

REFUND OF SECURITY DEPOSITS

Common problems and how to avoid them

One of the most common disagreements between landlords and tenants is over the refund of the tenant's security deposit after the tenant has moved out of the rental unit. California law, therefore, specifies procedures that the landlord must follow for refunding, using, and accounting for tenants' security deposits.

California law specifically allows the landlord to use a tenant's security deposit for four purposes:

- For unpaid rent;
- For cleaning the rental unit when the tenant moves out, but only to make the unit as clean as it was when the tenant first moved in;³⁰³
- For repair of damages, other than normal wear and tear, caused by the tenant or the tenant's guests; and
- If the rental agreement allows it, for the cost of restoring or replacing furniture, furnishings, or other items of personal property (including keys), other than because of normal wear and tear.³⁰⁴

A landlord cannot refuse to return your entire security deposit simply because you lived in the unit. A landlord can withhold from the security deposit only those amounts that are reasonably necessary for the purposes outlined above. The security deposit cannot be used for repairing defects that existed in the unit before you moved in, for conditions caused by normal wear and tear during your tenancy or previous tenancies, or for cleaning a rental unit that is as clean as it was when you moved in.³⁰⁵ A rental agreement can never state that a security deposit is "nonrefundable."³⁰⁶

A landlord also cannot withhold a tenant's partial or full security deposit based solely on the tenant being a victim of domestic violence and/or terminating their lease early as described previously.

Under California law, your landlord has 21 days from the date that you moved out to:

- Send you a full refund of your security deposit, or
- Mail or personally deliver to you an itemized statement that lists the amounts of any deductions from your security deposit and the reasons for the deductions, together with a refund of any amounts not deducted.³⁰⁷

The landlord should not send a "statement" to you via e-mail unless you have previously agreed with the landlord to receive the "statement" via e-mail.³⁰⁸ If you have not agreed to receive the "statement" via e-mail, you should provide your landlord with your forwarding address and provide the U.S. Postal Service with instructions to forward your mail to your new address. The landlord is obligated to mail the "statement" to your "last known address," which would be the address of the rental unit that you moved out of if the landlord does not have a current address for you.³⁰⁹

The landlord also must send you copies of receipts for the charges that the landlord incurred to repair or clean the rental unit and that the landlord deducted from your security deposit. Receipts for services should include the hourly rate and amount of time spent, both of which must be reasonable and not be excessive. The landlord must include the receipts with the itemized statement.³¹⁰ The landlord must follow these rules:

- **If the landlord or the landlord's employees did the work** - The itemized statement must describe the work performed, including the time spent and the hourly rate charged. The hourly rate must be reasonable.
- **If another person or business did the work** - The landlord must provide you copies of the person's or business' invoice or receipt. The landlord must provide the person's or business' name, address, and telephone number on the invoice or receipt, or in the itemized statement.
- **If the landlord deducted for materials or supplies** - The landlord must provide you a copy of the invoice or receipt. If the item used to repair or clean the unit is something that the landlord purchases regularly or in bulk, the landlord must reasonably document the item's cost (for example, by an invoice, a receipt or a

vendor's price list).³¹¹

- **If the landlord made a good faith estimate of charges** - The landlord is allowed to make a good faith estimate of charges and include the estimate in the itemized statement in two situations: (1) the repair is being done by the landlord or an employee and cannot reasonably be completed within the 21 days, or (2) services or materials are being supplied by another person or business and the landlord does not have the invoice or receipt within the 21 days. In either situation, the landlord may deduct the estimated amount from your security deposit. In the situation where services or materials are being supplied by another person or business, the landlord must include the name, address and telephone number of the person or business that is supplying the services or materials.

Within 14 calendar days after completing the repairs or receiving the invoice or receipt, the landlord must mail or deliver to you a correct itemized statement, the invoices and receipts described above, and any refund to which you are entitled.³¹²

The landlord is not required to send you copies of invoices or receipts, or a good faith estimate, if the total deductions are less than \$125, or if you waive your right to receive them.³¹³ If you wish to waive the right to receive these documents, you may do so by signing a waiver when the landlord gives you a 30-day, 60-day or 90-day notice to end the tenancy, when you give the landlord a 30-day notice to end the tenancy, when the landlord serves you a three-day notice to end the tenancy, or after any of these notices. If you have a rental agreement, you may waive this right no earlier than 60 days before the term ends. The waiver form given to you by the landlord must include the text of the security deposit law that describes your right to receive receipts.³¹⁴ Tenants should understand the consequences before agreeing to waive their right to such documentation.

