



Security Deposits Collection and Return

One of the most common disputes between a landlord and a tenant is the disposition of a tenant's security deposit. The law is clear on the amount of money a landlord can collect from a tenant and it even provides a specific time within which the landlord must return the deposit to the tenant upon vacating the unit. The law is vague, however, about how the deposit can be used by the landlord and many landlords and tenants end up before a judge who is left to make the ultimate decision about the appropriate use of the deposit. The basic rule to remember when collecting a security deposit is that the deposit is refundable at the termination of tenancy unless the tenant fails to pay rent or fails to return the unit to the condition that existed at the time they took possession – exclusive of ordinary wear and tear. If challenged by the tenant in court, the landlord has the burden to prove the reasonableness of any deductions to the deposit and must prove that any deduction was not a result of normal wear and tear. For example, a judge will also take into consideration the age of a damaged item and will require the landlord to prorate the cost of the item, such as carpet with a life expectancy of 7 years that is destroyed by the tenant after 5 years. The term “wear and tear” is not defined in the law, and not surprisingly, this is where most disputes center. A landlord who in bad faith keeps the security deposit may be ordered by a judge to pay to the tenant up to twice the amount of the security deposit in addition to actual damages.

How Much Can a Landlord Charge for the Security Deposit?

Prior to July 1, 2024, with an exception for military service members described below, a landlord may collect a refundable security deposit from a new tenant for up to two months' rent if the rental property is unfurnished and up to three months' rent if the unit is furnished.

With an exception for qualified “small” landlords described below, effective July 1, 2024, [AB 12 \(Haney\)](#) limits the amount of a security deposit to **one** month's rent for all tenants regardless of whether the rental unit is furnished or unfurnished.¹ Civ. Code 1950.5. Note that the law capping security deposits to one month's rent as of July 1, 2024 is not retroactive; landlords are not required to refund to the tenant any portion of a security deposit properly collected from the tenant prior to July 1, 2024 that exceeds one month's rent.

Special Exemption to Security Deposit Amount for “Small” Landlords

Effective July 1, 2024, there is a narrow exception to the one month's rent cap for “small” landlords as described below. If this “small” landlord exception applies, a security deposit of up to two month's rent, for either an unfurnished or furnished unit, may be collected.

The “small” landlord exception applies only to a landlord who (1) is a “natural person” or a “limited liability corporation in which all members are natural persons” **and** (2) owns no more than two residential rental properties that collectively include no more than four dwelling units “offered for rent.” A qualifying “small” landlord may collect a refundable security deposit from a new tenant in an amount equal to up to two month's rent.

Civil Code 1950.5(c)(4) (C) defines a “natural person” as including “any natural person who is a settlor or beneficiary of a family trust” and further defines a “family trust” as “a revocable living trust or irrevocable



trust in which the settlors and beneficiaries of the trust are persons who are related to each other as sibling, spouse, domestic partner, child, parent, grandparent, or grandchild.” While not specifically stated, it appears the definition of “natural person” is also intended to include the ordinary, plain meaning of the term (i.e. an individual).

It is unclear from the statute’s definition of “family trust” how the relationship requirement applies. One way to interpret the definition is that it simply requires that each beneficiary be related to the settlor (the creator of the trust) in one of the enumerated ways. However, the definition of “family trust” could also be interpreted as requiring each beneficiary be related to one another in one of the enumerated ways. Unless and until the definition of “family trust” is clarified either by the legislature or a court, it is strongly recommended that you consult with your attorney to determine if your property is owned by a “family trust” and you believe you may qualify under the “small” landlord exception.

Effective January 1, 2020, a landlord is prohibited from making any written or oral inquiry concerning the veteran or military status of potential tenants. Thus, landlords will need to determine whether the lower security deposit requirement applies from the employment information provided by the applicant or the applicant will need to inform the landlord of their eligibility. The “small” landlord exception does not apply for a new tenant that is a military service memberⁱⁱ. Security deposits for service members are restricted to one month’s rent due to a prior law. For more information on renting to military service members, see CAA’s Industry Insight – [Military Personnel: Renting to Military Personnel](#).

What Is a Security Deposit and What Can It Be Used For?

A nonrefundable security deposit is defined in the law as “any payment, fee, deposit, or charge, including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section 1950.6 [screening fees] that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, used or to be used for any purpose. . . .”(Civil Code Section 1950.5).

The landlord can use the security deposit for purposes including, but not limited to:

- Any unpaid rent;
- To repair damages to the premises - exclusive of ordinary wear and tear – caused by the tenant or a guest of the tenant; and
- To clean the premises, if necessary, at the end of the tenancy in order to return the unit to the same level of cleanliness it was in at the inception of the tenancy.
- The lease agreement cannot contain any provision that declares any portion of the security deposit as “nonrefundable.”
- The landlord cannot use the deposit for damages to the premises or any defective conditions that existed prior to the time the tenant moved in.
- The landlord cannot use the deposit for ordinary wear and tear, whether the wear and tear preexisted the tenancy or occurred during the tenancy.
- The landlord cannot use the deposit for the cumulative effects of ordinary wear and tear that may have occurred over one or more tenancies.
- The landlord must offer the tenant the option for a walk-through of the unit prior to the time the tenant moves out of the unit. For more information about the walk-through process, see the Related Items and Information Section on pages 3 and 4 hereafter.
- With the exception of an application screening fee as allowed by California Civil Code Section 1950.6, the landlord may not charge the tenant a fee to process their application.



