CALIFORNIA TENANTS

a guide to residential tenants' and landlords' rights and responsibilities

Arnold Schwarzenegger, Governor
State of California

Fred Aguiar, Secretary
State and Consumer Services Agency

Charlene Zettel, Director
Department of Consumer Affairs

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Notice

The opinions expressed in this booklet are those of the authors and should not be construed as representing the opinions or policy of any official or agency of the State of California. While this publication is designed to provide accurate and current information about the law, readers should consult an attorney or other expert for advice in particular cases, and should also read the relevant statutes and court decisions when relying on cited material.

Ordering Information

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For information on ordering copies of this booklet, see page 75.

Dear Reader:

There is no more significant consumer purchase than housing. For most of us, it's the biggest part of our budget. It's where we spend much of our time, and we want it to be hassle-free!

For landlords and tenants, handing over that new door key marks the beginning of an important relationship. To help you manage your rental-housing responsibilities, we're pleased to share with you the Department of Consumer Affairs' practical "California Tenants" guide.

The "California Tenants" guide is intended as a practical resource for both tenants and landlords. We've provided information about rental applications, discrimination, security deposits, repair responsibilities, rent increases, termination of leases, and eviction notices. And please be sure to use the inventory checklist before moving in, and again when moving out.

If you need additional assistance, we've also provided a comprehensive list of resources in communities throughout the Golden State.

We hope you find "California Tenants" helpful. You can get more information by visiting the Department's Web site at www.dca.ca.gov or by calling 1-800-952-5210.

California Department of Consumer Affairs

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California Tenants

A Guide to Residential Tenants' and Landlords' Rights and Responsibilities

INTRODUCTION

What should a tenant do if his or her apartment needs repairs? Can a **landlord** force a **tenant** to move? How many days' notice does a tenant have to give a landlord before the tenant moves? Can a landlord raise a tenant's rent? *California Tenants — A Guide to Residential Tenants' and Landlords' Rights and Responsibilities* answers these questions and others.

Whether the tenant is renting a room, an apartment, a house, or a duplex, the landlord-tenant relationship is governed by federal, state, and local laws. This booklet focuses on California laws that govern the landlord-tenant relationship, and suggests things that both the landlord and tenant can do to make the relationship a good one. Although the booklet is written from the tenant's point of view, landlords can also benefit from its information.

Tenants and landlords should discuss their expectations and responsibilities before they enter into a rental agreement. If a problem occurs, the tenant and landlord should try to resolve the problem by open communication and discussion. Honest discussion of the problem may show each party that he or she is not completely in the right, and that a fair compromise is in order.

If the problem is one for which the landlord is responsible (see pages 24-27), the landlord may be willing to correct the problem or to work out a solution without further action by the tenant. If the problem is one for which the tenant is responsible (see pages 25-27), the tenant may agree to correct the problem once the tenant understands the landlord's concerns. If the parties cannot reach a solution on their own, they may be able to resolve the problem through **mediation** or **arbitration** (see page 53). In some situations, a court action may provide the only solution (see pages 31-32, 40, 47-51).

The Department of Consumer Affairs hopes that tenants and landlords will use this booklet's information to avoid problems in the first place, and to resolve those problems that do occur.

HOW TO USE THIS BOOKLET

You can probably find the information you need by using this booklet's Table of Contents, Index, and Glossary of Terms.

Table of Contents

The Table of Contents (pages iii-iv) shows that the booklet is divided into nine main sections. Each main section is divided into smaller sections. For example, if you want information about the rental agreement, look under "Rental Agreements and Leases" in the "BEFORE YOU AGREE TO RENT" section.

Index

Most of the topics are mentioned in the Table of Contents. If you don't find a topic there, look in the Index (page 67). It's more specific than the Table of Contents. For example, under "Cleaning" in the Index, you'll find the topics "deposits or fees," "tenant's responsibility," etc.

Glossary

If you just want to know the meaning of a term, such as **"eviction"** or **"holding deposit,"** look in the Glossary (page 53). The glossary gives the meaning of more than 60 terms. Each of these terms also is printed in **boldface type** the first time that it appears in each section of the booklet.

The Department of Consumer Affairs hopes that you will find the information you're looking for in this booklet. If you can't find what you're looking for, call or write one of the resources listed in "Getting Help From a Third Party" (see pages 52-53) or "Tenant Information and Assistance Resources" (see page 58).

WHO IS A "LANDLORD" AND WHO IS A "TENANT?"

General Information About Landlords and Tenants

A **landlord** is a person or a company that owns a rental unit. The landlord rents or leases the rental unit to another person, called a **tenant**, for the tenant to live in. The tenant obtains the right to the exclusive use and possession of the rental unit during the lease or rental period.

Sometimes, the landlord is called the "owner," and the tenant is called a "resident."

A **rental unit** is an apartment, house, duplex, condominium, or room that a landlord rents to a tenant to live in. In this booklet, the term rental unit means any one of these. Because the tenant uses the rental unit to live in, it is called a "residential rental unit."

Often, a landlord will have a rental agent or a property manager who manages the rental property. The agent or manager is employed by the landlord and represents the landlord. In most instances, the tenant can deal with the rental agent or property manager as if this person were the landlord. For example, a tenant can work directly with the agent or manager to resolve problems. When a tenant needs to give the landlord one of the tenant notices described in this booklet (for example, see pages 31, 33), the tenant can give the notice to the landlord's rental agent or property manager.

The name, address and telephone number of the manager and an owner of the building (or other person who is authorized to receive legal notices for the owner) must be written in the rental agreement or lease, or posted conspicuously in the rental unit or building.[1]

Special Situations

The tenant rights and responsibilities discussed in this booklet apply only to people whom the law defines as tenants. Generally, under California law, **lodgers** and residents of hotels and motels have the same rights as tenants.[2] Situations in which lodgers and residents of hotels and motels do and do not have the rights of tenants, and other special situations, are discussed in the "Special Situations" sidebar on pages 3 and 5.[3]

LOOKING FOR A RENTAL UNIT

Looking for and Inspecting Rental Units

Looking for a rental unit

When you are looking for a rental unit, the most important things to think about are:

- The dollar limit that you can afford for monthly rent and utilities.
- The dollar limit that you can afford for all deposits that may be required (for example, holding and security deposits).
- The location that you want.

In addition, you also should carefully consider the following:

- The kind of rental unit that you want (for example, an apartment complex, a duplex, or a single-family house), and the features that you want (such as the number of bedrooms and bathrooms).
- Whether you want a month-to-month rental agreement or a lease (see pages 11-12).
- Access to schools, stores, public transportation, medical facilities, child-care facilities, and other necessities and conveniences.
- The character and quality of the neighborhood (for example, its safety and appearance).
- The condition of the rental unit (see "Inspecting before you rent," page 4).
- Other special requirements that you or your family members may have (for example, wheelchair access).

You can obtain information on places to rent from many sources. Local newspapers carry classified advertisements on available rental units. In many areas, there are free weekly or monthly publications devoted to rental listings. Local real estate offices and property management companies often have rental listings. Bulletin boards in public buildings, local colleges, and churches often have notices about places for rent. You can also look for

(Continued on page 4)

[1] *Civil Code Sections 1961, 1962, 1962.5. See Moskovitz et al., California Landlord-Tenant Practice, Section 1.21A (Cal. Cont. Ed. Bar, 2002).*

[2] *Civil Code Section 1940(a).*

[3] *See additional discussion in Moskovitz et al., California Landlord-Tenant Practice, Section 1.3 (Cal. Cont. Ed. Bar, 2002).*

Special Situations

Hotels and motels

If you are a resident in a hotel or motel, you do *not* have the rights of a tenant in any of the following situations:

1. You live in a hotel, motel, residence club, or other lodging facility for 30 days *or less*, and your occupancy is subject to the state's hotel occupancy tax.
2. You live in a hotel, motel, residence club, or other lodging facility for *more than 30 days,* but have not paid for all room and related charges owing by the thirtieth day.
3. You live in a hotel or motel to which the manager has a right of access and control, and all of the following is true:
   - The hotel or motel allows occupancy for periods of fewer than seven days.
   - *All* of the following services are provided for *all* residents:
     - a fireproof safe for residents' use;
     - a central telephone service;
     - maid, mail, and room service; and
     - food service provided by a food establishment that is on or next to the hotel or motel grounds and that is operated in conjunction with the hotel or motel.

If you live in a unit described by either 1, 2 or 3 above, you are *not* a tenant; you are a **guest**. Therefore, you don't have the same rights as a tenant.[4] For example, the proprietor of a hotel can "lock out" a guest who doesn't pay his or her room charges on time, while a landlord would have to begin formal eviction proceedings to evict a nonpaying tenant.

Residential hotels

You have the legal rights of a tenant if you are a guest in a residential hotel which is in fact your primary residence.[5] "Residential hotel" means any building which contains six or more guest rooms or efficiency units which are designed, used, rented or occupied for sleeping purposes by guests, and which is the primary residence of these guests.[6]

It is unlawful for the proprietor of a residential hotel to require a guest to move or to check out and reregister before the guest has lived there for 30 days, if the proprietor's purpose is to prevent the guest from gaining the legal rights of a tenant.[7] A person who violates this law may be punished by a $500 civil penalty and may be required to pay the guest's attorney fees.

Single lodger in a private residence

A **lodger** is a person who lives in a room in a house where the owner lives. The owner can enter all areas occupied by the lodger and has overall control of the house.[8] Most lodgers have the same rights as tenants.[9]

However, in the case of a *single* lodger in a house where there are *no other lodgers*, the owner can evict the lodger without using formal eviction proceedings. The owner can give the lodger written notice that the lodger cannot continue to use the room. The amount of notice must be the same as the number of days between rent payments (for example, 30 days). (See "Tenant's notice to end a periodic tenancy," page 33.) When the owner has given the lodger proper notice and the time has expired, the lodger has no further right to remain in the owner's house and may be removed as a trespasser.[10]

(Continued on page 5)

[4] *Civil Code Section 1940.*

[5] *Health and Safety Code Section 50519(b)(1); see California Practice Guide, Landlord-Tenant, Paragraphs 2:39, 2:40.1, 7:6.2 (Rutter Group 2002).*

[6] *Health and Safety Code Sections 50519(b)(1), 17958.1.*

[7] *Civil Code Section 1940.1.*

[8] *Civil Code Section 1946.5.*

[9] *Civil Code Section 1940(a).*

[10] *Civil Code Section 1946.5, Penal Code Section 602.3.*

(Continued from page 2)

"For Rent" signs in the neighborhoods where you would like to live.

Inspecting before you rent

Before you decide to rent, carefully inspect the rental unit with the landlord or the landlord's agent. Make sure that the unit has been maintained well. Use the inventory checklist (page 71) as an inspection guide. When you inspect the rental unit, look for the following problems:

- Cracks or holes in the floor, walls, or ceiling.
- Signs of leaking water or water damage in the floor, walls, or ceiling.
- Signs of rust in water from the taps.
- Leaks in bathroom or kitchen fixtures.
- Lack of hot water.
- Inadequate lighting or insufficient electrical outlets.
- Inadequate heating or air conditioning.
- Inadequate ventilation or offensive odors.
- Defects in electrical wiring and fixtures.
- Damaged flooring.
- Damaged furnishings (if it's a furnished unit).
- Signs of insects, vermin, or rodents.
- Accumulated dirt and debris.
- Inadequate trash and garbage receptacles.
- Chipping paint in older buildings. (Paint chips sometimes contain lead, which can cause lead poisoning if children eat them. If the building was built before 1978, you should read the booklet, "Protect Your Family From Lead in Your Home," which is available by calling 1-800-424-LEAD.)
- Signs of asbestos-containing materials in older buildings, such as flaking ceiling tiles, or crumbling pipe wrap or insulation. (Asbestos particles can cause serious health problems if they are inhaled.)

Also, look at the exterior of the building and any common areas, such as hallways and courtyards. Does the building appear to be well-maintained? Are the common areas clean and well-kept?

The quality of rental units can vary greatly. You should understand the unit's good points and shortcomings, and consider them all when deciding whether to rent, and whether the rent is reasonable.

Ask the landlord who will be responsible for paying for utilities (gas, electric, water, and trash collection). You will probably be responsible for some, and possibly all, of them. Try to find out how much the previous tenant paid for utilities. This will help you be certain that you can afford the total amount of the rent and utilities each month. With increasing energy costs, it's important to consider whether the rental unit and its appliances are energy efficient.

If the rental unit is a house or duplex with a yard, ask the landlord who will be responsible for taking care of the yard. If you will be, ask whether the landlord will supply necessary equipment, such as a lawn mower and a hose.

During this initial walk-through of the rental unit, you will have the chance to see how your potential landlord reacts to your concerns about it. At the same time, the landlord will learn how you handle potential problems. You may not be able to reach agreement on every point, or on any. Nonetheless, how you get along will help both of you decide whether you will become a tenant.

If you find problems like the ones listed above, discuss them with the landlord. If the problems are ones that the law requires the landlord to repair (see pages 24-27), find out when the landlord intends to make the repairs. If you agree to rent the unit, it's a good idea to get these promises in writing, including the date by which the repairs will be completed.

If the landlord isn't required by law to make the repairs, you should still write down a description of any problems if you are going to rent the property. It's a good idea to ask the landlord to sign and date the written description. Also, take photographs or a video of the problems. Your signed, written description and photographs or video will document that the problems were there when you moved in, and can help avoid disagreement later about your responsibility for the problems.

Finally, it's a good idea to walk or drive around the neighborhood during the day and again in the evening. Ask neighbors how they like living in the area. If the rental unit is in an apartment complex, ask some of the tenants how they get along with the landlord and the other tenants. If you are concerned about safety, ask neighbors and tenants if there have been any problems, and whether they think that the area is safe.

Special Situations, Continued from page 3

Transitional housing

Some tenants are residents of "transitional housing." Transitional housing provides housing to formerly homeless persons for periods of 30 days to 24 months. Special rules cover the behavior of residents in, and eviction of residents from, transitional housing.[11]

Mobilehome parks and recreational vehicle parks

Special rules in the Mobilehome Residency Law[12] or the Recreational Vehicle Park Occupancy Law,[13] and not the rules discussed in this booklet, cover most landlord-tenant relationships in mobilehome parks and recreational vehicle parks.

However, normal eviction procedures (see pages 47-51) must be used to evict certain mobilehome residents. Specifically, a person who leases a mobilehome from its owner (who has leased the site for the mobilehome directly from the management of the mobilehome park) is subject to the eviction procedures described in this booklet, and not the eviction provisions in the Mobilehome Residency Law. The same is true for a person who leases both a mobilehome and the site for the mobilehome from the mobilehome park management.[14]

Prepaid Rental Listing Services

Businesses known as prepaid rental listing services sell lists of rental units that are available. These businesses are regulated by the California Department of Real Estate and must be licensed.[15]

If you use a prepaid rental listing service, it must enter into a contract with you before it accepts any money from you.[16] The contract must describe the services that the prepaid rental listing service will provide you. The contract also must include a description of the kind of rental unit that you want to find. For example, the contract must state the number of bedrooms that you want and the highest rent that you will pay.

Before you enter into a contract with a prepaid rental listing service or pay for information about available rental units, ask if the service is licensed and whether the list of rentals is current. The contract cannot be for more than 90 days. The law requires prepaid rental listing services to give you a minimum of three current rentals within five days after you sign the contract.

You can receive a refund of the fee that you paid for the list of current rentals if the list does not contain three current rental units of the kind that you described in the contract.[17] In order to obtain a refund, you must demand a full refund from the prepaid rental listing service within 15 days of signing the contract. Your demand for a refund must be in writing and must be personally delivered or sent by certified or registered mail. (However, you can't get a refund if you found a rental using the services of the prepaid rental listing service.)

If you don't find a rental unit from the list you bought, or if you rent from another source, the prepaid rental listing service can keep only $50 of the fee that you paid. The service must refund the balance, but you must request the refund within 10 days after the end of the contract. You must provide documentation that you did not move, or that you did not find your new rental using the services of the prepaid rental listing service. If you don't have documentation, you can fill out and swear to a form that the prepaid rental listing service will give you for this purpose. You can deliver your request for a refund personally or by mail (preferably, by certified or registered mail with return receipt requested). Look in the contract for the address. The service must make the refund within 10 days after it receives your request.

[11] *Health and Safety Code Sections 50580-50591.*

[12] *Civil Code Sections 798-799.9.*

[13] *Civil Code Sections 799.20-799.79.*

[14] *California Practice Guide, Landlord-Tenant, Paragraphs 11:27-11:28 (Rutter Group 2002).*

[15] *Business and Professions Code Section 10167.*

[16] *Business and Professions Code Section 10167.9(a).*

[17] *Business and Professions Code Section 10167.10.*

The Rental Application

Before renting to you, most landlords will ask you to fill out a written **rental application form.** A rental application is different from a **rental agreement** (see pages 11-12). The rental application is like a job or credit application. The landlord will use it to decide whether to rent to you.

A rental application usually asks for the following information:

- The names, addresses, and telephone numbers of your current and past employers.
- The names, addresses, and telephone numbers of your current and past landlords.
- The names, addresses, and telephone numbers of people whom you want to use as references.
- Your social security number.
- Your driver's license number.
- Your bank account numbers.
- Your credit account numbers for credit reference.

The application also may contain an authorization for the landlord to obtain a copy of your **credit report**, which will show the landlord how you have handled your financial obligations in the past.

The landlord may ask you what kind of job you have, your monthly income, and other information that shows your ability to pay the rent. It is illegal for the landlord to ask you questions about your race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, disability or whether you have persons under the age of 18 living in your household. Also, the landlord should not ask you questions about your age or medical condition.[18] (See "Unlawful Discrimination, pages 8-10.)

