

LANDLORD – TENANT

TENANT'S RIGHTS: SECURITY DEPOSITS



您有权利对一个自由口译员。(Chinese)

Koj muaj txoj cais yuav ib tus neeg txhais lus Hmoob rau koj. (Hmong) May karapatan kang magkaroon ng tag-ugnay na walang bayad. (Tagalog)

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TENANTS' RIGHTS: SECURITY DEPOSITS



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INTRODUCTION

You probably paid a lot of money to your landlord to move into your rental unit. Except for last month's rent, the law treats this initial payment as a *security deposit no matter what your landlord calls it.* This is *your* money which you should get back after you move out, minus only reasonable amounts for cleaning, repairs of damage you cause, and rent you owe. By law, the landlord must also agree to do a pre-move-out "initial inspection" and can only withhold your deposit for certain specific reasons.

If you've followed the self-protection steps in this Packet, and the landlord doesn't have a legal reason for keeping your deposit, then you have a legal right to receive a refund of your deposit within **21 days** after you vacate your rented home or rental unit. State law regarding security deposits can be found at California Civil Code Section 1950.5.

The following information may be useful to you in your effort to get your security deposit back from your landlord. If, after following the advice provided in this Packet, you have any further questions, feel free to contact our office at ______.



FREQUENTLY ASKED QUESTIONS

Q: WHAT IS A SECURITY DEPOSIT?

A: Before moving into a home or rental unit, landlords often require tenants to give some type of deposit, or pay the last month's rent in advance, or both. Various labels are used to describe the different types of deposits: For example, they may be called security deposits, cleaning deposits, holding deposits, and other miscellaneous "special" fees and charges for keys, carpets, fire extinguishers, and pets. Regardless of what a deposit is called, *all fees and charges collected at the beginning of a tenancy, except for qualified application screening fees and last month's rent, are considered part of the security deposit.* As long as the purpose of the money is to protect the landlord against your possible failure to take care of the property or pay your rent, it is a security deposit.

Before giving any deposit money to a landlord, you should ask the landlord to explain the purpose of the deposit and the rules and procedures for getting the deposit money back. And, regardless of what the landlord charges you, you can always try to bargain for a lower deposit.

Q: <u>How much security deposit can a landlord charge?</u>

A: No matter whether the landlord calls it a deposit or fee, your landlord cannot collect move-in funds that are more than **two months' rent (for unfurnished residential property)**, or more than **three months' rent (for furnished residential property)**. These amounts do *not* include the first or last month's rent.

For the furnished deposit, "furnished," means providing basic furniture for living in the place. This includes, but is not limited to a couch or chairs for the living room, a bed in each bedroom and a table with chairs for dining. A refrigerator and stove must be included in furnished rentals.

What about "last month's rent"? The owner has the right to ask you to pay the last month's rent before you move in. The last month's rent is <u>not</u> considered part of the security deposit, and does not count toward the maximum security deposit amount. Be sure to get a dated and signed receipt from the landlord if you are required to pay last month's rent, and keep it for your records.

<u>DEPOSIT EXAMPLE</u>: If your rent is \$1,000 a month, the maximum security deposit for an *unfurnished* place is \$2,000. At move-in, your cost could be \$3,000 total (deposit plus rent for the first month), or \$4,000 if the landlord required both first and last month's rent. In this example, if the unit is furnished, the maximum deposit amounts would be \$3,000. The maximum move-in costs would thus be \$4,000 (including 1st month's rent) or \$5,000 (for 1st and last month's rent plus deposit).

Q: <u>How do I avoid getting stuck with an illegal or excessive deposit fee?</u>

A: If the landlord is demanding a fee that seems too high, politely ask what it is for. If it is called a "fee," and is claimed to be separate from the security deposit, mention that the limit on deposits in California is two months' rent. If the landlord insists on collecting money to move in that is more than two months' rent, this may be a warning sign about the kind of landlord he or she is. Ask yourself: Do I really want to move into and live in a place that starts off on the wrong foot?

