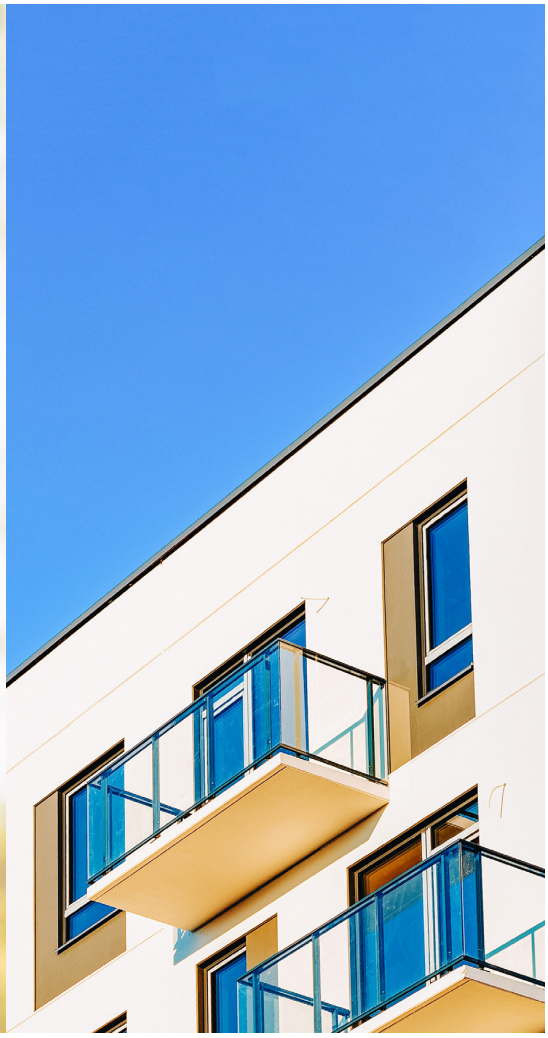
# CALIFORNIA TENANTS

## A GUIDE TO RESIDENTIAL TENANTS' AND LANDLORDS' RIGHTS AND RESPONSIBILITIES



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# Excerpt from
# California Tenants Guide

- failing to deliver possession of the property after providing the tenant with written notice or agreement to do so.[288]

No fault cause would be any of the following:

- removing the unit from the rental market;
- the owner's intent to occupy the unit for themselves or their family members (exceptions may apply for mobilehome leases);
- the owner complying with an ordinance or government order to vacate the premises; or
- the owner's intent to demolish or substantially remodel the premises.[289]

In situations where the reason for just cause can be cured, the owner is required to give the tenant notice and an opportunity to resolve the problem.[290] If the violation is not resolved, a three-day notice terminating the tenancy may be served. No fault terminations require the landlord to either pay the tenant one month's rent to assist with relocation or forgive their last month's rent.[291]

In addition to limitations as to property type, just cause under the Tenant Protection Act applies only under certain conditions of tenure of the tenants. It applies if a tenancy has been in place for 12 months or more. However, if any adult is added to occupancy in the unit before any tenant has resided there for 24 months, then the protection does not apply until all tenants have resided in the unit for 12 months or any tenant has resided there continuously for 24 months.[292]

## ADVANCE PAYMENT OF LAST MONTH'S RENT

Many landlords require tenants to pay "last month's rent" at the beginning of the tenancy as part of the security deposit or at the time the security deposit is paid. Almost without exception what a residential landlord calls "last month's rent" is really nothing other than a security deposit. The security deposit law, Civil Code section 1950.5, places strict limits on the advance payment of rent and characterizes any money given to the landlord, except for an application fee and the first month's rent, as security deposit.[293]

## 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;[294]
- 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.[295]

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.[296] A rental agreement can *never* state that a security deposit is "nonrefundable."[297]

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.[298]

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.[299] 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.[300]

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.[301] 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).[302]
- **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.[303]

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.[304] 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 (see pages 85-86), when you give the landlord a 30-day notice to end the tenancy (see pages 57-58), when the landlord serves you a three-day notice to end the tenancy (see pages 85-88), 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.[305] 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.[306]

## 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.[307]

### 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 (see pages 62-67 and 82-85). 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.[308]

The landlord's notice must also include the following statement:[309]

> 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.[310] 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.[311]

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.[312] 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.[313]

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.[314] 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.[315] 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.[316]
- Any deduction must be reasonable in amount, and must be for a purpose permitted by the security deposit statute.[317] 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 (see pages 31-34, 68-80).[318]

**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 window sill.
- Repair worn carpet in front of couch.
- Repair door jamb 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 window sill, 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.[319] 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. [320]

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.[321] 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.[322] 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.[323]

**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 on page 68. The statute limits the landlord's deduction from the security deposit to an amount that is "reasonably necessary" for the listed purposes.[324]

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.[325]

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.[326]

**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.[327] 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.[328] 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.[329]

**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 (see page 28). 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 (see pages 68-70) 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 your copy of the letter.

