

Security Deposit Law for California Residential Landlords

California law regarding residential security deposits is found at California Civil Code §1950.5, attached to this article. A summary of applicable law is below.

Collecting the Security Deposit

The maximum security deposit is up to two times the monthly rent if the rental unit is unfurnished and up to three times the monthly rent if the unit is furnished, plus an additional half-month's rent if there is a waterbed.

Last month's rent, pet deposits, key deposits, cleaning deposits and any other "deposits" for potential future losses are all considered to be a part of the security deposit. When totaled, they may not exceed the legal limits. Some courts allow itemized deposits to be used only for the stated purpose (i.e. some courts might rule that a pet deposit can only be used for pet damage). Therefore, a single security deposit (rather than multiple deposits such as a pet deposit, a key deposit, etc.) is recommended to avoid exceeding the statutory maximum and to ensure the landlord's ability to use all deposits for any loss (although a landlord may have different security deposit amounts for different tenants, depending on whether they have pets, additional keys, etc.).

The law does not permit any "nonrefundable" deposits of any kind, such as an automatic deduction for flea spraying when there has been a pet; if a tenant fully complies with the lease, the tenant should receive back 100% of the tenant's security deposit.

Pre Move-Out Inspections

Within a reasonable time after either the landlord or the tenant gives notice of termination of the tenancy or before the end of the lease term, the landlord must generally notify the tenant in writing of the tenant's option to request a pre-move out inspection and of the tenant's right to be present at the inspection. [No notice of the resident's right to a pre-move out inspection is required if the landlord has served the resident with a three day notice because of the resident's failure to pay rent, violated a provision of the lease, materially damaged the property, committed a nuisance, or used the property for an improper purpose.]

If the pre-move out inspection is requested by the tenant, the landlord must inspect the premises during the final two weeks of the tenant's occupancy. If an inspection is requested, the landlord and tenant must attempt to schedule the inspection at a mutually

acceptable date and time. The landlord must give at least 48 hours prior written notice of the date and time of the inspection if a time is agreed upon, or if the parties can't agree on a time, but the tenant still desires to have an inspection. The tenant and landlord may waive the 48-hour prior written notice by both signing a written waiver. Once the tenant has requested the inspection, the landlord must carry out the inspection (after giving the 48 hour notice or receiving the waiver), whether or not the tenant is present for the inspection, unless the tenant withdraws his or her request for the inspection.

After inspection, the landlord must give the tenant an itemized statement identifying cleaning or repairs that will cause security deposit deductions if they are not completed before the tenant vacates. The statement must include the text of California Civil Code §1950.5(d) and (b)(1)-(4).

After the pre-move out inspection, the tenant may remedy identified deficiencies (if allowed under the lease), to avoid deductions from the security deposit. The landlord may make security deductions for items not included in the itemized statement if the damages occurred after the inspection, or if the deficiencies were not identified during the pre-move out inspection because they were hidden by the tenant's possessions.

Uses of the Security Deposit

The security deposit may be used:

- For unpaid rent;
- To repair damages to the premises, not including ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant;
- To clean the premises to return it to the same level of cleanliness it was in when the tenant moved in; and
- To restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the rental agreement authorizes this use of the security deposit.

The express terms of the security deposit law do not list other items but indicate this list may not be complete.

Amortizing Costs

Many judges expect landlords to amortize the cost of big ticket items (such as paint and flooring) evenly over the life expectancy of the item, and charge a tenant only a portion of the cost as appropriate. For example, if the life expectancy of carpet is sixty months years,

and a landlord must replace it after thirty one months because of damage caused by a tenant, the landlord would charge the tenant only 29/60ths of the cost. To determine the life expectancy of an item, landlords should check with their vendor. Typical life expectancy for wall paint is 2-5 years (more for a glossy paint, and less for a flat paint). Typical life expectancy for a carpet is 5-7 years.

Lease Language

California Civil Code §1950.5 allows landlords to use the security deposit to repair, replace or restore personal property only if the rental agreement specifically authorizes this application.