The landlord may ask you about the number of people who will be living in the rental unit. In order to prevent overcrowding of rental units, California has adopted the Uniform Housing Code's occupancy requirements,[19] and the basic legal standard is set out in footnote 19. However, the practical rule is this: a landlord can establish reasonable standards for the number of people per square feet in a rental unit, but the landlord cannot use overcrowding as a pretext for refusing to rent to tenants with children if the landlord would rent to the same number of adults.[20]

Credit Checks

The landlord or the landlord's agent will probably use your rental application to check your credit history and past landlord-tenant relations. The landlord may obtain your credit report from a **credit reporting agency** to help him or her decide whether to rent to you. Credit reporting agencies (or "credit bureaus") keep records of people's credit histories, called "credit reports." Credit reports state whether a person has been reported as being late in paying bills, has been the subject of an **unlawful detainer lawsuit** (see page 47), or has filed bankruptcy.[21]

Other businesses, called **tenant screening services**, collect and sell information on tenants, such as whether they pay their rent on time and whether they have been the subject of an unlawful detainer lawsuit.

The landlord may use this information to make a final decision on whether to rent to you. Generally, landlords prefer to rent to people who have a history of paying their rent and other bills on time.

A landlord usually doesn't have to give you a reason for refusing to rent to you. However, if the decision is based partly or entirely on negative information from a credit reporting agency or a

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[18] *Government Code Sections 12900-12996; Civil Code Sections 51-53; 42 United States Code Section 3601 and following. However, after you and the landlord have agreed that you will rent the unit, the landlord may ask for proof of your disability if you ask for a "reasonable accommodation" for your disability, such as installing special faucets or door handles. (Brown and Warner, The California Landlords' Law Book, Vol. I: Rights & Responsibilities, page 9/18 [NOLO Press 2001]).*

[19] *Health and Safety Code Section 17922; see Uniform Housing Code Section 503(b) (every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two). Different rules apply in the case of "efficiency units." (See Uniform Housing Code Section 503(b), Health and Safety Code Section 17958.1.)*

[20] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 9/22 (NOLO Press 2001).*

[21] *See Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 1/14 (NOLO Press 2001); California Practice Guide, Landlord-Tenant, Paragraphs 9:419.5, 9:419.11 (Rutter Group, 2002).*

> ***If the landlord refuses to rent to you based on your credit report, it's a good idea to get a free copy of your credit report and to correct any erroneous items of information in it.***

tenant screening service, the law requires the landlord to give you a written notice stating all of the following:

- The decision was based partly or entirely on information in the credit report; and
- The name, address, and telephone number of the credit reporting agency; and
- A statement that you have the right to obtain a free copy of the credit report from the credit reporting agency that prepared it.[22]

If the landlord refuses to rent to you based on your credit report, it's a good idea to get a free copy of your credit report and to correct any erroneous **items of information** in it.[23] Erroneous items of information in your credit report may cause other landlords to refuse to rent to you also.

Also, if you know what your credit report says, you may be able to explain any problems when you fill out the rental application. For example, if you know that your credit report says that you never paid a bill, you can provide a copy of the canceled check to show the landlord that you did pay it.

Application Screening Fee

When you submit a rental application, the landlord may charge you an application screening fee. The landlord may charge up to $33, and may use the fee to cover the cost of obtaining information about you, such as checking your personal references and obtaining a credit report on you.[24]

The application fee cannot legally be more than the landlord's actual out-of-pocket costs, and can never be more than $33. The landlord must give you a receipt that itemizes his or her out-of-pocket expenses in obtaining and processing the information about you. The landlord must return any unused portion of the fee (for example, if the landlord does not check your references).

The landlord can't charge you an application screening fee when the landlord knows or should know that there is no vacancy or that there will be no vacancy within a reasonable time. However, the landlord *can* charge an application screening fee under these circumstances if you agree to it in writing.[25]

If the landlord obtains your credit report, the landlord must give you a copy of the report if you request it.[26] As explained in the section on "Credit Checks," it's a good idea to get a copy of your credit report from the landlord so that you know what's being reported about you.

Before you pay the application screening fee, ask the landlord the following questions about it:

- How long will it take the landlord to get a copy of your credit report? How long will it take the landlord to review the credit report and decide whether to rent to you?
- Is the fee refundable if the credit check takes too long and you're forced to rent another place?
- If you already have a current copy of your credit report, will the landlord accept it and either reduce the fee or not charge it at all?

If you don't like the landlord's policy on application screening fees, you may want to look for another rental unit. If you decide to pay the application screening fee, any agreement regarding a refund should be in writing.

Holding Deposit

Sometimes, the tenant and the landlord will agree that the tenant will rent the unit, but the

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[22] *Consumer Credit Reporting Agencies Act, Civil Code Sections 1785.1-1785.36 and Section 1785.20(a); Investigative Consumer Reporting Agencies Act, Civil Code Sections 1786-1786.60. In order to receive a free copy of your credit report, you must request it within 60 days after receiving the notice of denial. See discussion in California Practice Guide, Landlord-Tenant, Paragraphs 2:104.50-2:104.55 (Rutter Group 2002).*

[23] *Civil Code Section 1785.16.*

[24] *Civil Code Section 1950.6 The maximum fee is adjusted each year based on changes in the Consumer Price Index since January 1, 1998. In 2002, the maximum allowable fee was $33. ("New Laws Affect Renting in 2003," Sacramento Bee, December 15, 2002.)*

[25] *Civil Code Section 1950.6(c).*

[26] *Civil Code Section 1950.6(f).*

tenant cannot move in immediately. In this situation, the landlord may ask the tenant for a **holding deposit**. A holding deposit is a deposit to hold the rental unit for a stated period of time until the tenant 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 tenant changes his or her mind about moving in, the landlord may keep at least some of the holding deposit.

Ask the following questions before you pay a holding deposit:

- Will the deposit be applied to the first month's rent? If so, ask the landlord for a deposit receipt stating this. Applying the deposit to the first month's rent is a common practice.
- Is any part of the holding deposit refundable if you change your mind about renting? As a general rule, if you change your mind, the landlord can keep some — and perhaps all — of your holding deposit. The amount that the landlord can keep depends on the costs that the landlord has incurred because you changed your mind — for example, additional advertising costs and lost rent.

You may also lose your deposit even if the reason you can't rent is not your fault — for example, if you lose your job and become unable to afford the rental unit.

If you and the landlord agree that all or part of the deposit will be refunded to you in the event that you change your mind or can't move in, make sure that the written receipt clearly states your agreement.

A holding deposit merely guarantees that the landlord will not rent the unit to another person for a stated period of time. The holding deposit doesn't give the tenant the right to move into the rental unit. The tenant must first pay the first month's rent and all other required deposits within the holding period. Otherwise, the landlord can rent the unit to another person and keep all or part of the holding deposit.

Suppose that the landlord rents to somebody else during the period for which you've paid a holding deposit, and you are still willing and able to move in. The landlord should, at a minimum, return the entire holding deposit to you. You may also want to talk with an attorney, legal aid organization, tenant-landlord program, or housing clinic about whether the landlord may be responsible for other costs that you may incur because of the loss of the rental unit.

If you give the landlord a holding deposit when you submit the rental application, but the landlord does not accept you as a tenant, the landlord must return your entire holding deposit to you.

Unlawful Discrimination

What is unlawful discrimination?

It is unlawful for a landlord to refuse to rent to a tenant or to engage in any other type of **discrimination** on the basis of group characteristics specified by law (such as race or religion) that are not closely related to the business needs of the landlord.[27] Indeed, the California Legislature has declared that the opportunity to seek, obtain and hold housing without unlawful discrimination is a civil right.[28]

Under California law, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against a person or harass a person because of the person's race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability.[29] California law also prohibits discrimination based on any of the following:

- A person's medical condition or mental or physical disability; or
- Personal characteristics, such as a person's physical appearance or sexual orientation that are not related to the responsibilities of a tenant;[30] or
- A perception of a person's race, color, religion, sex, sexual orientation, marital

[27] *For example, the landlord may properly require that a prospective tenant have an acceptable credit history and be able to pay the rent and security deposit, and have verifiable credit references and a good history of paying rent on time. (See Moskovitz and Warner, California Tenants' Rights, page 5/4 [NOLO Press 2001].)*

[28] *Government Code Section 12921(b).*

[29] *Government Code Sections 12927(e), 12955(a),(d). See Fair Employment and Housing Act, Government Code Section 12900 and following; federal Fair Housing Act, 42 United States Code Section 3601 and following.*

[30] *Civil Code Sections 51, 51.2, 53; Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142 [278 Cal.Rptr. 614].*

Examples of Unlawful Discrimination

Unlawful housing discrimination can take a variety of forms. Under California's Fair Employment and Housing Act and Unruh Civil Rights Act, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against any person because of the person's race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, medical condition or age in any of the following ways:

- Refusing to sell, rent, or lease.
- Refusing to negotiate for a sale, rental, or lease.
- Representing that housing is not available for inspection, sale, or rental when it is, in fact, available.
- Otherwise denying or withholding housing accommodations.
- Providing inferior housing terms, conditions, privileges, facilities, or services.
- Harassing a person in connection with housing accommodations.
- Canceling or terminating a sale or rental agreement.
- Providing segregated or separated housing accommodations.
- Refusing to permit a disabled person, at the disabled person's own expense, to make reasonable modifications to a rental unit that are necessary to allow the disabled person "full enjoyment of the premises." As a condition of making the modifications, the landlord may require the disabled person to enter into an agreement to restore the interior of the rental unit to its previous condition at the end of the tenancy (excluding reasonable wear and tear).
- Refusing to make reasonable accommodations in rules, policies, practices, or services when necessary to allow a disabled person "equal opportunity to use and enjoy a dwelling."[31]

status, national origin, ancestry, familial status, source of income, or disability, or a perception that a person is associated with another person who may have any of these characteristics.[32]

Under California law, a landlord cannot use a financial or income standard for persons who want to live together and aggregate (combine) their incomes that is different from the landlord's standard for married persons who aggregate their incomes. In the case of a government rent subsidy, a landlord who is assessing a potential tenant's eligibility for a rental unit must use a financial or income standard that is based on the portion of rent that the tenant would pay.[33]

It is illegal for landlords to discriminate against families with children under 18. However, housing for senior citizens may exclude families with children. "Housing for senior citizens" includes housing that is occupied only by persons who are at least age 62, or housing that is operated for occupancy by persons who are at least age 55 and that meets other occupancy, policy and reporting requirements stated in the law.[34]

Limited exceptions for single rooms and roommates

If the owner of an owner-occupied, single-family home rents out a room in the home to a roomer or a boarder, and there are no other room-

[31] *Government Code Sections 12927(c)(1),(e), 12948, 12955(d), Civil Code Sections 51, 51.2.*

[32] *Government Code Section 12955(m).*

[33] *Government Code Sections 12955(n),(o).*

[34] *42 United States Code Section 3607(b), Civil Code Section 51.3(b)(1). "Housing for senior citizens" also includes: Housing that is provided under any state or federal program that the Secretary of Housing and Urban Development has determined is specifically designed and operated to assist elderly persons (42 United States Code Section 3607(b)); or a housing development that is developed, substantially rehabilitated or substantially renovated for senior citizens and that has the minimum number of dwelling units required by law for the type of area where the housing is located (for example, 150 dwelling units built after January, 1996 in large metropolitan areas) (Civil Code Sections 51.2, 51.3. See Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 72 [180 Cal.Rptr. 496]). While the law prohibits unlawful age discrimination, housing for homeless youth is both permitted and encouraged. (Government Code Section 11139.3.)*

ers or boarders living in the household, the owner is not subject to the restrictions listed under "Examples of unlawful discrimination" on page 9.

However, the owner cannot make oral or written statements, or use notices or advertisements which indicate any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability.[35] Further, the owner cannot discriminate on the basis of medical condition or age.[36]

A person in a single-family dwelling who advertises for a roommate may express a preference on the basis of gender, if living areas (such as the kitchen, living room, or bathroom) will be shared by the roommate.[37]

Resolving housing discrimination problems

If you are a victim of housing discrimination (for example, if a landlord refuses to rent to you because of your race or national origin), you may have several legal remedies, including:

- Compensation for the actual damages that you suffered.
- Admission to the housing you want, or similar housing.
- Reimbursement for the expenses that you incurred to find other housing.
- Damages that you suffered and are able to prove, in addition to actual expenses.
- Attorney's fees.

Sometimes, a court may order the landlord to take specific action to stop unlawful discrimination. For example, the landlord may be ordered to advertise vacancies in newspapers published by ethnic minority groups, or to place fair housing posters in the rental office.

A number of resources are available to help resolve housing discrimination problems:

- Local **fair housing organizations** (often known as fair housing councils). Look in the white (business) and yellow pages of the phone book.
- Local California apartment association chapters. Look in the white (business) and yellow pages of the phone book.
- Local government agencies. Look in the white pages of the phone book under *City* or *County Government Offices*, or call the offices of local elected officials (for example, your city council representative or your county supervisor).
- The **California Department of Fair Employment and Housing** investigates housing discrimination complaints (but *not* other kinds of landlord-tenant problems). The department's Housing Enforcement Unit can be reached at 1-800-233-3212 (TTY 1-800-700-2330). You can learn about the department's complaint process at www.dfeh.ca.gov.
- The **U.S. Department of Housing and Urban Development** (HUD) enforces the federal fair housing law, which prohibits discrimination based on sex, race, religion, national or ethnic origin, familial status, or mental handicap. To contact HUD, look in the white pages of the phone book under *United States Government Offices*.
- **Legal aid organizations** provide free legal advice, representation, and other legal services in noncriminal cases to economically disadvantaged persons. Legal aid organizations are located throughout the state. Look in the yellow pages of the phone book under *Attorneys*.
- Private attorneys. You may be able to hire a private attorney to take legal action against a landlord who has discriminated against you. For the names of attorneys who specialize in housing discrimination cases, call your county bar association or an attorney referral service.

You must act quickly if you believe that a landlord has unlawfully discriminated against you. The time limits for filing housing discrimination complaints are short (one year for complaints to the Department of Fair Employment and Housing).[38] First, write down what happened, including dates and the names of those involved. Then, contact one of the resources listed above for advice and help.

BEFORE YOU AGREE TO RENT

Before you decide on a rental unit, there are several other points to consider. For example: Is an oral rental agreement legally binding? What are the differences between a lease and a rental agreement?

[35] *Government Code Sections 12927(c)(2)(A), 12955(c).*

[36] *Civil Code Sections 51, 51.2, Government Code Section 12948.*

[37] *Government Code Section 12927(c)(2)(B).*

[38] *Government Code Section 12980(b).*

What are some of the advantages and disadvantages of each? This section answers these and other questions.

Rental Agreements and Leases

General information

Before you can rent a unit, you and the landlord must enter into one of two kinds of agreements: a **periodic rental agreement** or a **lease.** The periodic rental agreement or lease creates the tenant's right to live in the **rental unit.** The tenant's right to use and possess the landlord's rental unit is called a **tenancy**.

A periodic rental agreement states the length of time (the number of days) between the rent payments — for example a week (seven days) or a month (30 days). The length of time between rent payments is called the **rental period**.

A periodic rental agreement that requires one rent payment each month is a "month-to-month" rental agreement, and the tenancy is a "month-to-month" tenancy.[39] The month-to-month rental agreement is by far the most common kind of rental agreement, although longer (or shorter) rental periods can be specified.

If the periodic rental agreement requires that rent be paid once a week, it is a "week-to-week" rental agreement and the tenancy is a "week-to-week" tenancy.[40]

In effect, a periodic rental agreement expires at the end of each period for which the tenant has been paid rent, and is renewed by the next rent payment.[41] A periodic rental agreement does not state the total number of weeks or months that the agreement will be in effect. The tenant can continue to live in the rental unit as long as the tenant continues to pay rent, and as long as the landlord does not ask the tenant to leave.

In a periodic rental agreement, the length of time between the rent payments (the rental period) determines three things:

- How often the tenant must pay rent;
- The **amount of advance notice** the tenant must give the landlord if the tenant decides to leave; and
- The amount of advance notice the landlord must give the tenant if the landlord decides to change the terms of the rental agreement (other than the amount of rent).[42]

Oral rental agreements

In an oral rental agreement, you and the landlord agree orally (not in writing) that you will rent the rental unit. In addition, you agree to pay a specified rent for a specified period of time — for example, a week or a month. This kind of rental agreement is legally binding on both you and the landlord, even though it is not in writing. However, if you have a disagreement with your landlord, you will have no written proof of the terms of your rental agreement. Therefore, it's usually best to have a written rental agreement.

It's especially important to have a written rental agreement if your tenancy involves special circumstances, such as any of the following:

- You plan to live in the unit for a long time (for example, nine months or a year);
- Your landlord has agreed to your having a pet or water-filled furniture (such as a waterbed); or
- The landlord has agreed to pay any expenses (for example, utilities or garbage removal) or to provide any services (for example, a gardener).

Any time that a tenant and a landlord agree to the lease of a rental unit for more than one year, *the agreement must be in writing.*[43] If such an agreement is not in writing, it is not enforceable.

Written rental agreements

A written rental agreement is a periodic rental agreement that has been put in writing. The written rental agreement specifies all the terms of the agreement between you and the landlord — for example, it states the rent, the length of time between rent payments, and the landlord's and your obligations. It may also contain clauses on pets, late fees, and amount of notice.

The length of time between rent payments is important. In most cases, the amount of advance notice that the landlord gives you when notifying you of changes in the terms of the tenancy must be the same as the length of time between rent payments. For example, if you have a month-to-month rental agreement, the landlord usually must give you 30 days' advance written notice of changes such as an increase in the charge for parking or an increase in the security deposit.