If the landlord or agent still does not send you the refund that you think you are entitled to receive, try to work out a reasonable compromise that is acceptable to both of you. You also can suggest that the dispute be mediated by a neutral third person or agency (see page 106-107). You can contact one of the agencies listed on pages 105-106 for assistance. If none of this works, you may want to take legal action (see page 79). If you believe there is evidence that the landlord has engaged in "bad faith retention" of some or all or your deposit, the security deposit law contains a provision that may cause the landlord to be more willing to settle the matter, rather than taking it to court. You can request that the court, or the court on its action, can award up to twice the total security deposit as statutory damages if the court finds that the landlord is engaged in such "bad faith" action (see further discussion below).[330] Making sure the landlord is aware of this provision may lead them to be more inclined to resolve the dispute.

What if the landlord does not provide a full refund, or a statement of deductions and a refund of amounts not deducted, by the end of the 21-day period as required by law? According to a California Supreme Court decision, the landlord loses the right to keep any of the security deposit and must return the entire deposit to you.[331] Even so, it may be difficult for you to get your entire deposit back from the landlord.[332] The landlord may still claim damages for unpaid rent, repairs, and cleaning either as a defense for a set-off against the security deposit or by an affirmative counter claim against you (see the discussion on page 68). You should contact one of the agencies listed on pages 105-106 for advice.

Practically speaking, you have two options if the landlord does not honor the 21-day rule. The first step under either option is to call and write the landlord to request a refund of your entire security deposit. You can also suggest that the dispute be mediated. If the landlord presents good reasons for keeping some or all of your deposit for a purpose listed on page 68, it is probably wise to enter into a reasonable compromise with the landlord. This is because the other option is difficult and the outcome may be uncertain.

The other option is to sue the landlord in small claims court or Superior Court for return of your security deposit. Keep in mind that you will have to file that suit in a court with jurisdiction over either the location of the property or the location where the rental

agreement was signed or otherwise entered into. This can present problems if you are moving away from the area where the property is located, especially if you are moving out-of-state. While it is recommended that an action at court be commenced promptly, you will have up to 4 years to sue pursuant to a written rental agreement and 2 years pursuant to an oral one.[333] Keep in mind that the landlord can file a counterclaim against you. In the counterclaim, the landlord can assert a right to make deductions from the deposit, for example, for unpaid rent or for damage to the rental unit that the landlord alleges that you caused. The landlord also can seek to recover for damage or unpaid rent that exceeds the security deposit. Each party then will have to argue in court why they are entitled to the deposit or, in the landlord's case, damages or unpaid rent that exceeds the security deposit.[334] Also, understand that you, as a Plaintiff in small claims court, will have no right to appeal a decision on your claim with which you disagree. You will, however, have the right to appeal the decision in a landlord's counterclaim.

**Refund of security deposits after sale of building**

When a rental unit is sold, the selling landlord must do one of two things with the tenants' security deposits. The selling landlord must either transfer the security deposits to the new landlord or return the security deposits to the tenants following the sale.[335]

Before transferring the security deposits to the new landlord, the selling landlord may deduct money from the security deposits. Deductions can be made for the same reasons that deductions are made when a tenant moves out (for example, to cover unpaid rent). If the selling landlord makes deductions from the security deposits, they must transfer the balance of the security deposits to the new landlord.[336] The new landlord becomes legally responsible upon receipt of the security deposit.[337]

The selling landlord must notify the tenants of the transfer in writing. The selling landlord must also notify each tenant of any amounts deducted from the security deposit and the amount of the deposit transferred to the new landlord. The written notice must also include the name, address, and telephone number of the new landlord. The selling landlord must send this notice to each tenant by first-class mail, or personally deliver it to each tenant.[338]

The new landlord becomes legally responsible for the security deposits when the selling landlord transfers the deposits to the new landlord.[339]

If the selling landlord returns the security deposits to the tenants, the selling landlord may first make lawful deductions from the deposits (see pages 68-80). The selling landlord must send each tenant an itemized statement that lists the amounts of and reasons for any deductions from the tenant's security deposit, along with a refund of any amounts not deducted (see pages 68-80).[340]

If the selling landlord fails to either return the tenants' security deposits to the tenants or transfer them to the new owner, *both* the new landlord and the selling landlord are legally responsible to the tenants for the security deposits.[341] If the selling landlord and the security deposits cannot be found, the new landlord must refund all security deposits (after any proper deductions) as tenants move out.[342]

The new landlord cannot charge a new security deposit to current tenants simply to make up for security deposits that the new landlord failed to obtain from the selling landlord. But if the security deposits have been returned to the tenants, or if the new

landlord has properly accounted to the tenants for proper deductions taken from the security deposits, the new landlord may legally collect *new* security deposits.[343]

If the selling landlord has returned a greater amount to a tenant than the amount of the tenant's security deposit, after allowing for legitimate deductions, the new landlord may utilize this ability to collect a "*new*" deposit to recoup an amount of deposit that should otherwise be in their possession.[344]

Can the new landlord increase the amount of your security deposit? This depends, in part, on the type of tenancy that you have. If you have a fixed-term rental agreement, the new landlord cannot increase your security deposit during the term unless this is specifically allowed by the rental agreement. For periodic tenants (those renting month-to-month, for example) the new landlord can increase security deposits only after giving proper advance written notice, and if local law, such as a rent control ordinance, does not prohibit changing the terms of your tenancy or increasing the security deposit. In either situation, the total amount of the security deposit after the increase cannot be more than the legal limit (see pages 31-34). The landlord normally cannot require that you pay the security deposit increase in cash or electronic funds transfer without offering other options (see page 38).

