

Nonrefundable Deposits

No lease or rental agreement may call any deposit “non-refundable.” CC § 1950.5(1). Nor may a landlord escape this rule by demanding a “cleaning” or “security” or “pet” fee instead of a deposit. Under the law, the security deposit rules we discuss here apply to any “payment, fee, deposit or charge” that’s intended to cover damage and unpaid rent. CC § 1950.5(b).

Be sure to understand that landlords may impose a fee, up to \$30, to cover expenses associated with a credit check. CC § 1950.6. Landlords may not charge initiation fees – these are considered part of the security deposit. CC § 1950.5(b)

What the Deposits May Be Used For

State law says that the deposit may be used by the landlord “in only those amounts as may be reasonable necessary” to do the following four things *only*: CC § 1950.5(e)

1. to remedy defaults in payment of rent
2. to repair damage to the premises caused by the tenant (except for ordinary wear and tear”)
3. to clean the premises, if necessary, when the tenant leaves
4. if the rental agreement allows it, to pay for the tenants’ failure to restore or replace personal property.

One of the biggest sources of tenant landlord dispute centers around cleaning. For example, how clean must the tenant leave the premises when he vacates? The legislature must return the unit to the same level of cleanliness it was in at the beginning of the tenancy. CC § 1950.5(b) For tenants whose tenancies began before that date, there is no clear answer (one reason the Legislature enacted this provision).

If you are stuck with a pre-January 1, 2003 rental agreement or lease that has unclear language and you want to be sure to get your deposit back, we advise that you do two things:

- Clean the place thoroughly. This doesn’t normally mean you have to shampoo the

rugs, dry clean the drapes or wash the ceiling. A good thorough cleaning, including the refrigerator, stove, bathroom fixtures, and so on should be adequate.

- Carefully document your cleaning work through pictures, witnesses and so on.

And according to state law: if an agreement is unclear and leads to a conflict, a court will likely hold responsible the party that wrote or supplied the agreement. CC §§ 1654, 1442. Therefore, if the landlord wrote the language or provided the lease form, the language will be construed against her. “Cleaning deposit,” therefore, should be interpreted to mean that the tenant would not have to do any extraordinary cleaning.

Another area of tenant-landlord disputes over the return of deposits has to do with damages to the premises. Some landlords try to charge tenants for everything from a worn spot on a hall rug to faded paint to missing light bulbs. The tenant is not responsible for any damage or wear and tear done to the premises by an earlier tenant. CC § 1950.5(e)

Landlord’s Duty to Return Deposit

Within three weeks after you move out – whether voluntarily, by abandonment or by eviction – the landlord must do one of two things:

1. return all of your deposit, or
2. give you personally or by first-class mail an itemized statement” in writing saying why he is retaining part or all of the deposit, and return any remaining part to you.

Tenants whose tenancies began on or after January 1, 2003 have the right to a pre-move inspection of their rental, when they can learn of intended deductions for damage or uncleanness. You’ll have an opportunity to remedy the problems before the final inspection. Here’s how this works: Within a reasonable time after either you or the landlord notify the other of the end of your tenancy, the landlord must tell

you in writing of your right to be present at an initial inspection, which must take place (if you request it) no sooner than two weeks before the end of the tenancy. You and the landlord should schedule the inspection at a mutually convenient time, and the landlord must give you 48 hours' notice of the inspection if you haven't agreed upon a time but you still want the inspection. (The two of you can forego the 48 hours' notice if you both agree.)

Based upon the inspection, the landlord must give you an itemized statement of intended deductions, plus a copy of Civil Code §§1950.5(b)(1)-(4), 1950.5(d). If you're not present at the inspection, he should leave the list in the unit. You can remedy the problems as long as you don't violate any "no alterations" clause in your lease or rental agreement – for example, you can certainly do more cleaning, but if there's a deduction for damage that will require major work (such as repairing sheetrock or electrical items), you may need to ask permission first.

The landlord will reinspect when you leave and must give you another itemized statement of deductions within three weeks after you've vacated. If your efforts to fix or clean don't measure up, the landlord can still charge you. If you disagree, you'll be in the same position as anyone fighting a security deposit deduction – you'll argue that it's "clean enough" and the landlord will argue otherwise. The landlord can also charge you for damage or uncleanness that crops up after the initial inspection. CC § 1950.5

If a landlord fails to return your security deposit within the three weeks or doesn't otherwise follow the legal steps for itemization and return, you won't necessarily get the entire deposit back. That's because a landlord can argue in court that, despite his failure to follow correct procedures, you do owe back rent or have damaged the premises. He can ask the judge to "set off" these amounts against the security deposit. To defeat the landlord's claim of set-off, you'll have to convince the judge that he waited too long to bring these charges up, or that it would be fundamentally unfair to allow him a

"second chance" to dip into your security deposit. *Granberry v. Islay Investments*, 38 Cal. Rptr. 2d 650, 9 Cal.4th 738 (1995).

If the landlord's illegal use or tardy return of your deposit was done in "bad faith," however, a judge may not only not disallow a set-off, but may impose a penalty of up to twice the security deposit as well (you get the penalty). "Bad faith" is hard to pin down, but it involves at least more than simple carelessness or ignorance of the law. Landlords who knowingly break the law, especially those who do so repeatedly, come much closer to acting in "bad faith."

When one tenant moves out early: When two or more co-tenants rent under the same rental agreement or lease, the landlord does not have to return or account for any of the deposit until all of the tenants leave. If you move out early, however, your landlord might voluntarily work out an appropriate agreement and return your share of the security deposit. If not, you should try to work things out with the remaining tenants (or a new roommate, if there is one).

Effect of Sale of Premises on Security Deposits

A landlord who sells the building is supposed to do one of two things: return the deposit to the tenant, or transfer it to the new owner. CC § 1950.5(i)

It's been known to happen, however, that the landlord does neither and simply walks off with the money. The tenant often never knows of this. In fact, the tenant usually doesn't even know the building was sold until sometime later. But the new owner cannot require the tenant to replace any security deposit kept by the old landlord. CC § 1950.5(j).

The law requires the new owner to get all security deposits from the old landlord. Whether he does so or not, he becomes responsible for returning the security deposit to the tenant at the end of the tenancy, just as if he were the old landlord. CC § 1950.5(j)