

Re: Private Rental Contracts/Housing

Students have been wondering about their legal duty to continue their rental leases if UCSB cancels all in-person classes and encourages students to leave the community because of the Covid-19 virus outbreak. The outbreak has been characterized by the World Health Organization (WHO) as a pandemic. California and the federal government have declared states of emergency because of this pandemic. The question is whether a UCSB student is legally able to cancel their rental contract under the circumstances.

The simple answer is “probably not,” not without possible legal consequences from the landlord for the cancellation.

Tenants are citing a legal term called *force majeure* as a basis for legally cancelling their contracts, but this concept is dependent on a few essential criteria, most of which are absent in a residential lease agreement. The seeds of the *force majeure* clause began with the doctrine of impossibility. Implied in every contract, the doctrine of impossibility excuses both parties from performance if the contracted-for performance has become physically impossible because of some event or changed circumstances that is not the fault of either party. With the changing needs of contracts, impossibility morphed into impracticability. Under this doctrine, the parties can be excused from a contract because it has become impracticable to force the parties to fulfill the obligations required under the contract. While historically *force majeure* was considered a result of an act of God, natural disasters such as earthquakes and floods, the clause has been expanded to encompass many man-made and man-caused events such as strikes, market shifts, terrorist attack, computer hacking, and governmental acts. But much of its historic underpinnings have fallen by the wayside. *Force majeure* is now little more than a descriptive phrase without much inherent substance. Indeed, its scope and application, for the most part, is utterly dependent upon the terms of the contract in which it appears. In other words, if there is no term in your lease for a *force majeure* situation then there is no legal grounds for a tenant to end his or her lease early on this basis.

In most residential contracts, there is no “*force majeure*” clause. If you do have such a clause in your contract, review it carefully to see if a situation such as this applies. If it does then you would have legal grounds to cancel your lease, but it would be cancelled in its entirety and not just for some tenants who want to leave the apartment.

Some tenants may think that they can break their lease based on a breach of habitability because of the virus being virtually anywhere and everywhere. A warranty of habitability is implied in every lease or rental of a residential dwelling unit. The implied warranty of habitability in a lease is implicated if the premises are unfit for human occupancy and certain conditions that materially affect the health and safety of tenants or deficiencies that in the eyes of a reasonable person deprive the tenant of those essential functions which a residence is expected to provide.

The decision to cancel in-person classes due to the virus does not reflect on the habitability of your apartments. The existence of a virus possibly in the community is speculative, and does not reflect on the habitability of your apartment. Tenants can disinfect their apartments, just like you would if there was a flu outbreak. Unless your apartment meets the criteria for being uninhabitable (and that is a tough standard) you will not be able to cancel your lease if your landlord does not agree.

What you CAN do is try to find a replacement from the students who are moving out of the dorms but do not have anywhere to go until this situation settles down. You may have to negotiate the rent that they are willing to pay, and you will be responsible for the difference. Or you can retain your rights to your apartment and stay. There is no evacuation order in place, and you do not have to leave. If you leave without finding a replacement and you stop paying your rent then your landlord has every legal right to pursue the unpaid debt against you, and your guarantor (if you have one). This can negatively impact your credit report, and if the landlord obtains a court judgment against you (and your guarantor) then they can collect on it for 10 years, plus interest.

Please keep in mind that most landlords have mortgages and bills to pay arising from your apartment, regardless of whether you are currently occupying it. Most or all cannot afford to cancel your lease and absorb loss of rents. Their decision to not let you out of your lease is not personal or intended to take advantage of the situation; it is a matter of maintaining contractual obligations and keeping local business afloat. We recommend that you be transparent with your landlord about your situation and concerns, and work with them to see what they might be willing to do under these unique circumstances.

If you have questions about your lease or tenancy you can contact the A.S. Legal Resource Center legal.as.ucsb.edu or IVTU at (805) 968-6704, or the University & Community Housing Services Office at housinginfo@housing.ucsb.edu for further information.