

Residential Rental Security Deposit

This information is for informational purposes only. It should not be considered legal advice. For legal advice consult an attorney.

What is a security deposit?

A security deposit is a payment collected in advance by the landlord from the tenant to protect them against non-payment of rent or property damage (for example: *last month's rent, security, cleaning, etc.*). (Civil Code 1950.5(b))

How much is too much?

For an *unfurnished rental unit*, the security deposit cannot be more than two month's rent. For a *furnished rental unit*, it cannot be more than three month's rent. (CC 1950.5(c))

How should the deposit be returned?

Within three weeks after moving out, a tenant must receive from the landlord either the full amount of the rental deposit or a list of deductions and the rest of the deposit.

- If the tenant believes the deductions are too much, then he should write to the landlord and keep a copy of the letter. This step shows that the tenant tried to settle the dispute with the landlord before going to court (Code of Civil Procedure 116.320 (b)(3)).
- If the disagreement is not settled, the tenant can file a suit in small claims court (SC-100) for the amount of the rental deposit plus statutory damages of up to twice the amount of the security, in addition to actual damages. These damages may be rewarded if the judge believes that the landlord acted in bad faith (CC 1950.5(l)).

What are the landlord's responsibilities when deducting amounts from the security deposit?

The landlord must prove the amounts deducted from the security deposit were necessary and reasonable. He must also take the following steps: (CC 1950.5 (g)(2)(C))

1. Within three weeks of moving out and turning in the keys, the landlord must send a full refund of the security deposit or an itemized statement that lists reasons and amounts of any deductions from the deposit, with a refund of any amounts not deducted.
2. The landlord may withhold from the security deposit only those amounts that are reasonably necessary including: unpaid rent, repair of damages other than normal wear and tear, and for cleaning the rental unit (CC 1950.5(b)).

NOTE: The tenant must have the chance to fix the problems to get the deposit back. A landlord cannot require, in advance or routinely, that all tenants pay expenses such as professional cleaning, painting, or replacement of carpets or drapes. Such deductions can be allowed if they can be proven by the condition of the rental unit when the tenant moved in, and the amount of care taken during the tenancy. For further information, you may contact the **Fair Housing Council of Orange County at (714) 569-0823**.

3. The landlord must provide a copy of the bill, invoice or receipt if a deduction is made.

*Note: *All security deposits must be refundable.*

Who should be named on the claim?

If an individual or business owns the unit, name that individual or business in your claim. You may also consider naming the management company as an additional defendant if you think you have a claim against it as well.

- You can check the County Recorder's Office to determine who owns the property.
- For large apartment complexes, contact City Hall to see who holds the business license.

What is the landlord's required to include on a rental agreement?

The landlord or their agent must include each of the following things on the rental agreement: (CC 1962(a))

1. The name, telephone number, and usual street address for personal service for each authorized manager, owner or an agent of the owner.
2. The name, telephone number, and address of the person or business to pay the rent to.
 - a. The usual days and hours the person will be available to receive payments.
 - b. If the landlord wants the rent to be deposited into an account, the landlord must provide the account number, the name and the address of a financial institution within five miles of the rental property, and the information necessary to establish an electronic funds transfer procedure.
3. The ways rent payments can be made.

How can I get a copy of my rental agreement?

The landlord must provide a copy of the rental agreement or lease to the tenant within 15 days after the tenant signs. Once each calendar year, if the tenant asks, the landlord must provide an additional copy (or the required information with a statement that they no longer have it) to the tenant within 15 days.

If there is a change in owner or manager, he must provide the above information, in writing, to the tenant within fifteen (15) days. An owner is allowed to post the above information in (1) an elevator on the premises; or (2) In at least two conspicuous places if an elevator is not present, in EACH dwelling. (CC 1962.5)

Where do I serve if the landlord did not provide me with the required information in the rental agreement?

If landlord does not provide the tenant with the address for service required in Section 1962(a)(b) and Section 1962.5, the tenant may use Section 1962.7 to serve the owner or landlord at the location where rent is paid. If the landlord initially provided it and then did not update, service must be done through certified/registered mail to the location where rent was paid.

Example: If the landlord/owner provided the location of the financial institution (e.g. the bank) at which the rent must be paid, then the address of the bank can serve as a valid service location.

In order to get a default judgment, a tenant must inform the judge how service was performed by filing a Proof of Service (SC-104). Since this is an unusual situation, you may want to write a Declaration stating the reasoning and citing the legal code allowing for service at the location where service was performed.

What if the property was unlivable?

If a tenant tells the landlord or his agent about problems that make the property unlivable, and the landlord or his agent do not fix the damages in a reasonable amount of time (usually 30 days), the following applies: (CC 1942 (a))

- The tenant may do the repairs himself if the cost of the repairs is not more than one month's rent and deduct the expenses of the repairs from the rent.
- The tenant may leave the premises and deduct the cost of the repairs from the rent when it's due.
- The tenant may leave the premises, and not be required to pay rent from the date when he or she left. (A tenant cannot do this more than twice in any 12-month period.)