[39] *Civil Code Section 1944.*
[40] *Civil Code Section 1944.*
[41] *Civil Code Section 1946.1(a).*
[42] *Civil Code Sections 827(a),(b).*
[43] *Civil Code Sections 1091, 1624(a)(3).*

In addition, the amount of advance written notice that *you* give the *landlord* before you move out of the rental unit must be the same as the length of time between rent payments. For example, in a month-to-month rental agreement, you must give the landlord at least 30 days' advance written notice in order to end the rental agreement (see page 33). If you have a week-to-week rental agreement, you must give the landlord at least seven days' advance written notice in order to end the rental agreement.

As just explained, the general rule is that the amount of advance written notice that the landlord gives the tenant to change the terms of the tenancy must be the same as the length of time between rent payments. However, the landlord and tenant can specifically agree in writing to a shorter amount of notice (a shorter notice period). For example, the landlord and tenant might agree to 10-days' advance written notice for a change in the terms of a month-to-month rental agreement, such as a change in the hours that the laundry room is open. The notice period agreed to by the landlord and the tenant can *never* be shorter than seven days.[44]

If you have a written periodic rental agreement, special rules apply to the amount of advance notice that the landlord must give you to raise the rent (see pages 21-22) and to end the tenancy (see pages 33-35).

Leases

A lease states the total number of months that the lease will be in effect — for example, 6 or 12 months. Most leases are in writing, although oral leases are legal. If the lease is for more than one year, it *must* be in writing.[45]

It is important to understand that, even though the lease requires the rent to be paid monthly, you are bound by the lease until it expires (for example, at the end of 12 months). This means that you must pay the rent and perform all of your obligations under the lease during the entire lease period.[46]

There are some advantages to having a lease. If you have a lease, the landlord cannot raise your rent while the lease is in effect, unless the lease expressly allows rent increases. Also, the landlord cannot evict you while the lease in in effect, except for reasons such as your damaging the property or failing to pay rent.

A lease gives the tenant the security of a long-term agreement at a known cost. Even if the lease allows rent increases, the lease should specify a limit on how much and how often the rent can be raised.

The disadvantage of a lease is that if you need to move, a lease may be difficult for you to break, especially if another tenant can't be found to take over your lease. If you move before the lease ends, the landlord may have a claim against you for the rent for the rest of the lease term.

Before signing a lease, you may want to talk with an attorney, legal aid organization, housing clinic, or tenant-landlord program to make sure that you understand all of the lease's provisions, your obligations, and any risks that you may face.

Shared Utility Meters

Some buildings have a single gas or electric meter that serves more than one rental unit. In other buildings, a tenant's gas or electric meter may also measure gas or electricity used in a common area, such as the laundry room or the lobby. In situations like these, the landlord must disclose to you that utility meters are shared *before* you sign the rental agreement or lease.[47] If you become a tenant, the landlord must reach an agreement with you about who will pay for the shared utilities (see page 15).

Spanish-Language Translation of Proposed Rental Agreement

A landlord who negotiates primarily in Spanish for the rental, lease, or sublease of a rental unit must give the tenant a written, Spanish-language translation of the proposed lease or rental agreement *before* the tenant signs it.[48] This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for one month or less.

The landlord must give the tenant the Spanish-language translation whether or not the tenant requests the translation. It is never sufficient for the landlord to give the Spanish-language translation to

[44] *Civil Code Section 827(a).*

[45] *Civil Code Sections 1091, 1624(a)(3).*

[46] *However, the tenant's obligation to pay rent depends on the landlord's living up to his or her obligations under the* ***implied warranty of habitability.*** *See discussion of "Repairs and Habitability" (pages 24-27) and "Having Repairs Made" (pages 27-32).*

[47] *Civil Code Section 1940.9.*

[48] *Civil Code Section 1632. The purpose of this law is to ensure that the Spanish-speaking person has a genuine opportunity to read the Spanish-language translation of the proposed agreement that has been negotiated primarily in Spanish, and to consult with others, before signing the agreement.*

> ***A landlord who negotiates primarily in Spanish for the rental, lease, or sublease of a rental unit must give the tenant a written, Spanish-language translation of the proposed lease or rental agreement* before *the tenant signs it.***

the tenant *after* the tenant has signed the rental agreement.

However, the landlord is not required to give the tenant a Spanish-language translation of the rental agreement if all of the following are true:

- The Spanish-speaking tenant negotiated the rental agreement through his or her own interpreter;
- The tenant's interpreter is able to speak fluently and read with full understanding *both* English and Spanish;
- The interpreter is not a minor (under 18 years of age); and
- The interpreter is not employed or made available by or through the landlord.

If a landlord who is required to provide a Spanish-language translation of a lease or rental agreement fails to do so, the tenant can rescind (cancel) the agreement.[49]

WHEN YOU HAVE DECIDED TO RENT

Before you sign a rental agreement or a lease, read it carefully so that you understand all of its terms. What kind of terms should be in the rental agreement or lease? Can the rental agreement or lease limit the basic rights that the law gives to all tenants? How much can the landlord require you to pay as a security deposit? This section answers these and other questions.

What the Rental Agreement or Lease Should Include

Most landlords use printed forms for their leases and rental agreements. However, printed forms may differ from each other. *There is no "standard rental agreement" or "standard lease"!* Therefore, carefully read and understand the entire document before you sign it.

The written rental agreement or lease should contain all of the promises that the landlord or the landlord's agent has made to you, and should not contain anything that contradicts what the landlord or the agent told you. If the lease or rental agreement refers to another document, such as "tenant rules and regulations," get a copy and read it before you sign the written agreement.

Don't feel rushed into signing. Make sure that you understand everything that you're agreeing to by signing the rental agreement or lease. If you don't understand something, ask the landlord to explain it to you. If you still don't understand, discuss the agreement with a friend, or with an attorney, legal aid organization, tenant-landlord program, or housing clinic.

Key terms

The written rental agreement or lease should contain key terms, such as the following:

- The names of the landlord and the tenant.
- The address of the rental unit.
- The amount of the rent.
- When the rent is due, to whom it is to be paid, and where it is to be paid.
- The amount and purpose of the security deposit (see pages 16-18).
- The amount of any late charge or returned check fee (see page 20).
- Whether pets are allowed.
- The number of people allowed to live in the rental unit.
- Whether attorney's fees can be collected from the losing party in the event of a lawsuit between you and the landlord.
- Who is responsible for paying utilities (gas, electric, water, and trash collection).
- If the rental is a house or a duplex with a yard, who is responsible for taking care of the yard.

[49] *Civil Code Section 1632(g). See Civil Code Section 1688 and following on rescission of contracts.*

- Any promises by the landlord to make repairs, including the date by which the repairs will be completed.
- Other items, such as whether you can sublet the rental unit (see pages 23-24) and the conditions under which the landlord can inspect the rental unit (see pages 22-23).

In addition, the rental agreement or lease *must* disclose:

- The name, address and telephone number of the authorized manager of the rental property and an owner (or an agent of the owner) who is authorized to receive legal notices for the owner. (This information can be posted conspicuously in the building instead of being disclosed in the rental agreement or lease.)
- The name, address and telephone number of the person or entity to whom rent payments must be made. If you may make your rent payment in person, the agreement or lease must state the usual days and hours that rent may be paid in person. Or, the document may state the name, street address and account number of the financial institution where rent payments may be made (if it is within five miles of the unit) or information necessary to establish an electronic funds transfer for paying the rent.
- The form in which rent payments must be made (for example, by check or money order).[50]

A rental agreement or lease may contain other terms. Examples include whether you must park your car in a certain place, and whether you must obtain permission from the landlord before having a party.

Every lease or rental agreement must contain a written notice to the tenant that there is a statewide database that contains the locations of registered sex offenders, and that the California Department of Justice maintains a Sex Offender Identification Hotline. This notice must be in legally-required language.[51]

It is important that you understand all of the terms of your rental agreement or lease. If you don't comply with them, the landlord may have grounds to evict you.

Don't sign a rental agreement or a lease if you think that its terms are unfair. If a term doesn't fit your needs, try to negotiate a more suitable term (for example, a smaller security deposit or a lower late fee). It's important that any agreed-upon change in terms be included in the rental agreement or lease that both you and the landlord sign. If you and the landlord agree to change a term, the change can be made in handwriting in the rental agreement or lease. Both of you should then initial or sign in the area immediately next to the change to show your approval of the change. Or, the document can be retyped with the new term included in it.

If you don't agree with a term in the rental agreement or lease, and can't negotiate a better term, carefully consider the importance of the term, and decide whether or not you want to sign the document.

The owner of the rental unit or the person who signs the rental agreement or lease on the owner's behalf must give you a copy of the document within 15 days after you sign it.[52] Be sure that your copy shows the signature of the owner or the owner's agent, in addition to your signature. Keep the document in a safe place.

Tenant's basic legal rights

Tenants have basic legal rights that are always present, no matter what the rental agreement or lease states. These rights include all of the following:

- Limits on the amount of the security deposit that the landlord can require you to pay (see pages 16-18).
- Limits on the landlord's right to enter the rental unit (see pages 22-23).
- The right to a refund of the security deposit, or a written accounting of how it was used, after you move (see pages 35-42).
- The right to sue the landlord for violations of the law or your rental agreement or lease.

[50] *Civil Code Sections 1961-1962.7, as amended, effective January 1, 2002 (see Appendix 6). See Moskovitz et al., California Landlord-Tenant Practice, Section 1.21A (Cal. Cont. Ed. Bar 2002); California Practice Guide, Landlord-Tenant, Paragraphs 2:147-2:147.2 (Rutter Group 2002).*

[51] *Civil Code Section 2079.10a.*

[52] *Civil Code Section 1962(a)(4), effective January 1, 2002 (see Appendix 6).*

- The right to repair serious defects in the rental unit and to deduct certain repair costs from the rent, under appropriate circumstances (see pages 27-28).
- The right to withhold rent under appropriate circumstances (see pages 29-31).
- Rights under the warranty of habitability (see pages 24-27).
- Protection against retaliatory eviction (see pages 50-51).

These and other rights will be discussed throughout the rest of this booklet.

Landlord's and tenant's duty of good faith and fair dealing

Every rental agreement and lease requires that the landlord and tenant deal with each other fairly and in good faith. Essentially, this means that both the landlord and the tenant must treat each other honestly and reasonably. This duty of good faith and fair dealing is implied by law in every rental agreement and every lease, even though the duty probably is not expressly stated.

Shared utilities

If the utility meter for your rental unit is shared with another unit or another part of the building (see page 12), then the landlord must reach an agreement with you on who will pay for the shared utilities. This agreement must be in writing (it can be part of the rental agreement or lease), and can consist of one of the following options:

- The landlord can pay for the utilities provided through the meter for your rental unit by placing the utilities in the landlord's name;
- The landlord can have the utilities in the area outside your rental unit put on a separate meter in the landlord's name; or
- You can agree to pay for the utilities provided through the meter for your rental unit to areas outside your rental unit.[55]

Alterations to Accommodate a Disabled Tenant

A landlord must allow a disabled tenant to make *reasonable* modifications to the rental unit to the extent necessary to allow the tenant "full enjoyment of the premises."[53] The *tenant* must pay for the modifications. As a condition of making the modifications, the landlord may require the tenant to enter into an agreement to restore the interior of the rental unit to its previous condition at the end of the tenancy. The landlord cannot require an additional security deposit in this situation. However, the landlord and tenant may agree, as part of the tenant's agreement to restore the rental unit, that the tenant will pay a "reasonable estimate" of the restoration cost into an **escrow account**.[54]

Landlord's Disclosures

Lead-based paint

If the rental unit was constructed before 1978, the landlord must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling before the tenant signs the lease or rental agreement.

The landlord also must give the potential tenant a copy of the federal government's pamphlet, "Protect Your Family From Lead in Your Home" (available by calling 1-800-424-LEAD).[56]

Periodic pest control treatments

A pest control company must give written notice to the landlord and tenants of rental property regarding pesticides to be used when the company provides an initial treatment as part of an ongoing

[53] *Civil Code Section 54.1(b)(3)(A). See Examples of Unlawful Discrimination, page 9.*

[54] *Civil Code Section 54.1(b)(3)(A).*

[55] *Civil Code Section 1940.9. This section also provides remedies for violations.*

[56] *California Practice Guide, Landlord-Tenant, Paragraphs 2:104.20-2:104.23 (Rutter Group 2002); 42 United States Code Sections 4851b, 4852d (this disclosure requirement does not apply to dwellings with zero bedrooms, or to housing for elderly or disabled persons (unless a child younger than six is expected to live in the housing)); see Health and Safety Code Section 17920.10 (dwellings that contain lead hazards).*

pest-control service contract. The landlord must give a copy of this notice to every new tenant who will occupy a rental unit that will be serviced under the service contract.[57]

Asbestos

Residential property built before 1981 may contain asbestos. A leading reference for landlords recommends that landlords make asbestos disclosures to tenants whenever asbestos is discovered in the rental property. (This book also contains detailed information on asbestos disclosures, and protections that landlords must provide their employees.)[58]

Carcinogenic Material

A landlord with 10 or more employees must disclose the existence of known carcinogenic material (for example, asbestos) to prospective tenants.[59]

Illegal Controlled Substances

The owner of a dwelling who knows that an illegal controlled substance has been spilled or dumped on or beneath the dwelling must give a prospective tenant written notice of this fact before the tenant signs a rental agreement. LSD and methamphetamines are examples of illegal controlled substances. The owner must provide this notice if the owner knows of the condition, or if he or she has received notice of it from a law enforcement or health agency. The notice may be a copy of the agency's notice to the owner.[60]

Demolition Permit

The owner of a dwelling who has applied for a permit to demolish the dwelling must give written notice of this fact to a prospective tenant before accepting any fee from the tenant or entering into a rental agreement with the tenant. The notice must state the earliest approximate dates that the owner expects the demolition to occur and that the tenancy will end.[61]

Military Base or Explosives

A landlord who knows that a rental unit is within one mile of a closed military base in which ammunition or military explosives were used must give written notice of this fact to a prospective tenant. The landlord must give the tenant this notice before the tenant signs a rental agreement.[62]

Basic Rules Governing Security Deposits

At the beginning of the tenancy, the landlord most likely will require you to pay a **security deposit**. The landlord can use the security deposit, for example, if you move out owing rent, damage the rental unit beyond normal wear and tear, or leave the rental less clean than when you moved in.[63]

Under California law, a lease or rental agreement cannot say that a security deposit is "nonrefundable."[64] This means that at the end of the tenancy, the landlord *must* return to you any payment that is a security deposit, *unless* the landlord properly uses the deposit for a lawful purpose, as described on pages 18 and 35-42.

Almost all landlords charge tenants a security deposit. The security deposit may be called "last month's rent," "security deposit," "pet deposit," "key fee," or "cleaning fee." The security deposit may be a combination, for example, of the last month's rent plus a specific amount for security. No matter what these payments or fees are called, the law considers them all, as well as any other deposit or charge, to be part of the security deposit.[65] The one exception to this rule is stated in the next paragraph.

The law allows the landlord to require a tenant to pay an application screening fee, *in addition* to the security deposit (see page 7).[66] The application screening fee is *not* part of the security deposit. However, any other fee imposed by the landlord at the beginning of the tenancy to reimburse the landlord for costs of processing a

[57] *Business and Professions Code Section 8538, Civil Code Section 1940.8.*

[58] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 12/31-12/34 (NOLO Press 2001).*

[59] *Moskovitz et al., California Landlord-Tenant Practice, Section 1.29 (Cal. Cont. Ed. Bar, 2002). Health and Safety Code Sections 25249.5-25249.13.*

[60] *Civil Code Section 1940.7.5. Marijuana is not an illegal controlled substance for the purpose of this notice.*

[61] *Civil Code Section 1940.6, effective January 1, 2003 (see Appendix 6).*

[62] *Civil Code Section 1940.7.*

[63] *Civil Code Section 1950.5(b).*

[64] *Civil Code Section 1950.5(m); Moskovitz and Warner, California Tenants' Rights, page 10/3 (NOLO Press 2001).*

[65] *Civil Code Section 1950.5(b).*

[66] *Civil Code Sections 1950.5(b), 1950.6.*

> ***"The law limits the total amount that the landlord can require you to pay as a security deposit."***

new tenant *is* part of the security deposit.[67] Here are examples of the two kinds of fees:

- Application screening fee — A landlord might charge you an application screening fee to cover the cost of obtaining information about you, such as checking your personal references and obtaining your credit report (see pages 6-7). The application screening fee is *not* part of the security deposit. Therefore, it is not refundable as part of the security deposit.
- New tenant processing fee — A landlord might charge you a fee to reimburse the landlord for the costs of processing you as a new tenant. For example, at the beginning of the tenancy, the landlord might charge you for providing application forms, listing the unit for rent, interviewing and screening you, and similar purposes. These kinds of fees *are* part of the security deposit.[68] Therefore, these fees are refundable as part of the security deposit, *unless* the landlord properly uses the deposit for a lawful purpose, as described on pages 18 and 35-42.

The law limits the total amount that the landlord can require you to pay as a security deposit. The total amount allowed as security depends on whether the rental unit is unfurnished or furnished and whether you have waterbed.