What if the repairs cost less than \$125 or you waived your right to receive copies of invoices, receipts and any good faith estimate? The landlord still must send you an itemized statement 21 calendar days or less after you move, along with a refund of any amounts not deducted from your security deposit. When you receive the itemized statement, you may decide that you want copies of the landlord's invoices, receipts, and any good faith estimate. You may request copies of these documents from the landlord within 14 calendar days after you receive the itemized statement. It is best to make this request both orally and in writing. Always keep a copy of your written communication. The landlord must send you copies of invoices, receipts and any good faith estimate within 14 calendar days after they receive your request.³¹⁵

Initial Inspection Before Tenant Moves Out

A tenant can and should ask the landlord to inspect the rental unit before the tenancy ends. This helps you to know ahead of time what repairs, if any, are necessary. This will also keep the landlord from adding charges for unidentified repairs later. During this "initial inspection," the landlord or the landlord's agent identifies defects or conditions that justify deductions from the tenant's security deposit. This gives the tenant the opportunity to do the identified cleaning or repairs in order to avoid deductions from the security deposit. The tenant has the right to be present during the inspection.

The landlord must perform an initial inspection as described above if requested by the tenant. However, a landlord *cannot* conduct an initial inspection *unless* one is requested by the tenant. A landlord is not required to perform an initial inspection if the landlord has served the tenant with a three-day notice (an **eviction notice**) for one of the reasons specified in footnote 298.³¹⁶

Landlord's notice

The landlord must give the tenant written notice of the tenant's right to request an initial inspection of the rental to take place during the last 14 days of the tenancy, and to be present during the inspection. The landlord must give this notice to the tenant within a "reasonable time" after either the landlord or the tenant has given the other written notice of intent to terminate (end) the tenancy. If the tenant has a fixed term rental agreement, the landlord must give the tenant this notice within a "reasonable time" before the

rental term ends. If the tenant does not request an initial inspection, the landlord has no duties with respect to the initial inspection described above.³¹⁷

The landlord's notice must also include the following statement:³¹⁸

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.

Scheduling the inspection

When the tenant requests an initial inspection, the landlord and the tenant must try to agree on a mutually convenient date and time for the inspection. The inspection cannot be scheduled earlier than two weeks before the end of the rental term. The inspection should be scheduled to allow the tenant ample time to perform repairs or do cleaning identified during the initial inspection, tenants generally should not schedule the inspection on their last day in possession.³¹⁹ If the tenant has requested an inspection, If the tenant has requested an inspection, the landlord must give the tenant at least 48 hours advance written notice of the date and time of the inspection whether or not the parties have been able to agree to a date and time for the inspection. The landlord is not required to give the 48-hour notice to the tenant if:

- The parties have not agreed on a date and time, *and* the tenant withdraws the request for the inspection, in which case the inspection will not be conducted; or
- The landlord and tenant agree in writing to waive (give up) the 48-hour notice requirement.

Itemized statement

The landlord or the landlord's agent may perform the inspection if the tenant is not present, unless the tenant previously withdrew their request for an inspection.³²⁰

Based on the findings in the inspection, the landlord or agent must prepare an itemized statement of repairs or cleaning that the landlord or agent believes the tenant should perform in order to avoid deductions from the tenant's security deposit. The landlord or agent must give the statement to the tenant if the tenant is present for the inspection or leave it inside the unit if the tenant is not present.³²¹ The landlord or agent also must give the tenant a copy of the sections of California's security deposit statute that list lawful uses of tenants' security deposits.³²²

The security deposit statute has the effect of limiting the kinds of repairs or cleaning that the landlord or agent may properly include in the itemized statement. Because of this statute, the landlord cannot, for example, use the tenant's security deposit to repair damages or correct defects in the rental that existed before the tenant moved in or are the result of ordinary wear and tear.³²³ Since the landlord cannot use the tenant's deposit to correct these kinds of defects, the landlord or agent cannot list them in the itemized statement.

Before the tenancy ends, the tenant may make the repairs or do the cleaning described in the itemized statement, as allowed by the rental agreement, in order to avoid deductions from the deposit.³²⁴ However, the tenant cannot be required to repair defects or do cleaning if the tenant's security deposit could not be used properly to pay for that repair or cleaning.

