

Security Deposits

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Dec. 12, 2012 (revised)

It is customary for leases and rental agreements to require the tenant to give the landlord a sum of money to be held by the landlord until the landlord/tenant relationship has ended, as security for the tenant's performance of his or her obligations. There are statutory rules that govern the amount and disposition of these security deposits. See California Civil Code Section 1950.5 for the security deposit rules for residential property and Section 1950.7 for commercial and other non-residential properties. For purposes of this legal article, residential property includes all dwellings, and the term commercial property includes office buildings, industrial sites, and all other properties used for non-residential purposes.

There are some minor revisions which have been made to the law effective January 1, 2013. References to those changes will be in red.

Q 1. What is a "security deposit"?

A Residential: A security deposit is any payment, fee, deposit or charge, including those imposed as an advance payment of rent. It includes any charges imposed at the beginning of the tenancy to reimburse the landlord for costs associated with processing a new tenant, other than "application screening fees." (Cal.Civ. Code §1950.5(b).) See Question 3 below for a discussion of "application screening fees."

Commercial: A security deposit is defined to be "any payment or deposit of money the primary function of which is to secure the performance of a rental agreement. . . including an advance payment of rent". (Cal.Civ. Code §1950.7(b).)

Q 2. What is the maximum amount of "security" a landlord may require a tenant to pay?

A Residential: Residential landlords may collect a security deposit not to exceed the monetary equivalent of 2 months rent for unfurnished units, and 3 months rent for furnished units. For example, for an unfurnished residential property at \$800 per month, the maximum amount that the landlord can collect up front is \$2,400: This consists of \$800 rent for the first month, plus \$1,600 as a security deposit. If the landlord charges any other general processing fee or pet deposit or cleaning deposit, that amount is considered part of the \$1,600 security deposit. (Cal.Civ. Code

§1950.5(b.)

The landlord may not collect or demand any additional amount of money at the beginning of the tenancy, except as follows:

- A landlord is permitted to increase the deposit by one-half of one month's rent when a landlord is accepting a tenant with a waterbed or water-filled furniture. (In that situation, the landlord is also permitted to charge a reasonable fee for administrative costs, and can require the tenant to provide waterbed or water-filled furniture insurance.) (Cal.Civ. Code §§1950.5(c).1940.5(g).)
- In addition to the security deposit, a landlord may collect the first month's rent in advance.
- A landlord may collect six months or more of advance rent payment on leases of at least six months duration. (Cal.Civ. Code §1950.5(c).) Collecting two, three, four or five months of advance rent would violate the law.
- A landlord may charge a nonrefundable application screening fee for actual, out-of-pocket costs for obtaining information about a rental application, such as credit reports and reference checks (Cal.Civ. Code § 1950.6(j).) See Question 3 below for additional details.
- A landlord may include additional charges if there is a separate mutual fee agreement between the landlord and tenant for structural, decorative, furnishing, or other similar alterations, but not for cleaning or repairs (Cal.Civ. Code § 1950.5(c)).

Commercial: The specific monetary limitations on the maximum amount of a security deposit do not apply to commercial landlords. However, the statute refers to charging "only those amounts as are reasonably necessary to remedy tenant defaults." (Cal.Civ. Code § 1950.7(c).)

Q 3. Does the security deposit maximum include the "application screening fee"?

A Residential: No. A landlord may charge a nonrefundable application screening fee to cover the landlord's actual out-of-pocket costs of obtaining information about the applicant. This fee may be charged in addition to any security deposit. The law states the fee cannot be greater \$30, but that fee can be adjusted annually commensurate with an increase in the Consumer Price Index beginning January 1, 1998. Taking into account the increase in the consumer price index, a landlord can, as of 2012, charge a maximum of \$49.50. (Cal.Civ. Code § 1950.6.)

Commercial: There is no maximum security deposit. A landlord may also charge a "reasonable amount for the purpose of conducting reasonable business activity in connection with initiating, continuing, or renewing a lease or rental agreement . . . including, but not limited to, verifying creditworthiness. . . ." (Cal.Civ. Code § 1950.8(e).) However, it is unlawful for a landlord to demand "key money," or legal fees in preparing the lease or rental agreement as a condition of entering into the lease or rental agreement, unless this additional payment is stated in the written lease or rental agreement (Cal.Civ. Code § 1950.8(b).)

