

# Kimball, Tirey & St. John LLP

## Security Deposit Law for California Residential Landlords

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California law regarding residential security deposits is found at [California Civil Code §1950.5](#). A summary of applicable law is below.

### Collecting the Security Deposit

Generally, the maximum security deposit is up to two times the monthly rent if the rental unit is unfurnished and up to three times the monthly rent if the unit is furnished, plus an additional half-month's rent if there is a waterbed.

[SB 644](#) amended Civil Code 1950.5, reducing the amount that a landlord can charge service members for a security deposit on residential rental housing. Effective January 1, 2020, landlords may not request a security deposit of more than one month's rent for an unfurnished unit, and two month's rent for a furnished unit, if the unit is rented to a service member. Additionally, a landlord may not refuse to rent to a service member due to the reduced security deposit. This law does not apply in a roommate situation, where property is rented to a group of individuals, and at least one of the group is not the service member's spouse, parent, domestic partner or dependent. It also does not apply if the tenant has a history of poor credit or of causing damage to rental property or its furnishings. "Service member" is defined in [Military and Veterans Code §400](#), and is limited to active duty service members.

Last month's rent, pet deposits, key deposits, cleaning deposits and any other "deposits" for potential future losses are all considered to be a part of the security deposit. When totaled, they may not exceed the legal limits. Some courts allow itemized deposits to be used only for the stated purpose (i.e. some courts might rule that a pet deposit can only be used for pet damage). Therefore, a single security deposit (rather than multiple deposits such as a pet deposit, a key deposit, etc.) is recommended to avoid exceeding the statutory maximum and to ensure the landlord's ability to use all deposits for any loss (although a landlord may have different security deposit amounts for different tenants, depending on whether they have pets, additional keys, etc.).

The law does not permit any "nonrefundable" deposits of any kind, such as an automatic deduction for flea spraying when there has been a pet; if a tenant fully complies with the lease, the tenant should receive back 100% of the tenant's security deposit.

### Pre Move-Out Inspections

Within a reasonable time after either the landlord or the tenant gives notice of termination of the tenancy or before the end of the lease term, the landlord must generally notify the tenant in writing of the tenant's option to request a pre-move out inspection and of the tenant's right to be present at the inspection. [No notice of the resident's right to a pre-move out inspection is required if the landlord has served the resident with a three day notice because of the resident's failure to pay rent, violated a provision of the lease, materially damaged the property, committed a nuisance, or used the property for an improper purpose.]

If the pre-move out inspection is requested by the tenant, the landlord must inspect the premises during the final two weeks of the tenant's occupancy. If an inspection is requested, the

landlord and tenant must attempt to schedule the inspection at a mutually acceptable date and time. The landlord must give at least 48 hours prior written notice of the date and time of the inspection if a time is agreed upon, or if the parties can't agree on a time, but the tenant still desires to have an inspection. The tenant and landlord may waive the 48-hour prior written notice by both signing a written waiver. Once the tenant has requested the inspection, the landlord must carry out the inspection (after giving the 48 hour notice or receiving the waiver), whether or not the tenant is present for the inspection, unless the tenant withdraws his or her request for the inspection.

After inspection, the landlord must give the tenant an itemized statement identifying cleaning or repairs that will cause security deposit deductions if they are not completed before the tenant vacates. The statement must include the text of California Civil Code §1950.5(d) and (b)(1)-(4).

After the pre-move out inspection, the tenant may remedy identified deficiencies (if allowed under the lease), to avoid deductions from the security deposit. The landlord may make security deductions for items not included in the itemized statement if the damages occurred after the inspection, or if the deficiencies were not identified during the pre-move out inspection because they were hidden by the tenant's possessions.

### **Uses of the Security Deposit**

The security deposit may be used:

- For unpaid rent;
- To repair damages to the premises, not including ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant;
- To clean the premises to return it to the same level of cleanliness it was in when the tenant moved in; and
- To restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the rental agreement authorizes this use of the security deposit.

The express terms of the security deposit law do not list other items but indicate this list may not be complete.

### **Amortizing Costs**

Many judges expect landlords to amortize the cost of big ticket items (such as paint and flooring) evenly over the life expectancy of the item, and charge a tenant only a portion of the cost as appropriate. For example, if the life expectancy of carpet is sixty months years, and a landlord must replace it after thirty one months because of damage caused by a tenant, the landlord would charge the tenant only 29/60ths of the cost. To determine the life expectancy of an item, landlords should check with their vendor. Typical life expectancy for wall paint is 2-5 years (more for a glossy paint, and less for a flat paint). Typical life expectancy for a carpet is 5-7 years.

### **Lease Language**

California Civil Code §1950.5 allows landlords to use the security deposit to repair, replace or restore personal property only if the rental agreement specifically authorizes this application.

Landlords who want to maximize their ability to use the security deposit for any purpose allowed by law can insert the following provision (modeled after Civil Code §1950.5) in their leases:

*The security deposit may be used for any purpose allowed by law, including to compensate Landlord for Resident's default in rental payments, to repair damages to the premises (exclusive of ordinary wear and tear) caused by Resident, guests, and other household members, to clean the premises, and to remedy future defaults by Resident in any obligation under the rental agreement, including the obligation to restore, replace or return personal property or appurtenances, exclusive of ordinary wear and tear.*

## **Returning the Security Deposit**

Unless a shorter time is specified in the lease or rental agreement, a landlord has 21 days to provide a final accounting and return the balance of the resident's security deposit. The time begins when the landlord regains possession of the property.

