

How To Recover Your Security Deposit in Small Claims Court.

1. **Demand Letter.** Send a security deposit demand letter (insert link to TT template) to your landlord, building management company, rent recipient, or the party designated in your lease.
 - a. Wait a reasonable period of time, at least 10 days, for your landlord to respond to your demand. If the landlord does not respond to you, prepare to file your claim in small claims court.
 - b. The California courts provide helpful information for filing in small claims court here: <http://www.courts.ca.gov/selfhelp-smallclaims.htm>.
2. **Facts to Know Before You File in Small Claims Court:**
 - a. **The Statute of Limitations.** This is the period of time in which you must file your complaint against the landlord and sue to recover your deposit. This time period depends on the type of rental agreement you had with the landlord and the date your deposit should have been returned to you. **Remember**, your landlord legally has 21 days from the date you move out, to return your deposit to you.
 - i. If the agreement was oral, you must file within 2 years. If the agreement was in writing, you must file within 4 years.
 - b. **The Amount You Can Recover.** \$10,000 is the maximum amount you can attempt to recover in small claims court. See the state court website for more detailed information, <http://www.courts.ca.gov/1256.htm>.
 - c. **The Exact Name of the Person or Company You Wish To Sue.** You may be suing the same party named in the demand letter, but always double check that this is the proper party, in order to avoid delay. If you are unsure of the party's name, look in your lease or rental contract. You can view the claim form [SC-100](http://www.courts.ca.gov/1017.htm) here, <http://www.courts.ca.gov/1017.htm>.
 - i. **Suing a Person.** Use the person's first name and last name (and middle initial, if known) on the small claims form. If the person has used different names, you can list one name followed by "aka" (also known as), the other name.
 - ii. **Suing a Business Owned by One Person.** On the small claims form, write the property owner's name, followed by the words "individually and doing business as," then write the business's name. Double check with the county records here, <http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/CountyRecor>

[derOffice.aspx](#), or with your local tax assessor here, <http://www.boe.ca.gov/proptaxes/assessors.htm>, to confirm how the owner's name should be listed on the complaint.

- 1. More information on suing a partnership, corporation, a business owned by a corporation, or finding the name and address of your intended defendant can be found on the California court website, <http://www.courts.ca.gov/9736.htm>.**
- d. The Cost of Filing in Small Claims Court.** As of July 16, 2013, the fee is \$30 for claims of \$0 to \$1,500. The fee is \$50 for claims of \$1,500.01 to \$5,000. For claims of \$5,000.01 to \$10,000, the fee is \$75.
 - e. The Proper Court in which to File Your Claim.** Each county has a small claims court. You can file your claim in either the county where the defendant lives or does business, the county where you signed the rental agreement, where the contract was broken, or where the contract was to be carried out.
 - i.** Here is a state website that will help you identify your county and small claims court, <http://www.courts.ca.gov/find-my-court.htm>.
- 3. Filing Your Claim.** Read the plaintiff's information sheet found here, [Form SC-100-INFO](#), then go to court and file your claim, [Form SC-100](#).
 - a.** Note the number of copies you must submit, of the claim form.
 - b.** When there are more than 2 plaintiffs or 2 defendants, also fill out the "Other Plaintiffs or Defendants" [Form SC-100A](#).
 - c.** If you need more space to describe what happened, or you need witness statements, you can use the "Declaration" [Form MC-030](#).
 - d.** Ask your local court clerk if there are local forms you have to fill out.
 - e.** Give your forms to the clerk for filing. After reviewing your forms, the clerk will usually stamp "Filed" on the forms, and fill in the date, time, and location of your court hearing. The clerk will keep the originals and give you a copy for yourself and copies for each defendant you are suing.
- 4. Serve Your Claim.** Service of Process is the legal term for notifying the opposing party that you are starting the process of suing them, by giving them a copy of the court papers. The law requires you to serve the opposing party in accordance with very particular rules. Form SC-104B may be informative, and can be found here, <http://www.courts.ca.gov/9742.htm>.
 - a. Who Should You Server?** Each person you are suing must be served.
 - i.** To sue your landlord, serve your claim to the owner of the property you are renting. You should be able to find your landlord's contact

information either in your lease, or posted on the property. In addition, you can serve your landlord at the address where rent is paid. If the lease lists the manager's name and address, and the manager will not give you the owner's address, you can serve the manager.

- ii. You can find more information on suing a business or public entity here, [http://www.courts.ca.gov/9742.htm#If you are suing a partnership](http://www.courts.ca.gov/9742.htm#If_you_are_suing_a_partnership).

b. The Process Server. This person, not you, actually delivers a copy of your claim to the opposing party. The process server could either be a friend, relative, co-worker, sheriff, or professional server. In order for service to be valid, the process server must be over 18, cannot be a party to the suit, and must perform the tasks listed below:

- i. Serve the paperwork on the opposing party by the service deadline, which is determined by the type of service being performed;
- ii. Complete a “*Proof of Service*” form, found here, [Form SC-104](#), which tells the court who was served and when, where, and how service was performed;
- iii. Return the “*Proof of Service*” form to you, so you can file it with the court.

c. Types of Service. In small claims court, you are allowed to serve your papers to the opposing party by Personal Service, Substituted Service, or Service by Certified Mail.

- i. **Personal Service.** The process server personally delivers court documents to the opposing party. The party must be served at least 15 days before the court date, if he or she is located in the county, and 20 days if the party is outside the county.
 1. The server must identify the party being served at the time of service, hand over the documents, and inform the party that they are court papers. If the party being served does not want to take the papers, the process server can leave them on the ground in front of party to effectuate service. Even if the party tears the papers, the service is still valid.
 2. Service can occur at a party's home, work, or in any public place.

ii. Substituted Service. If the opposing party is not at the location where your process server goes to perform service, the process server can leave the court documents with one of the following people:

1. An adult (competent and over 18) living with the person being served;
2. An adult who appears to be in charge at the person's work;
3. Or an adult who appears to be in charge where the person being served receives mail.
4. The process server must also:
 - a. Tell the person who receives the documents to give them to the party being sued;
 - b. Write down the name (or physical description) of the person receiving the documents;
 - c. Mail the court documents to the party being sued, by first class mail, to the address where the documents were served, and fill out the "*Proof of Mailing*" document found here, [Form SC-104A](#).

iii. Service by Certified Mail. A small claims clerk can serve your claim via certified mail, for a small fee. Check with the court before your trial to confirm the receipt for certified mail was returned to the court. Service by certified mail is complete on the day the certified mail receipt is signed by the party being served.

1. **However**, service is incomplete if either the someone other than the opposing party or his or her agent signs the receipt, if the judge cannot read the signature, or if the party does not sign using his or her complete name. In this circumstance, you will be required to perform personal or substituted service.

d. Don't forget, you have to file your "*Proof of Service*" form with the court. The form can be found here, [Form SC-104](#),

5. Prepare for Trial.

a. Testimony. You need to be able to tell the judge why you are filing a claim, ex: *your landlord did not return your security deposit*; why you should succeed, ex: *you paid the deposit, gave proper notice before moving, and left the unit in a clean condition with no damage*; and what you want the judge to do, ex: *you want your deposit to be returned to you in full*.

- i.** Write down your main points and practice saying them, so you can stay on track at trial. State your facts in chronological order. Do not include too many details in your statement, just the important ones, and avoid being repetitive.