Q 4. Can the landlord contract with the tenant for a "nonrefundable" security deposit?

A Residential: No. No lease or rental agreement may contain any provision characterizing the security deposit as "nonrefundable" (Cal.Civ. Code § 1950.5(m).)

Commercial: Maybe. The statute doesn't contain the same explicit prohibition as Section 1950.5. Thus, it would be up to a court to decide if a nonrefundable security deposit would be deemed

unreasonable in a non-residential context. (Cal.Civ. Code § 1950.7(c).)

Q 5. *For what purpose can the tenant's security deposit be used?*

A Residential and Commercial:

The security deposit can be used to remedy defaults in payment of rent, to repair damage caused by the tenant (beyond normal wear and tear), to clean the unit, and to satisfy any other tenant defaults or obligations under the rental agreement or lease. (Cal.Civ. Code §§ 1950.5 (b), 1950.7(c).)

There are no restrictions on what the landlord can do with the deposit during the term of the rental agreement, except for what is required by local ordinance or by the rental agreement or lease. There is no state-wide requirement that the security deposit be placed in a special account or that it be placed in an interest-bearing account. However, several local rent control ordinances do require that the security deposit be kept in an interest-bearing account for the benefit of the tenant.

Commercial:

The 2005 California case, 250 L.L.C. v. Photopoint Corp., held that Civil Code Section 1950.7 does not allow a commercial lessor to retain the security deposit to cover its damages for future rent owed under the lease. The court interpreted Section 1950.7 to provide that a security deposit may be applied only against unpaid rent that has accrued as of the date called for in the statute for the return of the deposit.

For example, a lessor with abandoned premises, as was the case in 250 L.L.C., may either deem the lease terminated and seek damages under Section 1951.2 or continue to perform under the lease and seek rent as it becomes due under Section 1951.4. By terminating the lease, the landlord no longer has a continuing right to receive rent under the lease, but rather, has a damage claim for rent lost through the tenant's abandonment. In this instance, the landlord would have to return the security deposit on the date that it terminated the lease, and could consequently apply the security deposit only toward unpaid rent that had accrued as of that date.

However, the parties to a commercial lease can agree to waive Section 1950.7 in order to provide that a security deposit may be held and applied against future rent damages.

Q 6. *What should a property manager or landlord do with the security deposit?*

A Residential and Commercial:

If a real estate licensee is managing property for an owner, a security deposit should either be given to the owner or placed in the broker's trust account. The property management agreement should specify which of these options is to be chosen. If the landlord and tenant agree, the security deposit may be placed into an interest-bearing trust account. Any interest bearing account must follow the DRE rules for interest bearing trust accounts (see Trust Funds Q&A).

The lease should also state who is holding the security deposit, the owner or the property manager and who is responsible for it. The C.A.R. lease agreement, form LR, has provisions in paragraph 4 which specify who is holding the deposit and that if the deposit is being held by the owner then the tenant will not hold the broker responsible for its return.

Some local municipalities with rent control statutes require that residential security deposits be placed in interest-bearing accounts for the benefit of the tenants.

Residential: The tenant has a right to recover the deposit superior to all of the landlord's creditors. (Cal.Civ. Code § 1950.5(d).)

Commercial: The tenant has a right to recover the deposit superior to all of the landlord's creditors, except for a trustee in bankruptcy. (Cal.Civ. Code § 1950.7(b).)

Q 7. *What happens to the tenant's security deposit when the property is transferred to another owner?*

A Upon termination of a landlord's interest in the property, whether by sale, assignment, appointment of a receiver, death, or otherwise, certain procedures must be followed regarding the tenant's security deposit.

Residential: The landlord (or landlord's agent) should within a reasonable time

- transfer the deposit minus lawful deductions to the tenant with an accounting, or
- transfer the deposit minus lawful deductions to the new owner and notify the tenant by personal delivery or first-class mail of the transfer, claims made against the security deposit, the amount of the security deposited, and the name(s), address(es), and telephone number of the new owner(s). With personal delivery, the tenant should acknowledge receipt of the notice by signing his or her name on the landlord's copy of the notice.

(Cal. Civ. Code § 1950.5(h).)