Q: <u>What deposits are refundable?</u>

A: All deposits you pay to a landlord are refundable. There is no such thing as a "non-refundable" security deposit. It does not matter what the landlord called the funds—a key deposit, cleaning fee, move-in fee, carpet fee, closing costs, last month's rent, etc., because all money you pay other than your first month's rent is refundable. Even if you sign a rental agreement that includes a section about a "non-refundable" deposit, you are still entitled to a security deposit refund because the section is invalid.

What about application and credit check fees? According to state law, the cost for credit checks or application fee is <u>not</u> part of the move-in fee and is allowed to be nonrefundable, unless taken improperly. An example of an improper charge is if a landlord takes an application and fee, and the landlord knows (or should have known) that no rental unit was actually available at that time or would be available within a reasonable period of time.

What about interest on my deposit? The security deposit is your money, and it should not be mixed with the landlord's personal funds. However, state law does not require the landlord to pay interest on the security deposit held by the landlord, *unless* it is required by a local rent control ordinance, or by the rental agreement itself. Since there is no rent control in any of the cities in

County, look to your rental agreement or lease to see if you have the right to any interest on your deposit.

Q: WHAT CAN I DO BEFORE MOVING INTO THE UNIT TO PROTECT MY DEPOSIT?

A: You and your landlord should walk through and check the rental unit together when you move in, and fill out a checklist describing the condition of the premises. The move-in inspection can be done with or without the landlord. Generally, it is a good idea to have the landlord present for the inspection and to sign off on the checklist as well. *You can use the sample checklist on pages 14-15 of this Packet.*

Then when you move out, you and your landlord can go through the rental unit with this same list, and note any changes.

Take some of the following basic precautions when you move in. Many tenants end up going to Small Claims Court to get their deposits back. Taking these steps may give you the evidence you'll need.

- Get an itemized receipt for your deposit. This receipt will identify each charge (for example, pet deposit \$300, last month's rent \$1,000, cleaning fees \$250, etc.).
- ➤ When moving in, take careful inventory of the condition of the place. Refer to the sample checklist on pages 17-18 of this Packet. Write down descriptions of any existing damage and check all appliances to make sure they work properly. Ask the landlord to sign and date the inventory, and be sure to keep a copy. (If the landlord won't sign it, then send a copy to the landlord with a dated cover letter saying what you are sending. Keep a copy). Photographs or videos of the existing condition of the rental unit can also be helpful later.

Q: WHAT HAPPENS TO MY SECURITY DEPOSIT IF THE RENTAL PROPERTY IS SOLD?

A: If your landlord sells the rental unit you're living in, your deposit will probably be transferred to the new owner and become the new owner's responsibility. You will have the same rights as you did under the old owner, and you should not have to pay a new or additional deposit. It's the landlord's responsibility to tell you in writing about the ownership change, as well as about any security deposits that get directly transferred to the new owner.

If, however, within a reasonable amount of time, your old landlord notifies you (either by first class mail or handing you a copy) of the new landlord's name and address, *and* returns your deposit to you, then you will probably have to pay a new deposit to the new owner. Your old landlord must give you an itemized written account if he or she decides to deduct any amount from your deposit before returning the rest of it to you.

If your old landlord does not transfer your deposit to the new landlord, but doesn't return it to you either, then both the old landlord and the new landlord are legally responsible to you for your deposit. *Even if the new landlord can't find either the old landlord or your original deposit, the new landlord is still required by law to refund all security deposits (after any proper deductions) when you move out.*

Can the new landlord increase the amount of my security deposit? It depends on the type of tenancy you have. If you have a lease, the new landlord cannot increase your deposit unless the lease specifically allows it. If you're renting on a month-to-month basis, the new landlord can increase security deposits, but only after giving proper advance written notice. Either way, the total amount of the security deposit after the increase still cannot be more than two months rent for unfurnished units and three months for furnished units.

This means it's very important to keep copies of your rental agreement and the receipt for your security deposit. You may need those records to prove that you paid a security deposit, to verify the amount, and to determine whether the landlord had a right to make a deduction from the deposit.

Q: <u>CAN I DEDUCT THE SECURITY DEPOSIT FROM THE LAST OR ANY MONTH'S RENT?</u>

A: No. Even if your deposit is the same amount or more than one month's rent, you should **not** deduct the amount of the security deposit from your last month's rent. Your security deposit is **not** part of your rent payment and you cannot assume the landlord will apply the security deposit to pay for your last month.

