AB12 Security Deposit FAQ

Goes into affect on July 1, 2024

How much can a landlord request as a security deposit?

As of July 1 2024 deposit cannot exceed one months' rent whether the unit is furnished or not, with an exception for "small landlords" who can ask for a deposit of up to two months' rent. Tenants who are in the military limited security deposit is always equal to one months' rent.

Who are "small landlords" that can charge 2 months' rent deposit according to AB12?

A landlord would need to meet both requirements under (1) and (2) in order for them to charge security deposits of two months' rent for a security deposit for anyone who is not an active service member:

1. If the landlord is an individual who owns up to two residential rental properties with a total of no more than four rental units,
2. If the landlord is a natural person or an LLC in which all members are individuals and the landlord

The challenge for tenants will be determining how the landlord owns the property, how many residential rental properties their landlord owns, and how many units they rent out. I would counsel any tenant whose landlord is trying to charge a security deposit of two months' rent to request proof that the landlord meets both requirements.

What about interest on the security deposit?

California law does not require landlords to pay interest on security deposits. Some tenants are entitled to interest under local laws in the following locations: Berkeley, Hayward, Los Angeles, San Francisco and Santa Cruz.

Can a landlord charge a tenant extra for mail keys or key-fobs?

Fees for key fobs or mail keys would likely be considered refundable "security" if charged at the start of the tenancy. And the landlord cannot demand security – including fees for key fobs or mail keys – in an amount over one month's rent (in addition to any rent for the first month paid on or before the tenant moves in).

When do tenants get back their security deposit?

Deposit must be returned, or withholdings documented, within 21 days of the tenant's departure. Civil Code 1950.5 (g)(1).

What can the landlord withhold from security deposit?

Deductions from the deposit may be made for unpaid rent; costs to repair damages caused by tenant or tenants' guests; cleaning of unit to return the unit to the same level of cleanliness it was in at the inception of the tenancy; and other limited bases. The landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement.

When they are referring to "good faith estimate" they mean the damages the landlord has determined the tenant to be responsible for that are being fixed by a company/service that were not able to produce an invoice within the 21 days outlined by the law in which a landlord should provide an invoice or return security deposit.

A landlord cannot deduct for ordinary wear and tear. Civil Code 1950.5(b). Legitimate deductions must be documented in writing by landlord and site receipts. Landlord can withhold up to $125 without listing any deductions.

The $125 is a separate amount that they are saying is the maximum amount of damages that can be charged to a tenant without the landlord being required to send the itemized invoice.

What is ordinary wear and tear?

The security deposit cannot be kept by the landlord to address "ordinary wear and tear" during the tenancy, or to repair any damage or bad conditions that preexisted the tenancy. Ordinary wear and tear usually includes any deterioration of the premises that occurs under normal conditions, like faded paint, scuffed floors, worn carpet, and frayed drapes. Ordinary wear and tear can happen even if a tenant cleans regularly and takes good care of the unit.

In contrast, damage (for which a landlord can make deductions) usually occurs from accidents or unreasonable use of the property. "Damage" means only damage that was caused by the tenant or their guests. Cal. Civil Code § 1950.5(b)(2). However, if it appears that the tenant after a short period did major damage to the wall, then the landlord may put the responsibility on the tenant. It's a case specific determination.

Can a landlord require professional cleaning? Or require that a tenant pay to paint the unit?

If the place had been rented for a while, it is normal that it will need to be re-painted after several years – so that would probably be ordinary wear and tear that the landlord cannot keep the security deposit to fix.

After an inspection, landlords must provide an itemized breakdown of what needs to be repaired or cleaned. There is nothing in the statute that requires a professional cleaning. A landlord can request a professional cleaning, but a tenant doesn't have to pay for one. They just need to make sure the premises are clean.

If something needs to be painted and the landlord believes the tenant should be responsible for paying for painting costs, the law evaluates that based on the "ordinary wear and tear" standard. Cal. Civil Code § 1950.5(b)(2). A security deposit is the tenant's property – unless and until properly used to address a tenant's nonpayment of rent and/or to compensate the landlord for damage and cleaning.

However, landlords do not have unlimited discretion to use security deposits as they please or to keep security deposits when tenants move out.

How can a tenant protect their security deposit?