In either case, in a voluntary sale, the landlord must also deliver a statement to the new owner accounting for all deductions lawfully taken from the deposit and indicating which choice the seller/current landlord made about the disposition of the security deposit. (Cal.Civ. Code § 1950.5(i).)

The new owner may not require the tenant to post any security to replace the amount that the former owner deducted (for lawful deductions) from the amount given to the new owner unless and until the new owner first repays the balance of the security deposit to the tenant or provides the tenant with an accounting of all the amounts deducted. (Cal.Civ. Code § 1950.5(j).)

Commercial: The landlord (or landlord's agent) should within a reasonable time:

- transfer the deposit minus lawful deductions to the tenant, or
- transfer the deposit minus lawful deductions to the new owner and notify the tenant by personal delivery or certified mail of the transfer, claims made against the security deposit, the name(s) and address(es) of the new owner(s). With personal delivery, the tenant shall acknowledge receipt of the notice by signing his or her name on the landlord's copy of the notice.

(Cal. Civ. Code § 1950.7(d).)

Q 8. *Are there any requirements regarding the security deposit prior to the tenant moving out?*

A Yes, in residential tenancies the tenant has the right to request a pre-move out inspection described in detail below.

Residential:

Pre-Move-Out Inspection Rights. Tenants have the right to request an inspection of the premises before they move out. The law gives tenants an opportunity to correct any identified deficiencies in the condition of the property, and thereby minimize deductions, if any, from their security deposits. (Cal. Civ. Code § 1950.5(f).) The procedures for the pre-move-out inspection are as follows:

1. **Providing Notice of Inspection Rights.** Within a reasonable time after either the landlord or tenant gives notice to terminate the tenancy, or before the end of a fixed-lease term, the landlord must give the tenant written notice that the tenant may request an initial inspection, and may be present at that inspection. Landlords may use C.A.R.'s standard form NRI, "Notice Right to Inspection Prior to Termination of Tenancy."

2. **Scheduling the Inspection.** If the tenant requests an inspection, the parties must try to schedule a mutually acceptable date and time. If the tenant does not request an inspection, the landlord's duties regarding the inspection are discharged. If the tenant requests an inspection, C.A.R.'s standard form NRI, "Notice of Right to Inspection Prior to Termination of Tenancy," may be used to schedule the inspection.

3. **Providing 48-Hour Notice of Inspection.** For a tenant requesting an inspection, the landlord must give at least 48 hours prior written notice of the date and time of the inspection, whether the parties agreed to a mutual time, or could not schedule a mutually acceptable time. Landlords may use C.A.R.'s standard form FEHN, "48-Hour Notice of Inspection Prior to Termination of Tenancy."

4. **Conducting the Inspection.** The landlord or landlord's agent must conduct the inspection at a reasonable time no earlier than two weeks before the end of the lease. The landlord must proceed with the inspection whether the tenant is present or not, unless the tenant withdraws the request for inspection.

5. **Preparing the Inspection Statement.** Based on the inspection, the landlord must prepare an itemized statement of repairs or cleaning that are proposed to be the basis of any deductions from the security deposit. This statement must include the statutory language in California Civil Code sections 1950.5(b) and (d) which set forth, among other things, the items that may be properly deducted from the security deposit, including the following:

- Defaults in the payment of rent;
- Repairing damages, other than ordinary wear and tear, caused by the tenant or the tenant's guest or licensee;
- Cleaning costs (see below "New Cleanliness Standard"); and
- Future defaults by the tenant to restore, replace, or return personal property as authorized by the rental agreement.

Landlords may use C.A.R.'s standard form PMOI entitled "Pre-Move-Out Inspection Statement."

6. **Delivering the Inspection Statement.** The landlord must give the inspection statement to the tenant if the tenant is present for the inspection, or leave it inside the premises.

7. Providing an Opportunity to Correct. The tenant must be given an opportunity to avoid deductions from the security deposit by remedying any identified deficiencies in a manner consistent with the rental agreement.

8. Cleanliness Standard. For all tenancies beginning after January 1, 2003, a landlord incurring costs to clean the premises after a tenant moves out, may deduct from the security deposit only the cleaning cost "necessary to return the unit to the same level of cleanliness it was in at inception of the tenancy." For tenancies that began January 1, 2003 or earlier, the cleaning standard is more generally stated; that is, the landlord can deduct from the security deposit "the cleaning of the premises upon termination of the tenancy." (Cal, Civ. Code § 1950.5(b)(3).)

