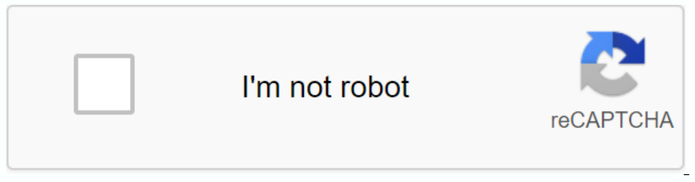


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# California civil code section 1950.5 m

One of the most problematic areas of landlord-tenant relationships revolves around the return of security deposits, money deposited with the landlord in rental housing, which is returned to the tenant after the landlord has determined whether any deductions can be made. The reason for the often heated exchange is simple: the return of bail occurs at the end of the relationship, when the landlord and the tenant are unlikely to re-inform each other except, perhaps, in court. Whatever economic incentives caused them to cooperate before they are over and the tenant faces the cost of moving, and the landlord faces the cost of re-hiring the unit, both are trying to maximize the amounts available to them from the deposit. California law is clear about the rights and remedies available to parties and how landlords and tenants should know the law to determine their appropriate arrangements. This article outlines the Basic Law and provides some practical advice. Basic Deposit Security Act in California: California law explicitly allows landlords to use tenant bail for four purposes: 1. For unpaid rent; 2. For the cleaning of a rental unit when the lessee moves out, but only to keep the unit clean, as was the case when the lessee first moved in; 3. To repair damage, other than normal wear and tear, caused by the tenant or guests of the tenant; In the 1990s and 1990 Where the lease or lease agreement so permits, for the cost of restoring or replacing furniture, furnishings or other objects of personal property (including keys), excluding normal wear and tear. California Civil Code § 1950.5 b) e). Only amounts reasonably necessary for these purposes may be withholded from the security by the lessor. The deposit may not be used to correct errors that existed in the unit before the lessee moved in, to conditions caused by normal wear and tear during the lease or previous lease, or to clean up the lease unit, which is as clean as at the time the existing tenant moved in. What is normal wear? There are many cases on this subject, but basically it comes down to the normal decay of carpets, walls, fixtures, etc. that time can create when a property is used for purposes that has been rented out. For example, the walls must be repainted every few years and the landlord cannot expect the tenant to pay for it. However, if the tenant installed a special entertainment system that damaged the wall during removal, the landlord can probably deduct the cost of repair and painting from the deposit. (CC 1950.b(b)(e). Note that a lease or lease can never indicate that the deposit is non-refundable. CC 1950,5 (m). Such a clause is null and void by law. Under California law, within 21 calendar days after the move, the landlord must either: 1. Send a full refund of the deposit, or 2. Mail or personally deliver to the tenant a summary statement indicating the amounts of all the reasons for the deduction, together with the return of any undeteccured amount. (CC 1950.5 g) (2) (with effect from 1 January 2004) The lessor must also send copies of the income for the fees incurred by the lessor for the repair or cleaning of the rental unit and deducted by the lessor from the deposit. The lessor must include the income with the statement included. The landlord must also follow the following rules: 1. Landlord or landlord employees have done the work - a breakdown statement must describe the work done, including the time spent and the hourly rate charged. The hourly rate must be reasonable. 2. Where the work has been carried out by another person or undertaking, the lessor shall provide copies of the invoice or of the person or undertaking. The landlord must provide the name, address and telephone number of the person or business on the invoice or receipt or in the statement issued. 3. If the landlord deducted for materials or supplies - The lessor must provide a copy of the invoice or receipt. If the goods used to repair or clean the unit are something that the lessor purchases regularly or in bulk, the lessor must adequately document the cost of the goods (e.g. by invoice, receipt or price list of the supplier). (cc section 1950.5(g)) (2) With effect from 1 January 2004.) 4. If the landlord has made a bona fide estimate of the fees – The landlord is allowed to make a bona fide estimate of the fees and include the estimate in the disassembled statement in two situations: (1) the repair is done by the landlord or employee and cannot be adequately completed within 21 days, or (2) the services or materials are supplied by another person or undertaking and the landlord does not have an invoice or receipt within 21 days. In both situations, the lessor may deduct the estimated amount from the deposit. In the situation (2), the lessor must include the name, address and telephone number of the person or undertaking supplying the services or materials. Within 14 calendar days after completion of repairs or receipt of the invoice or receipt, the lessor must send or deliver to the lessee the correctly broken down statements, invoices and receipts described above and any refund to which the lessee is