Final inspection

The landlord may perform a final inspection after the tenant has moved out of the rental. The landlord may make a deduction from the tenant's security deposit to repair a defect or correct a condition:

- That was identified in the inspection statement and that the tenant did not repair or correct; or
- That occurred after the initial inspection; or
- That was not identified during the initial inspection due to the presence of the tenant's possessions.³²⁵
- Any deduction must be reasonable in amount and must be for a purpose permitted by the security deposit statute.³²⁶ Twenty-one calendar days (or less) after the tenancy ends, the landlord must refund any portion of the security deposit that remains after the landlord has made any lawful deductions.³²⁷

Example

Suppose that you have a month-to-month tenancy, and that you properly give your landlord 30 days' advance written notice that you will end the tenancy. A few days after the landlord receives your notice, the landlord gives you written notice that you may request an initial inspection and be present during the inspection. A few days after that, the landlord telephones you, and you both agree that the landlord will perform the initial inspection at noon on the 14th day before the end of the tenancy. Forty-eight hours before the date and time that you have agreed upon, the landlord gives you a written notice confirming the date and time of the inspection.

The landlord performs the initial inspection at the agreed time and date, and you are present during the inspection. Suppose that you have already removed some of your possessions, but that your sofa remains against the living room wall. When the landlord completes the inspection, the landlord gives you an itemized statement that lists the following items, and also gives you a copy of the required sections of the security deposit statute. The itemized statement lists the following:

- Repair cigarette burns on windowsill.
- Repair worn carpet in front of couch.
- Repair door jam chewed by your dog.
- Wash the windows.
- Clean soap scum in bathtub.

Suppose that you scrub the bathtub until it sparkles, but don't do any of the repairs or wash the windows. After you move out, the landlord performs the final inspection. Twenty-one days after the tenancy ends, the landlord sends you an itemized statement of deductions, along with a refund of the rest of your security deposit. Suppose that the itemized statement lists deductions from your security deposit for the costs of repairing the windowsill, the carpet and the door jamb, and for washing the windows. Has the landlord acted properly?

Whether the landlord has acted properly depends on other facts. Suppose that the cigarette burns were caused by a previous tenant and that the carpet in the room with the couch was 10 years old. According to the security deposit statute, the cigarette burns are defective conditions from another tenancy, and the worn carpet is normal wear and tear, even if some of it occurred while you were a tenant. The statute does not allow the landlord to deduct from your security deposit to make these repairs.³²⁸ However, the landlord can deduct a reasonable amount to repair the door jamb chewed by your dog because this damage occurred during your tenancy and is more than normal wear and tear.³²⁹

Suppose that the windows were dirty when you moved in, and that they were just as dirty when you moved out. According to the security deposit statute, the windows are in "the same state of cleanliness" as at the beginning of your tenancy. The statute does not allow the landlord to deduct from your security deposit to do this cleaning.³³⁰ Also, with regards to dirt on the exterior of the windows there is an argument that a tenant is only responsible for dirt caused by themselves or their guests and dirt on the exterior of windows is caused by the environment not the tenant.

Now suppose that while you were moving out, you broke the glass in the dining room light fixture and found damage to the wall behind the sofa that you caused when you moved in. Neither defect was listed in the landlord's itemized statement. Suppose that your landlord nonetheless makes deductions from your security deposit to repair these defects. Has the landlord acted properly in this instance?

The landlord has acted properly, as long as the amounts deducted are reasonably necessary for the repairs made.³³¹ Both of these defects are more than normal wear and tear, and the landlord is allowed to make deductions for defects that occur after the initial inspection, as well as for defects that could not be discovered because of the presence of the tenant's belongings.³³²

Suggested Approaches to Security Deposit Deductions

California's security deposit statute specifically allows the landlord to use a tenant's security deposit for the four purposes stated under the section "Refund of Security Deposits." The statute limits the landlord's deduction from the security deposit to an amount that is "reasonably necessary" for the listed purposes.³³³

Unfortunately, the terms "reasonably necessary" and "normal wear and tear" are vague and mean different things to different people. The following suggestions are offered as practical guides for dealing with security deposit issues. While these suggestions are consistent with the law, they are not necessarily the law in this area.

1. Costs of cleaning

A landlord may properly deduct from the departing tenant's security deposit the amount necessary to make the rental unit as clean as it was when the tenant moved in.³³⁴

A landlord cannot routinely charge each tenant for cleaning carpets, drapes, walls, or windows in order to prepare the rental unit for the next tenancy. Instead, the landlord must look at how well the departing tenant cleaned the rental unit, and may charge cleaning costs only if the departing tenant left the rental unit (or a portion of it) less clean than when they moved in. Reasonable cleaning costs would include the cost of such things as eliminating flea infestations left by the tenant's animals, cleaning the oven, removing decals from walls, removing mildew in bathrooms, defrosting the refrigerator, or washing the kitchen floor. But the landlord could not charge for cleaning any of these conditions if they existed at the time that the departing tenant moved in. In addition, the landlord could not charge for the cumulative effects of wear and tear. Suppose, for example, that the tenant had washed the kitchen floor but that it remained dingy because of wax built up over the years. The landlord could not charge the tenant for stripping the built-up wax from the kitchen floor.

