

A Brief Guide on California Law Regarding Retention and Returning Residential Tenant Security Deposits



Presented by Robert M. Wells
Attorney at Law

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Basics on Landlord's Duty To Tenants Regarding Security Deposit

- The use and retention of residential tenant security deposits is primarily regulated by California Civil Code § 1950.5.
- Security Deposits may only be used by a landlord in certain situations.
- Any excess funds remaining on a security deposit must be returned to the tenants upon the conclusion of their tenancy.

A Landlord May Make Deductions From a Security Deposit When:

- A Landlord Is Owed Past Due Rent (Civ. Code § 1950.5(e),(b)(1)).
- A Landlord needs to repair damages in the rental unit beyond normal wear and tear caused by the tenants or his or her guest Rent (Civ. Code § 1950.5(e),(b)(2)).
- A Landlord must clean the unit when tenants do not restore the rental unit to the level of cleanliness at the inception of the tenancy Rent (Civ. Code § 1950.5(e),(b)(3)).
- A Landlord must restore, replace or return personal property or fixtures to the rental unit when the rental agreement specifically authorizes the deposit to be used for that purpose Rent (Civ. Code § 1950.5(e),(b)(4)).

Landlord Must Provide Security Deposit Accounting within 21 days of Tenant Vacating Unit

- For Most Landlords, The 21 Day Deadline Begins
 - When all tenants vacate the rental unit voluntarily and deliver possession to the landlord.
 - When the Sheriff Performing an Eviction Executes The Physical Lockout of All Tenants and Delivers the Landlord a Restoration of Possession Notice.

A Landlord Has a Burden to Justify Retention of A Deposit. An Accounting Should Show the Following:

- If Retaining Amounts for Past Due Rent: Spell Out with Particularity How Past Due Rent Accrued and for What Periods.
- If Amounts Are Deducted For Repairs or Cleaning Charges, Summarize the Deduction and Attach Contractor's Invoices or Supply Receipts to the Accounting.
- See Sample Security Deposit Accounting Sheet at the bottom of this screen or download at www.wellsesq.com

Note on Repair/Cleaning Receipts
Requirements Under Civil Code § 1950(g)

- When landlords deduct for repairs and or cleaning, landlords must provide copies of documents showing charges incurred and deducted from a security deposit.
 - If Work is performed by a landlord or his or her employee, an itemize statement must reasonably describe the work performed and include the time spent on the work and reasonable hourly rate charged.
 - If a landlord also is including cost of materials with deduction, the landlord needs to provide a receipt of all materials used showing the costs landlord incurred.

Note on Repair/Cleaning Receipts
Requirements Under Civil Code § 1950(g) Continued

- If a landlord pays a third party to perform repairs or cleaning such a contractor or cleaning service
 - A landlord must provide a copy of the bill, invoice or receipt issued by the third party.
 - The bill, invoice, or receipt must have the name, address and telephone number of the third party who did the repairs.
 - If a bill, invoice or receipt does not have the above information, make sure to put that information in your security deposit accounting!

If Repairs Cannot Be Completed or All Documentation
Required for Accounting Cannot be Made in 21-days

- Landlord allowed to Send Good Faith Estimate Accounting within 21 days and Supplement Accounting with Final Amounts.
 - When Final Repairs and Invoice is Received and or Documentation Becomes Available to Landlord, Landlord has 14-days to submit supplemental accounting to tenant.
 - It is important to send all invoices and or estimates Landlord has at hand to tenant within 21-day period to show good faith retention of security deposit.

Rob's Recommendations To Providing Accounting to Tenants

- An Accounting May be personally given to a tenant within 21-day period.
- You may also mail the accounting to your tenant. Rob's tips with mailing include:
 - Attempt to get a mailing address from your tenant to send accounting to. If your tenant will not provide a forwarding address Civil Code § 1950.5(g)(5) states the accounting shall be mailed to the vacated unit address.
 - Always Mail a copy of the accounting both by Certified Mail, Return Receipt Requested and by First Class Mail.

Failure to Account for Security Deposit or Comply with Civil Code §1950.5

- If a Landlord does not provide an accounting for a security deposit within 21 days, they must return the entire security deposit to their tenants!
- A landlords only recourse against a tenant for past due rent and or damage to a unit would be to file a lawsuit against the tenant to recover their damages.
- This rule applies even if a landlord goes through the eviction or unlawful detainer process for past due rent!

Failure to Account for Security Deposit or Comply with Civil Code §1950.5

- Failure of a landlord to return a security deposit upon a tenant's demand in violation of the accounting rules mentioned could subject a landlord to a lawsuit for Bad Faith retention of the security deposit.
- If a Court finds that a landlord has held a security deposit in bad faith, a landlord could be subject to actual damages suffered by a tenant as well as statutory damages of up to twice the amount of the security deposit withheld. (Civil Code § 1950.5(l)).

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Recommendations to Avoid Tenant Disputes Over Deductions

- Proposed Deductions Should be Reasonable and Factor in Normal Wear and Tear of the Item When Considering Deduction
 - Example: Landlord should not deduct tenant's deposit for carpet when carpet was 9 years old when tenant came into possession of unit and carpet has a 10 year life span.
- Landlords should itemize all allowable items in security deposit accounting to justify retention of deposit in case a tenant takes landlord to court to dispute amount of deduction.
 - Example Landlord withholds deposit of \$1,000.00 for \$900.00 and unpaid rent and \$300.00 for damages and cleaning to unit. Tenant takes landlord to small claims court to dispute \$300.00 in damage and cleaning fees. If a court reduces the damage and cleaning fees at the hearing to say \$100.00, Landlord would not owe tenant money and would prevail as accounting showed \$1,200.00 of damages. The accounting also would most likely prevent a bad faith finding by the court as well.

Thank You For Watching This Program!

- Current clients, please feel free to contact us with any questions and or comments about this presentation.
- If you are not a current client and need more specific information and advise regarding your own situation, please feel free to contact us to schedule a real estate strategy session.
- A sample tenant accounting worksheet and printout of this Power Point presentation is available for download at the bottom of this video. You may also go to www.wellsesq.com for the forms as well.