- Unfurnished rental unit: The total amount that the landlord requires as security cannot be more than the amount of *two months' rent*. If you have a waterbed, the total amount allowed as security can be up to two-and-a-half times the monthly rent.
- Furnished rental unit: The total amount that the landlord requires as security cannot be more than the amount of *three months' rent*. If you have a waterbed, the total amount allowed as security can be up to three-and-a-half times the monthly rent.
- *Plus first month's rent*: The landlord can require you to pay the first month's rent *in addition* to the security deposit.[69]

Security Deposit Example: Suppose that you have agreed to rent an unfurnished apartment for $500 a month. Before you move in, the landlord can require you to pay up to two times the amount of the monthly rent as a security deposit ($500 x 2 = $1,000). The landlord also can require you to pay the first month's rent of $500, plus an application screening fee of up to $33, in addition to the $1,000 security deposit. This is because the first month's rent and the application screening fee are not part of the security deposit.

Suppose that the landlord has required you to pay a $1,000 security deposit (the maximum allowed by law for an unfinished unit when the rent is $500 a month). The landlord *cannot* also demand, for example, a $200 cleaning deposit, a $15 key deposit, or a $50 fee to process you as a new tenant. The landlord cannot require any of these extra fees because the total of all deposits then would be more than the $1,000 allowed by law when the rent is $500 a month.

Suppose that you ask the landlord to make structural, decorative or furnishing alterations to the rental unit, and that you agree to pay a specific amount for the alterations. This amount is not subject to the limits on the amount of the security deposit discussed on this page, and is not part of the security deposit. Suppose, however, that the alterations that you have requested involve cleaning or repairing damage for which the landlord may charge the *previous tenant's* security deposit. In that situation, the amount that you pay for the alterations *would* be subject to the

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[67] *Civil Code Section 1950.5(b), as amended, effective January 1, 2003 (see Appendices 6 and 7 (paragraphs [1], [2])).*

[68] *Civil Code Section 1950.5(b), as amended, effective January 1, 2003 (see Appendices 6 and 7 (paragraphs [2], [3])).*

[69] *Civil Code Section 1950.5(c). These limitations do not apply to long-term leases of at least six months, in which advance payment of six months' rent (or more) may be charged.*

Civil Code Section 1940.5 sets the limits on security deposits when the tenant has a waterbed or water-filled furniture. The section also allows the landlord to charge a reasonable fee to cover the landlord's administrative costs.

limits on the amount of the security deposit and *would* be part of the security deposit.[70]

A payment that is a security deposit cannot be "nonrefundable."[71] However, when you move out of the rental, the law allows the landlord to keep part or all of the security deposit in any one or more of the following situations:

- You owe rent;
- You leave the rental less clean than when you moved in;
- You have damaged the rental beyond normal wear and tear; and
- You fail to restore personal property (such as keys or furniture), other than because of normal wear and tear.

If none of these circumstances is present, the landlord must return the entire amount that you have paid as security. However, if you have left the rental very dirty or damaged beyond normal wear and tear, for example, the landlord can keep an amount that is reasonably necessary to clean or repair the rental.[72] Deductions from security deposits are discussed in detail on pages 35-42.

Because you normally are entitled to a refund of your security deposit when you move out, make sure that your rental agreement or lease clearly states that you have paid a security deposit to the landlord, and accurately states the amount that you have paid. The rental agreement or lease should also describe the circumstances under which the landlord can keep part or all of the security deposit. Most landlords will give you a written receipt for all amounts that you pay as a security deposit. Keep your rental agreement or lease in case of a dispute.[73]

The Inventory Checklist

You and the landlord or the landlord's agent should fill out the Inventory Checklist on pages 71-74 (or one like it). It's best to do this before you move in, but it can be done two or three days later, if necessary. You and the landlord or agent should walk through the rental unit together and note the condition of the items included in the checklist in the "Condition Upon Arrival" section. Both of you should sign and date the checklist, and both of you should keep a copy of it. Carefully completing the checklist at the beginning of the tenancy will help avoid disagreements about the condition of the unit when you move out. See additional suggestions about the Inventory Checklist on page 71.

Renter's Insurance

Renter's insurance protects a tenant against property losses, such as losses from fire or theft. It also protects a tenant against liability (legal responsibility) for many claims or lawsuits filed by the landlord or others alleging that the tenant has negligently (carelessly) injured another person or damaged the person's property.

Carelessly causing a fire that destroys the rental unit or another tenant's property is an example of **negligence** for which you could be held legally responsible.[74] You could be required to pay for the losses that the landlord or other tenant suffers. Renter's insurance would pay the other party on your behalf for some or all of these losses. For that reason, it's often a good idea to purchase renter's insurance.[75]

Renter's insurance may not be available in every area. If renter's insurance is available, and if you choose to purchase it, be certain that it provides the protection you want and that it is fairly priced. You should check with more than one insurance company, since the price and type of coverage may differ widely among insurance companies. The price also will be affected by how much insurance protection you decide to purchase.

Your landlord probably has insurance that covers the rental unit or dwelling, but you shouldn't assume that the landlord's insurance will protect you. If the landlord's insurance company pays the landlord for a loss that you cause, the insurance company may then sue *you* to recover what it has paid the landlord.

If you want to use a waterbed, the landlord can require you to have a waterbed insurance policy to cover possible property damage.[76]

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[70] *Civil Code Section 1950.5(c).*

[71] *Civil Code Section 1950.5(m).*

[72] *Civil Code Sections 1950.5(b),(e).*

[73] *Civil Code section 1950.5(o) (describes evidence that proves the existence and amount of a security deposit).*

[74] *In general, every person is responsible for damages sustained by someone else as a result of the person's carelessness. (Civil Code Section 1714.)*

[75] *See discussion of renter's insurance in Moskovitz and Warner, California Tenants' Rights, pages 13/1-13/2 (NOLO Press 2001).*

[76] *Civil Code Section 1940.5(a).*

Rent Control

Some California cities have local ordinances, called **rent control ordinances**, that limit or prohibit rent increases. Some of these ordinances specify procedures that a landlord must follow before increasing a tenant's rent, or that make evicting a tenant more difficult for a landlord. Each community's ordinance is different.

For example, some ordinances allow landlords to evict tenants only for "just cause." Under these ordinances, the landlord must state and prove a valid reason for terminating a month-to-month tenancy. Other cities don't have this requirement.

Some cities have boards that have the power to approve or deny increases in rent. Other cities' ordinances allow a certain percentage increase in rent each year. Because of recent changes in state law, all rent control cities now have "vacancy decontrol." This means that the landlord can re-rent a unit at the market rate when the tenant moves out voluntarily or when the tenancy is terminated for nonpayment of rent.

Some ordinances make it more difficult for owners to convert rentals into condominiums.

Some kinds of property cannot be subject to local rent control. For example, property that was issued a certificate of occupancy after February 1995 is exempt from rent control. Beginning January 1, 1999, tenancies in single family homes and condos are exempt from rent control if the tenancy began after January 1, 1996.[77]

A rent control ordinance may change the landlord-tenant relationship in other important ways besides those described here. Find out if you live in a city with rent control. (See the list of cities with rent control on page 57.) Contact your local housing officials or rent control board for information. You can find out about the rent control ordinance in your area (if there is one) at your local law library, or by requesting a copy of your local ordinance from the city or county clerk's office. Some cities post information about their rent control ordinances on their Web site (for example, information about Los Angeles' rent control ordinance is available at www.lacity.org/lahd).

LIVING IN THE RENTAL UNIT

As a **tenant,** you must take reasonable care of your **rental unit** and any common areas that you use. You must also repair all damage that you cause, or that is caused by anyone for whom you are responsible, such as your family, guests, or pets.[78] These important tenant responsibilities are discussed in more detail under "Dealing with Problems," page 25-27.

This section discusses other issues that can come up while you're living in the rental unit. For example, can the **landlord** enter the rental unit without notifying you? Can the landlord raise the rent even if you have a **lease?** What can you do if you have to move before the end of the lease?

Paying the Rent

When is rent due?

Most **rental agreements** and leases require that rent be paid at the beginning of each **rental period.** For example, in a month-to-month tenancy, rent usually must be paid on the first day of the month. However, your lease or rental agreement can specify any day of the month as the day that rent is due (for example, the 10th of every month in a month-to-month rental agreement, or every Tuesday in a week-to-week rental agreement).

As explained on page 14, the rental agreement or lease must state the name and address of the person or entity to whom you must make rent payments. If this address does not accept personal deliveries, you can mail your rent payment to the owner at the stated name and address. If you can show proof that you mailed the rent to the stated name and address (for example, a receipt for certified mail), the law assumes that the rent is receivable by the owner on the date of postmark.[79]

It's very important for you to pay your rent on the day it's due. Not paying on time might lead to a negative entry on your **credit report**,[80] late fees (see next page), and even eviction (see pages 43-44).

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[77] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 4/3 (NOLO Press 2001).*

[78] *Civil Code Sections 1929, 1941.2.*

[79] *Civil Code Section 1962(f), effective January 1, 2002 (see Appendix 6).*

[80] *If the landlord intends to report negative credit information about the tenant to a credit bureau, the landlord must disclose this intent to the tenant. The landlord must give notice to the tenant, either before reporting the information, or within 30 days after reporting it. The landlord may personally deliver the notice to the tenant or send it to the tenant by first-class mail. The notice may be in the rental agreement. (Civil Code Section 1785.26; Moskovitz et al., California Landlord-Tenant Practice, Sections 1.29, 4.9 (Cal. Cont. Ed. Bar 2002).)*

Obtaining receipts for rent payments

If you pay your rent in cash or with a money order, you should ask your landlord for a signed and dated receipt. Legally, you are entitled to a written receipt whenever you pay your rent.[81] If you pay with a check, you can use the canceled check as a receipt. Keep the receipts or canceled checks so that you will have records of your payments in case of a dispute.

Late fees and dishonored check fees

A landlord can charge a late fee to a tenant who doesn't pay rent on time. However, a landlord can do this only if the lease or rental agreement contains a late fee provision. In some communities, late fees are limited by local **rent control ordinances.** (See "Rent Control," page 19.)

Late fees must be reasonably related to the costs that your landlord faces as a result of your rent payment being late. A properly set late fee is legally valid. However, a late fee that is so high that it amounts to a penalty is not legally valid.

What if you've signed a lease or rental agreement that contains a late-fee provision, and you're going to be late for the first time paying your rent? If you have a good reason for being late (for example, your paycheck was late), explain this to your landlord. Some landlords will **waive** (forgive) the late fee if there is a good reason for the rent being late, and if the tenant has been responsible in other ways. If the landlord isn't willing to forgive or lower the late fee, ask the landlord to justify it (for example, in terms of administrative costs for processing the payment late). However, if the late fee is reasonable, it probably is valid; you will have to pay it if your rent payment is late, and if the landlord insists.

The landlord also can charge the tenant a fee if the tenant's check for the rent (or any other payment) is dishonored by the tenant's bank. (A dishonored check is often called a "bounced" or "returned" check.) In order for the landlord to charge the tenant a returned check fee, the lease or rental agreement must authorize the fee, and the amount of the fee must be reasonable.

For example, a reasonable returned check fee would be the amount that the bank charges the landlord, plus the landlord's reasonable costs because the check was returned. Under California's "bad check" statute, the landlord can charge a *service charge* instead of the dishonored check fee described in this paragraph. The service charge can be up to $25 for the first check that is returned for insufficient funds, and up to $35 for each additional check.[82]

Partial rent payments

You will violate your lease or rental agreement if you don't pay the full amount of your rent on time. If you can't pay the full amount on time, you may want to offer to pay part of the rent. However, the law allows your landlord to take the partial payment *and* still give you an **eviction notice.**[83]

If your landlord is willing to accept a partial rent payment and give you extra time to pay the balance, it's important that you and the landlord agree on the details in writing. The written agreement should state the amount of rent that you have paid, the date by which the rest of the rent must be paid, the amount of any late fee that is due, and the landlord's agreement not to evict you if you pay the amount due by that date. Both you and the landlord should sign the agreement, and you should keep a copy. Such an agreement is legally binding.

Security Deposit Increases

Whether the landlord can increase the amount of the **security deposit** after you move in depends on what the lease or rental agreement says, and how much of a security deposit you have paid already.

If you have a lease, the security deposit cannot be increased unless increases are permitted by the terms of the lease.

In a periodic rental agreement (for example, a month-to-month agreement), the landlord can increase the security deposit unless this is prohibited by the agreement. The landlord must give you proper notice before increasing the security deposit. (For example, 30 days' advance written

[81] *Civil Code Section 1499.*

[82] *Civil Code Section 1719(a)(1). Advance disclosure of the amount of the service charge is a nearly universal practice, but is not explicitly required by Section 1719. The landlord cannot collect both a dishonored check fee and a service charge. The landlord loses the right to collect the service charge if the landlord seeks the treble damages that are authorized by the "bad check" law. (Civil Code Section 1719; see 3 Consumer Law Sourcebook [Department of Consumer Affairs 1996] Sections 28.12-28.47; see Legal Guide K-5, "California's Bad Check Law," available on the Department of Consumer Affairs' Web site, www.dca.ca.gov.)*

[83] *Code of Civil Procedure Section 1161 paragraph 2.*

notice normally is required in a month-to-month rental agreement.)

However, if the amount that you have already paid as a security deposit equals two times the current monthly rent (for an unfurnished unit) or three times the current monthly rent (for a furnished unit), then your landlord *can't* increase the security deposit, no matter what the rental agreement says. (See the discussion of the limits on security deposits, pages 16-18.) Local **rent control ordinances** may also limit increases in security deposits.

The landlord must give you proper advance written notice of any increase in the security deposit. (See "Proper Service of Notices," pages 46-47.)

Rent Increases

How often can rent be raised?

If you have a lease for more than 30 days, your rent cannot be increased during the term of the lease, unless the lease allows rent increases.

If you have a **periodic rental agreement**, your landlord can increase your rent, but the landlord must give you proper advance notice in writing. The written notice tells you how much the increased rent is and when the increase goes into effect.

California law guarantees you at least 30 days' advance written notice of a rent increase if you have a month-to-month (or shorter) periodic rental agreement.

Under the law, your landlord must give you at least 30 days' advance notice if the rent increase is 10 percent (or less) of the rent charged at any time during the 12 months before the rent increase takes effect. Your landlord must give you at least *60 days'* advance notice if the rent increase is *greater* than 10 percent.[84] In order to calculate the percentage of the rent increase, you need to know the lowest rent that your landlord charged you during the preceding 12 months, and the total of the new increase and all other increases during that period.

Examples: Assume that your current rent is $500 per month due on the first of the month and that your landlord wants to increase your rent $50 to $550 beginning this June 1. To see how much notice your landlord must give you, count back 12 months to last June.

30 days' notice required: Suppose that your rent was $500 last June 1. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increase	Compared to	10% of rent
$500 rent x .10			
$50	$50	***is the same as***	$50

Your landlord therefore must give you at least 30 days' advance written notice of the rent increase.

60 days' notice required: Suppose that your rent was $475 last June 1, and that your landlord raised your rent $25 to $500 last November. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increases	Compared to	10% of rent
$475 rent x .10	$25 +$50		
$47.50	$75	***is more than***	$47.50

Your landlord therefore must give you at least 60 days' advance written notice of the rent increase.

Now suppose that your rent was $500 last June 1, but that instead of increasing your rent $50, your landlord wants to increase your rent $75 to $575 beginning this June 1. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increase	Compared to	10% of rent
$500 rent x .10			
$50	$75	***is more than***	$50

Your landlord therefore must give you at least 60 days' advance written notice of the rent increase.

[84] *Civil Code Section 827(b). Longer notice periods apply if required, for example, by statute, regulation or contract. (Civil Code Section 827(c).) Tenants in Section 8 housing must be given at least* 30 days' *written notice of a greater-than-10-percent rent increase if the increase is caused by a change in the tenant's income or family composition, as determined by the local housing authority's recertification. (Civil Code Section 827(b)(3), as amended, effective January 1, 2002 (see Appendix 6).)*

Normally, in the case of a pertiodic rental agreement, the landlord can increase the rent as often as the landlord likes. However, the landlord must give proper advance written notice of the increase, and the increase cannot be **retaliatory** (see page 50). Local rent control ordinances may impose additional requirements on the landlord.

Increases in rent for government-financed housing usually are restricted. If you live in government-financed housing, check with the local public housing authority to find out whether there are any restrictions on rent increases.

Rent increase; notice and effective date

A landlord's notice of rent increase must be in writing. The landlord can deliver a copy of the notice to you personally.[85] In this case, the rent increase takes effect in 30 or 60 days, as just explained.

The landlord also can give you a notice of rent increase by first class mail. In this case, the landlord must mail a copy of the notice to you, with proper postage, addressed to you at the rental unit. The landlord must give you an additional five days' advance notice of the rent increase if the landlord mails the notice. Therefore, the landlord would have to give you at least 35 days' notice from the date of mailing if the rent increase is 10 percent or less. If the rent increase is more than 10 percent, the landlord would have to give you at least 65 days' notice from the date of mailing.[86]

Example of a rent increase

Most notices of rent increase state that the increase will go into effect at the beginning of the rental period. For example, a landlord who wishes to increase the rent by 10 percent or less in a month-to-month rental effective on October 1 must make sure that notice of the increase is delivered to the tenant personally by September 1 or mailed to the tenant by August 27. However, a landlord can make the increase effective at any time in the month *if* proper advance notice is given.

If the increase in the rent becomes effective in the middle of the rental period, the landlord is entitled to receive the increased rent for only the last half of the rental period. For example:

- Rental period: month-to-month, from the first day of the month to the last day of the month.
- Rent: $500 per month.
- Rent increase: $50 (from $500 to $550) per month (a 10 percent increase).
- Date that the notice of rent increase is delivered to the tenant personally: April 15 (that is, the middle of the month).
- Earliest date that the rent increase can take effect: May 15.