The landlord is allowed to deduct from the tenant's security deposit only the reasonable cost of cleaning the rental unit.³³⁵

2. Carpets and drapes - "useful life" rule

Normal wear and tear to carpets, drapes and other furnishings cannot be charged against a tenant's security deposit.³³⁶ Normal wear and tear includes simple wearing down of carpet and drapes because of normal use or aging and includes moderate dirt or spotting. In contrast, large rips or indelible stains justify a deduction from the tenant's security deposit for repairing the carpet or drapes or replacing them if that is reasonably necessary.

One common method of calculating the deduction for replacement prorates the total cost of replacement so that the tenant pays only for the remaining useful life of the item that the tenant has damaged or destroyed. For example, suppose a tenant has damaged beyond repair an eight-year-old carpet that had a life expectancy of ten years, and that a replacement carpet of similar quality would cost \$1,000. The landlord could properly charge only \$200 for the two years' worth of life (use) that would have remained if the tenant had not damaged the carpet.

3. Repainting walls

One approach for determining the amount that the landlord can deduct from the tenant's security deposit for repainting, when repainting is necessary, is based on the length of the tenant's stay in the rental unit. This approach assumes that interior paint has a two-year life. (Some landlords assume that interior paint has a life of three years or more.)

Length of Stay	Deduction
Less than 6 months	full cost
6 months to 1 year	two-thirds of cost
1 year to 2 years	one-third of cost
2 or more years	no deduction

In general charging for painting is only allowable if it is necessary because of damage beyond

normal wear and tear to painted surfaces or because of soiling that cannot be reasonably cleaned. Using the above approach, if the tenant lived in the rental unit for two years or more, the tenant could not be charged for any repainting costs, no matter how dirty the walls were.³³⁷ This is particularly true when the landlord has a standard business practice of repainting units between most tenancies.

4. Other damage to walls

Generally, minor marks or nicks in walls are the landlord's responsibility as normal wear and tear (for example, worn paint caused by a sofa against the wall). Therefore, the tenant should not be charged for such marks or nicks. However, a large number of holes in the walls or ceiling that require filling with plaster, or that otherwise require patching and repainting, could justify withholding the cost of repainting from the tenant's security deposit. In this situation, deducting for painting would be more likely to be proper if the rental unit had been painted recently, and less likely to be proper if the rental unit needed repainting anyway. Generally, large marks or paint gouges are the tenant's responsibility.³³⁸

5. Common sense and good faith

Remember: *These suggestions are not hard and fast rules. Rather, they are offered to help tenants and landlords avoid, understand, and resolve security deposit disputes.*

Security deposit disputes often can be resolved, or avoided in the first place, if the parties exercise common sense and good judgment, and deal with each other fairly and in good faith. For example, a landlord should not deduct from the tenant's security deposit for normal wear and tear, and a tenant should not try to avoid responsibility for damages that the tenant has caused.

The requirement that the landlord send the tenant copies of invoices and receipts with the itemized statement of deductions may help avoid potential security deposit disputes. Before sending these items to the tenant, the landlord has the opportunity to double check them to be sure that the amounts deducted are reasonable, accurate and reasonably necessary for a purpose specified by the security deposit statute. Before challenging the deductions, the tenant has the opportunity to review and carefully evaluate the documentation provided by the landlord. Straightforward conduct by both parties at this stage may avoid or minimize a dispute over deductions from the tenant's security deposit.

Especially in disputes about security deposits, overreaching by one party only invites the other party to take a hard line. Disputes that reach this level often become unresolvable by the parties and wind up in court.

What should you do if you believe that your landlord has made an improper deduction from your security deposit, or if the landlord keeps all of the deposit without good reason?

Tell the landlord or the landlord's agent why you believe that the deductions from your security deposit are improper. *Immediately* ask the landlord or agent for a refund of the amount that you believe you're entitled to get back. You can make this request orally or in writing, but if you request it orally you should follow up with a letter and always keep a copy. The letter should state the reasons that you believe the deductions are improper, and the amount that you feel should be returned to you. Keep a copy of your written communication. It is recommended that you send the letter (if you elected the preferred communication via letter) to the landlord or agent by certified mail and to request a return receipt to prove that the landlord or agent received the letter. Or, you can deliver the letter personally and ask the landlord or agent to acknowledge receipt by signing and dating