



Security Deposits

Member Legal Services

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Key Questions

- **What is the maximum amount of "security" a landlord may require a tenant to pay?** See Question 2
- **Can the landlord contract with the tenant for a “nonrefundable” security deposit?** See Questions 7
- **What happens to the tenant's security deposit when the property is transferred to another owner?** See Question 10
- **What are the timeframes for the return of the security deposit?** See Question 12
- **What’s the penalty for noncompliance with the laws governing security deposits?** See Question 16

New Law (AB 2801) beginning April 1, 2025, and July 1, 2025: Move-in, Move-out and post-repair and cleaning photos required:

- **Beginning April 1, 2025**, the landlord is required to take photographs of the unit within a reasonable time after the possession of the unit is returned to the landlord, but prior to any repairs or cleaning for which the landlord will make a deduction from or claim against the security deposit pursuant to this section *and*
- The landlord is also required to take photographs of the unit within a reasonable time after such repairs or cleanings are completed.
- **For tenancies that begin on or after July 1, 2025**, the landlord is required to take photographs of the unit immediately before, or at the inception of, the tenancy.

New Law (AB 12) beginning July 1, 2024:

Residential security deposits with minor exceptions will be limited to one month’s rent as follows:

- Landlords will only be able to demand or receive one month’s rent in addition to the first month’s rent, before to initial occupancy.
- There is no exception for furnished units.
- “Small landlords” will be able to demand or receive two month’s rent in addition to the first month’s rent before to initial occupancy.
- A small landlord is defined as a landlord who:
 - Owns no more than two residential rental properties that collectively include no more than four dwelling units offered for rent.

- The landlord is a natural person or LLC in which all members are natural persons. A family trust may also qualify as a small landlord.
- If the prospective tenant is a service member, then the exception for small landlords does not apply, and the small landlord is limited to one month's rent in addition to the first month's rent.
- Landlords who currently hold a security deposit or those who demand or collect a security deposit in excess of one month's rent prior to July 1, 2024, may retain the security deposit even though it is more than one month's rent.

Introduction

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. California Civil Code Section 1950.5 governs for the security deposit rules for residential property and Section 1950.7 applies to 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.

Q1. What is a "security deposit"?

A1. 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).)

Q2. What is the maximum amount of security a landlord may require a tenant to pay?

A2. Residential:

Beginning July 1, 2024, Landlords may only be able to demand or receive one month's rent in addition to the first month's rent, before to initial occupancy. For example, for a residential property renting at \$800 per month, the maximum amount that the landlord can collect up front is \$1,600: This consists of \$800 rent for the first month, plus \$800 as a security deposit. If the landlord charges any other general processing fee or pet deposit or cleaning deposit, that amount must be included as part of the one-month limit. (Cal. Civ. Code §1950.5(b).) There is no exception for furnished units.

Exception for "small landlords"

“Small landlords” will be able to demand or receive two month’s rent in addition to the first month’s rent before to initial occupancy.

- A landlord qualifies for the exception if they:
 - Own no more than two residential rental properties that collectively include no more than four dwelling units offered for rent. As an example, a landlord who owns two rental properties one of which is a single family property and the other is a tri-plex would qualify as a small landlord,
 - The landlord must also be a natural person or LLC in which all members are natural persons. A family trust may also qualify as a small landlord.
 - If the prospective tenant is a service member, then the exception for small landlords does not apply, and the small landlord is limited to one month’s rent in addition to the first month’s rent.
- Landlords who currently hold a security deposit or those who demand or collect a security deposit in excess of one month’s rent prior to July 1, 2024, may retain the security deposit even though it is more than one month’s rent.

Other exceptions:

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 proof of 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 but not to exceed \$62 (as of 2024). (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.

Q3. How can a property manager verify that the landlord qualifies as a “small landlord” which would enable the landlord to collect up to two months security?

A3. The C.A.R. Form “Security Deposit Disclosure and Addendum” (C.A.R. Form SDDA) can be attached to the lease agreement. The landlord may indicate on this addendum that they qualify for the small landlord exemption by checking the box and signing under paragraph 4. If a tenant is a service member, then they can indicate such by filling in the information and signing under paragraph 5 (which means that the only one-month security can be charged despite the landlord qualifying as a small landlord).

Q4. For active service members what is the maximum amount of security a landlord may require a tenant to pay?

A4. A landlord may demand only one month's security for active service members even if the landlord otherwise qualifies for the "small landlord" exception. This applies to active or reserve members of the Armed Forces who have been ordered into active duty, or an active or reserve members of the National Guard, State Military Reserve, the Naval Militia or the "unorganized militia" who have been called or ordered into active state or federal service. It is illegal for a landlord to refuse to enter into a rental agreement with an active service member because of the lower security requirement.

This active service member rule applies if a service member is listed as a tenant on the property even if the property is also rented to the service member's spouse, parent, domestic partner or dependent. However, the rule does not apply if the property is rented to anyone other than these persons. (Cal. Civ. Code 1950.5(c)(2)(B)).