If the landlord delivers the notice on April 15, the increase becomes effective 30 days later, on May 15. The landlord is entitled to the increased rent beginning on May 15. On May 1, the tenant would pay $250 for the first half of May (that is, 15 days at the old rent of $500), plus $275 for the last half of May (that is, 15 days at the new rent of $550). The total rent for May that is due on May 1 would be $525. Looking at it another way, the landlord is entitled to only one-half of the increase in the rent during May, since the notice of rent increase became effective in the middle of the month.

Of course, the landlord could deliver a notice of rent increase on April 15 which states that the rent increase takes effect on June 1. In that case, the tenant would pay $500 rent on May 1, and $550 rent on June 1.

When Can the Landlord Enter the Rental Unit?

California law states that a landlord can enter a rental unit only for the following reasons:

- In an emergency.
- When the tenant has moved out or has **abandoned** the rental unit.
- To make necessary or agreed-upon repairs, decorations, alterations, or other improvements.
- To show the rental unit to prospective tenants, purchasers, or lenders, to provide entry to contractors or workers who are to perform work on the unit, or to conduct an **initial inspection** before the end of the tenancy (see page 37).
- If a court order permits the landlord to enter.[87]
- If the tenant has a waterbed, to inspect the installation of the waterbed when the

[85] *Civil Code Section 827(b)(1)(A).*

[86] *Civil Code Sections 827(b)(1)(B),(2),(3); Code of Civil Procedure Section 1013.*

[87] *Civil Code Section 1954.*

installation has been completed, and periodically after that to assure that the installation meets the law's requirements.[88]

Except when the tenant has moved out of the rental unit, abandoned it, or in an emergency, the landlord or the landlord's agent must give the tenant reasonable advance notice in writing before entering the unit, and can enter only during normal business hours (generally, 8 a.m. to 5 p.m. on weekdays).

The landlord or agent may use any one of the following methods to give the tenant written notice of intent to enter the unit. The landlord or agent may:

- Personally deliver the notice to the tenant; or
- Leave the notice at the rental unit with a person of suitable age and discretion (for example, a roommate or a teenage member of the tenant's household); or
- Leave the notice on, near or under the unit's usual entry door in such a way that it is likely to be found; or
- Mail the notice to the tenant.[89]

The law considers 24 hours' advance written notice to be reasonable in most situations. If the notice is mailed to the tenant, mailing at least six days before the intended entry is presumed to be reasonable, in most situations.[90] The tenant can consent to shorter notice and to entry at times other than during normal business hours.

Special rules apply if the purpose of the entry is to show the rental to a purchaser. In that case, the landlord or the landlord's agent may give the tenant notice orally, either in person or by telephone. The law considers 24 hours' notice to be reasonable in most situations. However, before oral notice can be given, the landlord or agent must first have notified the tenant in writing that the rental is for sale and that the landlord or agent may contact the tenant orally to arrange to show it. This written notice must be given to the tenant within 120 days of the giving of the oral notice.[91] The landlord or agent may enter only during normal business hours, unless the tenant consents to entry at a different time.[92] When the landlord or agent enters the rental, he or she must leave a business card or other written evidence of entry.[93]

The landlord cannot abuse the right of access under these rules, or use this right to harass (repeatedly disturb) the tenant.

If your landlord violates these access rules, talk to the landlord about your concerns. If that is not successful in stopping the landlord's misconduct, send the landlord a formal letter asking the landlord to strictly observe the access rules stated above. If the landlord continues to violate these rules, you can talk to an attorney or a legal aid organization, or file suit in small claims court to recover damages that you have suffered due to the landlord's misconduct.

Subleases and Assignments

Sometimes, a tenant with a lease may need to move out before the lease ends, or may need help paying the rent. In these situations, the tenant may want to **sublease** the rental unit or **assign** the lease to another tenant. However, the tenant cannot sublease the rental unit or assign the lease *unless* the terms of the lease allow the tenant to do so.

Subleases

A **sublease** is a separate rental agreement between the original tenant and a new tenant who moves in temporarily (for example, for the summer), or who moves in with the original tenant and shares the rent. The new tenant is called a **"subtenant."**

With a sublease, the agreement between the original tenant and the landlord remains in force. The original tenant is still responsible for paying the rent to the landlord, and functions as a landlord to the subtenant. Any sublease agreement between a tenant and a subtenant should be in writing.

Most rental agreements and leases contain a provision that prohibits (prevents) tenants from subleasing or assigning rental units. This kind of provision allows the landlord to control who rents the rental unit. If your rental agreement or lease prohibits subleases or assignments, you must get your landlord's permission before you sublease or assign the rental unit.

Even if your rental agreement doesn't contain a provision that prohibits you from subleasing or assigning, it's wise to discuss your plans with your landlord in advance. Subleases and assignments usually don't work out smoothly unless everyone has agreed in advance.

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[88] *Civil Code Section 1940.5(f).*

[89] *Civil Code Section 1954 paragraph 3, as amended, effective January 1, 2003 (see Appendix 6).*

[90] *Civil Code Section 1954 paragraph 3, as amended, effective January 1, 2003 (see Appendix 6).*

[91] *Civil Code Section 1954 paragraph 4, effective January 1, 2003 (see Appendix 6).*

[92] *Civil Code Section 1954 paragraph 2.*

[93] *Civil Code Section 1954 paragraph 4, effective January 1, 2003 (see Appendix 6).*

You might use a sublease in two situations. In the first situation, you may have a larger apartment or house than you need, and may want help paying the rent. Therefore, you want to rent a room to someone. In the second situation, you may want to leave the rental unit for a certain period and return to it later. For example, you may be a college student who leaves the campus area for the summer and returns in the fall. You may want to sublease to a subtenant who will agree to use the rental unit only for that period of time.

Under a sublease agreement, the subtenant agrees to make payments to you, not to the landlord. The subtenant has no direct responsibility to the landlord, only to you. The subtenant has no greater rights than you do as the original tenant. For example, if you have a month-to-month rental agreement, so does the subtenant. If your rental agreement does not allow you to have a pet, then the subtenant cannot have a pet.

In any sublease situation, it's essential that both you and the subtenant have a clear understanding of both of your obligations. To help avoid disputes between you and the subtenant, this understanding should be put in the form of a written sublease agreement that both you and the subtenant sign.

The sublease agreement should include things like the amount and due date of the rent, where the subtenant is to send the rent, who is responsible for paying the utilities (typically, gas, electric, water, and telephone), the dates that the agreement begins and ends, a list of any possessions that you are leaving in the rental unit, and any conditions of care and use of the rental unit and your possessions. It's also important that the sublease agreement be consistent with the lease, so that your obligations under the lease will be fully performed by the subtenant, if that is what you and the subtenant have agreed on.

Assignments

An **assignment** is a transfer of your rights as a tenant to someone else. You might use an assignment if you have a lease and need to move permanently before the lease ends. Like a sublease, an assignment is a contract between the original tenant and the new tenant (not the landlord).

> ***"A rental unit must be fit to live in; that is, it must be habitable."***

However, an assignment differs from a sublease in one important way. If the new tenant accepts the assignment, the new tenant is directly responsible to the landlord for the payment of rent, for damage to the rental unit, and so on. Nevertheless, an assignment *does not* relieve the original tenant of his or her legal obligations to the landlord. If the new tenant doesn't pay rent, or damages the rental unit, the original tenant remains legally responsible to the landlord.[94]

In order for the original tenant to avoid this responsibility, the landlord, the original tenant, and the new tenant all must agree that the new tenant will be *solely* responsible to the landlord under the assignment. This agreement is called a **novation,** and should be in writing.

Remember: Even if the landlord agrees to a sublease or assignment, the tenant is still responsible for the rental unit *unless* there is a written agreement (a novation) that states otherwise. For this reason, think carefully about whom you let live in the rental unit.

DEALING WITH PROBLEMS

Most landlord-tenant relationships go smoothly. However, problems sometimes arise. For example, what if the rental unit's furnace goes out in the middle of the winter? What happens if the landlord sells the building or decides to convert it into condominiums? This section discusses these and other possible issues and problems in the landlord-tenant relationship.

Repairs and Habitability

A **rental unit** must be fit to live in; that is, it must be **habitable.** In legal terms, "habitable" means that the rental unit is fit for occupation by human beings and that it substantially complies with state and local building and health codes that materially affect tenants' health and safety.[95]

[94] *Civil Code Section 822.*

[95] *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 719]; Civil Code Sections 1941, 1941.1.*

California law makes **landlords** and **tenants** each responsible for certain kinds of repairs, although landlords ultimately are legally responsible for assuring that their rental units are habitable.

Landlord's responsibility for repairs

Before renting a rental unit to a tenant, a landlord must make the unit fit to live in, or habitable. Additionally, while the unit is being rented, the landlord must repair problems which make the rental unit unfit to live in, or **uninhabitable**.

The landlord has this duty to repair because of a California Supreme Court case, called Green v. Superior Court,[96] which held that all residential leases and rental agreements contain an **implied warranty of habitability.** Under the "implied warranty of habitability," the landlord is legally responsible for repairing conditions that seriously affect the rental unit's habitability.[97] That is, the landlord must repair substantial defects in the rental unit and substantial failures to comply with state and local building and health codes.[98] However, the landlord is *not* responsible under the implied warranty of habitability for repairing damages which were caused by the tenant or the tenant's family, guests, or pets.[99]

Generally, the landlord also must do maintenance work which is necessary to keep the rental unit liveable.[100] Whether the landlord or the tenant is responsible for making less serious repairs is usually determined by the **rental agreement.**

The law is very specific as to what kinds of conditions make a rental uninhabitable. These are discussed in the following pages.

Tenant's responsibility for repairs

Tenants are required by law to take reasonable care of their rental units, as well as common areas such as hallways and outside areas. Tenants must act to keep those areas clean and undamaged. Tenants also are responsible for repair of all damage that results from their neglect or abuse, and for repair of damage caused by anyone for whom they are responsible, such as family, guests, or pets.[101] Tenants' responsibilities for care and repair of the rental unit are discussed in detail on pages 26-27.

Conditions that make a rental unit legally uninhabitable

There are many kinds of defects that could make a rental unit unlivable. The implied warranty of habitability requires landlords to maintain their rental units in a condition fit for the "occupation of human beings."[102] In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.[103]

A dwelling may be considered uninhabitable (unlivable) if it substantially lacks any of the following:[104]

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities in good working order.
- An electric system, including lighting, wiring, and equipment, in good working order.
- Clean and sanitary buildings, grounds, and appurtenances (for example, a garden or a detached garage), free from debris, filth, rubbish, garbage, rodents, and vermin.
- Adequate trash receptacles in good repair.
- Floors, stairways, and railings in good repair.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower. The toilet and bathtub or shower

[96] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

[97] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704]; Hinson v. Delis (1972) 26 Cal.App.3d 62 [102 Cal.Rptr. 661].*

[98] *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719].*

[99] *Civil Code Sections 1929, 1941.2.*

[100] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

[101] *Civil Code Sections 1929, 1941.2.*

[102] *Civil Code Section 1941.*

[103] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

[104] *Civil Code Section 1941.1.*

must be in a room which is ventilated and allows privacy.

- A kitchen with a sink that cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights. Windows in each room must be able to open at least halfway for ventilation, unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials.[105]
- Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.[106]
- Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.[107]

The implied warranty of habitability is *not* violated merely because the rental unit is not in perfect, aesthetically pleasing condition. Nor is the implied warranty of habitability violated if there are minor housing code violations, which, standing alone, do not affect habitability.[108]

While it is the landlord's responsibility to install and maintain the inside wiring for one telephone jack, the landlord's failure to do so probably does not violate the implied warranty of habitability.[109]

Limitations on landlord's duty to keep the rental unit habitable

Even if a rental unit is unlivable because of one of the conditions listed above, a landlord may not be legally required to repair the condition if the tenant has not fulfilled the tenant's own responsibilities.

In addition to generally requiring a tenant to take reasonable care of the rental unit and common areas (see page 25), the law lists specific things that a tenant must do to keep the rental unit liveable.

Tenants must do all of the following:

- Keep the premises "as clean and sanitary as the condition of the premises permits."
- Use and operate gas, electrical, and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets; flushing large, foreign objects down the toilet; and allowing any gas, electrical, or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner.
- Not destroy, damage, or deface the premises, or allow anyone else to do so.
- Not remove any part of the structure, dwelling unit, facilities, equipment, or appurtenances, or allow anyone else to do so.
- Use the premises as a place to live, and use the rooms for their intended purposes. For example, the bedroom must be used as a bedroom, and not as a kitchen.[110]
- Notify the landlord when dead bolt locks and window locks or security devices don't operate properly.[111]

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.[112]

If a tenant violates these requirements in some minor way, the landlord is still responsible for providing a habitable dwelling, and may be prosecuted for violating housing code standards. If the tenant fails to do one of these required things, and the tenant's failure has either substantially caused an unlivable condition to occur or has substantially interfered with the landlord's ability to repair the condition, the

[105] *Health and Safety Code Sections 17900-17995.*

[106] *Civil Code Section 1941.3. See this section for additional details and exemptions. Remedies for violation of these requirements are listed at Civil Code Section 1941.3(c). See California Practice Guide, Landlord-Tenant, Paragraphs 3:21.5-3:21.10 (Rutter Group 2002).*

[107] *Health and Safety Code Section 13113.7.*

[108] *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719]; Hinson v. Delis (1972) 26 Cal.App.3d 62, 70 [102 Cal.Rptr. 661, 666].*

[109] *Civil Code Section 1941.4; Public Utilities Code Section 788. See California Practice Guide, Landlord-Tenant, Paragraph 3:21.10 (Rutter Group, 2002).*

[110] *Civil Code Section 1941.2(a).*

[111] *Civil Code Section 1941.3(b).*

[112] *Civil Code Section 1941.2(b).*

landlord does not have to repair the condition.[113] However, a tenant cannot withhold rent or sue the landlord for violating the implied warranty of habitability if the tenant has failed to meet these requirements.[114]

Responsibility for other kinds of repairs

As for less serious repairs, the rental agreement or **lease** may require either the tenant or the landlord to fix a particular item. Items covered by such an agreement might include refrigerators, washing machines, parking places, or swimming pools. These items are usually considered "amenities," and their absence does not make a dwelling unit unfit for living.

These agreements to repair are usually enforceable in accordance with the intent of the parties to the rental agreement or lease.

Tenant's agreement to make repairs

The landlord and the tenant may agree in the rental agreement or lease that the tenant will perform *all* repairs and maintenance in exchange for lower rent.[115] Such an agreement must be made in good faith: there must be a real reduction in the rent, and the tenant must intend and be able to make all the necessary repairs. When negotiating the agreement, the tenant should consider whether he or she wants to try to negotiate a cap on the amount that he or she can be required to spend making repairs. Regardless of any such agreement, the landlord is responsible for maintaining the property as required by state and local housing codes.[116]

Having Repairs Made

If a tenant believes that his or her rental unit needs repairs, and that the landlord is responsible for the repairs under the implied warranty of habitability, the tenant should notify the landlord. Since rental units typically are business investments for landlords, most landlords want to keep them safe, clean, attractive, and in good repair.

It's best for the tenant to notify the landlord of damage or defects by *both* a telephone call *and* a letter. The tenant should specifically describe the damage or defects and the required repairs in both the phone call and the letter. The tenant should date the letter and keep a copy to show that notice was given and what it said.

The tenant should send the notice to the landlord, manager, or agent by certified mail with return receipt requested. Sending the notice by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent and ask for a receipt to show that the notice was received. The tenant should keep a copy of the notice and the receipt, or some other evidence that the notice was delivered.

If the landlord doesn't make the requested repairs, and doesn't have a good reason for not doing so, the tenant may have one of several remedies, depending on the seriousness of the repairs. These remedies are discussed in the rest of this section. *Each of these remedies has its own risks and requirements, so the tenant should use them carefully.*

The "repair and deduct" remedy

The **"repair and deduct"** remedy allows a tenant to deduct money from the rent, up to the amount of one month's rent, to pay for repair of defects in the rental unit.[117] This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.[118] (See discussion of the implied warranty of habitability, pages 24-27.) Examples might include a leak in the roof during the rainy season, no hot running water, or a gas leak.

As a practical matter, the repair and deduct remedy allows a tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, it's a good idea for the tenant to talk to a lawyer, legal aid organization, or tenants' association before proceeding.

The basic requirements and steps for using the repair and deduct remedy are as follows:

1. The defects must be serious and directly related to the tenant's health and safety.[119]
2. The repairs cannot cost more than one month's rent.

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[113] *Civil Code Section 1941.2(a).*

[114] *Civil Code Sections 1929, 1942(c); see Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 11/8-11/9 (NOLO Press 2001).*

[115] *Civil Code Section 1942.1.*

[116] *Moskovitz and Warner, California Tenants' Rights, page 2/5 (NOLO Press, 2001).*

[117] *Civil Code Section 1942.*

[118] *California Practice Guide, Landlord-Tenant, Paragraphs 3:115-3:116 (Rutter Group, 1999).*

[119] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/9 (NOLO Press 2001).*

3. The tenant cannot use the repair and deduct remedy more than twice in any 12-month period.
4. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
5. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed. (See "Giving the landlord notice," page 31.)
6. The tenant must give the landlord a reasonable period of time to make the needed repairs.
   - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the situation. For example, if the furnace is broken and it's very cold outdoors, two days may be considered reasonable (assuming that a qualified repair person is available within that time period).
7. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant may either make the repairs or hire someone to do them. The tenant may then deduct the cost of the repairs from the rent when it is due. The tenant should keep all receipts for the repairs.
   - It's a good idea, but not a legal requirement, for the tenant to give the landlord a written notice that explains why the tenant hasn't paid the full amount of the rent. The tenant should keep a copy of this notice.

