

Security Deposits – Itemized Statements of Deductions

It is time to address a common issue regarding security deposits that is often asked about by landlords and property managers. The issue involves the proper procedure for retention and return of a tenant's security deposit, including giving the tenant the required itemized statement of deductions from the security deposit, and any bills, invoices, or receipts evidencing those deductions. California Civil Code section 1950.5 governs the requirements for this procedure. If you haven't read the section, you should because absent compliance with the required inspections and accountings, deductions cannot be made to the deposit.

Let's begin with a fundamental review of what costs, expenses, and/or "damages" may be deducted from a tenant's security deposit by a landlord. Pursuant to Civil Code section 1950.5(e), "[t]he landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision (b) [of Civil Code section 1950.5]." The following are permissible deductions from the security deposit under Civil Code section 1950.5(b):

- (1) The compensation of a landlord for a tenant's default in the payment of rent;
- (2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant;
- (3) The cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy;
- (4) To remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the security deposit is authorized to be applied thereto by the rental agreement.

As to permissible deductions from a security deposit, it is important to note that "[t]he landlord may not assert a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies." (Civ. Code, § 1950.5(e).)

With this understanding of the basic categories of permissible deductions, let's examine the procedure required to make deductions from the security deposit. This procedure begins with making sure that the tenant not only has an opportunity to do a pre-moveout inspection, but is provided a list of items to be repaired or cleaned, followed by an itemized statement of any deductions from the security deposit, along with copies of any bills, invoices, or receipts evidencing deductions for those corrections which were not made by the tenant.

Within a reasonable time after notification of the termination of the tenancy, or before the end of the lease term, the Landlord shall notify the tenant in writing of the option to request an initial inspection of the property and of the right to be present during the inspection. This requirement applies to situations involving 30-day and 60-day notices, but not termination of tenancy situations involving 3-day notices for nonpayment of rent or breach of covenants. A reasonable time would be no earlier than two weeks before the termination of the lease term.

The initial inspection, if requested by the tenant, must be conducted with the tenant present. If no initial inspection is requested after written notice of that right, then the Landlord is relieved of the

responsibility to provide an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security the Landlord intends to make. If the tenant requests this initial inspection, then that statement must be provided and the tenant given the opportunity to remedy the deficiencies noted in the statement in order to avoid deductions from the security. Failing to give that statement or allowing the tenant the opportunity to cure the deficiencies precludes any deduction from the deposit and it must be returned in full.

Within twenty one (21) calendar days after the tenant has vacated the leased premises, the landlord must give the tenant, by personal delivery or by mail, a copy of an itemized statement listing the basis for, and the amount of, any deductions the landlord has made from the security deposit. The deductions to be made must be in the category of items identified in the initial list of deficiencies given the tenant, unless the item of repair or cleaning arose after the initial inspection and before end of the term, in which case the Landlord can still make a deduction if the condition is not remedied by the tenant. The landlord must return any remaining portion of the security deposit to the tenant with the itemized statement. (See Civ. Code, § 1950.5(g)(1).) Remember: any deduction the landlord indicates in this itemized statement must fit within one of the permissible categories of deductions listed above.

Along with a copy of the itemized statement of deductions, the landlord must include copies of documents, such as bills, invoices, or receipts, showing any charges incurred and deducted by the landlord to repair or clean the leased premises, as follows:

- (1) If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged. [As to what a "reasonable hourly rate" charged by the landlord or landlord's employee is, consider what are comparable hourly rates of an outside contractor or professional for similar work.]
- (2) If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. . . .
- (3) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

(See Civ. Code, § 1950.5(g)(2).)

"If a repair to be done by the landlord or landlord's employee cannot reasonably be completed within 21 calendar days after the tenant has vacated the premises, or if the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession within 21 calendar days after the tenant has vacated the premises, 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. If the reason for the estimate is because the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession, the itemized statement shall include the name, address, and telephone number of the person or entity. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall complete the requirements in paragraphs (1) and (2) [of Civil Code section 1950.5 (g),] in the manner specified." (Civ. Code, § 1950.5(g)(3),

emphasis added.) “Paragraphs (1) and (2)” of Civil Code section 1950.5 (g) refer to the requirements of the landlord to provide an itemized statement of deductions to the tenant, and copies of documentation, including bills, invoices, and receipts, showing the charges incurred by the landlord for repair and/or cleaning of the leased premises.

Finally, the landlord need not provide the tenant with (a) copies of documentation, including bills, invoices, and receipts, showing the charges incurred by the landlord for repair and/or cleaning of the leased premises, or (b) a good faith estimate of those charges when such documentation is not available to the landlord within 21 calendar days, if either of the following apply:

- (1) The deductions for repairs and cleaning together **do not exceed one hundred twenty-five dollars (\$125)**.
- (2) The tenant waived the rights specified in paragraphs (2) and (3) [of Civil Code section 1950.5(g)]. The waiver shall only be effective if it is signed by the tenant at the same time or after a notice to terminate a tenancy under [Civil Code] Section 1946 or 1946.1 has been given, a notice under Code of Civil Procedure Section 1161 has been given, or no earlier than 60 calendar days prior to the expiration of a fixed-term lease. The waiver shall substantially include the text of paragraph (2) [of Civil Code section 1950.5(g)].

(See Civil Code § 1950.5(g)(4), emphasis added.) It is important to note that an itemized statement of deductions under Civil Code section 1950.5 (g)(1) is still required to be given by the landlord to the tenant despite (a) deductions not exceeding \$125, or (b) a waiver of the rights specified in Civil Code section 1950.5(g)(2) and (g)(3), mentioned above.

Civil Code section 1950.5 is detailed and lengthy. It is intended to limit the right of the landlord to deduct from a security deposit unless the tenant has been given an opportunity to cure the deficiencies noted in the itemized statement. A controversy can arise where the landlord has failed to give the required notice of right to have an initial inspection, and/or the failure to provide an itemization of deficiencies for which deductions will be made. The landlord will want to take the position that even failing to give notice of the right to cure the deficiencies noted, they have a right to sue for the damages that they suffered as a result of the tenant not cleaning or repairing. The tenant will argue that the landlord’s failure to give the required notices of inspection and list of deficiencies precluded the tenant from exercising his right to mitigate damages and to correct the problems at a cost less than the landlord may want or need to charge. The tenant will in effect argue breach of duty by the landlord to comply with statute and excuse of further performance due to the failure of the landlord in following the prescribed procedures of the security deposit statute.

Our conclusion: The path of least resistance and ultimate expense is to follow the guidelines of the statute governing security deposits and avoid the argument that the legislative intent of this statute and other contract principles would preclude the landlord’s claim for damages and repairs that could have and should have been itemized as required by statute.

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