A tenant may represent that they qualify as an active service member by signing C.A.R. Form SDDA under paragraph 5. This form should be made part of the rental agreement.

Q5 What if the service member has poor credit? Can the landlord collect more than one month's security?

Q5 As of July 1, 2024, there is no longer an exception for a service member who has a history of poor credit or of causing damage to the rental property or its furnishings. A service member with poor credit may still not be charged more than one month's rent.

However, on or after April 1, 2025, if a landlord or its agent charges a service member who rents residential property in which the service member will reside a higher than standard or advertised security pursuant to paragraph (1) due to the credit history, credit score, housing history, or other factor related to the tenant, the landlord shall provide the tenant with a written statement, on or before the date the lease is signed, of the amount of the higher security and an explanation why the higher security amount is being charged. The additional amount of security shall be returned to the tenant after no more than six months of residency if the tenant is not in arrears for any rent due during that period. (Senate Bill 611; Cal Civ Code 1950.5(c)(4)).

Q6. Does the security deposit maximum include the "application screening fee"?

A6. 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 application screening fee may not exceed the "actual out-of-pocket costs of gathering information concerning the applicant, including, but not limited to, the cost of using a tenant screening service or a consumer credit reporting service, and the reasonable value of time spent by the landlord or his or her agent

in obtaining information on the applicant." (Cal. Civ. Code § 1950.6(a).)

But the law adds that in no case can the fee be greater than \$30, adjusted annually commensurate with an increase in the Consumer Price Index beginning January 1, 1998. (Cal. Civ. Code § 1950.6.). The law does not specify which consumer price index is to be used in calculating the permissible increase. Using the California Department of Industrial Relations All Urban Consumers, the adjusted fee maximum through August 2024 would be \$62.13.

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).)

Q7. Can the landlord contract with the tenant for a “nonrefundable” security deposit?

A7. Residential: No. No lease or rental agreement may contain any provision characterizing the security deposit as "nonrefundable" (Cal. Civ. Code § 1950.5(m).)

Commercial: While the statute doesn't contain the same explicit prohibition as Civil Code Section 1950.5 against non-refundable security deposits, it does state that the landlord may claim from the security only those amounts that are reasonably necessary to remedy tenant defaults. (Cal. Civ. Code § 1950.7(c).)

Q8. For what purpose can the tenant's security deposit be used?

A8. 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 (bringing it back to the level of cleanliness it was at the lease's inception), and to replace or return personal property or appurtenances. (Cal. Civ. Code §§ 1950.5 (b), 1950.7(c).) This is a non-exclusive list, meaning that the law leaves open the possibility of using the security deposit for other defaults besides these explicit items. In the case of C.A.R.'s residential lease, there is a provision which allows for the deposit to be applied to breach of contract items in the event of early termination of the lease. These include in addition to lost rent, commissions, advertising expenses, and painting necessary to prepare the property for re-rental.

The restrictions on what the landlord can do with the deposit during the term of the rental agreement are the same, 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.

Q9. What should a property manager or landlord do with the security deposit?

A9. Residential and Commercial:

If a real estate licensee is managing property for an owner, a security deposit should either be transferred to and held by the owner or held in the broker's trust account. These are the two options as presented on paragraph 4 of the C.A.R. residential lease agreement.

In most circumstances it will be prudent to check the box to indicate that the security deposit will be "transferred to and held by the Owner of the premises," as opposed to the other choice to be "held in Owner's Broker's trust account." The reason this is the more prudent choice is that this practice avoids involving the broker in disputes over deductions from the security after the tenant has vacated the property.

Nonetheless, it is possible for the broker to hold the deposit in their own trust fund account. In that case, 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).

Some local municipalities with rent control statutes require that residential security deposits be paid back with interest regardless of whether the security is held in an interest bearing trust account.

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).)

Q10. What happens to the tenant's security deposit when the property is transferred to another owner?

A10. 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).)

Q11. Are there any requirements regarding the security deposit prior to the tenant moving out?

A11. 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.** 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." (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.

Q12. What are the timeframes for the return of the security deposit?

A12. Residential:

The landlord must furnish to the tenant an itemization of deductions (see question 11 for what information the landlord must provide to the tenant) from 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 shall be mailed on the 21st day or earlier by first-class mail, postage prepaid. 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).)

The security deposit law calls for the return of an itemization of deductions and the balance of the security, if any, within 21 days after the tenant vacates. There is an often overlooked exception to this rule. The law states that the landlord must furnish this itemization, "No later than 21 calendar days after the tenant has vacate the premises, but...not earlier than 60 calendar days prior to the expiration of a fixed-term lease,..." It's probably best not to rely on the literal reading of this law given that later amendments to Civil Code 1950.5 make no further mention of the 60-day period, but instead focus on the 21-day period. Nonetheless, that is the plain language of the law.

