



Rights of Tenants: Security Deposits

A security deposit is any payment, fee, deposit or charge made prior to moving in, not including first month's rent. It does not matter what the landlord calls the payment. A security deposit could include "last month's rent," a pet fee, or any cleaning fee.

HOW MUCH CAN A LANDLORD CHARGE FOR A DEPOSIT?

The total amount of the deposit may not be more than two months of the initial rent if the apartment is unfurnished. If the apartment is furnished, then the total may not be more than three months of the initial rent. This calculation does not include the current month of rent (aka "first month's rent") because current rent is not actually part of the deposit.

CAN THE LANDLORD RAISE THE SECURITY DEPOSIT AFTER THE TENANCY HAS BEGUN?

If you have a fixed-term lease agreement (i.e. the lease is set for a predetermined duration of time longer than a month), then the amount of the deposit may not be increased during that fixed period unless provided in the agreement. If you have a month-to-month agreement, then the landlord may increase the deposit by serving a 30-day written notice. In no case may your landlord demand more than double the initial rent (if unfurnished) or triple the initial rent (if furnished).

IS IT POSSIBLE FOR DEPOSITS TO BE NON-REFUNDABLE?

No. California law requires all deposits to be refundable, regardless of what your agreement states. In other words, your landlord cannot refuse to refund any amount of money from your deposit simply on the grounds that it is a "non-refundable deposit." In order to justify any withholding from a deposit, a landlord must follow the law detailed below. There are other types of payments made to landlords that are not deposits that *are* non-refundable, such as rent for a specific period and application fees (usually around \$35) used for the cost of checking a tenant's credit and rental history.

HOW CAN A LANDLORD USE A DEPOSIT?

Deposits may be used by landlords after the conclusion of a tenancy to cover:

- unpaid rent or fees due under the lease
- repairs to the unit for damage caused by the tenant beyond "ordinary wear and tear"
- cleaning the unit, but only if you leave the unit less clean than when you moved in.

WHAT IS ORDINARY WEAR AND TEAR?

"Ordinary wear and tear" is the level of deterioration to the rental unit a reasonable person would expect given the length of your tenancy. The longer you live in a unit the more wear and tear on things like carpet and paint is to be expected.

SHOULD I INSPECT THE UNIT BEFORE MOVING IN?

Definitely! Before moving into the unit, inspect and make a list of any damage and problems with the unit. It is best to do this with the landlord, and to have your landlord sign the checklist when you are done inspecting the unit. Also, take dated photographs, and bring a third party with you, just in case you need evidence later.

SHOULD I HAVE THE LANDLORD INSPECT THE UNIT WITH ME BEFORE I MOVE OUT?

Yes! In fact, unless you have received a three-day notice, when the landlord is given proper notice that you are moving, she must give you notice within a reasonable time that you have a right to inspection with the landlord. Arrange a time for inspection with your landlord that is no sooner than two weeks prior to move-out. Have your landlord give you a signed document of any repairs or cleaning that she thinks must be made. Then, make the repairs yourself and clean your place to the condition it was in when you moved-in. Take dated pictures of the apartment right before you move out, and bring a third party witness.

WHEN MUST THE LANDLORD RETURN MY DEPOSIT?

The landlord must send the deposit refund to a forwarding address within 21 calendar days, including a written, itemized accounting of any amounts deducted from the deposit. If there's no forwarding address, your landlord can send the deposit to the last known address.

WHEN MUST THE LANDLORD PROVIDE ME WITH RECEIPTS?

There are two scenarios in which landlords must prove how they spent deposit deductions:

1. If the landlord keeps more than \$125, she must give you copies of all relevant receipts, bills, and invoices showing how the money was spent. If the landlord couldn't get the work done within 21 days, she can provide a good faith estimate of charges in writing, and upon completion of the work must provide receipts within 14 days.
2. If you request receipts or invoices within 14 days of receiving the written, itemized deductions, the landlord must provide you with copies.

WHAT IF MY LANDLORD DOESN'T RETURN MY DEPOSIT WITHIN 21 CALENDAR DAYS, OR I DISAGREE WITH THE DEDUCTIONS?

First, make a written demand for the full deposit, or disputing the landlord's deductions. Send the demand letter in a way that you can prove it was sent (e.g., fax, over-night mail, first class mail with certificate of mailing) and keep a copy for your records. You can model your letter on the sample demand letter below, but be sure to include your particular facts and explain your reasons for disputing any individual deductions claimed by the landlord. For help with writing a demand letter, use the California Courts "Self Help" website at <http://www.courts.ca.gov/11150.htm>. If the landlord doesn't respond in a reasonable time, or the response is unsatisfactory, then you can sue in small claims court for up to \$10,000. You can file your claim by using Judicial Council form SC-100, available on the California Courts website and at the court clerks' office. At your Small Claims hearing, make sure to bring all of your evidence, including the checklist, the inspection documents, the photos, your demand letter, and your third party witness. If you can show that the landlord kept your deposit in "bad faith," the judge can award you up to twice the amount of your security deposit in addition to the actual damages.

SAMPLE DEMAND LETTER FOR SECURITY DEPOSIT

April 10, 2014

Via First-Class Mail with Certificate of Mailing

Lucy Landlord
123 First Street
Burlingame CA, 94100

Re: Return of Security Deposit

Dear Ms. Landlord:

I am writing to request that you return my security deposit as required under Cal. Civ. Code §1950.5. As you know, I vacated the premises at 789 Main Street, South San Francisco, on March 12, 2014. When I moved out, after giving you 30 days' written notice, I left the apartment cleaner than it was when I moved in. I was current on all my rent payments and I gave you my new address. Pursuant to Cal. Civ. Code §1950.5, you were required, by April 2, 2014, to refund my security deposit and/or provide an itemized statement listing any amounts you have withheld.

As of today, I have not received my security deposit or an itemized statement. If you do not return my security deposit by April 20, 2014, I will proceed with a small claims action to recover the entire amount of my deposit. You may also be responsible for damages up to two (2) times the amount of the security deposit for withholding my security deposit in bad faith. I retain the right to seek additional damages up to the amount allowed by law in a small claims proceeding.

If you wish to discuss this matter, I can be reached at the address and telephone listed below.

Sincerely,

Tina Tenant
654 Better Place
San Mateo, CA 94100
(Telephone: 650-555-1111)