



PREVENTIVE LAW SERIES

SECURITY DEPOSITS



Prepared by:
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WHAT IS A SECURITY DEPOSIT?

A security deposit is any payment, fee, or charge, other than the first month's rent, that the tenant pays upon moving into a rental unit. Cleaning deposits and pet deposits are beyond the first month's rent and therefore are part of the security deposit. Security deposits must be refundable and a landlord may not represent the contrary. The security deposit may not be more than the value of two months' rent for an unfurnished unit or more than three months' rent for a furnished unit.

INCREASING A SECURITY DEPOSIT

In order to increase a security deposit, the landlord must give the tenant written notice. The notice must be at least as long as the rental period between the rent payments. The tenant may agree to a shorter notice period in the lease agreement, but the period may be no less than seven days. The landlord may not increase the security deposit if the amount already equals the above limits. Additionally, if the tenant and the landlord executed a lease agreement, the amount of the security deposit may not be increased during the lease term unless the agreement allows it.

REASONABLE DEDUCTIONS

The landlord must refund the security deposit less any proper deductions when the tenant moves out. The following is a list of proper deductions:

- Unpaid rent.
- The rental unit is less clean than before it was rented.
- Repairs--other than normal wear and tear.
- Failure to restore rental property, such as keys or furniture.

Any deduction from the security deposit must be reasonable. The landlord may not use a security deposit to repair damage from normal wear and tear or to repair defects in the unit that preceded the tenant. If the tenant caused damage to the unit at a cost in excess to the security deposit, the landlord may recover the excess from the tenant.

RECOVERING THE SECURITY DEPOSIT

The tenant should give the landlord a forwarding address when moving out. Within 21 days the landlord must return the entire security deposit or provide personally--or by first-class mail--an itemized statement in writing explaining why the deposit was not fully returned. Together with the itemized statement the landlord must provide copies of the receipts showing the charges incurred to repair or clean the premises if the deductions for repairs and cleaning together exceed \$125. If the landlord fails to return the deposit within this period or makes deductions that the tenant disputes, the tenant should write to the landlord explaining his position. The letter should state why the deductions are improper and request to have the difference refunded. This letter should be sent certified mail with return receipt requested and the tenant should keep a copy.

If the landlord fails to return the security deposit or make deductions that the tenant disputes and the tenant has been unable to resolve the matter informally, the tenant may sue the landlord in small claims court. The tenant, however, may not sue for more than \$10,000 in small claims court. The landlord must prove that the amount deducted was reasonable and necessary. Additionally, if the court determines that the landlord acted in "bad faith" in his refusal to return the deposit, the court may award twice the amount of the security deposit paid.

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FOR LEGAL ADVICE IN A PARTICULAR SITUATION, ALWAYS CONSULT WITH AN ATTORNEY.

IF THE LANDLORD SELLS THE PROPERTY

If the landlord sells the property he must do one of the following: (1) return the deposit to the tenant, or (2) transfer the deposit to the new landlord. The selling landlord may make lawful deductions from the deposit just as if the tenant had moved out. The new landlord may be able to increase the deposit to replace the lawfully deducted amount. If the selling landlord returns the deposit to the tenant, the buying landlord may collect a new security deposit. If the selling landlord transfers the deposit, he must give the tenant notice in writing of the buying landlord's name, address, and telephone number. If the selling landlord fails to transfer or refund the deposit, then both landlords may be liable for the security deposit when the tenant moves.

MULTIPLE TENANTS

Sailors often share rent on an apartment or house with other sailors or non-family members. In most cases, when one tenant moves out early, the landlord does not have to return any portion of the deposit until all the tenants have moved out. An early move-out tenant may have difficulty recovering the security deposit. If you have any questions come to the Legal Assistance Office and speak to a Legal Assistance Attorney.

LEGAL ASSISTANCE SERVICES

A legal assistance attorney is available by appointment Monday from 0800 - 1100 and 1300 - 1500, Tuesday through Thursday from 0900 - 1100 and 1300 - 1500, and Friday from 0900 - 1045. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island - Coronado, Building 318 - Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437

RESOURCES

California Department of Consumer Affairs: www.dca.ca.gov, (800) 952-5210

California Courts Self-help: www.courtinfo.ca.gov/selfhelp/other/landten.htm

California Civil Code §1950.5 (2015)

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