Risks: The defects may not be serious enough to justify using the repair and deduct remedy. In that event, the landlord can sue the tenant to recover the money deducted from the rent, or can file an **eviction** action based on the nonpayment of rent. If the tenant deducted money for repairs not covered by the remedy, or didn't give the landlord proper advance notice or a reasonable time to make repairs, the court can order the tenant to pay the full rent even though the tenant paid for the repairs, or can order that the eviction proceed.

The landlord may try to evict the tenant or raise the rent because the tenant used the repair and deduct remedy. This kind of action is known as a **"retaliatory eviction"** (see page 50). The law prohibits this type of eviction, with some limitations.[120]

The "abandonment" remedy

Instead of using the repair and deduct remedy, a tenant can **abandon** (move out of) a defective rental unit. This remedy is called the **"abandonment"** remedy. A tenant might use the abandonment remedy where the defects would cost more than one month's rent to repair,[121] *but this is not a requirement of the remedy*. The abandonment remedy has most of the same requirements and basic steps as the repair and deduct remedy.[122]

In order to use the abandonment remedy, the rental unit must have substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.[123] (See discussion of the implied warranty of habitability, pages 24-27.) If the tenant uses this remedy properly, the tenant is not responsible for paying further rent once he or she has abandoned the rental unit.[124]

The basic requirements and steps for lawfully abandoning a rental unit are:

1. The defects must be serious and directly related to the tenant's health and safety.[125]
2. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed. (See "Giving the landlord notice," page 31.)
4. The tenant must give the landlord a reasonable period of time to make the needed repairs.
   - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances. For example, if tree roots block the main sewer drain and none of the toilets or drains work, a reasonable period might be as little as one or two days.

[120] *Civil Code Section 1942.5(a).*

[121] *California Practice Guide, Landlord-Tenant, Paragraph 3:127 (Rutter Group, 1999).*

[122] *Civil Code Section 1942.*

[123] *California Practice Guide, Landlord-Tenant, Paragraphs 3:115-3:116, 3:126 (Rutter Group, 1999).*

[124] *Civil Code Section 1942.*

[125] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/9 (NOLO Press 2001).*

5. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant should notify the landlord in writing of the tenant's reasons for moving and then actually move out. The tenant should return all the rental unit's keys to the landlord. The notice should be mailed or delivered as explained in "Giving the landlord notice," page 31. The tenant should keep a copy of the notice.
   - It's a good idea, but not a legal requirement, for the tenant to give the landlord written notice of the tenant's reasons for moving out. The tenant's letter may discourage the landlord from suing the tenant to collect additional rent or other damages. A written notice also documents the tenant's reasons for moving, which may be helpful in the event of a later lawsuit. If possible, the tenant should take photographs or a video of the defective conditions or have local health or building officials inspect the rental unit before moving. The tenant should keep a copy of the written notice and any inspection reports and photographs or videos.

Risks: The defects may not affect the tenant's health and safety seriously enough to justify using the remedy. The landlord may sue the tenant to collect additional rent or damages.

The "rent withholding" remedy

A tenant may have another option for getting repairs made — the **"rent withholding"** remedy.

By law, a tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious defects that violate the implied warranty of habitability.[126] (See discussion of the implied warranty of habitability, pages 24-27.) In order for the tenant to withhold rent, the defects or repairs that are needed must be *more* serious than would justify use of the repair and deduct and abandonment remedies.[127] The defects must be serious ones that threaten the tenant's health or safety.[128]

The defects that were serious enough to justify withholding rent in Green v. Superior Court[129] are listed below as examples:

- Collapse and nonrepair of the bathroom ceiling.
- Continued presence of rats, mice, and cockroaches.
- Lack of any heat in four of the apartment's rooms.
- Plumbing blockages.
- Exposed and faulty wiring.
- An illegally installed and dangerous stove.

In the Green case, *all* of these defects were present, and there also were many violations of the local housing and building codes. In other situations, the defects that would justify rent withholding may be different, but the defects would still have to be serious ones that threaten the tenant's health or safety.

In order to prove a violation of the implied warranty of habitability, the tenant will need evidence of the defects that require repair. In the event of a court action, it is helpful to have photographs or videos, witnesses, and copies of letters informing the landlord of the problem.

Before the tenant withholds rent, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The basic requirements and steps for using the rent withholding remedy are:

1. The defects or the repairs that are needed must threaten the tenant's health or safety.[130]
   - The defects must be serious enough to make the rental unit uninhabitable. For example, see the defects described in the discussion of the Green case above.
2. The tenant, or the tenant's family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord either orally or in writing of the repairs that are needed. (See "Giving the landlord notice," page 31.)
4. The tenant must give the landlord a reasonable period of time to make the needed repairs.

[126] *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

[127] *Moskovitz and Warner, California Tenants' Rights, page 7/9 (NOLO Press 2001).*

[128] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/11 (NOLO Press 2001).*

[129] *10 Cal.3d 616 [111 Cal.Rptr. 704].*

[130] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/11 (NOLO Press 2001).*

- What is a reasonable period of time? This depends on the defects and the type of repairs that are needed.

5. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant can withhold some or all of the rent. The tenant can continue to withhold the rent until the landlord makes the repairs.
   - How much rent can the tenant withhold? While the law does not provide a clear test for determining how much rent is reasonable for the tenant to withhold, judges in rent withholding cases often use one of the following methods. These methods are offered as examples.

     Percentage reduction in rent: The percentage of the rental unit that is uninhabitable is determined, and the rent is reduced by that amount. For example, if one of a rental unit's four rooms is uninhabitable, the tenant could withhold 25 percent of the rent. The tenant would have to pay the remaining 75 percent of the rent. Most courts use this method.

     Reasonable value of rental unit: The value of the rental unit in its defective state is determined, and the tenant withholds that amount. The tenant would have to pay the difference between the rental unit's fair market value (usually the rent stated in the rental agreement or lease) and the rental unit's value in its defective state.[131]
6. The tenant should save the withheld rent money *and not spend it*. The tenant should expect to have to pay the landlord some or all of the withheld rent once the repairs have been made.
   - If the tenant withholds rent, the tenant should put the withheld rent money into a special bank account (called an **escrow account**). The tenant should notify the landlord in writing that the withheld rent money has been deposited in the escrow account, and explain why.

Depositing the withheld rent money in an escrow account is not required by law, but is a very good thing to do for three reasons.

First, as explained under "Risks" below, rent withholding cases often wind up in court. The judge usually will require the tenant to pay the landlord some reduced rent based on the value of the rental unit with all of its defects. Judges rarely excuse payment of all rent. Depositing the withheld rent money in an escrow account assures that the tenant will have the money to pay any "reasonable rent" that the court orders.

> ***"Whenever a tenant gives the landlord notice of the tenant's intention to repair and deduct, withhold rent, or abandon the rental unit, it's best to put the notice in writing."***

Second, putting the withheld rent money in an escrow account proves to the court that the tenant didn't withhold rent just to avoid paying rent. If there is a court hearing, the tenant should bring rental receipts or other evidence to show that he or she has been reliable in paying rent in the past.

Third, most legal aid organizations and lawyers will not represent a tenant who has not deposited the withheld rent money in an escrow account.

Sometimes, the tenant and the landlord will be able to agree on the amount of rent that is reasonable for the time when the rental unit needed repairs. If the tenant and the landlord can't agree on a reasonable amount, the dispute will have to be decided in court, or resolved in an **arbitration** or **mediation** proceeding (see page 53).

Risks: The defects may not be serious enough to threaten the tenant's health or safety. If the tenant withholds rent, the landlord may give the tenant an **eviction notice** (a **three-day notice** to pay the rent or leave). If the tenant refuses to pay, the landlord will probably go to court to evict the tenant. In the court action, the tenant will have to prove that the landlord violated the implied warranty of habitability.

If the tenant wins the case, the landlord will be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent. The rent ordinarily must be paid within a few days after the judge makes his or her decision. If the tenant wins, but doesn't pay the amount of rent ordered when it is due, the judge will enter a judgment for the landlord, and the tenant probably will be evicted. If the tenant loses, he or she will have to pay the rent, probably will be evicted, and may be ordered to pay the landlord's attorney's fees.

[131] *See discussion in Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/12 (NOLO Press 2001) and Moskovitz and Warner, California Tenants' Rights, page 7/10 (NOLO Press 2001).*

There is another risk of using rent withholding: if the tenant doesn't have a lease, the landlord may ignore the tenant's notice of defective conditions and seek to remove the tenant by giving him or her a 30-day or 60-day notice to move. This may amount to a **"retaliatory eviction"** (see pages 50-51).[132] The law prohibits retaliatory evictions, with some limitations.[133]

Giving the landlord notice

Whenever a tenant gives the landlord notice of the tenant's intention to repair and deduct, withhold rent, or abandon the rental unit, it's best to put the notice in writing. The notice should be in the form of a letter, and can be typed or handwritten. The letter should describe in detail the problem and the repairs that are required. The tenant should sign and date the letter and keep a copy.

The notice should be sent to the landlord, manager, or agent by certified mail (return receipt requested). Sending the notice by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent. The tenant should ask for a signed and dated receipt showing that the notice was received, or ask the landlord to date and sign (or initial) the tenant's copy of the letter to show that the landlord received the notice. Whatever the method of delivery, it's important that the tenant have proof that the landlord, or the landlord's manager or agent, received the notice.

The copy of the letter and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said. Keep the copy of the letter and the receipt in case of a dispute with the landlord.

Tenant Information

An occupant of residential property can invite another person onto the property during reasonable hours, or because of emergency circumstances, to provide information about tenants' rights or to participate in a tenants' association or an association that advocates tenants' rights. The invited person cannot be held liable for trespass.[134]

Lawsuit for damages as a remedy

The remedies of repair and deduct, abandonment, and rent withholding allow a tenant in a rental unit with serious habitability defects to take action against the landlord without filing a lawsuit. Arbitration and mediation are other methods of resolving disputes about the condition of a rental unit (see page 53).

A tenant has another option: filing a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects in a timely manner.[135] This kind of lawsuit can be filed in small claims court or superior court, depending on the amount demanded in the suit.

If the tenant wins the lawsuit, the court may award the tenant his or her actual damages, and "special damages" in an amount ranging from $100 to $1,000.[136] "Special damages" are costs that the tenant incurs, such as the cost of a motel room, because the landlord did not repair the defects in the rental unit.

The court also may order the landlord to abate (stop or eliminate) a nuisance and to repair any substandard condition which significantly affects the health and safety of the tenant.[137] For example, a court could order a landlord to repair a leaky roof, and could retain jurisdiction over the case until the roof is fixed.

In order for a tenant to win such a lawsuit against the landlord, all of the following conditions must be met:[138]

- The rental unit must have serious habitability defects — that is, it must substantially lack any of the minimum requirements for habitability listed in the eight categories on page 25.
- A housing inspector must inspect the premises, and must notify the landlord or the landlord's agent, in writing, of the landlord's obligation to repair the substandard conditions.
- The substandard conditions must continue to exist for more than 60 days after the housing inspector issued the written

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[132] *Moskovitz, California Eviction Defense Manual, Section 16.19 (Cal. Cont. Ed. Bar 2003).*

[133] *Civil Code Section 1942.5(a).*

[134] *Civil Code Section 1942.6. A tenants' association does* not *have a right under the California Constitution's free speech clause to distribute its newsletter in a privately owned apartment complex. (Golden Gateway Center v. Golden Gateway Tenants Assoc. (2001) 26 Cal. 4th 1013 [111 Cal. Rptr. 2d 336].)*

[135] *Civil Code Section 1942.4.*

[136] *Civil Code Section 1942.4(a).*

[137] *Civil Code Sections 1942.4(a),(c).*

[138] *Civil Code Section 1942.4(a).*

notice, and the landlord must not have "good cause" for failing to make the repairs.

- The substandard conditions were not caused by the tenant or the tenant's family, guests, or pets.

In addition to recovering money damages, the party who wins the lawsuit is entitled to recover his or her costs of bringing the suit (for example, court filing fees), plus reasonable attorney's fees as awarded by the court.[139]

Before filing this kind of lawsuit, the tenant should take all of these basic steps:

- The tenant should notify the landlord in writing about the conditions that require repair. (See "Giving the landlord notice," page 31.) The rental unit must have serious habitability defects that were not caused by the tenant's family, guests, or pets.
- The notice should specifically describe the defects and the repairs that are required.
- The notice should give the landlord a reasonable period of time to make the repairs.
- If the landlord doesn't make the repairs within a reasonable time, the tenant should contact the local city or county building department, health department, or local housing agency and request an inspection.
- The housing inspector must inspect the rental unit.
- The housing inspector must give the landlord written notice of the required repairs.
- The substandard conditions must continue to exist for more than 60 days after the housing inspector issues the notice.
- The tenant should gather evidence of the substandard conditions (for example, photographs or videos, statements of witnesses, inspection reports) so that the tenant can prove his or her case in court.
- The tenant should discuss the case with a lawyer, legal aid organization, tenant program, or housing clinic in order to understand what the lawsuit is likely to accomplish, and also the risks involved.

Resolving complaints out of court

Before filing suit, the tenant should try to resolve the dispute out of court, either through personal negotiation or a dispute resolution program that offers mediation or arbitration of landlord-tenant disputes. If the tenant and the landlord agree, a neutral person can work with both of them to reach a solution. Informal dispute resolution can be inexpensive and fast. (See "Arbitration and Mediation," page 53.)

Landlord's Sale of the Rental Unit

If your landlord voluntarily sells the rental unit that you live in, your legal rights as a tenant are not changed. Tenants who have a lease have the right to remain through the end of the lease under the same terms and conditions. The new landlord can end a periodic tenancy (for example, a month-to-month tenancy), but only after giving the tenant the required advance notice. (See "Landlord's notice to end a periodic tenancy," pages 33-35.)

The sale of the building doesn't change the rights of the tenants to have their **security deposits** refunded when they move. Pages 35-42 discuss the landlord's responsibility for the tenants' security deposits after the rental unit has been sold.

Condominium Conversions

A landlord who wishes to convert rental property into condominiums must obtain approval from the city or county planning agency. The landlord also must receive final approval in the form of a public report issued by the state Department of Real Estate. Affected tenants must receive notices at various stages of the application and approval process.[140] These notices are designed to allow affected tenants and the public to have a voice in the approval process.[141] Tenants can check with local elected officials or housing agencies about the approval process and opportunities for public input.

Perhaps most important, affected tenants must be given written notice of the conversion to condominiums at least 180 days before their tenancies end due to the conversion.[142] Affected tenants also must be given a first option to buy the rental unit on the same terms that are being offered to the general public (or better terms).

[139] *Civil Code Section 1942.4(b).*

[140] *Government Code Sections 66427.1(a),(b).*

[141] *Government Code Sections 66451.3, 65090, 65091.*

[142] *Government Code Section 66427.1(c).*

The tenants must be able to exercise this right for at least 90 days following issuance of the Department of Real Estate's public report.[143]

Demolition of Dwelling

The owner of a dwelling must give written notice to current tenants before applying for a permit to demolish the dwelling. The owner also must give this notice to tenants who have signed rental agreements but who have not yet moved in. The notice must include the earliest approximate dates that the owner expects the demolition to occur and the tenancy to end.[144]

MOVING OUT

Giving and Receiving Proper Notice

Tenant's notice to end a periodic tenancy

To end a **periodic rental agreement** (for example, a month-to-month agreement), you must give your **landlord** proper written notice before you move.

You must give the landlord the same amount of notice as there are days between rent payments.[145] This means that if you pay rent monthly, you must give the landlord written notice at least 30 days before you move. If you pay rent every week, you must give the landlord written notice at least seven days before you move.[146]

To avoid later disagreements, date the notice, state the date that you intend to move, and make a copy of the notice for yourself. It's best to deliver the notice to the landlord or property manager in person, or mail it by certified mail with return receipt requested. (You can also **serve** the notice by one of the methods described under "Proper Service of Notices," pages 46-47.)[147]

You can give the landlord notice any time during the **rental period,** but you must pay full rent during the period covered by the notice. For example, say you have a month-to-month rental agreement, and pay rent on the first day of each month. You could give notice any time during the month (for example, on the tenth). Then, you could leave 30 days later (on the tenth of the following month, or earlier if you chose to). But you would have to pay rent for the first 10 days of the next month whether you stay for those 10 days or move earlier. (Exception: You would not have to pay rent for the entire 10 days if you left earlier, *and* the landlord rented the unit to another tenant during the 10 days, *and* the new tenant paid rent for all or part of the 10 days.)[148]

The rental agreement or lease must state the name and address of the person or entity to whom you must make rent payments (see page 14). If this address does not accept personal deliveries, you can mail your notice to the owner at the name and address stated in the lease or rental agreement. If you can show proof that you mailed the notice to the stated name and address (for example, a receipt for certified mail), the law assumes that the notice is receivable by the owner on the date of postmark.[149]

Landlord's notice to end a periodic tenancy

A landlord can end a periodic **tenancy** (for example, a month-to-month tenancy) by giving the tenant proper advance written notice. If you have lived in the **rental unit** for a year or more, your landlord must give you 60 days' advance written notice that the tenancy will end.[150] However, the landlord can give you *30* days' advance written notice in either of the following situations:

- You have lived in the rental unit less than one year;[151] or
- The landlord has contracted to sell the rental unit to another person who intends to occupy the unit for at least a year after the tenancy ends. In addition, all of the following must be true in order for the selling landlord to give you a 30-day notice –

[143] *Government Code Section 66427.1. See Business and Professions Code Sections 11018, 11018.2, California Practice Guide, Landlord-Tenant, Paragraph 5:306 and following (Rutter Group, 1999).*

[144] *Civil Code Section 1940.6, effective January 1, 2003 (see Appendix 6).*

[145] *Civil Code Section 1946.1(b), as amended, effective January 1, 2003 (see Appendix 6).*

[146] *Civil Code Sections 1946.1(a),(b).*

[147] *Civil Code Section 1946.1(e).*

[148] *See Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 19/2-19/4 (NOLO Press 2001).*

[149] *Civil Code Section 1962(f), effective January 1, 2002 (see Appendix 6).*

[150] *Civil Code Section 1946.1(b), as amended, effective January 1, 2003 (see Appendix 6).*

[151] *Civil Code Section 1946.1(c), as amended, effective January 1, 2003 (see Appendix 6).*

- The landlord must have opened escrow with a licensed escrow agent or real estate broker, and
- The landlord must have given you the 30-day notice within 120 days after opening the escrow, and
- The landlord must not previously have given you a 30-day or 60-day notice, and
- The rental unit must be one that can be sold separately from any other dwelling unit.[152]

The landlord usually isn't required to state a reason for ending the tenancy in the 30-day or 60-day notice (see "**Thirty- or Sixty Day Notice,"** page 44). The landlord can serve the 30-day or 60-day notice by certified mail or by one of the methods described under "Proper Service of Notices," pages 46-47.[153]

Note: In the circumstances described on pages 44-45, a landlord can give you just *three* days' advance written notice.

If you receive a 30-day or 60-day notice, you must leave the rental unit by the end of the thirtieth or sixtieth day after the date on which the landlord served the notice (see page 44). For example, if the landlord served a 60-day notice on July 16, you would begin counting the 60 days on July 17, and the 60-day period would end on September 14. If September 14 falls on a weekday, you would have to leave on or before that date. However, if the end of the 60-day period falls on a Saturday, you would not have to leave until the following Monday, because Saturdays and Sundays are legal holidays. Other legal holidays also extend the notice period.[154]

If you don't move by the end of the notice period, the landlord can file an **unlawful detainer lawsuit** to evict you (see page 47).

What if you have received a 30-day or 60-day notice, but you want to continue to rent the property, or you believe that you haven't done anything to cause the landlord to give you a notice of termination? In this kind of situation, you can try to convince the landlord to withdraw the notice. Try to find out why the landlord gave you the notice. If it's something within your control (for example, consistently late rent, or playing music too loud), assure the landlord that in the future, you will pay on time or keep the volume turned down. Then, keep your promise. If the landlord won't withdraw the notice, you will have to move out at the end of the 30-day or 60-day period, or be prepared for the landlord to file an unlawful detainer lawsuit to evict you.

Special rules may apply in cities with rent control. For example, in some communities with rent control ordinances, a periodic tenancy cannot be ended by the landlord without a good faith "just cause" or "good cause" reason to evict. In these communities, the landlord must state the reason for the termination, and the reason may be reviewed by local housing authorities.

Landlords usually must have good cause for evicting tenants who live in government-assisted housing.[155] Suppose that you are a tenant who participates in the Section 8 housing voucher program, and that your landlord wants to terminate (end) your tenancy. If the lease is in effect, the landlord must give you at least 30 days' advance written notice that the landlord intends to terminate the lease.[156] The landlord's written notice must state facts constituting good cause to evict you.[157] If the landlord withdraws from the Section 8

[152] *Civil Code Section 1946.1(d), as amended, effective January 1, 2003 (see Appendix 6). For example, a house or a condominium can be sold separately from any other dwelling unit, but the units in a halfplex cannot be sold separately from each other.*

[153] *Civil Code Section 1946.1(e), effective January 1, 2003 (see Appendix 6).*

[154] *Code of Civil Procedure Section 12a.*

[155] *Moskovitz, California Eviction Defense Manual, Section 18.5 (Cal. Cont. Ed. Bar 2003). See California Practice Guide, Landlord-Tenant, Chapter 12 (Rutter Group, 2002) for an in-depth discussion of the Section 8 housing program.*

[156] *Gallman v. Pierce (ND Cal. 1986) 639 F. Supp. 472, 485. This decision requires that the landlord follow California law when terminating a tenant's Section 8 lease. Beginning January 1, 2003, California law requires that a landlord give a tenant 60 days' advance written notice of termination if the tenant has lived in the rental a year or more. (Civil Code Section 1946.1, as amended, effective January 1, 2003 (see Appendix 6).) The courts have not yet considered whether this new requirement applies in the context of Section 8 housing.*

[157] *Moskovitz, California Eviction Defense Manual, Section 18.22 (Cal. Cont. Ed. Bar 2003).*

program, the landlord must give you 90 days' advance written notice.[158]

If you live in government-assisted housing or in an area with rent control, check with your local housing officials to see if any special rules apply in your situation.

Advance Payment of Last Month's Rent

Many landlords require tenants to pay "last month's rent" at the beginning of the **tenancy** as part of the **security deposit** or at the time the security deposit is paid. Whether the tenant can use this amount at the end of the tenancy to pay the last month's rent depends on the language used in the **lease** or rental agreement.[159]

Suppose that at the beginning of the tenancy, you gave the landlord a payment for the last month's rent and for the security deposit, and that the lease or rental agreement labels part of this upfront payment "last month's rent." In this situation, you have paid the rent for your last month in the rental unit. However, sometimes landlords raise the rent before the last month's rent becomes due. In this situation, can the landlord require you to pay the amount of the increase for the last month?

The law does not provide a clear answer to this question. If your lease or rental agreement labels part of your upfront payment "last month's rent," then you have a strong argument that you paid the last month's rent when you moved in. In this situation, the landlord should *not* be able to require you to pay the amount of the increase for the last month.[160] However, if your lease or rental agreement labels part of your upfront payment "security for last month's rent," then the landlord has a good argument that you have not actually paid the last month's rent, but have only provided security for it. In this situation, the landlord *could* require you to pay the amount of the increase for the last month.

For example, say that your rental agreement labeled part of the total deposit that you paid when you moved in "security for last month's rent," or that "last month's rent" is one of the items listed in your rental agreement under the heading "Security." Suppose that your rent was $500 when you moved in and that you paid your landlord $500 as "security for the last month's rent." Suppose that you also paid your landlord an additional $500 as a security deposit. If the landlord properly raised your rent to $550 while you were living in the rental unit, you can expect to owe the landlord $50 for rent during the last month of your tenancy (that is, the current rent [$550] minus the prepaid amount [$500] equals $50 owed).

If your rental agreement calls your entire upfront payment a "security deposit" and does not label any part of it "last month's rent," or "security for last month's rent," then you will have to pay the last month's rent when it comes due. In this situation, you cannot use part of your security deposit to pay the last month's rent. However, you will be entitled to a refund of your security deposit, as explained in the next section.

Refunds of Security Deposits

Common problems and how to avoid them

The most common disagreement between landlords and tenants is over the refund of the tenant's security deposit after the tenant has moved out of the rental unit. California law therefore specifies procedures that the landlord must follow for refunding, using, and accounting for tenants' security deposits.

California law specifically allows the landlord to use a tenant's security deposit for four purposes:

- For unpaid rent;
- For cleaning the rental unit when the tenant moves out, but only to make the

[158] *Civil Code Section 1954.535, Moskovitz, California Eviction Defense Manual, Section 18.22 (Cal. Cont. Ed. Bar 2003).*

[159] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 5/4-5/5 (NOLO Press 2001).*

[160] *Moskovitz and Warner, California Tenants' Rights, page 10/10 (NOLO Press 2001); see Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 5/5 (NOLO Press 2001).*

unit as clean as it was when the tenant first moved in;[161]

- For repair of damages, other than normal wear and tear, caused by the tenant or the tenant's guests; and
- If the lease or rental agreement allows it, for the cost of restoring or replacing furniture, furnishings, or other items of personal property (including keys), other than because of normal wear and tear.[162]

A landlord can withhold from the security deposit *only* those amounts that are reasonably necessary for these purposes. The security deposit *cannot* be used for repairing defects that existed in the unit before you moved in, for conditions caused by normal wear and tear during your tenancy or previous tenancies, or for cleaning a rental unit that is as clean as it was when you moved in.[163] A rental agreement or lease can *never* state that a security deposit is "nonrefundable."[164]

Under California law, within 21 days (three weeks) after you move, your landlord must either:

- Send you a full refund of your security deposit, or
- Mail or personally deliver an itemized statement that lists the amounts of and reasons for any deductions from your security deposit, along with a refund of any amounts not deducted.[165]

What should you do if you believe that your landlord has made an improper deduction from your security deposit, or if the landlord keeps all of the deposit without good reason?

Tell the landlord or the landlord's agent why you believe that the deductions from your security deposit are improper. *Immediately* ask the landlord or agent for a refund of the amount that you believe you're entitled to get back. You can make this request by phone, but you should follow it up with a letter. The letter should state the reasons that you believe the deductions are improper, and the amount that you feel should be returned to you. Keep a copy of your letter. It's a good idea to send the letter to the landlord or agent by certified mail and to request a return receipt to prove that the landlord or agent received the letter. Or, you can deliver the letter personally and ask the landlord or agent to acknowledge receipt by signing and dating your copy of the letter.

If the landlord or agent still doesn't send you the refund that you think you're entitled to receive, try to work out a reasonable compromise that is acceptable to both of you. You also can suggest that the dispute be mediated by a neutral third person or agency (see page 53.) You can contact one of the agencies listed on pages 52-53 for assistance. If none of this works, you may want to take legal action (see page 40).

What happens if the landlord doesn't deliver or mail a full refund or the required statement of deductions within 21 days as required by law? According to a California Supreme Court ruling, the landlord loses the right to keep any of the security deposit and must return the entire deposit to you.[166] Even so, it may be difficult for you to get your entire deposit back from the landlord.[167] You should contact one of the agencies listed on pages 52-53 for advice.

Practically speaking, you have two options if the landlord doesn't honor the 21-day rule. The first step for both is to call and write the landlord to request a refund of your entire security deposit. You can also suggest that the dispute be mediated. If the landlord presents good reasons for keeping

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[161] *For many years, landlords, tenants and courts used the "clean as it was when the tenant moved in" standard as the practical standard for determining whether the departing tenant left the rental unit clean. A new law has made this practical standard the legal standard as well. (Civil Code Section 1950.5(b)(3), as amended (see Appendix 6).) The new legal standard applies to tenancies for which the tenant's right to occupy the unit begins after January 1, 2003.*

As with any statutory provision, this provision should be given "a reasonable and common sense interpretation consistent with the apparent purpose, which will result in wise policy rather than mischief or absurdity." (7 Witkin, Summary of California Law (9th ed. 1987) Constitutional Law, Section 94.)

Notwithstanding this new standard, the tenant is not responsible for damages resulting from normal wear and tear (Civil Code Sections 1950.5(b),(e)), and the rental must, at a minimum, be fit to live in at the beginning of each tenancy (Civil Code Section 1941; see discussion of "Habitability," pages 24-27).

[162] *Civil Code Sections 1950.5(b),(e).*

[163] *Civil Code Sections 1950.5(b),(e).*

[164] *Civil Code Section 1950.5(m).*

[165] *Civil Code Section 1950.5(g).*

[166] *Granberry v. Islay Investments (1995) 9 Cal.4th 738, 745 [38 Cal.Rptr.2d 650, 653]. See California Practice Guide, Landlord-Tenant, Paragraphs 2:783.1-2:783.6 (Rutter Group 2002).*

[167] *Moskovitz and Warner, California Tenants' Rights, page 10/4 (NOLO Press 2001).*

Initial Inspection Before Tenant Moves Out

A tenant may ask the landlord to inspect the rental unit before the tenancy ends to identify defects or conditions that justify deductions from the tenant's security deposit. The purpose of this "**initial inspection**" is to give the tenant an opportunity to repair the defects or do the cleaning identified during the inspection in order to avoid deductions from the tenant's security deposit. The tenant has the right to be present during the inspection.

Beginning January 1, 2003, the landlord must perform an initial inspection as described in this sidebar if the tenant requests it. The landlord cannot make an initial inspection unless the tenant requests it.

Landlord's notice

The landlord must give the tenant written notice of the tenant's right to request an initial inspection of the rental and to be present during the inspection. The landlord must give this notice to the tenant a "reasonable time" after either the landlord or the tenant has given the other written notice of intent to terminate (end) the tenancy (see pages 33-35). If the tenant has a lease, the landlord must give the tenant this notice a "reasonable time" before the lease ends. If the tenant does not request an initial inspection, the landlord does not have any other duties with respect to the initial inspection.[168]

Scheduling the inspection

When the tenant requests an initial inspection, the landlord and the tenant must try to agree on a mutually convenient date and time for the inspection. The inspection cannot be scheduled earlier than two weeks before the end of the tenancy or lease term. In any event, the inspection should be scheduled to allow the tenant ample time to perform repairs or do cleaning identified during the initial inspection.[169] The landlord must give the tenant at least 48 hours' advance written notice of the date and time of the inspection whether or not the parties have agreed to a date and time for the inspection. The landlord is not required to give the 48-hour notice to the tenant if:

- the parties have not agreed on a date and time, *and* the tenant no longer wants the inspection; or
- the landlord and tenant have agreed in writing to **waive** (give up) the 48-hour notice requirement.

Itemized statement

The landlord or the landlord's agent may perform the inspection if the tenant is not present, unless the tenant has previously withdrawn his or her request for inspection.[170]

Based on the inspection, the landlord or agent must prepare an itemized statement of repairs or cleaning that the landlord or agent believes the tenant should perform in order to avoid deductions from the tenant's security deposit. The landlord or agent must give the statement to the tenant if the tenant is present for the inspection, or leave it inside the unit if the tenant is not present.[171] The landlord or agent also must give the tenant a copy of California's security deposit statute, which lists lawful uses of tenants' security deposits.[172] (See Appendix 5 for the text of this statute.)

This statute has the effect of limiting the kinds of repairs or cleaning that the landlord or agent may properly include in the itemized statement. Because of this statute, the landlord cannot, for example, use the tenant's security deposit to repair damages or correct defects in the rental that existed when the tenant moved in or that are the result of ordinary wear and tear.[173] Since the landlord cannot use the tenant's deposit to correct these kinds of defects, the landlord or agent cannot list them in the itemized statement.

Before the tenancy ends, the tenant may make the repairs or do the cleaning de-

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[168] *Civil Code Section 1950.5(f)(1), effective January 1, 2003 (see Appendix 6).*

[169] *See Senate Judiciary Committee Report on AB 2330 (2001-02 Regular Session), as amended May 21, 2002, p. 10.*

[170] *Civil Code Section 1950.5(f)(1), effective January 1, 2003 (see Appendix 6).*

[171] *Civil Code Section 1950.5(f)(2), effective January 1, 2003 (see Appendix 6).*

[172] *Civil Code Section 1950.5(f)(2), referring to Civil Code Sections 1950.5(b)(1)-(4),(d),(e).*

[173] *See Civil Code Sections 1950.5(b)(2),(e). See discussion in "Suggested Approaches to Security Deposit Deductions" sidebar pages 41-42.*

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some or all of your deposit for a purpose listed on pages 35-36, it's probably wise to enter into a reasonable compromise with the landlord. This is because the other option is difficult and the outcome may be uncertain.

The other option is to sue the landlord in small claims court for return of your security deposit. However, the landlord then can file a counterclaim against you. In the counterclaim, the landlord can assert a right to make deductions from the deposit, for example, for unpaid rent or for damage to the rental that the landlord alleges that you caused. Both parties then will have to argue to the judge why he or she is entitled to the deposit.[174]

Refund of security deposits after sale of building

When a building is sold, the selling landlord must do one of two things with the tenants' security deposits. The selling landlord must either transfer the security deposits to the new landlord, or return the security deposits to the tenants following the sale.[175]

Before transferring the security deposits to the new landlord, the selling landlord may deduct money from the security deposits. Deductions can be made for the same reasons that deductions are made when a tenant moves out (for example, to cover unpaid rent). If the selling landlord makes deductions from the security deposits, he or she must transfer the balance of the security deposits to the new landlord.[176]

The selling landlord must notify the tenants of the transfer in writing. The selling landlord must also notify each tenant of any amounts deducted from the security deposit and the amount of the deposit transferred to the new landlord. The written notice must also include the name, address, and telephone number of the new landlord. The selling landlord must send this notice to each tenant by first class mail, or personally deliver it to each tenant.[177]

The new landlord becomes legally responsible for the security deposits when the selling landlord transfers the deposits to the new landlord.[178]

If the selling landlord returns the security deposits to the tenants, the selling landlord may first make lawful deductions from the deposits (see pages 18, 35-36). The selling landlord must send each tenant an itemized statement that lists the amounts of and reasons for any deductions from the tenant's security deposit, along with a refund of any amounts not deducted.[179]

If the selling landlord fails to either return the tenants' security deposits to the tenants or transfer them to the new owner, *both* the new landlord and the selling landlord are legally responsible to the tenants for the security deposits.[180] If the selling landlord and the security deposits can't be found, the new landlord must refund all security deposits (after any proper deductions) as tenants move out.[181]

The new landlord can't 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.[182]

If the selling landlord has returned a greater amount to a tenant than the amount of the tenant's security deposit, the new landlord may recover this excess amount from the tenant.[183]

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[174] *See Granberry v. Islay Investments (1995) 9 Cal.4th 738, 749-750 [38 Cal.Rptr.2d 650, 656-657]; Moskovitz and Warner, California Tenants' Rights, page 10/4 (NOLO Press 2001). In simplest terms, the landlord must convince the judge that the damage occurred, and that the amount claimed is reasonable and is a proper deduction from the security deposit. The tenant then must prove that the landlord's conduct makes it unfair to allow the deductions from the deposit (for example, because the landlord waited too long to claim the damage and the delay harmed the tenant in some way).*

[175] *Civil Code Section 1950.5(h).*

[176] *Civil Code Sections 1950.5(e),(h)(1).*

[177] *Civil Code Section 1950.5(h)(1).*

[178] *Civil Code Section 1950.5(k).*

[179] *Civil Code Sections 1950.5(e),(g),(h)(2).*

[180] *Civil Code Section 1950.5(j). Exception: If the new landlord acted in the good faith belief that the old landlord properly complied with the transfer or refund requirement, the new landlord is not jointly liable with the old landlord.*

[181] *See Moskovitz and Warner, California Tenants' Rights, page 10/4 (NOLO Press 2001).*

[182] *Civil Code Section 1950.5(j).*

[183] *California Practice Guide, Landlord-Tenant, Paragraph 2:810 (Rutter Group, 2000).*

scribed in the itemized statement, as allowed by the rental agreement, in order to avoid deductions from the deposit.[184] However, the tenant cannot be required to repair defects or do cleaning if the tenant's security deposit could not be used properly to pay for that repair or cleaning.