entitled. CC 1950.5 g) (1). The lessor must send a wordsheet, copies of invoices or receipts and any estimate of good faith to the lessee to the address provided by the lessee. If the lessee does not provide an address, the lessor must send these documents to the address of the rental unit that the lessee has just emptied. Note that the landlord is not obligated to send copies of invoices or receipts, or a bona fide estimate, if the repair or cleaning costs less than $126, or if the tenant has waived the right to receive them. CC 1950,5 g ( 4). (With effect from 1 January 2004) If, within 21 days, the lessor does not give away the full refund or the required statement of by law, the landlord loses the right to keep any of the security deposit and must return the entire deposit to the lessee. Granberry/Islay Investments (1995) 9 Cal 4, 738. REASONABLE WEAR AND TEAR: THE USUAL FIGHT The most common cause of disputes regarding security deposits concerns the landlord, who insists that the damage was caused, which should allow deductions from the deposit and tenants insist the damage was only expected over time, or that the condition already existed when the tenant arrives. Are there any guidelines that can help? Recall that California's bail statute explicitly allows landlords to use tenant bail for the four purposes listed above. The law limits the lessor's deduction from the deposit to the amount reasonably necessary for those purposes. Unfortunately, the status terms reasonably needed and normal wear and tear are vague and mean different things to different people. The following suggestions are offered as practical instructions suggested by the California Department of Consumer Affairs to address deposit security issues. Although these proposals comply with the law, they are not necessarily a law in this area. 1. Cleaning costs – The landlord can duly deduct from the outgoing tenant's bail to keep the rental unit as clean as it was when the tenant moved in. CC 1950.5 (b) (3) for units in which the lease started after 1 January 1950. The landlord cannot normally charge each tenant for cleaning carpets, curtains, walls or windows to prepare the rental unit for further hire. Instead, the landlord needs to look at how well the outgoing tenant cleaned up the rental unit, and can only charge cleaning costs if the outgoing tenant has left the rental unit (or part of it) less clean than when he or she moved in. Reasonable cleaning costs would include the cost of things such as removing flea infestations left behind by the tenant's animals, cleaning the oven, removing bruises from the walls, removing mould in the bathrooms, defrosting the fridge or washing the kitchen floor. But the landlord could not charge for cleaning up any of these conditions if they existed at the time the outgoing tenant moved in. Moreover, the lessor could not charge for the cumulative effects of wear. Suppose, for example, that the tenant washed the kitchen floor, but that it remained stained due to wax built over the years. The landlord could not charge the tenant for stripping the built-up wax from the kitchen floor. 2. Carpets and curtains - life rule - Normal wear of carpets, curtains and other furniture can not be charged on the tenant's bail. Normal wear includes easy to wear over carpet and curtains due to normal use or aging, and involves slight dirt or spotting. Conversely, large rips or indelible stains justify a deduction from the tenant's safety to repair carpets or curtains or replace them if reasonably necessary. One common method of calculating the deduction for replacement prorates the total cost of the replacement so that the tenant pays only for the remaining life of the item that the tenant has damaged or destroyed. Suppose, for example, that a tenant damaged an outside repair of an eight-year-old carpet that had a life expectancy of ten years, and that a replacement carpet of similar quality would cost $1,000. The landlord could properly charge just $200 for two years' worth of life (use) that would have remained if the tenant hadn't damaged the carpet. 