

MEDIATING LANDLORD-TENANT SECURITY DEPOSIT DISPUTES

California Civil Code 1950.5

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- I. Basic Rule: All security deposits must be “refundable,” but not necessarily “refunded;” “non-refundable” security deposit is void.
 - A. Cannot circumvent this rule by characterizing security deposit as a non-refundable pet deposit, cleaning deposit, etc. Must always be refundable.
- II. Ceilings on Collection of Security Deposits:
 - A. Unfurnished unit = 2 months’ rent.
 - B. Furnished unit = 3 months’ rent.
- III. Proper Withholding of Security Deposit by Landlord: Landlord may deduct from the security deposit those sums reasonably necessary to compensate Landlord for:
 - A. Tenant’s default in the payment of RENT
 1. Month-Month Rental Agreement: offset unpaid rent.
 2. Lease: offset damages for broken lease, subject to duty to mitigate, and/or
 - B. The repair of DAMAGES to the premises, exclusive of ordinary wear & tear, caused by the Tenant, and/or
 - C. The CLEANING of the premises necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy.
- IV. Improper Withholding of Security Deposit by Landlord: Landlord cannot make deductions for from the Tenant’s Security Deposit for the following:
 - A. Ordinary Wear & Tear
 1. Not defined in the statute. Courts sometime use informal formula for calculating ordinary wear & tear first determining the useful life of the damaged item, then calculating how much of the useful life remains.
 - B. Damages to the premises or any defective conditions that PREEXISTED the tenancy.
 - C. LL’s turnover costs to re-rent the unit (advertising, upgrades, etc.)

V. Common Security Deposit Error made by TENANT:

- A. Tenant cannot skip last month's rent & tell Landlord to take it out of security deposit.

VI. Landlord Required to Perform TWO Inspections BEFORE Tenant Moves Out:

- A. INITIAL INSPECTION (Pre Move-Out): to give Tenant the opportunity to remedy damage to unit to avoid deductions from security deposit.
1. Within a reasonable time after either LL or T's intention to terminate tenancy, LL must NOTIFY T in writing of T's option to request an inspection & T's right to be present at inspection.
 2. At a reasonable time, but no earlier than two weeks before the termination date, LL shall, upon request of T, make an INITIAL INSPECTION of the premises to allow T an opportunity to remedy identified deficiencies in order to avoid deductions from the security deposit.
 3. No inspection is necessary unless T requests one. T can elect to have landlord conduct initial inspection & choose to be present or not be present.
 - a. 48 hour written notice of initial inspection must be given.
 - b. Inspection NOT required if T is being EVICTED under 3-Day Pay or Quit Notice
 4. Based on inspection, Landlord must give Tenant an ITEMIZED STATEMENT OF PROPOSED DEDUCTIONS for repairs/cleaning, which must be presented to T at time of initial inspection if T is present, or left in rental unit if T not present.
 5. Tenant shall have the opportunity, until termination of tenancy, to REMEDY any identified deficiencies in order to avoid deductions from the security deposit.
- B. FINAL INSPECTION (Post Move-Out): Itemized statement of actual deductions after T has vacated. (see attached Security Deposit Refund Form)
- C. Landlord's Failure to Perform Inspections or Alert Tenant of Right of Inspection:
1. Tenant will be at an advantage if he can plausibly argue that, had he been afforded the opportunity to remedy issues that Landlord made deductions for, he would have done so.
 2. May be "BAD FAITH," and may preclude Landlord from deducting damages to unit/unpaid rent from security deposit, even in subsequent court action.

VII. Returning Security Deposit – 21 Day Rule:

- A. Landlord must return full security deposit within 21 CALENDAR DAYS of Tenant vacating, or provide an itemized statement indicating the basis for, and amount of, any deductions made. There are no exceptions to this time limit!
1. If LL PERSONALLY did the work, he must reasonably describe the work performed & include the time spent & reasonable hourly rate charged. Receipts for materials must be included if T is being charged for them.
 2. If LL did NOT do the work, LL shall provide T with a copy of the bill, invoice or receipt supplied by the person performing the work.
 3. If repair TO BE DONE cannot be made, or receipts are not available with the 21-day period, LL may deduct a “good faith estimate” of the deduction amounts and must provide an estimated accounting to T within the 21-day period.
 - a. When final figures & receipts are available, LL must provide a final statement within 14 days from the date the repair is completed.
 - b. T has 14 days after receiving final itemized statement to request additional receipts from LL. If requested, LL has another 14 days to provide the additional receipts.
 4. Exception to documentation requirement: LL does not need to provide written receipts if deductions for repairs & cleaning together do not exceed \$125, UNLESS Tenant demands them within 14 days of receiving itemized statement.
 5. LL must mail itemization to FORWARDING ADDRESS provided by Tenant, or if none provided, to the unit that has been vacated.
 - a. Recommendation: although only mailing by first class mail is required, it is a good idea to mail via certified mail, return receipt requested for proof.
- B. Consequences of Violating 21 Day Rule:
1. If LL fails to comply with 21 day rule, he loses right to deduct any damages to unit/unpaid rent from security deposit. The security deposit must be returned in full to the tenant.
 - a. However, if GOOD FAITH violation of 21 day rule, Landlord can pursue claim for actual damages/unpaid rent as plaintiff in subsequent court action against Tenant, or request Setoff as defendant if Plaintiff Tenant brings subsequent court action against him. (Granberry v. Islay Investments)

- b. If BAD FAITH violation of 21 day rule, Landlord probably CANNOT pursue damages/unpaid rent in subsequent court action against Tenant (Alcoser v. Thomas: unpublished decision).
 - c. So, what's the point of the 21 day rule if Landlord can seek damages in subsequent court action? Much easier to deduct LL's legitimate damages from security deposit than suing Tenant later and collecting on the judgment.
 2. Possible Bad Faith damages imposed against Landlord.
- C. Bad Faith Damages: The Bad Faith claim or retention by LL of security deposit may subject LL to statutory damages of up to TWICE the amount of the security deposit, in addition to actual damages.
1. Court can award bad faith damages whenever the facts warrant, regardless of whether requested by the Tenant.
 2. Landlord has BURDEN OF PROOF that the type and cost of any deductions made from security deposit for damages are reasonable.
3. What is Bad Faith?
- a. Tenants frequently claim bad faith, but judges rarely find it exists. Sometimes, small claims judges (especially pro-tem judges) award bad faith damages which are subsequently reversed on appeal.
 - b. Bad Faith is intentional & systematic conduct to deprive Tenant of security deposit, not mere carelessness or ignorance of the statute.
 - i. Landlords who KNOWINGLY break the law, especially those who so do REPEATEDLY, come much closer to acting in bad faith.
 - ii. Imbalance of bargaining power? Sophisticated Landlord vs. unsophisticated Tenant.
 - c. Landlord may subject himself to a finding of bad faith if he knowingly does not conduct the pre-move out initial inspection and/or fails to inform Tenant of the right to the inspection.