Exception: If all or part of your security deposit is called "last month's rent" on your lease or rental agreement or any deposit receipt, then it can be used towards paying your last month's rent.

Q: <u>How can I ENSURE a refund of my entire deposit at move out?</u>

A: As when moving in, you can take some basic precautions when you move out. You must do certain things before you are entitled to a full refund. Here are steps you should take

1. Give proper notice that you are moving out in writing.

When you decide that you want to move out, you must give the landlord proper notice *in writing*. The notice must state that you intend to move out, and the date when you plan to move. Send this notice to the landlord by certified mail, return receipt requested.

If you pay your rent once a month, you must give at least thirty days *written* notice; if you pay rent twice a month, you must give at least fourteen days written notice. Be sure to date and sign your notice, and keep a copy for yourself.

2. <u>Request an "Initial Inspection."</u>

By law, within a reasonable time after either you or your landlord gives notice to the other to move out, your landlord must notify you in writing that you can ask for an "initial inspection" of the unit before moving out, and that you have the right to be present at this inspection. After you receive notice of your right to the initial inspection, you must then ask for the inspection to get one. (If the landlord fails to give you the required notice, ask for the inspection in writing, anyway.)

Keep a copy of the written request for your own records. The inspection must take place during the last two weeks of the tenancy.

If you ask for an inspection, the landlord *must* conduct an inspection of the rental unit with you. After the initial inspection, the landlord must provide you with an itemized written list of the things the landlord might want to deduct from your security deposit.

The purpose of this "initial inspection" is to give you the chance to make repairs and/or clean the unit so that no money will be deducted from your security deposit for those items. You *must* be allowed to fix anything that is wrong. The landlord is limited to deducting from your deposit *only* for problems or that remain after the inspection, or damage not found at the time of the inspection.

3. <u>Premises must be left clean and undamaged.</u>

Before you give the rental unit keys back to the landlord, make sure to clean the rental unit and repair any damages you, other household members or guests may have caused. For example, if you've left crayon marks on the walls or spots on the carpeting, the landlord may deduct the costs of cleaning or repair from your deposit. Also, make sure you fix and/or clean everything that the landlord noticed during the initial inspection.

4. <u>Request a final inspection.</u>

After you've removed all of your belongings from the premises and cleaned it, ask the landlord or manager to inspect the rental unit again with you. It is best to ask for this "move-out" inspection in writing. Again, keep a copy of your request for a move-out inspection. To be on the safe side, you should also have a witness you can rely on with you during the inspection. Have the landlord or manager give you a written inspection report, or fill out the sample checklist on pages 17-18 of this Packet, showing how conditions have changed since you moved in.

If you have a camera, it is also a good idea to take pictures of the rental unit to show the condition you left it in. If you can't be present when the final inspection takes place, then taking pictures is critical. The photos will be the only proof of the condition your rental unit was in at move-out if you if need to go court to get your deposit back later on.

5. <u>All rent must be paid in full.</u>

If you owe the landlord any amount of rent when you move out, the landlord can deduct this amount from your deposit. If the amount you owe is more than your deposit, the landlord can sue you to collect the rest.

The landlord can also charge you for rent up to and including the day that you actually give the keys back to the landlord. *Therefore, it is very important that when you have completely moved out, you give all of the keys back to the landlord and get a dated receipt for them, or that you return the keys with a dated and signed cover letter stating that you are vacating that day and returning the enclosed keys.* Keep a copy of that letter for your records. *Remember that you also must notify the landlord of the address where you want your deposit sent.* Do this in writing and keep a copy of your letter.

Q: <u>What can my landlord deduct from my security deposit?</u>

A: California law allows the landlord to use your security deposit for four things:

- 1. For unpaid rent;
- 2. For cleaning the rental unit when you move out, if the unit is not as clean as it was when you first rented it;
- 3. For repair of damages, other than normal wear and tear, resulting from negligence, carelessness, accident, or abuse, caused by you or your guests; *and*
- 4. For other unpaid charges specifically listed in your lease or rental agreement, such as: charges for late rent payment, returned checks, animal violations, or the cost of restoring or replacing furniture, furnishings, or other items of personal property (including keys you don't return to the management), *other than* normal wear and tear.

