

Know Your Rights as a Tenant

Many servicemembers and their families will be changing station in the upcoming months, so the Presidio of Monterey Legal Assistance Office shares the following tips regarding your rights as a tenant. California law applies to all servicemembers who are tenants, whether they live in privatized military housing, or rent from a local landlord or property management company. Below, when there is a legal statute supporting the point, that statute is noted in parenthesis.

Tenants' Rights at Move-In

- Rental agreements cannot make a security deposit nonrefundable (Cal. Civil Code § 1950.5(m)). This means that when the lease ends, the landlord must return to you any payment that is a security deposit, unless the landlord uses the deposit for a lawful purpose as described below.
- The maximum security deposit amount for active-duty servicemembers is capped at one month's rent for unfurnished units and two months' rent for furnished units (Cal. Civil Code §1950.5(c)(1)(2)). This maximum cap is for all security deposits, so even if the landlord charges a separate "pet security deposit" the total for all security deposits cannot exceed the maximum cap. Note that the cap does not apply if the lease is shared, and there is at least one tenant on the lease who is not the servicemember's spouse, dependent, domestic partner, or parent. The cap on security deposits also does not apply if the servicemember has poor credit history, or a history of damaging leased properties.
- Be wary of indemnity provisions in leases that require the tenant to "defend, indemnify, and hold the landlord harmless." This "shifting indemnity" requires the tenant to take on liability and financial responsibility for harm to third parties on the rented premises, even when that harm is due to the landlord's negligence. Shifting indemnity in such a way is contrary to California laws protecting tenants, and such a shift in liability is likely unenforceable. Additionally, your renter's insurance policy provider will probably not agree to shifting indemnity, and you should check with your provider regarding any proposed terms. If you are presented with such terms in a lease, ask that those terms be removed.

Tenants' Rights at Move-out

- California law specifically allows the landlord to use a tenant's security deposit for four purposes (Cal. Civil Code §1950.5(b)):
 1. For unpaid rent;
 2. For cleaning the rental unit when the tenant moves out, but only to make the unit as clean as it was when the tenant first

moved in (**Note that a landlord cannot require a tenant to pay for professional cleaning, or professional carpet cleaning. The tenant is simply required to get the rental unit clean to the same level as it was when the tenant moved in. How that is done is up to the tenant.**);

3. For repair of damages, other than normal wear and tear, caused by the tenant or the tenant's guests; and
 4. If the rental agreement allows it, for the cost of restoring or replacing furniture, furnishings, or other items of personal property (including keys), but not because of normal wear and tear to these items.
- Under Cal. Civil Code §1950.5(f), a landlord has *21 days* from the date that you moved out to do the following:
 1. Send you a full refund of your security deposit, or
 2. Mail or personally deliver to you an itemized statement that lists the amounts of any deductions from your security deposit and the reasons for the deductions, together with a refund of any amounts not deducted.
 3. If the landlord acts in bad faith to withhold some or all of the security deposit, he can be liable for statutory damages of up to twice the amount of the security deposit, in addition to any other claimed damages (Cal. Civil Code §1950.5(f)). Tenants can usually go to small claims court in California to allege such damages with the threshold for small claims court being claims totaling up to \$12,500.
 - A tenant can and should ask the landlord to inspect the rental unit before the tenancy ends to prevent the landlord from adding charges for unidentified repairs later. The landlord must perform an initial inspection if requested by the tenant (Cal. Civil Code § 1950.5(b)(3)).
 1. The inspection cannot be scheduled earlier than two weeks before the end of the rental term. It should be scheduled to allow the tenant ample time to perform repairs or cleaning identified during the initial inspection.
 2. The landlord must prepare and give an itemized statement of repairs or cleaning that the tenant should perform in order to avoid deductions from the tenant's security deposit. The POM LAO recommends that tenants are present at these inspections.

3. Costs of cleaning: A landlord may properly deduct from the departing tenant's security deposit the amount necessary to make the rental unit as clean as it was when the tenant moved in (Cal. Civ. Code §1950.5(e)). However, a landlord cannot charge for the cumulative effects of normal wear and tear to carpets, drapes and other furnishings. Similarly, a landlord cannot charge against a tenant's security deposit for normal wear and tear to painted surfaces. Minor marks or nicks in walls are the landlord's responsibility as normal wear and tear.

For assistance with legal issues, including landlord-tenant disputes in either privatized military housing, or non-military housing, contact the Presidio of Monterey Legal Assistance Office at 813-242-5084.