3. Repainting the walls - One approach to determining the amount that the landlord can deduct from the tenant's deposit for repainting, if necessary repainting, is based on the length of stay of the tenant in the rental unit. This approach assumes that the interior color has a two-year service life. (Some landlords assume that interior paint has a lifespan of three years or more.) Length of stay Deduction Less than 6 months full cost 6 months to 1 year two thirds of the cost 1 year to 2 years one-third of the cost of 2 or more years no deduction Using this approach, if the tenant lived in a rental unit for two years or more, the tenant could not be charged for any repainting costs, no matter how dirty the walls were. 4. Other damage to the walls - In general, small marks or scratches in the walls are the landlord's responsibility as normal wear and tear (for example, worn paint caused by the sofa against the wall). Therefore, the tenant should not be charged for such tags or nicknames. However, a large number of holes in the walls or ceiling that require plaster filling, or which otherwise require patching and repainting, could justify withholding the cost of repainting from the tenant's bail. In this situation, the deduction for painting would be more likely to be correct if the rental unit was painted recently, and less likely to be correct if the rental unit needed repainting as well. In general, large brands or colors of gouges are the tenant's responsibility. Relief available practically put, the tenant has two options if the landlord does not brush the 21-day rule. The first step for both is to call and write to the landlord to ask for a refund of the entire deposit as described in accordance with the above law. At this point either a settlement is reached, or litigation, mediation or arbitration will follow, depending on the lease between the parties. Another option is to sue the landlord in court for small claims for the refund of bail. It should be noted that in this forum the landlord could then file a counterclaim against the tenant as well. In counterclaim, the lessor may exercise the right to deduct from the deposit, for example for unpaid rent or for rent damage claimed by the lessee. Both parties will then have to argue to the judge why he is entitled to An initial check before the tenant moves the tenant may ask the landlord to inspect the rental unit before the lease ends to identify defects or conditions that justify deductions from the tenant's bail. The purpose of this initial check is to give the tenant the opportunity to correct the defects or to do the cleaning detected during the inspection to avoid deductions from the tenant's bail. The lessee shall have the right to be present during the inspection. The lessor must carry out an initial check if the lessee so requests, but cannot carry out an initial check unless the lessee is known to do so. However, the lessor is not obliged to carry out an initial check if the lessor has served the lessee a three-day notice period (eviction notice) because the lessee has not paid the rent, breached a provision of the lease or lease agreement, substantially damaged the property, committed harassment or used the property for an illegal purpose. Cc section 1950.0 (f) (1) (with effect from 1 January 2004). Notice to the landlord The lessor must give the lessee written notice of the tenant's right to apply for an initial rent check and be present during the inspection. The lessor must give this notice to the lessee for a reasonable period of time after either the lessor or the lessee has given further written notice of the intention to terminate the (end) lease. If the lessee has a lessee, the lessor must give the lessee this notice a reasonable time before the lease ends. If the lessee does not require an initial check, the lessor has no other obligations in relation to the initial inspection. Planning control If a tenant requests an initial check, the landlord and the lessee must try to agree on a mutually beneficial date and time of the check. The check cannot be scheduled until two weeks before the end of the lease or lease term. In any case, the inspection should be planned in such a way that the lessee has sufficient time to carry out repairs or clean-ups identified during the initial inspection. The lessor must give the lessee at least 48 hours' written notice of the date and time of the inspection, regardless of whether the parties have agreed on the date and time of the inspection. Upon inspection, the landlord or agent must prepare a summary statement of repairs or cleaning that the landlord or agent believes the lessee should make to avoid deductions from the tenant's bail. The lessor or representative must provide a statement to the lessee if the tenant is present for inspection, or leave it inside the unit if the lessee is not present. The landlord or agent must also give the tenant a copy of the California Deposit Act, which states the legal use of tenants' security deposits. This status has the effect of limiting the types of repairs or cleaning that the landlord or agent can correctly include in the summary statement. in this Act, for example, the lessor may not use the tenant's security to repair damage or correct rent errors that existed when the lessee moved in or which are the result of normal