Repairable? Destroyed?
- **Which laws apply?**
 - Determined by nature and duration of tenancy, type of housing, and location.



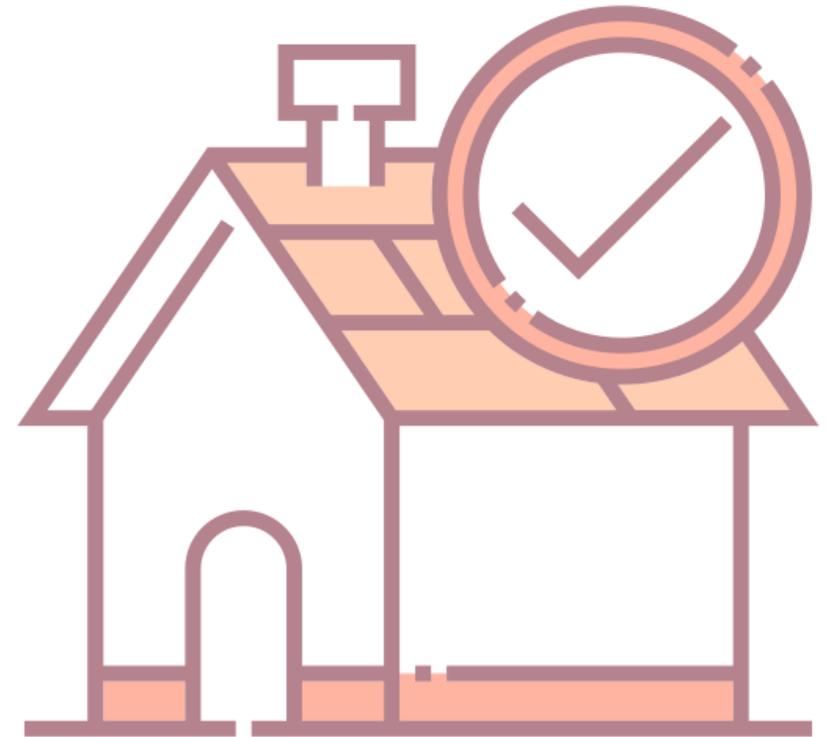


Landlord Duties

- Tenants have exclusive right of possession over rented property; landlords may not take away possession absent due process.
- Required process includes:
 - Written notice terminating the tenancy
 - Expedited court proceeding – “unlawful detainer”



- Landlords have a duty to maintain rented property in safe condition. *Green v. Superior Court* (1974) 10 Cal.3d 616
 - Warranty of habitability cannot be waived by tenants
- Every agreement to rent property includes an implied “covenant of quiet enjoyment.” Civ. Code §1927



Condition of Premises

- If rented property is completely destroyed, the tenancy is terminated per Civil Code §1933.
- Key question is whether premises is actually destroyed, or whether landlord has duty to rehabilitate.
 - No clear definition of “destroyed.”
 - Advocate for tenant should look for factors that indicate feasibility of restoring any remaining structure.

Red Tag by Code Enforcement

- Administrative determination that premises is not safe to occupy.
- Code enforcement order should specify substandard conditions and what needs to be done to bring into compliance.
- Tenant is required to vacate, but their rights under the lease and the landlord's duties are not extinguished.



- Does tenant have to pay the rent?
 - Not obligated to pay the rent if premises not in habitable condition.
 - Landlord should refund rent paid per diem for days tenant is out of possession.
- Tenancy survives when a property is red-tagged.
 - **Red tag** will interrupt ability to occupy premises and landlord has the duty to repair.
 - *Erlach v. Sierra Asset Servicing, LLC*, (2014) 226 Cal. App. 4th 1281, 1292



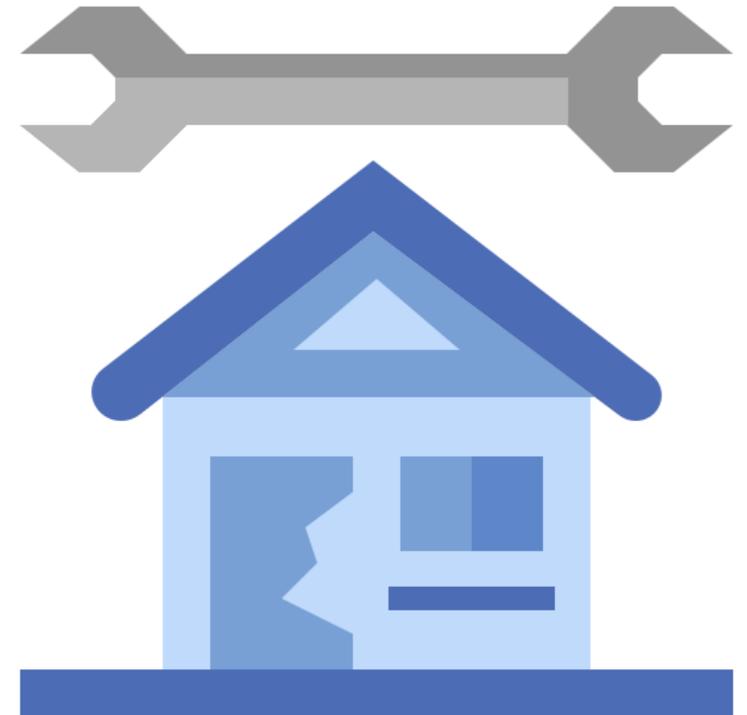
Red Tag by Code Enforcement

- Generally after **red tag**, owner obligated to pay relocation assistance.
 - Owner to pay tenant 2x fair market rent + deposit refund.
- NOT applicable if red tag is “result of a fire, flood, earthquake, or other event beyond the control of the owner, and the owner did not cause or contribute to the condition.”
 - Health and Safety Code section 17975, *et seq.*