Landlords who want to maximize their ability to use the security deposit for any purpose allowed by law can insert the following provision (modeled after Civil Code §1950.5) in their leases:

The security deposit may be used for any purpose allowed by law, including to compensate Landlord for Resident's default in rental payments, to repair damages to the premises (exclusive of ordinary wear and tear) caused by Resident, guests, and other household members, to clean the premises, and to remedy future defaults by Resident in any obligation under the rental agreement, including the obligation to restore, replace or return personal property or appurtenances, exclusive of ordinary wear and tear.

Returning the Security Deposit

Unless a shorter time is specified in the lease or rental agreement, a landlord has 21 days to provide a final accounting and return the balance of the resident's security deposit. The time begins when the landlord regains possession of the property.

This final "disposition of the security deposit" accounting must be personally delivered or sent by first-class mail, postage prepaid, to the last known address of the resident. Often this means mailing it to the premises the resident just vacated. If it is returned by the post office, the landlord should keep the original, plus a copy of the unopened return envelope, as proof that the accounting was mailed within the prescribed time. If the returned mail has a forwarding address, the security deposit accounting and refund should be sent to that address.

Landlords and tenants may agree to handle security deposit accountings and refunds electronically. The agreement must be made after the landlord or tenant have given notice of termination of the tenancy. It is recommended that the agreement be documented in writing.

If there are multiple residents, landlords should make any refund check jointly payable to *all* of the residents who have signed the lease unless all residents have given you written instructions to the contrary. This will avoid potential liability to a tenant who isn't forwarded his/her share of the deposit by another roommate. Making the check payable to all of the residents ensures that they must work out that division between them, avoiding any landlord involvement in any dispute between the residents about splitting the refund. A landlord can mail the check to any resident's last known address unless the residents provide other instructions.

Security Deposit Accounting Requirements

Owners and managers must provide their residents with written receipts showing the charges incurred to repair or clean the apartment if the total amount is \$125 or more. The receipts must be attached to the final security deposit accounting.

If the landlord did the work personally, he or she must reasonably describe the work performed and must include the time spent and the reasonable hourly rate charged. Arguments about what is reasonable are common, so a conservative approach is highly recommended.

If a contractor or vendor does the work, the owner or manager must provide the resident with a copy of the bill, invoice or receipt supplied, including the contractor's name, address and telephone number.

Owners and managers must also provide receipts for materials if the resident is being charged for them. Property owners or managers who purchase materials on an on-going basis may provide the resident with a copy of a vendor price list or any other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

If a repair cannot be made, or receipts are not available within the 21-day period, the owner or manager may deduct only a good faith estimate of the deduction amounts and must provide an estimated accounting to the resident within the 21-day period.

If the owner or manager doesn't have the receipts within the 21-day period because they are still with the contractor, the owner or manager must provide the name, address and telephone number of the contractor along with the estimate. When the final figures and receipts are available, the owner or manager must provide a final statement within 14 days from the date the repair is completed or from the date the owner or manager receives the receipt documents from the vendor.

The resident has 14 days after receiving the final itemized statement to request additional receipts from the owner or manager. If receipts are requested, the

owner or manager has another 14 days to provide the additional receipts.

The only exception to this law exists if the repairs or cleaning do not exceed \$125 total or if the resident signs a written waiver of his/her right to receive the receipts. The waiver can only be signed after the termination notice is given, including three-day notices, or within 60 days of the expiration of a fixed term lease. If the waiver is signed, the resident can still request receipts within 14 days after receiving the final security deposit statement.

A well-drafted, comprehensive security deposit accounting form, such as the CAA form, is recommended to help landlords comply with the law.

Electronic Security Deposit Refunds and Accountings

California law permits email transmittal of security deposit accountings and electronic refund payments, when agreed to by landlord and tenant after either party has given notice of termination of the tenancy. KTS has a form available to document this agreement, and to provide instructions to the landlord. The Electronic Security Deposit Accounting and Refund Agreement form is available for \$150.

The Penalties for Retaining a Security Deposit in Bad Faith

The damages for the bad faith retention of a security deposit by a landlord are up to two times the amount of the security deposit. They may be awarded in a lawsuit even if the resident did not ask for those damages in the lawsuit.