You can start protecting your deposit at move-in:

- Document the unit's condition when you move in. Many landlords will provide you with a move-in checklist .
- In your checklist, note holes, cracks or stains as well as more serious problems. Complete a checklist even if the landlord fails to provide you one. If the landlord's checklist is incomplete, then add areas or problems to the checklist.
    - Even if the unit is in good condition, every problem that you detail in completing the checklist is one less problem that might be used to justify a deposit reduction after you move out.
- If the landlord doesn't sign off on a dated checklist, then mail a dated checklist to the landlord with proof of mailing.
- You can also take photographs of the unit, with particular focus on any damaged areas, preferably with a camera that includes a date stamp.

And you can work to protect your deposit before you move out:

- First, be sure to provide proper written notice specifying when you are going to vacate.

    - If you are leaving before the expiration of the lease, you may want to consult with an attorney or tenant counselor.
    - If you are leaving a month-to-month rental, send your landlord a letter providing at least thirty days notice and specifying the departure date, and make sure to obtain proof of mailing.
    - If you don't provide sufficient notice, the landlord will likely try to deduct a month's rent from your deposit.
- Second, ask for a pre-move out inspection. California Civil Code 1950.5(f) entitles the tenant to demand that the landlord do a walkthrough inspection of the unit in the two weeks before departure.
    - If the landlord doesn't agree with the date that you select, then the landlord must provide forty-eight hours notice of the inspection.
    - After the inspection, the landlord must provide you with a detailed list of damages or cleaning needs that would result in withholding portions of the deposit .
    - The purpose of the process is to allow the tenant to fix the damages or provide the cleaning rather than lose portions of the deposit.
    - The higher the amount the landlord plans to withhold, the more you need to document your repair or cleaning efforts with photographs or video.

What if a sub-tenant paid security deposit to the master tenant?

The new amendment has no impact on how roommates' security deposit is handled. A roommate who never gave a security deposit directly to the landlord, must deal with their master tenant—the person they gave the money to. If there is a dispute with the master tenant withholding the security deposit that would need to be dealt with in small claims court.

What if property ownership changes?

If there is a new owner, the old landlord has two options when dealing with an existing tenant's security deposit:

1. they can transfer the portion of the security deposit to the new landlord and send a notice to tenant of the amount being transferred to new owner, plus new owner's contact information.
2. return the portion of the security deposit to the tenant with an accounting of what is being returned.

The new owner assumes the same rights and obligations with respect to the security deposit as applied to the prior landlord. Civil Code sec. 1950.5(k). Both the original landlord and subsequent landlords are liable to the tenant if the deposit is not returned.

The new landlord cannot charge a new security deposit to current tenants simply to make up for security deposits that the new landlord failed to obtain from the selling landlord. But if the security deposits have been returned to the tenants, or if the new landlord has properly accounted to the tenants for proper deductions taken from the security deposits, the new landlord may legally collect new security deposits. Civ. Code § 1950.5(j).

Can a new landlord increase the security deposit of the landlord to align with a rent increase?

This depends, in part, on the type of tenancy. If the tenant has a fixed-term rental agreement, the new landlord cannot increase the security deposit during the term unless this is specifically allowed by the rental agreement.

For periodic tenancy (month-to-month) the new landlord can increase security deposits only after giving proper advance written notice, and if local law, such as a rent control ordinance, does not prohibit changing the terms of tenancy or increasing the security deposit.

In either situation, the total amount of the security deposit after the increase cannot be more than the legal limit (either one or two months' rent).

What to do if the landlord doesn't return your deposit?

If the deposit is not returned, consider writing a certified letter to the landlord demanding the deposit and/or filing a lawsuit. The landlord may be liable not just for the amount of the deposit, but in cases of bad faith for up to two times the amount of the deposit as a penalty. Civil Code sec. CC §1950.5(l). You can sue in small claims court for up to $10,000.

Should tenants hire a lawyer?

Generally, cases regarding security deposits are handled in small claims court where all parties represent themselves. It rarely makes economic sense to hire an attorney to handle a case exclusively about a security deposit, since you may well end up paying an attorney more than you could hope to recover from the landlord. It may be worth hiring an attorney in situations where the deposit is particularly large and the landlord is blatantly acting in bad faith. Also, if you have other disputes with your landlord, you may want to consult with an attorney about whether it would make sense to combine your security deposit claim with other claims in a single lawsuit where you are represented by an attorney.