

# Getting Your Security Deposit Back

Chances are that you have handed over a lot of money in order to move into your apartment. This is your money. If your unit is covered by rent control, in most cases, your landlord must pay you interest every year and return your deposit with interest to you when you move out. The landlord must agree to do a pre-move-out inspection and can only withhold your deposit for certain specific reasons.

If your landlord does not return your security deposit, you will need to sue in small claims court. This is an easy process.

## Moving In

When you move in, your landlord will ask for some type of deposit. Whatever it's called, the law treats this initial payment as security deposit subject to California Civil Code Section 1950.5.

*According to this state law:*

- There is no such thing as a "non-refundable" security deposit. No matter what it's called -- a key deposit, cleaning fee, move-in fee, closing costs, last month's rent, etc. -- all money you pay in addition to your first month's rent is refundable. Since "non-refundable" deposits are illegal, don't worry if your rental agreement includes a section about a "non-refundable" deposit. This section will not be valid even if you have signed the rental contract or agreed to it.
- No matter what it's called, the total amount the landlord can charge for all the deposits (including last month's rent) is twice the amount of one month's rent for an unfurnished place or three times one month's rent for a furnished place.

## Protecting Your Deposit When Moving In

Take some of these basic precautions when you move in. Many tenants end up going to Small Claims Court to get their deposits back and these precautions can give you needed evidence.

- Get an itemized receipt for your deposit. This receipt will identify each charge ( for example, pet deposit, last month's rent, cleaning fees, etc.).
- When moving in, take careful inventory of the condition of the place. Record 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 s/he won't sign, send a copy to them and mail one to yourself which you save unopened). Pictures or videos of the existing condition of the apartment can also be helpful later.

## **Moving Out**

The law stipulates that a landlord do a pre-move-out inspection with you, let you fix identified deficiencies and limits what can be withheld. It also says how long the landlord has to return your money and what he must do to justify any withholding.

*According to California Civil Code Section 1950.5:*

- Upon your request, the landlord must conduct an inspection of the apartment with you. This must be done in the last 2 weeks of tenancy, the landlord must let you fix anything which is wrong and the landlord is limited to taking deductions for unfixed deficiencies, damage which occurred after the inspection, or damage not found at the time of the inspection.
- Your deposit must be returned to you within 21 days after you move out. Your landlord must give you a written, itemized statement of the reason for any amount withheld from your deposit. Money can be withheld only for:
  - Unpaid Rent (talk to a counselor if you are breaking a lease or giving less than 30 days' notice).
  - Damage caused by you beyond normal wear and tear.
  - "Reasonable" cleaning charges.
- If your security deposit is not returned or accounted for within 21 days, you can sue the landlord in Small Claims (limit is \$5,000; if higher, then lawsuit would be in Superior Court Limited Jurisdiction) court for the amount of the deposit, plus twice the amount of the deposit if you can show bad faith, plus any actual damages,

## **Protecting Your Deposit When Moving Out**

As when moving in, you can take some basic precautions when you move out.

- Be sure to give at least 30 days written notice before you move out. Technically, you are responsible to pay rent for these 30 days and your landlord can deduct "unpaid rent" from your deposit. If you need to move quickly because of conditions in your apartment or if you are breaking a lease, talk to one of the Tenants Union counselors.
- On the day you move out, have the landlord or manager do a final inspection of the apartment 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 exchange keys or sign a statement, take pictures/videos of the condition of the apartment (hold up a copy of the day's newspaper to show the pictures weren't taken earlier).

## **Stubborn Landlords**

- If your landlord does not return your money on time or if he unjustly withholds some of it, be prepared to assert your rights. Remember, many landlords withhold all security deposits knowing that many tenants will not take the steps to get back their money. Go To Small Claims Court... Send a letter to your landlord requesting the money. Refer to the Security Deposit Laws (CCC Sec. 1950.5). Give the landlord a deadline date of when you expect the money.
- If the landlord doesn't respond within a reasonable time, you can take him/her to Small Claims Court. For a small filing fee, you can sue for up to \$5,000. In addition to the disputed money, you can sue for statutory damages for your landlord's illegally withholding your deposit. Small Claims Court is informal and no lawyers are allowed. A few weeks after you

file a claim, a hearing will be held. You will tell your side of the story and the landlord will tell his/her side. Your written documentation (receipts, inspection report, photos, etc.) will help your case. You must sue in the city where the rental was.

### **Self-Help Tactics...**

Depending on where you're moving to or what your landlord is like, you may want to think about applying your security deposit to your last month's rent.

- If all or part of your security deposit is called "last month's rent" on your lease or rental agreement, then applying this amount to your last month's rent is simply what your rental agreement stipulates.
- If part of your deposit was not specifically for last month's rent, you are supposed to pay rent the last 30 days you are there (even when the security deposit is larger than or equal to one month's rent). However, if you think it will be difficult to get your landlord to return the security deposit, you may choose to use your deposit towards your last month's rent. Write a note and keep a copy explaining that you need your money for moving expenses, and that you intend to leave the place clean (you may even offer to have the landlord inspect right then to look for damage).
- If your landlord doesn't like this solution, the worst that can happen is that you'll receive a 3-day notice to pay the rent or move out. If you don't do either, you cannot be locked out, have your things removed, or be harassed in order to make you leave. Your landlord must take you to court to regain possession of your apartment. Since you are moving anyway, and your landlord already has your money for that month, chances are your landlord would find that to be a big waste of time and money to take you to court.

### **Other Rights You Are Owed Annual Interest...**

If you are a tenant in Los Angeles, West Hollywood, San Francisco or in other cities with rent control, the landlord must pay you interest per year on your deposit. Check with your city's Rent Stabilization Department to find out the particulars of the security deposit interest law.

### **Increases in Security Deposits...**

In cities without rent control, there are no limits on security deposit increases. Allowable increases to security deposits varies, depending on a city's rent control law. For instance, in the City of Los Angeles for units covered by rent control, security deposits can only be increase once a year, and only at the same time of the rent annual adjustment, and only in the percentage that is equal to the rent annual adjustment.