

SMALL CLAIMS

RESIDENTIAL RENTAL SECURITY DEPOSITS

WHAT IS A SECURITY DEPOSIT?

Payments collected in advance by the landlord from the tenant to protect them against non-payment of rent or property damage, (whether it is *last month's rent*, *security*, *cleaning*, etc.), is considered to be a form of security deposit subject to these regulations. (Civil Code 1950.5).

HOW MUCH IS TOO MUCH?

- *Unfurnished rental unit* - The security deposit cannot be more than two month's rent.
- *Furnished rental unit* - The security deposit cannot be more than three month's rent.

HOW DEPOSIT SHOULD BE HANDLED

After moving out, a tenant must receive from the landlord within three weeks either a return of the entire rental deposit or an itemized statement of deductions and the balance of the deposit.

- If the tenant believes the deductions are improper, then he should write to the landlord and keep a copy of the letter. This step is meant to show that the tenant attempted to settle the dispute with the landlord before going to court (Code of Civil Procedure 116.320 (b)(4))
- If the disagreement is not settled, the tenant can file a suit (SC-100) in small claims court for the deposit plus statutory damages of up to twice the amount of the security, in addition to actual damages. These damages may be rewarded if the judge believes that the landlord acted in bad faith (Civil Code 1950.5(k)(1)).

WHO SHOULD BE NAMED ON THE CLAIM?

If an individual or business owns the unit, name that individual or business in your claim. You may also consider naming the management company as an additional defendant if you think you have a claim against it as well.

- You can check the County Recorder's Office to determine who owns the property
- For larger apartment complexes, contact City Hall and see who holds the business license

WHERE TO SERVE YOUR CLAIM

In the event an owner, successor owner, manager, or agent fails to comply with the requirements of this chapter, service of process by a tenant with respect to a dispute arising out of the tenancy may be made by registered or certified mail sent to the address at which rent is paid, in which case the provisions of Section 1013 of the Code of Civil Procedure shall apply. (Civil Code 1962.7)

LANDLORD'S RESPONSIBILITIES

On Rental Agreement:

Under CC.1962(a), any owner of a dwelling structure specified in Section 1961 or a party signing a rental agreement or lease on behalf of the owner shall do all of the following:

- (1) Disclose therein the name, telephone number, and usual street address at which personal service may be effected of each person who is

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- (A) Authorized to manage the premises.
(B) An owner of the premises or a person who is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for all notices and demands.
- (2) Disclose therein the name, telephone number, and address of the person or entity to whom rent payments shall be made.
- (3) Disclose therein the form or forms in which rent payments are to be made.
- (4) Provide a copy of the rental agreement or lease to the tenant within 15 days of its execution by the tenant. Once each calendar year thereafter, upon request by the tenant, the owner or owner's agent shall provide an additional copy to the tenant within 15 days. If the owner or owner's agent does not possess the rental agreement or lease or a copy of it, the owner or owner's agent shall instead furnish the tenant with a written statement stating that fact and containing the information required by paragraphs (1), (2), (3), of subdivision (a).

Withholding the Security Deposit:

The landlord must prove the amounts deducted from the security deposit were necessary and reasonable. He must also take the following steps for the withholding to be considered proper:

1. Within three weeks of moving out and turning in the keys, the landlord must send a full refund of the security deposit or an itemized statement that lists reasons and amounts of any deductions from the deposit, with a refund of any amounts not deducted.
2. The landlord may withhold from the security deposit only those amounts that are reasonably necessary including: unpaid rent, repair of damages other than normal wear and tear, and for cleaning the rental unit (CC 1950.5(b)).
NOTE: The tenant must have the chance to fix the problems to get the deposit back. A landlord cannot require, in advance or routinely, that all tenants pay expenses such as professional cleaning, painting, or replacement of carpets or drapes. Such deductions can be allowed if they can be proven by the condition of the rental unit when the tenant moved in, and the amount of care taken during the tenancy.
- For further information, you may contact the Fair Housing Council of Orange County at (714) 569-0823.
3. The landlord must provide a copy of the bill, invoice or receipt if a deduction is made (CC 1950.5 (g)(2)(C)).

**Note: All security deposits must be refundable.*

On Rent and Damages:

Under (CC.1942) (a) If within a reasonable time after notice, written or oral, was given to the landlord or his agent of damages rendering the premises un-tenantable, and they neglect to fix the damages:

- The tenant may do the repairs himself if the cost of such repairs does not require the expenditure of more than one month's rent of the premises and deduct the expenses of such repairs from the rent when due

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*NOTE: For the purpose of this section, if a tenant acts to repair and deduct after the 30th day following notice, he is presumed to have acted after a reasonable time. The presumption established by this subdivision is a rebuttable presumption affecting the burden of producing evidence and shall not be construed to prevent a tenant from repairing and deducting after a shorter notice if all the circumstances require shorter notice

- The tenant may vacate the premises and deduct the expenses of such repairs from the rent when due
- The tenant may vacate the premises, in which case the tenant shall be discharged from further payment of rent, or performance of other conditions as of the date of vacating the premises. (This remedy shall not be available to the tenant more than twice in any 12-month period.)