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).)

Q13. Is the landlord required to make a good faith effort to re-rent the property?

A13. In most circumstances, yes. In order for a landlord to claim damages for unpaid rent, the landlord should make a good faith effort to mitigate their losses. Meaning, the landlord is not allowed to sit on their hands and accumulate damages (in a residential tenancy). Instead, the landlord must actively attempt to reduce their damages. In most circumstances this means that the landlord must actively attempt to re-rent the property. If the landlord is unable to rent the property for a period of time, then the landlord may claim the lost rent that could not be recovered.

Although reletting the property is almost always the way a landlord mitigates their damages, case law allows that a sale of the property may also be mechanism for mitigating damages. (See *Milliken v. American Real Estate Spectrum Services California Inc* (2004)).

Neither does the landlord's efforts to mitigate their losses require that they re-let at the exact same rent. The landlord is entitled to recover damages with mitigation based on the fair market rental value of the property. The duty to mitigate will often require that the property be relet at a rent that is more or less than the rent provided in the original lease. The test in each case is whether the lessor acted reasonably and in good faith in reletting the property. (Lu v Grewal (2005)).

For commercial property a landlord is not necessarily required to attempt to mitigate damages by reletting the property or otherwise. If the lease agreement allows that the landlord may elect to continue the tenancy so long as the landlord does not terminate it or relet it. The C.A.R. Commercial Lease Agreement has such a provision.

Q14. The security deposit law permits deductions based upon unpaid rent. What if the landlord is unable to determine the amount of unpaid rent within the 21 days after the tenant vacates? Is the

landlord permitted to continue to hold the deposit until the unit has been re-rented even if this takes more than 21 days?

A14. The law requires the landlord to furnish an itemization within 21 days after the tenant vacates. Typically, the landlord would like to have signed up a new tenant to rent the property within the 21 days. Even though the lease term of the prospective tenant may commence at a future date, the landlord will be able to reasonably calculate the amount of loss and make a deduction on that basis.

In the event that the landlord is not able to relet the premises within the 21 day period, then the conservative risk management practice is to provide an itemization on the 21st day and make deductions for only three weeks of lost rent. That is fairly conservative.

A more aggressive approach is to send out the itemization within the 21-day period but hold back the full deposit until a new tenant can be found, at which point the landlord will return the balance of the deposit. This is a more risky practice since a landlord who fails to comply with the security deposit law “in bad faith” may have to pay double the amount of the security as a penalty.

(There is case which seems to allow for this, the California Supreme Court case of *Granberry v Islay Investments* (1995). In that case the landlord retained over \$1,000,000 (collectively) of security deposits without sending out any itemizations. The landlord was sued but defended by claiming 1) The failure to send out an itemization was in good faith and 2) Because the landlord was acting in good faith they were entitled to the defense of “offset.” Note that it would be very easy for a judge or jury to decide that a landlord was not acting in good faith, and the outcome would be completely reversed).

Q15. In residential rentals if the landlord makes deductions to the security deposit, what does the landlord need to send to the tenant?

A15. New Law (AB 2801) Beginning April 1, 2025, and July 1, 2025: Move-in, Move-out and post-repair and cleaning photos required:

- **Beginning April 1, 2025**, the landlord is required to take photographs of the unit within a reasonable time after the possession of the unit is returned to the landlord, but prior to any repairs or cleaning for which the landlord will make a deduction from or claim against the security deposit pursuant to this section *and*
- The landlord is also required to take photographs of the unit within a reasonable time after such repairs or cleanings are completed.
- **For tenancies that begin on or after July 1, 2025**, the landlord is required to take photographs of the unit immediately before, or at the inception of, the tenancy.

In addition to the photo requirements under AB 2801, all previous rules still apply. 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 an itemized statement of the deductions within the 21-day period discussed above and which must contain the information detailed below. CAR's Sample Letter "Security Deposit Return" may be used.

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 material.
- 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.
- Photographs as discussed above

The law provides an exception to providing copies of the invoices and photographs 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).)

Q16. What's the penalty for noncompliance with the laws governing security deposits?

A16. 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).)

Q17. May either the landlord or the tenant take the other to small claims court over a security deposit

dispute?

A17. Residential: Yes, as long as the damages claimed—actual, statutory, or both--do not exceed \$10,000.00 (\$12,500 beginning January 1, 2024) if the person suing is a natural person, that is not a corporation or LLC or do not exceed \$5,000 (\$6,250 beginning January 1, 2024) 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).)

Q18. Where can I obtain additional information?

A18. Security deposits involving mobilehomes are not covered in this legal article. Readers may refer to our legal article, Mobilehomes, for information on that subject.

The DRE's "[A Guide to Residential Tenant's and Landlord's Rights and Responsibilities](#)" discusses issues pertaining to the security deposit.

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answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Revised by Robert Bloom

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