

Are You Handling Tenant Security Deposits Properly? **by Michael Hall, Esq.**

To begin a tenancy, you as a landlord, may collect the first month's rent plus a security deposit. That deposit may not be more than two months' rent, unless the unit is furnished, in which case, the deposit may equal three months' rent. These monetary limits apply to the total of all sums collected at the outset of the tenancy, regardless of what these are called, (i.e., security deposit, key deposit, cleaning deposit, cleaning fee, last month's rent deposit, pet deposit or other terms). If the initial lease term exceeds six months, the landlord may accept six months (or more) prepaid rent.

If the tenant intends to have a water bed, you may collect an additional deposit equal to one-half a month's rent, plus a fee to cover reasonable administration costs. The only other exception to the deposit sums ceiling is that landlords may collect a nonrefundable fee to cover out-of-pocket cost for tenant application screening and credit reports. That fee is not considered a deposit. ***Other than the application screening fee, all deposits must be refundable and may not be labeled "nonrefundable."***

You may not collect an additional deposit for disabled tenant's guide, service or signal dog. However, the tenant remains responsible for any damage caused by the animal. You may charge an additional deposit if the tenant operates a family day care home, but no more than the maximum amount otherwise allowed under the rules described above. If the unit is rent-controlled, you may lawfully provide in your rental agreement that the security deposit will increase proportionately to reflect the lawful annual rent increases and any other increases allowed under the rent-control ordinance. We recommend that you include a security-deposit escalation clause in your written tenancy agreement.

San Francisco landlords must pay tenants interest annually on all security deposits held for more than one year. The Rent Board publishes the interest rate annually. The amount is due on the tenant's anniversary date (unless the tenancy started before September 1, 1983, in which case is due on every first day of September). You may deduct 50% of the annual Rent Board fee for each unit from the annual interest payment to the tenant. (The Rent Board fee also varies from year to year.) For further information, check the Rent Board's website "Fact Sheet 3" (sfgov.org/site/rentboard).

San Francisco

2.0% - Annual allowable rent increase

5.2% - Interest on security deposits

\$13 – Collectible SF Rent Board Fee

[Editor's Note: Owners of Los Angeles rent controlled units must pay interest annually on all security deposits held for more than one year of 2.39% for 2007 and 3.22% for 2008 OR by using the actual documented interest on each security deposit account.]

At the conclusion of a tenancy, you must allow the tenant an opportunity to remedy any defects in the condition of the premises that would otherwise result in deductions from the security deposit. You must give written notice of the tenant's right to a pre-move out inspection to occur no earlier than two weeks before the move-out date. The inspection should occur only after 48 hours' advance written notice, unless the tenant waives this requirement. The tenant has the right to be present at the inspection, and must be notified of that right. IF the tenant wishes to be present at the inspection, it should occur at a mutually convenient time.

If problems are found, you must provide the tenant with an itemized statement specifying the proposed deductions for repairs and/or cleaning. ***In San Francisco***, it must include the text of Civil Code 1950.5(b)(1)-(4):

“(b) As used in this section, ‘security’ means any payment, fee, deposit or charge, including but not limited to any payment, fee, deposit or charge except as provided in Section 1950.6 that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advanced payment of rent, used or to be used for any purpose, including, but not limited to the following:

- The compensation of a landlord for a tenant's default in the payment of rent.
- 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
- 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. The amendments to this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.
- 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.”

If the tenant is being evicted based on a 3-day notice, you need not give notice of a pre-move out inspection.

Landlords may use the deposit only for limited purposes, i.e., those amounts reasonable necessary:

- To remedy tenant's rent default
- To repair damage caused by the tenant or tenant's guests exceeding ordinary wear and tear;
- For cleaning to return the premises to the same level of cleanliness as it was at the inception of the tenancy; and
- To restore, replace or return personal property or appurtenances, but only if pre-authorized in the written rental agreement, and beyond ordinary wear and tear.

The security deposit must be accounted for and any unused amount refunded within 21 days after the tenant vacates. This is an important, mandatory deadline. You should provide a written accounting within the 21-day period even if some of the deductions are only estimates. If you fail to comply with this deadline, you must return the entire deposit without deductions. In this event, any charges against the tenant might have to be sorted out in small claims court.

Along with the itemized statement of deductions from the security deposit, you must include copies of documents showing charges incurred, such as receipts and invoices for cleaning and repairs. You must itemize the time and reasonable hourly charges for any work performed personally. For work performed by others, you must include the worker's contact information, unless it already appears on the invoice or receipt. If the work cannot reasonably be completed within 21 days, you may deduct the amount of a good-faith estimate of any future charges and itemize the estimated amount on the tenant's statement. If the amount of the charges must be estimated because you have not received documentation from the service provider, then the tenant must be given the service provider's contact information. You must follow up with a subsequent statement of the actual charges within 14 days after the work is completed or the documentation provided.

All statements must be mailed to the address provided by the tenant, or, if no forwarding address is provided, to the address of the unit that has been vacated (so that the mail may be forwarded). The landlord is not excused from these reporting requirements if the tenant fails to provide a forwarding address. You may be subject to court-imposed penalties for any "bad-faith" retention of the security deposit. To avoid such problems, comply with the pre-move out inspection rules and deduct only such amounts as are reasonably necessary.

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