The Courts on Security Deposits and Fees

The courts have provided some definition in the area of security deposits and fees.

A landlord, who had a practice of renting to tenants for an initial 30-day term and thereafter lowering the rent if the tenant elected to renew the contract, was found by the court to have violated the security deposit law. The court held that “merely calling an item ‘rent’ does not make it so” and that by charging this greater initial rent payment, the landlord was actually charging an illegal security deposit. 9 Cal.4th 738, 38 Cal.Rptr.2d 650.

A landlord’s practice of charging a nonrefundable fee to new tenants and to those tenants who moved to a different unit was ruled by the court to be a violation of the security deposit law. The court permanently enjoined the landlord from charging the fee and required the landlord to provide future tenants with a notice of their rights under the security deposit law. 198 Cal.App.3d 683, 244 Cal.Rptr.22

The Appellate Court found that a landlord violated the security deposit law by collecting a nonrefundable “Tenant Initiation Expense Reimbursement” fee. The case later went to the Supreme Court, where the court justices came back with a conflicting opinion. While they declared that the fee was not a security deposit, they left unanswered whether or not the landlord could charge such a fee based on Civil Section 1950.6 (screening/application fees). Expert attorneys have written that “fees assessed at the outset of a tenancy that don’t comply with Civil Code Section 1950.5 and the 1950.6 screening fee limit of \$30 (plus CPI adjustments) may be suspect, depending upon the purpose for which they are assessed and how they are applied. Fees that are assessed for moving out prior to the end of the lease are likely to be declared unlawful liquidated damages. 23 Cal.4th 116, 96 Cal.Rptr.2d 485; 999 P.2d 718.

Receipts or Vendor Documents Required

With some exceptions as outlined below, landlords must provide tenants with the following information no later than 21 calendar daysⁱⁱⁱ from the time that the tenant vacates the premises:

- An itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant; and
- Copies of receipts, bills, invoices, or a vendor price list or other vendor document that reasonably documents the cost of the items purchased by the landlord and used in the repair or cleaning of the unit.

Returning the Deposit, the Itemized Statement, and Receipts Direct Deposit, Email, Personal Delivery, or Mail

After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and the tenant may mutually agree to have the landlord deposit any remaining portion of the security deposit electronically to a bank account or other financial institution designed by the tenant.

Also, after either the landlord or the tenant provides notice to terminate the tenancy, the landlord and the tenant may also agree to have the landlord provide a copy of the itemized statement along with any receipts for items purchased or work done to an email account provided by the tenant.

Alternatively, if the landlord and the tenant have not agreed to return of any remaining funds to a tenant’s bank account or have not agreed to the provision of the itemized statement and receipts to a tenant’s email account, the landlord must furnish the documents to the tenant by personal delivery or by first-class mail, postage prepaid, to the last known address provided by the tenant.



Any remaining security deposit funds as well as the itemized statement and receipts must be returned by the landlord to the tenant no later than 21 calendar days after the tenant has vacated the premises. Some exceptions do apply if the work is not yet complete by the landlord or contractors. See more details below.

The Landlord Can Charge for Self-Performance Work

The law makes clear that the landlord or the landlord's employees may perform the work and charge the tenant for that work. The landlord can generate his/her own bill or receipt and document the work performed and the hourly rate charged.

Estimates are Allowed

The law specifically allows the landlord to provide the tenant with an estimate within the 21-calendar day-time period. If the repair cannot be completed within 21 calendar days or if the landlord does not have the receipts within the 21-calendar day-time period, the landlord may supply the tenant with an estimate for work planned. If a contractor or vendor has not made the receipts available, the landlord must list on the itemized statement the name, address, and telephone number of the contractor or vendor.

Once Work is Complete

If a landlord has provided an estimate to the tenant, the landlord must provide the documentation for the completed work within 14 calendar days after it is complete.

Opt-Out Provisions

The landlord does not have to provide receipts, invoices, bills, or a vendor price list in the following instances:

- The repair and cleaning together do not exceed \$125.00; or
- The tenant waived his or her rights to receive the receipts, invoices, bills, or vendor price list.

Time Limit on Tenant's Request for Information

A tenant has 14 calendar days from the time he/she receives the itemized statement to make a request for receipts, invoices, or vendor documents. The landlord must then provide that information within 14 calendar days from the time he/she receives the tenant's request.

When Property Is Transferred from One Landlord to Another

Upon termination of a landlord's interest in the property, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord must, within a reasonable time, do one of the following:

- Transfer to the new landlord the portion of the security deposit remaining after any lawful deductions are made. The landlord must thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security deposit, of the amount of the security deposited, and of the name, address and telephone number of the new landlord. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice; or
- Return to the tenant the portion of the security remaining after any lawful deductions are made together with an accounting as provided by law.