Additional Considerations. It is unclear from the statutory language whether a landlord carrying out the pre-move-out inspection procedures must also comply with the separate right-of-entry requirements. The pre-move-out inspection rules are primarily set forth in California Civil Code section 1950.5(f). However, the landlord's right to enter the leased premises to conduct this pre-move-out inspection has also been incorporated into the right-of-entry statute set forth in California Civil Code section 1954. Hence, a prudent landlord should comply with both statutes until the courts or the Legislature clarifies the following issues:

1. **Waiver of 48-Hour Notice.** Section 1950.5(f) allows waiver of the 48-hour notice of inspection if the waiver is in writing signed by both the landlord and tenant. However, section 1954 independently requires the landlord to provide written notice of the landlord's intent to enter to conduct a pre-move-out inspection, and section 1954 does not explicitly allow waiver. Thus, to be prudent, a landlord should provide written notice of an upcoming inspection, and refrain from invoking the right to waive that notice requirement until the courts or the Legislature clarifies this issue.
2. **Normal Business Hours.** In the event that the tenant wants a pre-move-out inspection but the parties cannot mutually agree to a date and time, the landlord must unilaterally set a date and time for the inspection, and notify the tenant accordingly. A landlord should err, if necessary, on the side of caution by making sure that any unilaterally scheduled date and time are during "normal business hours" as required by section 1954. There is no statutory definition for "normal business hours," but some practitioners interpret it as excluding evenings and weekends.
3. **Methods of Service.** Section 1950.5(f) does not provide any specific methods of serving the required notices. However, because section 1950.5(f) has been incorporated into section 1954, a prudent landlord should deliver the inspection notices in one of the following ways:
 - Personal delivery to the tenant;
 - Left with someone of suitable age and discretion at the premises;
 - Left on, near, or under the usual entry door in a manner that a reasonable person would discover the notice; or
 - Mailed to the tenant. A notice mailed at least six days before an intended entry is presumed reasonable notice absent evidence to the contrary.

Q 9. What are the timeframes for the return of the security deposit?

A Residential:

The landlord must send to the tenant a detailed accounting (see question 11 for what information

the landlord must provide to the tenant) of the security deposit as well as any security deposit remaining after deductions, or the whole deposit if there are no deductions, within 21 days after the tenant vacates the property. The deposit may be mailed on the 21st day and it is a good idea, although not legally required for the landlord to mail it by certified mail or at least obtain a proof of mailing from the post office to show compliance. **As of January 1, 2013, after either party gives a notice of termination of tenancy the parties may mutually agree to have both the accounting and required receipts emailed to an email address provided by the tenant and may allow for the security deposit to be sent to an electronic funds transfer to an account designated by the tenant. (Civil Code section 1950.5(g).)**

Commercial:

1. **Security Deposit Less Than or Equal to One Month Plus Last Month's Rent:** If the landlord's claim is only for defaults in the payment of rent and the security deposit is no more than one month's rent plus a deposit described as the last month's rent, then the landlord has up to 30 days from when the landlord receives possession of the property to return the security deposit (or any portion remaining). (Cal.Civ. Code § 1950.7(c)(1).)
2. **Security Deposit Greater than One Month Plus Last Month's Rent:** If the landlord's claim is only for defaults in the payment of rent and the security deposit exceeds the amount of one month's rent plus a deposit clearly described as the payment of the last month's rent, then any remaining portion of the deposit in excess of an amount equal to one month's rent must be returned to the tenant no later than 2 weeks after the date the landlord receives possession of the premises and the balance must be returned (or accounted for) within 30 days from the date the landlord receives possession of the premises. (Cal.Civ. Code § 1950.7(c)(2).)
3. **Rental Property Damaged/Or Must Be Cleaned:** If the landlord's claim includes amounts reasonably necessary to repair damages to the premises caused by the tenant or to clean the premises, then any remaining portion of the security deposit must be returned to the tenant no later than 30 days from the date the landlord receives possession of the premises. (Cal.Civ. Code § 1950.7(c)(3).)