Resolving Security Deposit Disputes

If a landlord cannot reach an amicable agreement with the resident over a security deposit dispute, either of the parties may file suit in Small Claims Court.

Small claims jurisdictional limits are \$10,000 for "natural persons" in most situations. The jurisdictional limit remains at \$5,000 for plaintiffs who are corporations, partnerships, unincorporated associations, governmental entities, LLCs or other entities. See California Code of Civil Procedure §116.220, 116.221, 116.224 and 116.231 for a complete overview of small claims jurisdictional limitations, including additional limitations against guarantors and actions brought by "natural persons" for bodily injury claims arising out of automobile accidents.

Actions against guarantors or co-signers of the lease

are limited to \$4,000 per claim or \$2,500 if the guarantor does not charge a fee for the service.

Property Sale

When selling property, a landlord must do more than just turn over the security deposits to the new owner. Even after selling property, a former landlord will be liable to tenants to return their security deposit and provide an accounting unless the landlord does one of the following:

(1) the landlord returns the deposit to the resident, (after deducting any amounts allowed by law and providing a security deposit disposition accounting to the resident); or

(2) the landlord furnishes the tenant with a written notice stating the security deposit has been transferred to the new owner, provides the name, address, and telephone number of the new owner, and the landlord transfers the security deposits to the new property owner.

Kimball, Tirey & St. John specializes in landlord/tenant, collections, business and real estate law, with offices throughout California. This article is informational only and should not be used as legal advice. Check with your attorney before acting. If you have any questions regarding this article, for a copy of Kimball, Tirey & St. John's Small Claims Guide, or to purchase an Electronic Security Deposit Accounting and Refund Agreement form, please call (619) 744-0863.

***Text of California Civil Code §1950.5
California Residential Security Deposit Law***

(a) This section applies to security for a rental agreement for residential property that is used as the dwelling of the tenant.

(b) As used in this section, "security" means any payment, fee, deposit, or charge, including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

(1) The compensation of a landlord for a tenant's default in the payment of rent.

(2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant.

(3) The cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy. The amendments to this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.

(4) To remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the security deposit is authorized to be applied thereto by the rental agreement.

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent, in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy.

This subdivision does not prohibit an advance payment of not less than six months' rent if the term of the lease is six months or longer.

This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

(d) Any security shall be held by the landlord for the tenant who is party to the lease or agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the landlord.

(e) The landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision (b). The landlord may not assert a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of

ordinary wear and tear occurring during any one or more tenancies.

(f) (1) Within a reasonable time after notification of either party's intention to terminate the tenancy, or before the end of the lease term, the landlord shall notify the tenant in writing of his or her option to request an initial inspection and of his or her right to be present at the inspection. The requirements of this subdivision do not apply when the tenancy is terminated pursuant to subdivision (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At a reasonable time, but no earlier than two weeks before the termination or the end of lease date, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection shall be to allow the tenant an opportunity to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security. If a tenant chooses not to request an initial inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours' prior written notice of the date and time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written waiver. The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection. Written notice by the landlord shall contain, in substantially the same form, the following:

"State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out." (2) Based on the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleanings that are proposed to be the basis of any deductions from the security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive, of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

(3) The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security.

(4) Nothing in this subdivision shall prevent a landlord from using the security for deductions itemized in the statement provided for in paragraph (2) that were not cured by the

tenant so long as the deductions are for damages authorized by this section.

(5) Nothing in this subdivision shall prevent a landlord from using the security for any purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs between completion of the initial inspection and termination of the tenancy or was not identified during the initial inspection due to the presence of a tenant's possessions.

(g) (1) No later than 21 calendar days after the tenant has vacated the premises, but not earlier than the time that either the landlord or the tenant provides a notice to terminate the tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security, and shall return any remaining portion of the security to the tenant. After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and tenant may mutually agree to have the landlord deposit any remaining portion of the security deposit electronically to a bank account or other financial institution designated by the tenant. After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and the tenant may also agree to have the landlord provide a copy of the itemized statement along with the copies required by paragraph (2) to an email account provided by the tenant . (2) Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, as follows:

(A) If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged.

(B) If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. The itemized statement shall provide the tenant with the name, address, and telephone number of the person or entity, if the bill, invoice, or receipt does not include that information.