A landlord can only keep an amount from the security deposit reasonably necessary to cover the cost any of the above items. A landlord *cannot* use your deposit to fix defects that were there before you moved in, or for conditions caused by normal wear and tear. "Normal wear and tear" means the gradual deterioration or normal decline of the premises that occurs over time through everyday use.

If the landlord decides to deduct any amount from your security deposit, then he or she must provide you, within 21 days of the date you moved out, with the following: 1) a written itemized statement of the deductions taken, 2) in most cases, receipts or documents showing the charges the landlord incurred for making repairs or cleaning and 3) payment for any remaining balance.

<u>What if I think the landlord is keeping too much money for repairs?</u> Remember, there is no such thing as automatic move-out charges. The landlord must prove that repairs are necessary and reasonable, and for conditions beyond normal wear and tear. The landlord is obligated to provide you with a statement that lists what specific items he is deducting for and, in most cases, he must also provide you with receipts or other documents that prove he actually had those expenses. Carefully review all of these receipts and other documents. You can also get estimates from other, independent cleaning or repair services to see if the rates they would charge are comparable to the amount deducted

from your deposit. If you believe the amount deducted was too high, you may file a claim in Small Claims Court. See page 11 of this Packet for information about going to Small Claims Court.

Q: <u>When should I Get my security deposit refund?</u>

A: Under California law, the landlord must return the full amount of your deposit within 21 days of your move-out date, if the unit is clean and not damaged.

If, however, you owe any rent, left the unit less clean than when you moved in, or have caused any damage to the premises, the landlord can deduct for the amount needed to cover these items. The landlord cannot withhold any part of your deposit to cover normal wear and tear.

If a landlord decides to keep any or all of your deposit, the landlord must give you (either by mail or personal delivery) an itemized written statement of the amount kept and why. The remaining portion of the deposit, if any, must be returned to you *within 21 days* of the date you moved out. If the damages are more than the deposit, the landlord can sue you for the extra amount.

Q: <u>What do I do if the landlord doesn't return my deposit or doesn't send</u> <u>ME A WRITTEN STATEMENT WITHIN 21 DAYS?</u>

A: 1. Contact the landlord or manager.

If 21 days have passed since you moved out, and you haven't received any portion of your deposit or an accounting that is has all been used for damages/cleaning, write your landlord a letter asking for return of your entire deposit. *There is a sample letter at the end of this Packet*. You can say in the letter that you are asking for the return of the deposit under the "California security deposit law, California Civil Code Sec. 1950.5." Give the landlord a deadline date of when you expect the money. It's best to send your letter by certified mail, return receipt requested. Keep a photocopy for your records.

2. Go to Small Claims Court.

If the landlord refuses to refund your deposit within a reasonable time after getting a written demand letter from you, or if the landlord withholds any amount you feel is unreasonable, you may want to sue the landlord in Small Claims Court. There is a filing fee, but you may be able to get the fee waived if you have very low income. You can sue for up to three times the amount of your original security deposit, or up to \$7,500. If your claim is higher than \$7,500 total, then you would need to file the lawsuit in Superior Court instead of Small Claims Court.

You should file as soon as possible after your landlord's refusal to follow the law. You can get general information about suing in Small Claims Court from our office.

The people in Small Claims Court are not allowed to have lawyers argue their case. You (the plaintiff), and the landlord (the defendant), will represent yourselves. A few weeks after you file a claim, there will be a hearing on your case. In court, the landlord has to prove that the amount of the security deposit he or she kept was reasonable under the circumstances. If you can show that the landlord should have returned your deposit, but withheld it in "bad faith," the court may order the landlord to pay you three times the amount of your deposit. "Bad faith" means the landlord kept your money on purpose and not by an honest mistake. Your written documentation (receipts, inspection report, photos, copies of letters, etc.) will help your case.

