
Forry Law Group

Telephone
(818) 361-1321

Attorneys at Law
11150 Sepulveda Blvd., Suite 200
Mission Hills, California 91345-1126
Forrylaw@aol.com

Facsimile
(818) 365-6522

A Legal View: The Basics of Security Deposits for Residential Rentals

by Craig B. Forry, Esq.

Q: I recently purchased a second home with the intention to rent it, but I do not know how much I can charge as a security deposit, or the procedure I should follow in accounting for the security deposit after the tenancy ends. Can you provide me with the basic information I need to follow regarding security deposits?

A: Security deposits on residential rental property are governed primarily by California's Civil Code, section 1950.5. Residential rental "security" is "any payment, fee, deposit or charge" 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 imposed as an advance payment of rent, to be used for a default in the payment of rent, for the repair of damage to the premises other than ordinary wear and tear, for cleaning necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy and, if the rental agreement expressly so provides, to remedy tenant defaults in the obligation to restore, replace or return personal property or appurtenances (exclusive of ordinary wear and tear). The label given a payment at the outset of the tenancy is not controlling and any fee, however denominated, is considered a security deposit.

A non-refundable application screening fee to cover the cost of obtaining information about the applicant is not considered a security deposit. Such costs may include obtaining personal reference checks, consumer credit reports, and similar information. However, a screening fee cannot exceed the landlord's out-of-pocket costs of gathering the information about the tenant, and in no case may it exceed \$30 (subject to annual adjustment for consumer price index increases). If the fee is not used to perform a personal reference check, the unused portion of the fee must be refunded. The tenant must be given a receipt for the screening fee and if requested, a copy of the consumer credit report that the landlord obtains.

The tenant may be charged the first month's rent, plus a security deposit that is a maximum of two month's rent for an unfurnished unit, and a maximum of three month's rent for a furnished unit. If the tenant installs a waterbed, an extra security deposit in an amount equal to one-half of one month's rent may be charged, together with a "reasonable fee to cover administrative costs". For long-term leases of six months or more, advance payments of "not less than six months' rent" can be charged. If the landlord requires an excessive deposit to enter into a lease, the tenant can pay the amount demanded and then file a small claims court action to recover the excess.

Although it is deposited into the landlord's bank account, the security deposit remains the tenant's property until it is applied to remedy the tenant's rent default or for damage or cleaning. The interest that accrues on the security deposit belongs to the landlord in the absence of an applicable legislative enactment to the contrary. Most of the disputes arise after the tenant vacates the premises and seeks the return of the security deposit. Within a reasonable time after either party notifies the other of the expected termination of the tenancy, or before the end of the lease, the landlord must give the tenant written notice of the tenant's right to request an initial inspection of the premises by the landlord. The only exception to this rule is if the tenancy is terminated pursuant to a three-day notice for nonpayment of rent or other breaches of the lease. If the tenant requests the inspection, it must occur no earlier than two weeks before the termination or the end of the lease, so the tenant has at least two weeks to remedy the deficiencies. If there is an inspection, the landlord must give the tenant an itemized statement specifying the repairs or cleaning that the landlord intends to deduct from the security deposit at the end of the inspection by handing a copy to the tenant or leaving a copy at the premises.

The tenant should always request an inspection by the landlord and be present to receive the list of deficiencies because the landlord's use of the security deposit is then limited to the items on the list, or that occur after completion of the initial inspection and before the termination of the lease, or those that were not identified because of the presence of the tenant's possessions during the inspection.

Within 21 calendar days after the tenant vacates the premises, the landlord must provide the tenant, by personal delivery or postage prepaid first class mail (the better practice is to use registered or certified mail), an itemized statement indicating the basis for and the amount of any security deposit received and the amounts being retained by the landlord for the specified deficiencies in the premises, and a check for the unused amount of the security deposit, if any. The landlord must include with the itemized statement copies of bills, invoices, or receipts showing the charges incurred and deducted (e.g., cleaning bill, carpet repair, etc.) for the work performed, and for any materials or supplies.

If the work cannot be performed within the 21 day period, the landlord may deduct the amount of a good faith estimate of the charges and include that estimate with the itemized statement. If the reason for the estimate is the landlord has not yet received the invoice or bill from the provider, the provider's name, address, and telephone number must be include in the estimate. Within 14 days after the repairs or receipt of the documentation, the landlord must provide the information and documents to the tenant.

The landlord does not have to provide the copies of the bills and receipts showing the charges incurred if the combined deductions for repairs and cleaning do not exceed \$125, or the tenant waives the right to such a statement or documents in a signed document. Even if the repairs and cleaning do not exceed \$125, the documentation for those charges must still be provided if the tenant makes a request within 14 days after the tenant receives the landlord's itemized statement.

If the landlord does not comply with the statutory duties outlined above, he forfeits the "summary deduct-and-retain" procedure and the entire security deposit must be returned to the tenant. Therefore, unless the tenant has breached the lease, the landlord should give the tenant the written notice of the right to have an inspection, and within 21 days after the tenant vacates, a second inspection should be performed and all repairs made, and a statement of the items and amounts that are being retained, together with the repair/cleaning bills and invoices should be delivered to the tenant with a check for any unused portion of the security. Following these basis rules should avoid any legal problems for the landlord.

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