

Sometimes, the tenant and the landlord will agree that the tenant will rent the unit, but the tenant cannot move in immediately. In this situation, the landlord may ask the tenant for a **holding deposit**. A holding deposit is a deposit to hold the rental unit for a stated period of time until the tenant pays the first month's rent and any security deposit. During this period, the landlord agrees not to rent the unit to anyone else. If the tenant changes his or her mind about moving in, the landlord may keep at least some of the holding deposit.

Ask the following questions before you pay a holding deposit:

- Will the deposit be applied to the first month's rent? If so, ask the landlord for a deposit receipt stating this. Applying the deposit to the first month's rent is a common practice.
- Is any part of the holding deposit refundable if you change your mind about renting? As a general rule, if you change your mind, the landlord can keep some - and perhaps all - of your holding deposit. Therefore be sure you really want the place before giving this kind of deposit. The amount that the landlord can keep depends on the costs that the landlord has incurred because you changed your mind - for example, additional advertising costs and lost rent.

You may also lose your deposit even if the reason you can't rent is not your fault - for example, if you lose your job and become unable to afford the rental unit.

If you and the landlord agree that all or part of the deposit will be refunded to you in the event that you change your mind or can't move in, make sure that the written receipt clearly states your agreement.

Also be sure you and the landlord understand what is to happen to the deposit when you take the place. Usually it will be applied to the first month's rent. To make this clear, have the

landlord give you a receipt for the deposit, and have her write on the receipt what is to happen to the deposit when you come back with the rent.¹

A holding deposit merely guarantees that the landlord will not rent the unit to another person for a stated period of time. The holding deposit doesn't give the tenant the right to move into the rental unit. The tenant must first pay the first month's rent and all other required deposits within the holding period. Otherwise, the landlord can rent the unit to another person and keep all or part of the holding deposit.

Suppose that the landlord rents to somebody else during the period for which you've paid a holding deposit, and you are still willing and able to move in. The landlord should, at a minimum, return the entire holding deposit to you. You may also want to talk with an attorney, legal aid organization, tenant-landlord program, or housing clinic about whether the landlord may be responsible for other costs that you may incur because of the loss of the rental unit.

If you give the landlord a holding deposit when you submit the rental application, but the landlord does not accept you as a tenant, the landlord must return your entire holding deposit to you.²

¹ *California Tenants' Rights*, Moskowitz and Warner, page 2/10 (¹ *California Tenants – A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*, page 7 (Department of Consumer Affairs 2003).NOLO 2003).