(C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

(3) If a repair to be done by the landlord or the landlord's employee cannot reasonably be completed within 21 calendar days after the tenant has vacated the premises, or if the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession within 21 calendar days after the tenant has vacated the premises, the landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement. If the reason for the estimate is because the documents from a

person or entity providing services, materials, or supplies are not in the landlord's possession, the itemized statement shall include the name, address, and telephone number of the person or entity. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall complete the requirements in paragraphs (1) and (2) in the manner specified.

(4) The landlord need not comply with paragraph (2) or (3) if either of the following apply:

(A) The deductions for repairs and cleaning together do not exceed one hundred twenty-five dollars (\$125).

(B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver shall only be effective if it is signed by the tenant at the same time or after a notice to terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section 1161 of the Code of Civil Procedure has been given, or no earlier than 60 calendar days prior to the expiration of a fixed-term lease. The waiver shall substantially include the text of paragraph (2).

(5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2) and (3) when a tenant makes a request for documentation within 14 calendar days after receiving the itemized statement specified in paragraph (1). The landlord shall comply within 14 calendar days after receiving the request from the tenant.

(6) Any mailings to the tenant pursuant to this subdivision shall be sent to the address provided by the tenant. If the tenant does not provide an address, mailings pursuant to this subdivision shall be sent to the unit that has been vacated.

(h) Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver, or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the security held:

(1) Transfer the portion of the security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security, of the amount of the security deposited, and of the names of the successors in interest, their addresses, and their telephone numbers. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

(2) Return the portion of the security remaining after any lawful deductions made under subdivision (e) to the tenant, together with an accounting as provided in subdivision (g).

(i) Prior to the voluntary transfer of a landlord's interest in the premises, the landlord shall deliver to the landlord's successor in interest a written statement indicating the following:

(1) The security remaining after any lawful deductions are made.

(2) An itemization of any lawful deductions from any security received.

(3) His or her election under paragraph (1) or (2) of subdivision (h).

This subdivision does not affect the validity of title to the real property transferred in violation of this subdivision.

(j) In the event of noncompliance with subdivision (h), the landlord's successors in interest shall be jointly and severally liable with the landlord for repayment of the security, or that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and (g). A successor in interest of a landlord may not require the tenant to post any security to replace that amount not transferred to the tenant or successors in interest as provided in subdivision (h), unless and until the successor in interest first makes restitution of the initial security as provided in paragraph (2) of subdivision (h) or provides the tenant with an accounting as provided in subdivision (g).

This subdivision does not preclude a success or in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a landlord's successor in interest has a good faith belief that the lawfully remaining security deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he or she is not liable for damages as provided in subdivision (l), or any security not transferred pursuant to subdivision (h).

(k) Upon receipt of any portion of the security under paragraph (1) of subdivision (h), the landlord's successors in interest shall have all of the rights and obligations of a landlord holding the security with respect to the security.

(l) The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof in violation of this section, or the bad faith demand of replacement security in violation of subdivision

(j), may subject the landlord or the landlord's successors in interest to statutory damages of up to twice the amount of the security, in addition to actual damages. The court may award damages for bad faith whenever the facts warrant that award, regardless of whether the injured party has specifically requested relief. In any action under this section, the landlord or the landlord's successors in interest shall have the burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to demand additional security deposits.

(m) No lease or rental agreement may contain any provision characterizing any security as "nonrefundable."

(n) Any action under this section may be maintained in small claims court if the damages claimed, whether actual or statutory or both, are within the jurisdictional amount allowed by Section 116.220 or 116.221 of the Code of Civil Procedure.

(o) Proof of the existence of and the amount of a security deposit may be established by any credible evidence, including, but not limited to, a canceled check, a receipt, a lease indicating the requirement of a deposit as well as the amount, prior consistent statements or actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence Code.

(p) The amendments to this section made during the 1985 portion of the 1985-86 Regular Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.

(q) The amendments to this section made during the 2003 portion of the 2003-04 Regular Session of the Legislature that are set forth in paragraph (1) of subdivision (f) are declaratory of existing law. ☒