

Should You Take a Holding Deposit?

by Jan Leasure

Question: An applicant has put down a holding deposit on a house I had for rent, but now has decided not to move in. Can I keep the entire deposit?

Answer: The California Civil Code describes all deposits as “refundable,” therefore, there is no such thing as a non-refundable deposit in California. However, because you took your rental house off the market and held it for the prospective resident (presumably turning away other applicants), you can keep a reasonable amount from the deposit to cover your costs of keeping your house vacant. For example, you could keep the rent for the number of days you had the property off the market. You may also have some costs related to stopping and restarting your advertising. You can keep that amount, as well as the daily rent.

So what about this issue of holding deposits? The question and answer above begins to address the issue. A holding deposit is a deposit to hold the rental unit for a stated period until the applicant pays the first month’s rent and any security deposit. During this period, the landlord agrees not to rent the unit to anyone else. If the applicant changes his or her mind about moving in, the landlord may keep at least some of the holding deposit. A holding deposit simply ensures that the landlord will not rent the unit to another applicant for an acknowledged period. The holding deposit does not give the resident the right to take possession of the rental unit. The resident must first pay the first month’s rent and security deposit during the holding period. If not, the landlord can rent the unit to another applicant and keep all or some part of the holding deposit.

If an applicant gives a landlord a holding deposit when he/she submits a rental application, but the landlord does not accept the applicant, the landlord must return the holding deposit in full to the applicant.

Personally, I do not like holding deposits. I think the use of holding deposits has huge potential for misunderstandings. Furthermore, I think they are unnecessary. Here’s why: Your job when selecting a tenant is to get the most highly qualified applicant you can for your property. Suppose a pretty good applicant gives you a holding deposit. While you are processing “Pretty Good’s” application, “Really Great” applicant applies for the same property. Now you are going to rent the property to “Really Great”, so you give “Pretty Good” his holding deposit back. That begs the question of why you have it in the first place. It serves no purpose. You are going to take the most qualified applicant, so why take the deposit from anyone?

Sometimes, an applicant and the landlord agree that the applicant will rent the unit, but the applicant cannot move in immediately. The landlord may ask the applicant for a holding deposit. Once again, why a holding deposit? If both parties agree that the applicant qualifies to move in and that he intends to do so, go ahead and execute the rental agreement, rather than a holding deposit agreement. Once the lease is executed, if the applicant changes his mind and does not move in, he is still subject to the terms of the rental agreement.

If you are still not convinced, and I know some of you won’t be, here is my advice for using holding deposits. *[Editor’s Note: use AOA form 100B.]*

Ask yourself the following questions before taking a holding deposit, and be sure you have conveyed the answers to the applicant so there is a complete understanding of the terms:

- Will the deposit be applied to the first month's rent or to the security deposit? Applying the deposit to the first month's rent or to the security deposit is a common practice.
- What part, if any, of the holding deposit will you refund to the Applicant if he/she changes his/her mind about renting? How will the calculation be made? On what basis?

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