

GUIDELINES FOR RETURN OF SECURITY DEPOSIT

Service members move often during their military commitment. Addressing the security deposit paid to a landlord is an important part of those moves. Security deposits may equal a large sum of money, money which may be used to help with the new move. The Legal Assistance Office has prepared this paper to assist you in the proper steps to take to when requesting the return of some or all of your security deposit.

BASIC RULES GOVERNING SECURITY DEPOSITS

Landlords are allowed to charge a security deposit and almost all landlords do.

The total amount a landlord charges cannot be more than the amount of two month's rent for an unfurnished rental unit or three month's rent for a furnished unit.

A security deposit cannot be non-refundable. However, part or all of the deposit can be retained under certain circumstances, such as if you move out and still owe rent or leave the unit in a damaged condition.

REFUND OF SECURITY DEPOSITS

California law specifies a procedure that a landlord must use if they are going to retain any or all of a security deposit.

1. A landlord may use your security deposit for four purposes only:

- For cleaning the rental unit after the tenant moves out, if the unit was not as clean as it was when rented.

- For repairs other than normal wear and tear caused by the tenant or the tenant's guests.

- If the rental agreement allows it, for the cost of restoring or replacing furniture, furnishings, or other items of personal property, exclusive of ordinary wear and tear (including keys).

- For unpaid rent.

2. A landlord can withhold from the security deposit only those amounts that are **REASONABLY NECESSARY** for these purposes. The security deposit cannot be used to clean or repair items damaged only by normal wear and tear, for repairing defects that existed before the tenant moved in, or for cleaning a unit that is as clean as it was when the tenant moved in.

3. Your landlord must, **WITHIN TWENTY-ONE DAYS** after you move, either send you a full refund of the security deposit, or an itemized statement that lists reasons for and amounts of any deductions from the deposit, with a refund of any amounts not deducted. Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises.

4. To prevent problems from arising in receiving your security deposit back, after you have notified the landlord of your intention to leave, you may request an initial inspection of your apartment to be conducted no earlier than two weeks before you leave. This will allow you the opportunity to remedy identified deficiencies that you are responsible for to avoid deductions from the security deposit. The landlord shall give you at least 48 hours' prior written notice of the date and time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time cannot be scheduled but you still want an inspection. You may agree to forgo the 48-hour prior written notice by signing a written waiver. After the inspection, the landlord shall give you an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deduction for you to correct if you so desire.

LEGAL ACTIONS FOR OBTAINING REFUNDS OF SECURITY DEPOSITS

First, tell the landlord why you believe it is improper for them to keep all or part of your deposit. Immediately ask for a refund of the amount you believe you are entitled to. Put this request in writing and send it to the landlord by certified mail and request a return receipt to prove that the landlord received the letter. Also, be sure to keep a copy of the letter and the receipt for your files. *See sample letter below.*

If the landlord still does not send you the refund, you have two options:

You may want to take legal action by filing a claim in small claims court. (See below).

Contact one of the agencies listed below:

Presidio of Monterey Legal Assistance Office (831) 242-5083/5084

Presidio of Monterey Housing Office (831) 242-7979

Monterey County Consumer Protection Division (831) 647-7770

SMALL CLAIMS COURT

File suit in small claims court for the security deposit plus any court costs. Filing fees may be waived by the court. The maximum amount that can be claimed in small claims court is \$10,000. Legal representation is not allowed in a small claims courts but a Presidio of Monterey legal assistance attorney will help you prepare your case.

For amounts over \$10,000, you must file in municipal or superior court. You may wish to have an attorney represent you but you will have to retain a civilian attorney at your own cost.

If you wish to consult with a legal assistance attorney on this matter, visit our office in Building 358, Presidio of Monterey, Monterey, CA or call (831) 242-5083/5084 to schedule an appointment.

SAMPLE LETTER

Date

Owner's Name and Address (Do not merely address to Unit Manager)

Dear Mr. and/or Ms. (Property Owner's Name Here):

As you may know, I received permanent change of station orders from the area and I moved out of the rental located at (address of rental here) on (date that you actually vacated the unit here).

Under California Civil Code section 1950.5 (e) I was due a complete refund of my security deposit and/or complete accounting of any expenses for which any portion of my security deposit was retained within 21 days of the date I vacated the rental unit. This 21-day statute of limitations is just that, a statute of limitations. If you did not provide the accounting to me within the 21 days, you have no legal basis to retain any of my security deposit and if you are unreasonable in the refunding of my deposit, you may also be liable for statutory damages of up to twice the amount of the security, in addition to actual damages (California Civil Code section 1950.5 (k)).

California Civil Code section 1950.5 (b) provides that you may only retain a security deposit to pay for damages and cleaning BEYOND NORMAL WEAR AND TEAR. You also cannot charge me for cleaning that you do yourself and for which you have made no payments to others.

California law also prohibits landlords from making any deposits non-refundable. This may be an unconscionable term in the lease, and therefore a court could chose not to enforce it.

Additionally, it may be an unfair business practice and a violation of the California Business and Professions Code, which regulates landlords, and subjects them to a penalty of up to \$2,500 per violation.

(If the service member had to move out of the rental unit before the end of the lease or before the end of a 30 day notice period, consider adding the following paragraph.

Under California law the landlord has a duty to mitigate his damages if a tenant must leave early. Mitigation means that you had to attempt to re-rent the rental unit as soon as you knew that the tenant was moving. No attempts were made to re-rent the unit, and therefore I am entitled to a refund of rent I paid beyond the day I moved out. I believe you owe me the following refund:

- | | |
|---------------------------|----|
| 1. Security Deposit: | \$ |
| 2. Rent Refund: | \$ |
| 3. Punitive Damages: | \$ |
| 4. Key, Pet, Carpet, etc: | \$ |
| 5. My Expenses to Date: | \$ |
| TOTAL: | \$ |

Please send a certified check for the total within 14 days of the date of this letter to me at the following address: (Address Here).

Sincerely,

(Print and sign your name)