All of this means that it is important to keep copies of your rental agreement and the receipt for your security deposit. You may need those records to prove that you paid a security deposit, to verify the amount, and to determine whether either a previous or current landlord had a right to make a deduction from the deposit.[345]

**Legal actions for obtaining refund of security deposits**

Suppose that your landlord does not return your security deposit as required by law, or makes improper deductions from it. If you cannot successfully resolve the problem with your landlord, you can file a lawsuit in small claims court (for claims not exceeding $10,000) or Superior Court for the amount of the security deposit plus court costs, and possibly also a penalty and interest.[346] If your claim is for a little more than $10,000, you can waive (give up) the extra amount and still use the small claims court. For amounts greater than $10,000, you must file in Superior Court, and you ordinarily will need a lawyer in order to effectively pursue your case. In such a lawsuit, the landlord has the burden of proving that his or her deductions from your security deposit were reasonable.[347]

If you prove to the court that the landlord acted in "bad faith" in refusing to return your security deposit, the court can order the landlord to pay you the amount of the improperly withheld deposit, plus up to twice the amount of the security deposit as a "bad faith" penalty. The court can award a bad faith penalty in addition to actual damages whenever the facts of the case warrant—even if the tenant has not requested the penalty.[348] These additional amounts can also be recovered if a landlord who has purchased your building makes a "bad faith" demand for replacement of security deposits. The landlord has the burden of proving the authority upon which the demand for the security deposits was based.[349]

Whether you can collect attorney's fees if you win such a suit depends on whether the rental agreement contains an attorney's fee clause.[350] If the rental agreement contains an attorney's fee clause, you can claim attorney's fees as part of the judgment, even if

the clause states that only the landlord can collect attorney's fees.[351] However, you can only collect attorney's fees if you were represented by an attorney.[352]

**TENANT'S DEATH**

If a tenant dies during the term of the tenancy, the tenant's estate as overseen by an executor or administrator will be responsible financially for rent through the remainder of the term, despite the tenant's death. For instance, if the tenant had a **fixed term rental agreement** (i.e., a rental term of six months or one year) and dies, the tenant's estate will be responsible for the remainder of the six-month or one-year rental term. The tenant's estate may surrender the tenancy and return possession back to the landlord, but the tenant's estate will remain responsible financially unless and until the landlord re- lets the rental unit. The landlord must make a good faith effort to re-let the unit to minimize or eliminate the liability of the tenant's estate for future rent. If the tenant had a periodic tenancy (i.e., week to week or month to month) and dies, the tenancy is terminated (ended) by notice of the tenant's death and the tenancy ends on the 30th day following the tenant's last payment of rent before the tenant's death.[353] No notice (other than the notice to the landlord of the tenant's death) is required to terminate the tenancy.[354] There still might be issues involving the return of the tenant's personal belongings after the termination of the tenancy (see page 100).

**Moving out at the end of a rental agreement**

A fixed-term rental agreement expires automatically at the end of the term unless the terms of the agreement provide otherwise.[355] At the expiration of the fixed-term rental agreement, the tenant is expected to renew the rental agreement (with the landlord's consent) or move out if the tenancy is not covered by just cause for eviction protections, such as a local rent-control ordinance, just cause ordinance, or the Tenant Protection Act of 2019 (the "Tenant Protection Act"). The Tenant Protection Act covers all tenancies where the tenant has resided at the rental unit for more than 12 months or 24 months if an adult tenant has been added to the rental agreement in the last 12 months.[356] If the tenancy is subject to just cause for eviction protections, the tenancy continues on a month-to-month basis at the end of the rental term and will continue until either the tenant gives notice of move-out or the landlord has a valid reason under the law to terminate the tenancy.

Most fixed-term rental agreements do not require a tenant to notify their landlord at the expiration of their rental agreement that they do not intend to renew. As a courtesy, however, the tenant may want to consider giving the landlord notice that they intend to move out and not renew their rental agreement.

If you do not have just cause eviction protections and continue living in the rental unit after the rental agreement expires, the landlord has two options. The landlord can proceed with an eviction proceeding to remove you from the rental unit or treat you as a holdover tenant. If the landlord accepts rent from you after the end of your term, you will automatically become a holdover tenant and can continue legally to occupy the rental unit. Your new tenancy will be a periodic tenancy and the length of your tenancy will be determined based on the length of time between your rent payments (for example, monthly rent payments result in a month-to-month tenancy). With the exception of the rental term, which is now a periodic tenancy, all other provisions of the rental

# End of Excerpt

Read More: https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf