

## **Win Your Security Deposit Case in Small Claims Court by FDR (Frank D. Rubin, Esq.)**

The most contentious legal issue for most owners concerns distribution of security deposits. Small Claims Court Judges will tell you security deposit disputes are the number one most litigated rental housing issues. On many days, security deposit issues can consume 25% of a Small Claims Court's case calendar.

Part of the problem is that most of the time, the Small Claims Court Judge is a Judge Pro Tem and not a regular Judge who sits on the bench daily. A Pro Tem is an attorney volunteer helping the court system out for a half or full day. In Los Angeles County, these people are well trained and certified with six to eight hours of training from a well run orientation program operated by the local Judges. Still, Pro Tems sit randomly, not daily and can be very unpredictable, unlike a regular Judge who sits on the bench daily and who eventually gets to know the community.

If ever a case's outcome was conditioned on what the "Judge ate for breakfast", security deposit cases are a natural. The guiding law as handed down by the California State Legislature uses anything but a precise objective standard. The standard is "ordinary wear and tear". Try applying that in the real world to carpets, paint, drapery, stoves and toilets.

We all have our own very clear definition of what is art or obscenity. Likewise, we all have our own definition of "ordinary wear and tear."

Our own personal definition of "ordinary wear and tear" does not matter. All that matters is what the person in the black robe says it is on any given day in any given case in any given courtroom.

Consistency, logic? Dream on. Not surprisingly, one old timer Judge told me very early in my career when giving me a ruling the total opposite of what the Judge literally in the courtroom next door did in exactly similar circumstances. He said, "You want consistency? You are in the wrong business." So much for a nation of laws, not persons. The Judge Pro Tem (volunteer), regular sitting Commissioner (a full time County employee hired by the local sitting judges), or an elected or Governor appointed Judge knows "ordinary wear and tear" when they see it.

So the question becomes, what can you show the Judge in your case to argue your version of "ordinary wear and tear?" In Small Claims Court, anything you can get away with.

Keep in mind that in Small Claims Court, the people's court, almost anything can come in unlike regular courts that are supposedly governed by rules of evidence. Small Claims Courts are informal, fast-paced and unfettered.

I advise clients in Small Claims Court to “show, don’t tell”. Anyone can come to Court and mouth off. Usually, they do. However, if you have photos, diagrams, accountings, reports, receipts and rental contracts, they are very helpful. The more actual documentation you show and the less said the better. Often, Small Claims cases are heard when there are only three hours time and fifteen cases to hear. Brevity of mouth is advantageous. Let your documents speak. They have a better chance of being considered.

Make sure you have a written rental agreement. The California Civil Code Section 1950.5 covers security deposits. The California Code allows for a security deposit in an amount equal to two (2) months’ rent for an unfurnished unit and three months’ rent for a furnished unit. If you have a very rich tenant with a long-term lease, you can have a deposit of six months’ rent or more in size. Thus, the only questionable deposit amounts are three, four or five months’ rent in amount. No one said that laws (statutes) written by the politicians (State Legislature) had to be logical.

Mark Twain once said, “Imagine you are an idiot. Then imagine that you are a politician. Oh, I’m sorry, I repeated myself.”

In your rental agreement, security deposit clauses do not limit the use of deposit funds. DO NOT say “last month’s rent”. If you do, you may be contractually bound to only one of three legal allowable uses:

- Rent owed
- Cleaning and
- Repairing damages

If you contractually categorize a portion of your deposit as “last month’s rent”, then you may be held by the Court to only using the security deposit as contracted to last month’s rent (unpaid rent) only. If the tenant leaves fully paid up in rent but trashed the rental unit, you could have a problem in applying the deposit you are holding. California law limits security deposit use to only three items. There is no reason to further reduce those three uses contractually to only one item. The law is limited enough; don’t contractually tighten it even further.

Of the three categories allowed, rent owed is pretty clear, but as to cleaning and damages over “ordinary wear and tear”, what is that?

That is where this column began. Wear and tear is what you can, with documents, photos, receipts and accounting, convince a judicial officer on any particular day that it is. How long should paint last? Three years? Five years? How long should carpet last? Three or four years? Even people in those industries have as many opinions as there are people in those industries. The opinions flow with variety similar to religious interpretations.

You have to deal with a totally vague standard (isn't that any oxymoron?) applying ordinary "wear and tear" to a product (i.e. carpet) that industry experts all disagree about, presented in Court by non-legal professionals, (an owner and tenant), who both have their own personal, very different point of view, decided by a judicial officer (amateur or professional) brings to Court his or her own point of view. No wonder this area of law is so heavily litigated. Fortunately, since the sums are modest, the litigation is almost always in Small Claims Court.

One thing you can do to limit your exposure is to follow the law and make sure you do a written accounting of the deposit's use (or non-use) in less than 21 days (in California) of the actual tenant move-out. Your failure to account even if you are returning nothing could be deemed "bad faith" and carry a penalty of up to \$600.

What is "bad faith"? It is as clear as defining "ordinary wear and tear". Now you begin to understand why the law is so much fun. When all else fails, you get this mess resolved in a Small Claims Court. "Tempus Confusious". (These are confusing times.)

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