

5. Security Deposits - State and Local Law

State Law Regarding Security Deposits

Civil Code section 1950.5 regulates residential security deposits. (Search California Civil Code for 1950.5.) A landlord is authorized to deduct from a tenant's security deposit only the amount that is reasonably necessary to (1) cover rent defaults, (2) repair damages a tenant or a tenant's guest caused other than normal wear and tear, (3) do necessary cleaning (for tenancies beginning after January 1, 2003, defined as the amount of cleaning needed to return the unit to the same level of cleanliness as at the beginning of the tenancy), and (4) if allowed by the lease, cover the cost of restoring or replacing personal property (including keys) or furniture, excluding ordinary wear and tear.

At a reasonable time after either party gives notice that the tenancy is being terminated or before the expiration of the lease, the landlord must notify the tenant in writing of the tenant's right to request an initial inspection of the unit and to be present at the inspection. The purpose of the inspection is to identify needed cleaning for the tenant to perform before moving out so as to avoid deductions from the security deposit. The landlord has no duty to make an initial inspection if the tenant does not request one. If an inspection is requested, it should occur at a mutually agreed upon time no earlier than two weeks before the tenancy is to end. If a time cannot be agreed upon, the tenant may either cancel the inspection or allow the inspection to proceed in his or her absence. The landlord must give 48 hours' prior written notice of the inspection, unless the tenant waives this requirement in writing.

Immediately after the inspection, the landlord must give the tenant (or leave in the unit if the tenant is absent) an itemized list of repairs and cleaning that need to be done to avoid authorized deductions. The notice must include the text of Civil Code section 1950.5, subdivision (b) (setting forth authorized deductions from the security deposit, listed above). The tenant may then, before the end of the tenancy, remedy the identified deficiencies. The landlord may use the deposit for authorized deductions that were itemized in the statement but not cured, arose after the initial inspection, or were not identified during the inspection because they were concealed by the tenant's possessions.

Within **three** weeks after the tenant (or tenants) leave the unit vacant², the landlord must (1) furnish the tenant with a written statement itemizing the amount of and purpose for which any part of the security was claimed and used; and (2) return any remaining portion of the security to the tenant.

² Where several roommates live together and have paid a deposit, the landlord is not required to return the deposit until the unit is returned to the landlord vacant.

If more than \$125 is deducted from the deposit for cleaning and repairs together, the landlord must attach to the itemized statement copies of documents showing the charges and costs incurred to clean and repair the unit. If the landlord or his or her employee did the work, the

statement must describe the work performed, the time spent, and the reasonable hourly rate charged. If another person or company did the work, the landlord must provide their name, address, and telephone number, and a copy of their bill, invoice or receipt for the work. A deduction for materials or supplies must include a copy of a bill, invoice or receipt.

The tenant may waive the documentation requirement in writing, but even so, the tenant may, within 14 days of receiving the landlord's itemized statement, request any omitted documentation, and the landlord must provide it within 14 days of receiving the request.

If, within 21 days of the unit being vacated, necessary repairs cannot reasonably be completed, or if a service provider does not make the documentation available, the landlord may deduct an amount based on a good faith estimate of the charges, and provide the required documentation within 14 days of completing the repairs or obtaining the documentation.

All mailings to the tenant after the tenancy ends must be sent to the tenant's new address. If the tenant did not furnish a new address, the mailings must be sent to the tenant at the vacated address. A tenant who does not receive the refund and accounting within three weeks, or disputes the amount claimed by the landlord, may sue the landlord for the disputed amount (in Small Claims Court if the amount is less than \$5,000) and up to twice the amount of the deposit for the "bad faith retention" of (i.e., the unreasonable refusal to return) any security. In court, the landlord has to prove the reasonableness of any amounts retained.

A security deposit for a residential rental unit is defined as any payment, fee, deposit or charge, that is imposed at the beginning of the tenancy as an advance payment of rent, or to be used for any purpose, including recovering rent defaults, repairing damages caused by the tenant, or cleaning. This does not include an application or screening fee, which must not exceed \$30. Money paid as the first month's rent isn't considered a security deposit, but money paid in excess of the first month's rent (including that which is called "last month's rent") is considered part of the deposit. Generally, a security deposit may not exceed two times the monthly rent for an unfurnished unit or three times the monthly rent for a furnished unit. It is unlawful for a lease or rental agreement to make a security deposit non-refundable.

A landlord who sells a rental property must either: (1) transfer the deposit to the new landlord; or (2) return the deposit to the tenant.

In either case, the selling landlord may deduct any proper amounts for lawful claims, and must supply the tenant with an itemized accounting of the amounts deducted and the supporting documentation described above. If the seller transfers all or part of the deposit to the new landlord, the seller must also notify the tenant of the transfer, and the new landlord's name, address, and telephone number. All notices must be delivered to the tenant by first-class mail or personal delivery. If the deposit is not refunded or transferred, both the former and current landlords are jointly liable to the tenant for the whole amount.

Berkeley Law Regarding Security Deposits and Interest on Deposits

The provisions of the Rent Stabilization Ordinance and the Regulations governing interest on security deposits (B.M.C. section 13.76.070; Regulations 701 - 706) apply to all units that are required to be registered and to some units that are exempt from the Ordinance's registration requirements. Such units include: those constructed after 1980, single-family residences described in Regulation 508, units owned or leased by the Berkeley Housing Authority, and units rented to federal Section 8 participants.

A recent Ordinance amendment requires landlords to hold security deposits in a fiduciary capacity for the benefit of tenants. The deposits are deemed to accrue simple interest at the rate of the average interest rates paid on six-month certificates of deposit. Landlords must return interest accrued through October 31st of each year to the tenants every December as a cash payment or rent rebate. By November 15th of each year, the Board will publicize the interest rate to be applied in December, which will be based on the average for the 12 months ending November 1st. After the tenant has vacated the premises, along with the appropriate part of the security deposit, a landlord must pay the tenant the balance of any interest accrued at the average monthly rate from the prior November 1st to the departure date. The Board will publish each month's applicable interest rate.

A tenant who has not received a refund of security deposit interest by January 10 for the preceding calendar year may, after giving the landlord 15 days' advance written notice of intent to do so, deduct interest at the rate of 10 percent simple interest per year, from the rent. The landlord may instead refund the interest at the 10 percent rate before the deduction is to be made. (Regulation 704.)

Landlords may not increase the amount of the security deposit for any tenant during the term of the tenancy, even if the rent ceiling increases during the term. (Regulation 705.)

A tenant who does not receive a security deposit refund or accounting within three weeks of moving out may either sue the landlord in court or file a petition with the Board to recover the amount allegedly owed. (Go to Petitions and Forms for more information.) Each forum has its advantages and drawbacks. Unlike small claims court, there is no fee to file a petition, and a Rent Board hearing is less formal than a court proceeding. However, if a landlord refuses to comply with a Rent Board hearing examiner's decision ordering a security deposit refund, the tenant will have to go to court to enforce the Rent Board's decision. Also, unlike a court, the Rent Board is not authorized to award damages for "bad faith" retention of the security deposit.