Yellow Tag by Code Enforcement

- Administration determination that premises has **substandard conditions** but can be used to some degree.
- Tenant stays in possession.
- Owner obligated to repair to the standards under Civil Code 1941.1



Yellow Tag by Code Enforcement

- Tenant is entitled to rent abatement.
- Owner and tenant should negotiate rent reduction for **lack of habitability**.
- If no agreement, Tenant should continue to pay full rent.
 - Tenant to seek remedy through a local Rent Board or Small Claims Court.

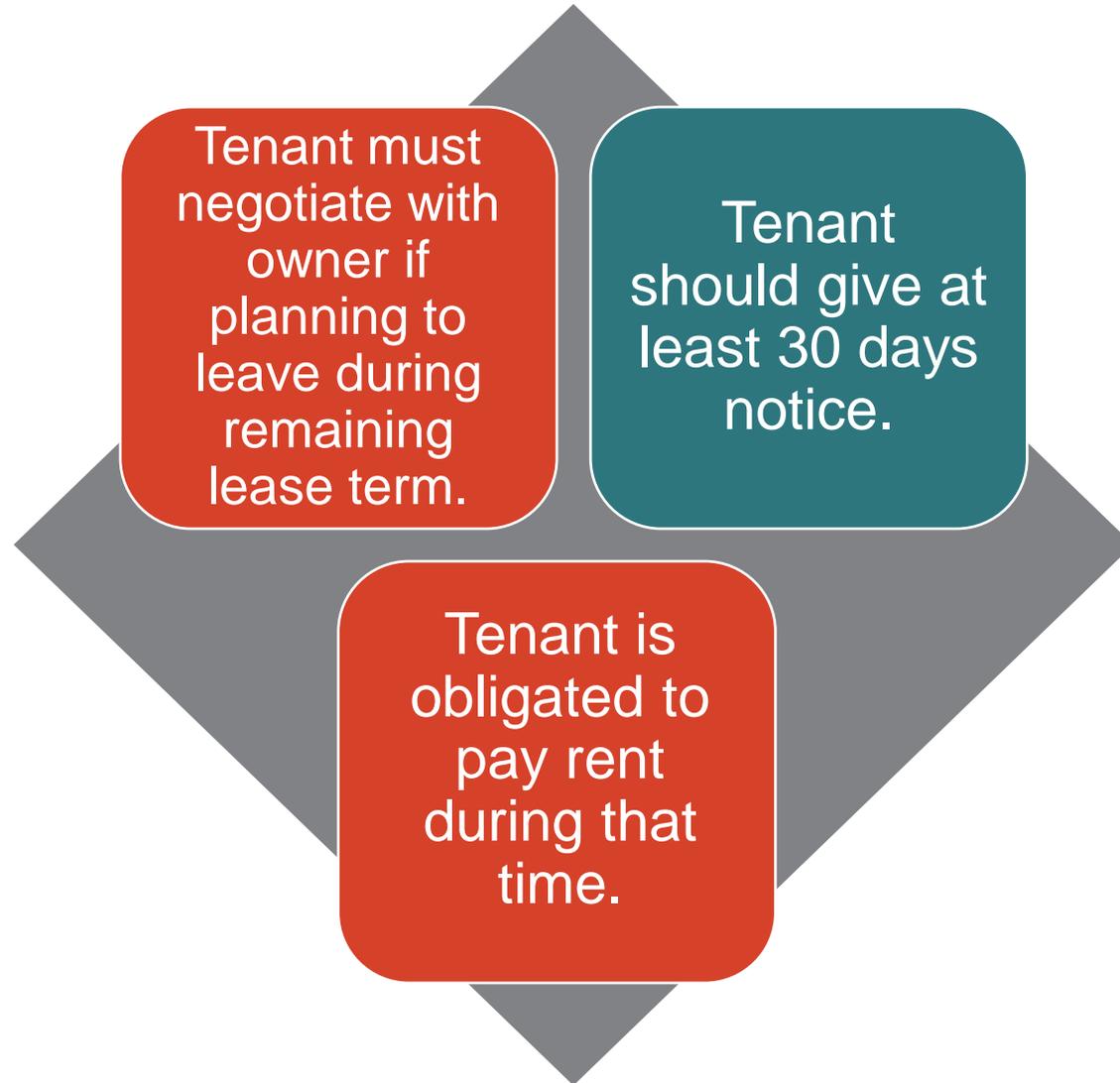


- No administrative finding that premises is substandard, no requirement that tenant vacate.
- Tenant's right of occupancy and obligation to pay rent continues.
 - Unless agreement to the contrary.
- Tenant may self-document any substandard conditions.





No Tag by Code Enforcement



If tenant breaking a lease, then tenant needs to:

- Find a replacement tenant or
- Offer to pay landlord advertising and re-rental expenses

Tenant will be obligated to pay the monthly rent until rented out.

- Landlord has an obligation to mitigate their own damages.



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Thank you for joining us

Have a nice day!