Q 10. *In residential rentals if the landlord makes deductions to the security deposit, what does the landlord need to send to the tenant?*

A If the landlord in a residential rental is going to deduct monies from the security deposit, the landlord is required to send to the tenant a detailed accounting of the deductions within the 21 day period discussed above and which must contain the information detailed below.

An Itemized statement of all the work performed which must include the information listed below.

- Itemized receipts or invoices from the persons who were hired and paid to perform the work for which the deductions were made. The invoices must contain the name, address and telephone number of the person who did the work. If the invoices do not contain the required information then that should be provided by the landlord.
- If the landlord or an employee of the landlord performed the work then the landlord may deduct for the reasonable hourly rate charged for the reasonable amount of time needed to perform the work and the cost of materials.

If the work cannot be completed prior to the 21-day limit for the return of the security deposit and it is work being done by the landlord or one of the landlord's employees, then a reasonable estimate for

the work may be given and deducted. Also, if a receipt of invoice for work performed was not made available to the landlord prior to the 21-day limit, an estimate may be provided without a receipt. However, within 14 days of the work being performed or the invoices being delivered to the landlord the landlord must provide the tenant with the invoices.

The law provides an exception to providing copies of the invoices if the total deductions are less than \$125.00 or if the tenant signs a waiver. However, the waiver must be detailed and include a full discussion of the tenant rights under the law to get a fully detailed accounting and invoices. Furthermore the waiver has to be signed after a termination of tenancy is given, or no earlier than 60 days prior to the end of a fixed term lease. If a property manager is considering a waiver, an attorney should be consulted to draft the appropriate document. However, even with a waiver or the less than \$125.00 exemption, the tenant may, within 14 days of receipt of the itemized statement, request from the landlord a copy of the invoices which must be provided by the landlord within 14 days of receiving the request. Given the complications and expenses involved in a waiver, very few property managers use a waiver, especially since it is likely that if the deductions are significant, the tenant will demand invoices which he or she is then entitled to. (Civil Code section 1950.5(g).)

Q 11. *What's the penalty for noncompliance with the laws governing security deposits?*

A Residential:

The bad faith retention by a landlord or transferee of the security deposit (or a portion) may subject the landlord to statutory damages up to 2 times the amount of the security deposit, in addition to actual damages. (Cal. Civ. Code § 1950.5(l).)

The current and former landlords are jointly and severally liable to the tenant for the payment of the security deposit if the procedures in Question 7 are not followed when a property is transferred to a new owner during the tenancy. (Cal.Civ. Code § 1950.5(j).)

Commercial: The bad faith retention by a landlord or transferee of the security deposit (or a portion) may subject the landlord or transferee to damages up to \$200 in addition to the actual damages (Cal.Civ. Code § 1950.7(f).)

Q 12. *May either the landlord or the tenant take the other to small claims court over a security deposit dispute?*

A Residential: Yes, as long as the damages claimed—actual, statutory, or both--do not exceed \$10,000.00 if the person suing is a natural person, that is not a corporation or LLC or do not exceed \$5,000 if the party suing is a corporation or LLC (Cal.Civ. Code § 1950.5(n).) Both the landlord or the successor (subsequent owner) may sue the tenant for damages in excess of the security deposit. However, the landlord (or successor) has the burden of proof of the reasonableness of the amounts claimed. (Cal.Civ. Code § 1950.5(j(l).)

Commercial: Yes. Any dispute over security deposit may be handled by a small claims court provided the damages claimed do not exceed the limits noted above.(Cal.Code Civ. Proc. § 116.220(a)(1).)

Residential and Commercial : Note, however, that an unlawful detainer action—both residential

and commercial--must be filed in the superior court of the appropriate county—not small claims court (Cal.Code Civ. Proc. § 116.220(a).)

If the landlord prefers to go to small claims court even though the amount of the security deposit or damages exceed the maximum that he or she can sue for in small claims court,, he or she may waive any damages over the jurisdictional limit for small claims court (Cal.Code Civ. Proc. § 116.220(d).)

Q 13. *Where can I obtain additional information?*

A Security deposits involving mobilehomes are not covered in this legal article. Readers may refer to our legal article, [Mobilehomes](#), for information on that subject.

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