Prior to the voluntary transfer of a landlord's interest in the rental property, the landlord must deliver to the new landlord a written statement indicating the following:

- The security deposit remaining after any lawful deductions are made;
- An itemization of any lawful deductions from any security deposit received; and
- His or her election for disposition of the security deposit (whether it will be transferred to the new landlord or returned to the tenants).

In the event of noncompliance with this law, the new landlord shall be liable along with the preexisting landlord for repayment of the security deposit, or the remaining portion, to which the tenant is entitled. The new landlord may not require the tenant to post any security to replace that amount not transferred to the tenant or to the new landlord by the preexisting landlord, unless the new landlord first makes restitution of the initial security or provides the tenant with an accounting as required by law.

Keys and the Rental Unit

Although keys are probably the most significant symbol of giving back possession of a rental unit, a landlord's receipt of the keys is not a necessary act in order for the landlord to take possession of the unit. Once it is clear from all of the circumstances that the tenant has vacated, the landlord can take over possession, even without keys. The 21 days to account for the use of the deposit begins at the time the landlord takes possession. A judge could also rule that the 21 days began when the landlord should have known that he/she could have taken over possession if the landlord was not diligent in doing so. Likewise, if the tenant's notice of termination has not expired or if the tenant has paid rent that extends beyond the date the tenant vacated, it does not in and of itself, preclude a landlord from taking possession of the unit if other factors make it clear that the tenant has vacated, such as a written statement from the tenant to the landlord that they have moved out. If it is unclear whether or not the tenant vacated the unit, the landlord may charge rent up to the time that it was deemed reasonable to believe that the tenant vacated the premises.

Tips for Avoiding a Dispute

- Before tenants move their possessions into the unit, walk through the premises with them.
- Utilize a "Move-In, Move-Out Itemized Statement," noting the condition of the property at the time the tenant moves in. Have the tenants sign the form and provide them with a copy.
- Prior to the termination of the tenancy, again perform a walk-through with the tenant, noting any changes to the condition of the unit that may result in a deduction from the security deposit. For more details about the walk-through process. See CAA related documents listed below.

Unclaimed Security Deposits

If the landlord is unable to locate the previous tenant in order to return the security deposit, state law requires the landlord to turn the funds over to the California State Controller after a three-year period. For more details go to https://www.sco.ca.gov/upd_msg.html

Related Items and Information

- Form CA-030 – Move-In/Move-Out Itemized Statement
- Form CA-031 – Furniture Inventory
- Form CA-040 – Rental Agreement (Month-to-Month)
- Form CA-041 – Lease Agreement
- Form CA-042 – Renewal Rental Agreement (Month-to-Month)
- Form CA-043 - Renewal Lease Agreement
- Form CA-180 – Notice to Enter Dwelling Unit
- Form CA-230 – 3-Day Notice to Pay Rent or Quit
- Form CA-231 – 3-Day Notice to Perform Conditions and/or Covenants or Quit
- Form CA-421 – Notice to Pay Rent or Quit in 30 Days (Covered by CARES Act)



- Form CA-422 – Notice to Perform Conditions and/or Covenants or Quit in 30 Days (Covered by CARES Act)
- Form CA-235 – Thirty-Day Notice of Termination of Tenancy
- Form CA-236 – Sixty-Day Notice of Termination of Tenancy
- Form CA-243 – Notice of Resident Option to Request Initial Inspection of the Rental Unit
- Form CA-248 – Acknowledgement of Resident(s) Thirty-Day Notice of Intent to Vacate
- Form CA-262 - Voluntary Lease Termination Offer & Acceptance, Termination Agreement and Mutual Release
- Form CA-290 – Itemized Disposition of Security Deposit
- CAA Industry Insight – [Walk-Through Process](#)
- CAA Industry Insight – [Abandonment of Real and Personal Property](#)
- California Civil Code Section 1950.5
- California Civil Code Section 1950.6
- California Civil Code Section 1940.5
- California Code of Civil Procedure Section 1520
- [AB 12 \(Haney\), Ch. 733, Stats. 2023](#)

ⁱ If a resident has a waterbed or other bedding with liquid filling material in their rental unit, California law allows a landlord to increase the amount of the security deposit they may collect from the resident in an amount equal to one-half of one month's rent. Civ. Code 1940.5(g).

ⁱⁱ "Service member" means all of the following: (1) A member of the militia, as defined in Section 120, called or ordered into active state or federal service pursuant to Section 143 or 146 or federal law; (2) A member of an active or reserve component of the Armed Forces who is ordered into active duty pursuant to federal law. The militia of the State consists of the National Guard, State Military Reserve and the Naval Militia—which constitute the active militia—and the unorganized militia.

ⁱⁱⁱ The landlord also has the option of providing this information prior to the tenant's departure. The language specifically provides that "no later than 21 calendar days after the tenant has vacated the premises, but not earlier than the time that either the landlord or the tenant provides a notice to terminate the tenancy . . . or not earlier than 60 calendar days prior to the expiration of a fixed-term lease."