This final "disposition of the security deposit" accounting must be personally delivered or sent by first-class mail, postage prepaid, to the last known address of the resident. Often this means mailing it to the premises the resident just vacated. If it is returned by the post office, the landlord should keep the original, plus a copy of the unopened return envelope, as proof that the accounting was mailed within the prescribed time. If the returned mail has a forwarding address, the security deposit accounting and refund should be sent to that address.

Landlords and tenants may agree to handle security deposit accountings and refunds electronically. The agreement must be made after the landlord or tenant have given notice of termination of the tenancy. It is recommended that the agreement be documented in writing.

If there are multiple residents, landlords should make any refund check jointly payable to *all* of the residents who have signed the lease unless all residents have given you written instructions to the contrary. This will avoid potential liability to a tenant who isn't forwarded his/her share of the deposit by another roommate. Making the check payable to all of the residents ensures that they must work out that division between them, avoiding any landlord involvement in any dispute between the residents about splitting the refund. A landlord can mail the check to any resident's last known address unless the residents provide other instructions.

## **Security Deposit Accounting Requirements**

Owners and managers must provide their residents with written receipts showing the charges incurred to repair or clean the apartment if the total amount is \$125 or more. The receipts must be attached to the final security deposit accounting.

If the landlord did the work personally, he or she must reasonably describe the work performed and must include the time spent and the reasonable hourly rate charged. Arguments about what is reasonable are common, so a conservative approach is highly recommended.

If a contractor or vendor does the work, the owner or manager must provide the resident with a copy of the bill, invoice or receipt supplied, including the contractor's name, address and telephone number.

Owners and managers must also provide receipts for materials if the resident is being charged for them. Property owners or managers who purchase materials on an on-going basis may provide the resident with a copy of a vendor price list or any other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

If a repair cannot be made, or receipts are not available within the 21-day period, the owner or manager may deduct only a good faith estimate of the deduction amounts and must provide an estimated accounting to the resident within the 21-day period.

If the owner or manager doesn't have the receipts within the 21-day period because they are still with the contractor, the owner or manager must provide the name, address and telephone

number of the contractor along with the estimate. When the final figures and receipts are available, the owner or manager must provide a final statement within 14 days from the date the repair is completed or from the date the owner or manager receives the receipt documents from the vendor.

The resident has 14 days after receiving the final itemized statement to request additional receipts from the owner or manager. If receipts are requested, the owner or manager has another 14 days to provide the additional receipts.

The only exception to this law exists if the repairs or cleaning do not exceed \$125 total or if the resident signs a written waiver of his/her right to receive the receipts. The waiver can only be signed after the termination notice is given, including three-day notices, or within 60 days of the expiration of a fixed term lease. If the waiver is signed, the resident can still request receipts within 14 days after receiving the final security deposit statement.

A well-drafted, comprehensive security deposit accounting form, such as the CAA form, is recommended to help landlords comply with the law.

### **Electronic Security Deposit Refunds and Accountings**

California law permits email transmittal of security deposit accountings and electronic refund payments, when agreed to by landlord and tenant after either party has given notice of termination of the tenancy. KTS has a form available to document this agreement, and to provide instructions to the landlord. The Electronic Security Deposit Accounting and Refund Agreement form is available for \$150.

### **The Penalties for Retaining a Security Deposit in Bad Faith**

The damages for the bad faith retention of a security deposit by a landlord are up to two times the amount of the security deposit. They may be awarded in a lawsuit even if the resident did not ask for those damages in the lawsuit.

### **Resolving Security Deposit Disputes**

If a landlord cannot reach an amicable agreement with the resident over a security deposit dispute, either of the parties may file suit in Small Claims Court.

Small claims jurisdictional limits are \$10,000 for “natural persons” in most situations. The jurisdictional limit remains at \$5,000 for plaintiffs who are corporations, partnerships, unincorporated associations, governmental entities, LLCs or other entities. See California Code of Civil Procedure §116.220, 116.221, 116.224 and 116.231 for a complete overview of small claims jurisdictional limitations, including additional limitations against guarantors and actions brought by “natural persons” for bodily injury claims arising out of automobile accidents.

Actions against guarantors or co-signers of the lease are limited to \$4,000 per claim or \$2,500 if the guarantor does not charge a fee for the service.

### **Property Sale**

When selling property, a landlord must do more than just turn over the security deposits to the new owner. Even after selling property, a former landlord will be liable to tenants to return their security deposit and provide an accounting unless the landlord does one of the following:

- (1) the landlord returns the deposit to the resident, (after deducting any amounts allowed by law and providing a security deposit disposition accounting to the resident);or

- (2) the landlord furnishes the tenant with a written notice stating the security deposit has been transferred to the new owner, provides the name, address, and telephone number of the new owner, and the landlord transfers the security deposits to the new property owner.

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