Warning! If you file a case against the landlord in Small Claims Court, the landlord has the right to file a counterclaim against you that demands deductions from the deposit. Therefore, it's best not to sue in Small Claims Court if you owe any unpaid rent or caused excessive damages.

Q: <u>What if I am being evicted and I have paid deposits?</u>

A: If you have paid a deposit, you should appear in court in your eviction case and ask the judge or commissioner to give you credit for any security deposit or last month's rent against any judgment for back rent that you might owe. The law does not require the judge to do this, but some judges do.

Example: You owe the landlord \$500 in back rent and you paid the landlord a \$300 deposit when you moved in. If the judge allows your deposit to be credited to your back rent, the judgment against you would be for \$200.

If you settle your case with the landlord, and he or she waives (agrees not to collect) your back rent, you should still get your security deposit back unless your settlement specifically says that you are also waiving your rights to collect your deposit.

If you owe back rent and move out before the eviction trial without paying what you owe, you have to remember to subtract the rent you owe from your deposit, to see if the landlord still owes you any money.

TIPS FOR GETTING YOUR FULL DEPOSIT BACK

- □ At least a week or two before move out, arrange a time for you and the landlord to walk through the rental unit and fill out a written, signed checklist describing the condition of the premises. If available, have a copy of your move-in checklist handy for comparison. Refer to pages 17-18 of this Packet for a sample checklist.
- □ On the day you move out, have the landlord or manager do a final inspection of the rental unit with you. Try to arrange an exchange of your keys for your security deposit. Or have the landlord/manager sign and date a statement that the place is clean and in good condition. If the landlord won't sign a statement, take pictures/videos of the condition of the rental unit. Hold up a copy of the day's newspaper when taking the pictures, to show the pictures weren't taken earlier.
- □ If the landlord refuses to sign that you returned the keys, you can protect yourself by mailing all your keys to the landlord the day you finish moving out by certified mail, return receipt requested. Include a cover letter that says you have moved out and mailed the keys on that date. Keep a copy of the letter and your mailing receipt, to show the day you mailed the keys. Be sure to put in a request to forward your mail with the Post Office, so you will get the return receipt card back from the post office.
- If you want to move, be sure to give at least 30 days written notice before you move out. (You may need to give more time if you have a rental agreement that is more than month-to-month.) You are responsible to pay rent for these 30 days and if you don't, your landlord can deduct "unpaid rent" from your deposit. *Refer to the sample "Notice to Vacate and Request for Inspection" letter on page 14 of this Packet.*
- Give the landlord written notice of your new address.
- Don't owe rent or other payments to the landlord when you move out.
- □ Leave the premises in a clean condition, and follow any other lease requirements related to your security deposit refund.
- Go through your rental unit or other rental property with the manager to check its condition and compare it to your "move-in" inventory checklist.

This is the English version of a sample request for inspection. In most cases, this is the version you would send to the landlord. A translated copy of this form is attached.

SAMPLE LETTER #1:

NOTICE TO VACATE AND REQUEST FOR INSPECTION

Insert Date

Insert Tenant's Name & Address

Insert Landlord's Name & Address

Dear (Insert Landlord's Name):

This is to inform you that I am terminating my month-to-month tenancy effective (*Insert date you are moving out*). I plan to vacate the rental unit on or before (*Insert date you are moving out*), and I request that we conduct a move-out inspection of the premises on (*Date and time you want the inspection*), or at such other time as we mutually agree. I will also return the keys to you at that time.

Further I request that you return my cleaning and security deposit to me at the following address:

(Insert address where you want your deposit mailed)

Thank you for your attention.

Sincerely,

Insert Tenant's Name & Signature

This is the English version of a sample Demand for Deposit. In most cases, this is the version you would send to the landlord. A translated copy of this form is attached.

SAMPLE LETTER #2:

DEPOSIT REQUEST DEMAND LETTER

Insert Date

Insert Tenant's Name & Address

Insert Landlord's Name & Address

Dear (Insert Landlord's Name):

As you know, until (*Insert date you moved out*), I resided at (*Insert your old address & rental unit number*). I paid my rent regularly to you through (*Insert date you moved out*), at which time I moved out after giving proper notice of my intention to vacate. When I moved out, I left the premises as clean or cleaner than when I moved in.