wear and tear. Since the landlord cannot use the tenant's deposit to correct these kinds of vass, the landlord or agent cannot list them in the summary statement. Tenant's right to repair Before the lease ends, the tenant may make repairs or perform the cleaning described in the breakdown statement, as permitted by the lease agreement, to avoid deductions from the deposit. However, a tenant cannot be required to repair or clean up if the tenant's security deposit could not be used correctly to pay for this repair or cleaning. Legal relief available legal action to obtain refunds of security deposits are available and a penalty against a landlord who does not comply with the law is available. Assuming a person wants to use a small claims court (where lawyers are not allowed to argue), the maximum amount that can be recovered is ten thousand dollars, the maximum jurisdictional amount in small claims. (The tenant, even if the claim is for more than ten thousand dollars can waive the additional amount and still use the small claims court.) For sums in addition to $10,000, the tenant must file in the high court. Note that normally the landlord has the burden of proving that his or her bail deductions were reasonable. You can file as many claims as you'd like for up to $2,500 each, but you're only able to file two claims in a calendar year asking for more than $2,500. If the tenant can prove to the court that the landlord acted in bad faith in refusing to refund the relevant security deposit, the court may order the landlord to pay the amount of the improperly withstook deposit, plus up to twice the amount of the deposit as a bad faith penalty. The court may impose a penalty in bad faith in addition to actual damages whenever the circumstances of the case so require - even if the lessee has not requested a penalty. CC 1950.5 (l). These additional amounts can also be recovered if the landlord who bought the building makes a bad faith demand for the exchange of security deposits. The lessor shall bear the burden of proving the authority on which the security deposit requirement was based. Whether either party can collect attorney's fees if that party wins such an action depends on whether the lease or lease agreement contains a lawyer's fee clause. If the lease or lease agreement contains a lawyer's fee clause, the winning party may claim lawyer's fees as part of the judgment, even if the clause states that only the landlord can collect the lawyer's fees. Conclusion Attorneys rarely directly engage in these types of disputes because the amount usually does not justify their fees. The absence of a lawyer's fees clause, as described above, the average attorney bill will cost more than in the dispute. For this reason, the vast majority of parties informally settle their claims or fight them in small claims court. And most of the fighting can be completely prevented by using the inspection method described above and by some kind of compromise with common sense. However, we found that more than most disputes, arguments regarding a security deposit can escalate into a truly intense confrontation in which emotions overcome thought and parties spend tens of hours and thousands of dollars fighting over several hundred dollars in paint costs, etc. He chose the fight carefully. In many court systems, especially San Francisco and Berkeley, there is prejudice against landlords that may make their appearances in court decisions later greatly regretted. Even in more even-numbered legal systems in which courts are not inclined in favor of tenants, few judges get hearings about who failed to clean the oven or paint the wall. The writer remembers well one friend who, furious at the landlord's refusal to return a thousand dollars due to a dyed carpet, spent two dozen hours preparing a case complete with pictures, video and experts, and was surprised to see during a presentation to see a judge reading a plea from another case while allegedly listening to evidence so painfully prepared by my friend. Over beer the other day he complained bitterly when I pointed out to him that no one except the landlord and he really cares if the stain comes from a pizza or a previous tenant's older pet dog and that he has lost track of the priorities. Yes, but I cost the landlord a package, I can tell you. He lost all day in court and had to give me a thousand dollars. Fine. So, what's the complaint? It cost me more than lost my working hours, and no one paid me for the hours I spent preparing the case, that's not fair. And I told him what I was saying to clients in cases of big and small. The courts are about money and power. The courts cannot give you more than money and only money that the law allows. You want justice? Try some other forum. Churches abound. He laughed and drank more beer and talked about baseball... and I knew his priorities had finally come back. Returned.