It has been over twenty-one (21) days since I moved out, and as of today, I have not yet received a refund of my \$ (insert total amount due you)

retund of my \$_____ (insert total amount due you) ______ (describe deposits; e.g., cleaning, security, pet, etc.) deposit(s). I have not even received a written itemized accounting from you for that money.

Please understand that I am aware of my rights under California Civil Code section 1950.5. If I do not receive my full refund within the next week, I will regard the retention of my deposits as a showing of bad faith on your part and will sue you for triple the amount of my deposit, plus actual damages, as allowed by California Civil Code section 1950.5.

The prompt return of my deposit will make court action unnecessary. Please mail the deposit to me at the address provided below:

[Insert Name & Full mailing address]

Thank you for your attention.

Sincerely,

Tenant's Name & Signature

This is the English version of a sample checklist. In most cases, this is the version you would give to the landlord.

A translated copy of this form is attached.

INVENTORY AND CONDITION CHECKLIST

NAME

DATE OF INSPECTION

ADDRESS

DATE OCCUPANCY BEGAN

CITY, STATE, ZIP CODE

DATE OCCUPANCY ENDS

This inventory form is for your protection. It helps establish the condition of the rental premises at the time of your move-in, and should be completed and returned to the landlord within the first three days of occupancy.

At least two weeks before moving out, arrange a time to complete the final inspection.

Be specific and check carefully when completing this form. Look for dust, grease, stains, burns, damages, and wear and tear. Cross out items that do not apply, and attach additional paper if more space is needed. Copies of the entire inventory, including any attachments, should be provided to both the tenant and landlord. Usually, you would give the English version to the landlord.

EXTERIOR	QUANTITY	CONDITION AT MOVE-IN	CONDITION AT MOVE-OUT
Locks			
Mailbox			
Porch			
Entry Hallway			
Doors			
Doorbell & Knocker			
Patio/Balcony			
Garage			
Floor Covering			
Electrical/ Light Fixtures			

& DINING ROOM Walls/Ceiling	 MOVE-IN	MOVE-OUT
walls/Celling		
Doors		
Windows &		
Screens		
Drapery		
Rods/Blinds/		
Drapes		
Electrical/		
Light Fixtures		
Hardware		
Woodwork		
Carpet/Floor/		
Floor Covering		
_		
Furniture (Please		
specify):		

INVENTORY CHECKLIST (Continued)

KITCHEN	QUANTITY	CONDITION AT MOVE-IN	CONDITION AT MOVE-OUT
Walls/Ceiling			
Doors			
Windows &			
Screens			
Electrical/			
Light Fixtures			
Cabinets			
Sink Disposal			
Dishwasher			
Refrigerator			
Cooking Range/			
Range Surfaces/			
Range Hood			
Oven			
Hardware			
Plumbing			
Drapery Rods			
Woodwork			
Countertops			
Floor/			
Floor Covering			

BEDROOM	QUANTITY	CONDITION AT MOVE-IN	CONDITION AT MOVE-OUT
Walls			
Ceiling			
Doors			
Windows &			
Screens			
Hardware			
Drapery			
Rods/Blinds/			
Drapes			
Woodwork			
Electrical/			
Light Fixtures			
Floor/			
Floor Covering			
Furniture (Please			
specify)			

MOVE-IN OUT Walls Ceiling Doors Windows/ Screens Hardware Drapery Rods/Blinds/ Drapes Woodwork Electrical/ Light Fixtures Floor/Floor Covering Towel Rods Sinks/Faucets Toilet Bathtub/Shower Vanity Hardware Caulking Woodwork **BASEMENT &** CONDITION AT **CONDITION AT MOVE-**QUANTITY UTILITY **MOVE-IN** OUT ROOM Walls Ceiling Doors Floor/ Floor Covering Stairway Electrical/ Light Fixtures Furnace Water Heater Laundry Facilities Hardware Smoke Alarms

CONDITION AT

CONDITION AT MOVE-

Date of Arrival Inspection

Tenant Signature

BATHROOM

QUANTITY

Landlord Signature