Final inspection

The landlord may perform a final inspection after the tenant has moved out of the rental. The landlord may make a deduction from the tenant's security deposit to repair a defect or correct a condition:

- That was identified in the inspection statement and that the tenant did not repair or correct; or,
- That occurred after the initial inspection; or
- That was not identified during the initial inspection due to the presence of the tenant's possessions.[185]

Any deduction must be reasonable in amount, and must be for a purpose permitted by the security deposit statute.[186] Within three weeks after the tenancy ends, the landlord must refund any portion of the security deposit that remains after the landlord has made any lawful deductions (see pages 18, 35-36).[187]

Example

Suppose that you have a month-to-month tenancy, and that you properly give your landlord 30 days' advance written notice that you will end the tenancy. A few days after the landlord receives your notice, the landlord gives you written notice that you may request an initial inspection and be present during the inspection. A few days after that, the landlord telephones you, and you both agree that the landlord will perform the initial inspection at noon on the fourteenth day before the end of the tenancy. Forty-eight hours before the date and time that you have agreed upon, the landlord gives you a written notice confirming the date and time of the inspection.

The landlord performs the initial inspection at the agreed time and date, and you are present during the inspection. Suppose that you have already moved some of your possessions, but that your sofa remains against the living room wall. When the landlord has completed the inspection, the landlord gives you an itemized statement that lists the following items, and also gives you a copy of the text of California's security deposit statute. The itemized statement lists the following:

- Repair cigarette burns on window sill.
- Repair worn carpet in front of couch.
- Repair door jamb chewed by your dog.
- Wash the windows.
- Clean soap scum in bathtub.

Suppose that you scrub the bathtub until it sparkles, but don't do any of the repairs or wash the windows. After you move out, the landlord performs the final inspection. Three weeks after the tenancy ends, the landlord sends you an itemized statement of deductions, along with a refund of the rest of your security deposit. Suppose that the itemized statement lists deductions from your security deposit for the costs of repairing the window sill, the carpet and the door jamb, and for washing the windows. Has the landlord acted properly?

Whether the landlord has acted properly depends on other facts. Suppose that the cigarette burns were caused by a previous tenant and that the carpet in the room with the couch was 10 years old. According to the security deposit statute, the cigarette burns are defective conditions from another tenancy, and the worn carpet is normal wear and tear, even if some of it occurred while you were a tenant. The statute does not allow the landlord to deduct from your security deposit to make these repairs.[188] However, the landlord can deduct a reasonable amount to repair the door jamb chewed by your dog. This is because this damage occurred during your tenancy and is more than normal wear and tear.[189]

Suppose that the windows were dirty when you moved in, and that they were just as dirty when you moved out. According to the security deposit statute, the windows are

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[184] *Civil Code Section 1950.5(f)(3), effective January 1, 2003 (see Appendix 6).*

[185] *Civil Code Sections 1950.5(f)(4),(5), effective January 1, 2003 (see Appendix 6); see Civil Code Section 1950.5(e).*

[186] *Civil Code Sections 1950.5(b),(e).*

[187] *Civil Code Section 1950.5(g).*

[188] *Civil Code Sections 1950.5(b),(e).*

[189] *Civil Code Sections 1950.5(b),(e),(f)(4).*

(Continued from page 38)

Can the new landlord increase the amount of your security deposit? This depends, in part, on the type of tenancy that you have. If you have a lease, the new landlord can't increase your security deposit unless this is specifically allowed by the lease. For periodic tenants (those renting month-to-month, for example) the new landlord can increase security deposits only after giving proper advance written notice. In either situation, the total amount of the security deposit after the increase cannot be more than the legal limit (see page 17).

All of this means that it's important to keep copies of your rental agreement and the receipt for your security deposit. You may need those records to prove that you paid a security deposit, to verify the amount, and to determine whether the landlord had a right to make a deduction from the deposit.[190]

Legal actions for obtaining refunds of security deposits

Suppose that your landlord does not return your security deposit as required by law, or makes improper deductions from it. If you cannot successfully work out the problem with your landlord, you can file a lawsuit in small claims court for the amount of the security deposit plus court costs, and possibly also a penalty and interest, up to a maximum of $5,000. (If your claim is for a little more than $5,000, you can **waive** (give up) the extra amount and still use the small claims court.) For amounts greater than $5,000, you must file in superior court, and you ordinarily will need a lawyer in order to effectively pursue your case. In such a lawsuit, the landlord has the burden of proving that his or her deductions from your security deposit were reasonable.[191]

If you prove to the court that the landlord acted in "bad faith" in refusing to return your security deposit, the court can order the landlord to pay you the amount of the improperly withheld deposit, plus up to twice the amount of the security deposit as a "bad faith" penalty. The court can award a bad faith penalty in addition to actual damages whenever the facts of the case warrant — even if the tenant has not requested the penalty.[192] These additional amounts can also be recovered if a landlord who has purchased your building makes a "bad faith" demand for replacement of security deposits. The landlord has the burden of proving the authority upon which the demand for the security deposits was based.[193]

Whether you can collect attorney's fees if you win such a suit depends on whether the lease or rental agreement contains an attorney's fee clause.[194] If the lease or rental agreement contains an attorney's fee clause, you can claim attorney's fees as part of the judgment, even if the clause states that only the landlord can collect attorney's fees.[195] However, you can only collect attorney's fees if you were represented by an attorney.[196]

Tenant's Death

Suppose that a tenant who has a tenancy for a specified term (for example, a one-year lease) dies. The tenancy continues until the end of the lease term, despite the tenant's death. Responsibility for the rest of the lease term passes to the tenant's executor or administrator.[197]

Now suppose instead that the tenant had a month-to-month tenancy. In this case, the tenancy is terminated (ended) by notice of the tenant's death.[198] The tenancy ends on the thirtieth day following the tenant's last payment of rent before the tenant's death. No 30-day or 60-day notice is required to terminate the tenancy.[199]

Moving at the End of a Lease

A lease expires automatically at the end of the lease term. The tenant is expected either to renew the lease before it expires (with the landlord's agreement) or to move out. A lease usually doesn't require a tenant to give the landlord any advance written notice when the lease is about to expire. However, the tenant should read the lease to see if it has any provisions covering what happens at the end of the lease.

(Continued on page 43)

[190] *Civil Code Section 1950.5(o) (describes evidence that proves the existence and amount of a security deposit).*

[191] *Civil Code Section 1950.5(l).*

[192] *Civil Code Section 1950.5(l).*

[193] *Civil Code Section 1950.5(l).*

[194] *Code of Civil Procedure Sections 1032(b), 1033.5(a)(10)(A).*

[195] *Civil Code Section 1717.*

[196] *Jacobson v. Simmons Real Estate (1994) 23 Cal.App.4th 1285 [28 Cal.Rptr.2d 699]; Trope v. Katz (1995) 11 Cal.4th 274 [45 Cal.Rptr.2d 241]; see California Practice Guide, Landlord-Tenant, Paragraphs 9:391.1-9:391.4, 9:391.10 and following (Rutter Group, 2002).*

[197] *Joost v. Castle (1939) 33 Cal.App.2d 138 [91 P.2d 172]; 42 Cal. Jur. 3d, Landlord and Tenant, Section 267.*

[198] *Civil Code Section 1934.*

[199] *Miller & Desatnik Management Co. v. Bullock (1990) 221 Cal.App.3d Supp. 13, 18-19 [270 Cal.Rptr. 600, 604].*

Initial Inspection Before Tenant Moves Out (Continued from page 39)

in "the same state of cleanliness" as at the beginning of your tenancy. The statute does not allow the landlord to deduct from your security deposit to do this cleaning.[200]

Now suppose that while you were moving out, you broke the glass in the dining room light fixture and found damage to the wall behind the sofa that you caused when you moved in. Neither defect was listed in the landlord's itemized statement. Suppose that your landlord nonetheless makes deductions from your security deposit to repair these defects. Has the landlord acted properly in this instance?

The landlord has acted properly, as long as the amounts deducted are reasonably necessary for the repairs made.[201] Both of these defects are more than normal wear and tear, and the landlord is allowed to make deductions for defects that occur after the initial inspection, as well as for defects that could not be discovered because of the presence of the tenant's belongings.[202]

Suggested Approaches to Security Deposit Deductions

California's security deposit statute specifically allows the landlord to use a tenant's security deposit for the four purposes stated on pages 35-36. The statute limits the landlord's deduction from the security deposit to an amount that is "reasonably necessary" for the listed purposes.[203]

Unfortunately, the statute's terms "reasonably necessary" and "normal wear and tear" are vague and mean different things to different people. The following suggestions are offered as practical guides for dealing with security deposit issues. While these suggestions are consistent with the law, they are not necessarily the law in this area.

1. Costs of cleaning

A landlord may properly deduct from the departing tenant's security deposit to make the rental unit as clean as it was when the tenant moved in.[204]

A landlord cannot routinely charge each tenant for cleaning carpets, drapes, walls, or windows in order to prepare the rental unit for the next tenancy. Instead, the landlord must look at how well the departing tenant cleaned the rental unit, and may charge cleaning costs only if the departing tenant left the rental unit (or a portion of it) less clean than when he or she moved in. Reasonable cleaning costs would include the cost of such things as eliminating flea infestations left by the tenant's animals, cleaning the oven, removing decals from walls, removing mildew in bathrooms, defrosting the refrigerator, or washing the kitchen floor. But the landlord could *not* charge for cleaning any of these conditions if they existed at the time that the departing tenant moved in. In addition, the landlord could not charge for the cumulative effects of wear and tear. Suppose, for example, that the tenant had washed the kitchen floor but that it remained dingy because of wax built up over the years. The landlord could not charge the tenant for stripping the built-up wax from the kitchen floor.

The landlord is allowed to deduct from the tenant's security deposit only the *reasonable* cost of cleaning the rental unit. One practical measure of the cost of cleaning is the going hourly rate for cleaning costs in the area where the rental unit is located.[205]

(Continued on page 42)

[200] *Civil Code Section 1950.5(b)(3).*

[201] *Civil Code Section 1950.5(e).*

[202] *Civil Code Section 1950.5(f)(5), effective January 1, 2003 (see Appendix 6).*

[203] *Civil Code Section 1950.5(e).*

[204] *Civil Code Section 1950.5(b)(3), as amended, effective January 1, 2003 (see Appendix 6). The "clean as it was when the tenant moved in" legal standard applies only to tenancies for which the tenant's right to occupy the rental began after January 1, 2003.*

[205] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 5/3, 20/5-20/6 (NOLO Press 2001); see Moskovitz and Warner, California Tenants' Rights, pages 10/3-10/4 (NOLO Press 2001).*

Suggested Approaches to Security Deposit Deductions (Continued from page 41)

2. Carpets and drapes — "useful life" rule

Normal wear and tear to carpets, drapes and other furnishings cannot be charged against a tenant's security deposit.[206] Normal wear and tear includes simple wearing down of carpet and drapes because of normal use or aging, and includes moderate dirt or spotting. In contrast, large rips or indelible stains justify a deduction from the tenant's security deposit for repairing the carpet or drapes, or replacing them if that is reasonably necessary.

One common method of calculating the deduction for replacement prorates the total cost of replacement so that the tenant pays only for the remaining useful life of the item that the tenant has damaged or destroyed. For example, suppose a tenant has damaged beyond repair an eight-year-old carpet that had a life expectancy of ten years, and that a replacement carpet of similar quality would cost $1,000. The landlord could properly charge only $200 for the two years' worth of life (use) that would have remained if the tenant had not damaged the carpet.

3. Repainting walls

One approach for determining the amount that the landlord can deduct from the tenant's security deposit for repainting, *when repainting is necessary,* is based on the length of the tenant's stay in the rental unit. This approach assumes that interior paint has a two-year life. (Some landlords assume that interior paint has a life of three years or more.)

Length of stay	*Deduction*
Less than 6 months	full cost
6 months to 1 year	two-thirds of cost
1 year to 2 years	one-third of cost
2 or more years	no deduction

Using this approach, if the tenant lived in the rental unit for two years or more, the tenant could not be charged for any repainting costs, no matter how dirty the walls were.[207]

4. Other damage to walls

Generally, minor marks or nicks in walls are the landlord's responsibility as normal wear and tear (for example, worn paint caused by a sofa against the wall). Therefore, the tenant should not be charged for such marks or nicks. However, a large number of holes in the walls or ceiling that require filling with plaster, or that otherwise require patching and repainting, could justify withholding the cost of repainting from the tenant's security deposit. In this situation, deducting for painting would be more likely to be proper if the rental unit had been painted recently, and less likely to be proper if the rental unit needed repainting anyway. Generally, large marks or paint gouges are the tenant's responsibility.[208]

5. Common sense and good faith

Remember: *These suggestions are not hard and fast rules. Rather, they are offered to help tenants and landlords avoid, understand and resolve security deposit disputes.*

Security deposit disputes often can be resolved, or avoided in the first place, if the parties exercise common sense and good judgment, and deal with each other fairly and in good faith (see page 15). For example, a landlord should not deduct from the tenant's security deposit for normal wear and tear, and a tenant should not try to avoid responsibility for damages that the tenant has caused.

Especially in disputes about security deposits, overreaching by one party only invites the other party to take a hard line. Disputes that reach this level often become unresolvable by the parties and wind up in court.

[206] *Civil Code Section 1950.5(e).*

[207] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 20/6 (NOLO Press 2001).*

[208] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 20/6 (NOLO Press 2001).*

(Continued from page 40)

Before you move, you may want to give the landlord a courtesy notice stating that you do not want to renew your lease.

If you continue living in the rental after the lease expires, and if the landlord accepts rent from you, your tenancy will be a periodic tenancy from that point on. The length of time between your rent payments will determine the type of the tenancy (for example, monthly rent results in a month-to-month tenancy). Except for the length of the agreement, all other provisions of the lease will remain in effect.[209]

If you don't move in time, and if the landlord refuses to accept rent after the lease expires, the landlord can file an **eviction** lawsuit immediately without giving you any notice (see page 47). (This may not be true if you live in a rent control jurisdiction.)[210]

Important: If you want to *renew* your lease, you should begin negotiating with your landlord in plenty of time before the lease expires. Both your landlord and you will have to agree to the terms of the new lease. This process may take some time if one of you wants to negotiate different terms in the new lease.

The Inventory Checklist

You and the landlord or the landlord's agent can use the inventory checklist (see pages 71-74) if you request an initial inspection of the rental unit before you move out (see pages 37-41). You and the landlord or agent should agree on a mutually convenient date and time for the inspection about two weeks before the end of the tenancy or the lease term. You and the landlord or agent should walk through the rental unit at that time and complete the "Condition Upon Initial Inspection" portion of the checklist.

After you have moved out, the landlord can use the "Condition Upon Departure" portion of the checklist to conduct the final inspection (see pages 71-74). It's a good idea for you to be present when the landlord conducts the final inspection, but the law does not require that you be present or that the landlord allow you to be present.

If you don't want an initial inspection, you and the landlord should make arrangements for a final inspection close to the time that you move out. You and the landlord or agent should walk through the rental and complete the "Condition Upon Departure" portion of the checklist. Ideally, this walkthrough should occur after you have moved all of your belongings and have thoroughly cleaned the rental unit. Carefully completing the checklist at this point will help identify problem areas, and will help avoid disagreements after you have moved.

For example, you can identify repairs or cleaning that may be needed by comparing items noted under "Condition Upon Arrival" and "Condition Upon Departure." Items identified as needing repair or cleaning may result in deductions from your security deposit, unless you take care of them yourself or reach an agreement with the landlord.

Both you and the landlord or agent should sign and date the inventory checklist after each inspection. (The landlord or agent should sign the checklist even if you're not present.)

See additional suggestions regarding the inventory checklist on page 71, and "Refunds of Security Deposits," pages 35-42.

TERMINATIONS AND EVICTIONS

When Can a Landlord Terminate a Tenancy?

A **landlord** can terminate (end) a month-to-month **tenancy** simply by giving the **tenant** 30 days' or 60 days' advance written notice. (For an explanation of month-to-month tenancies, see page 11; for an explanation of 30-day and 60-day notices, see pages 33-35, 44.)

However, the landlord can terminate the tenancy by giving the tenant only *three* days' advance written notice if the tenant has done any of the following:[211]

- Failed to pay the rent.
- Violated any provision of the lease or rental agreement.
- Materially damaged the rental property ("committed waste").

[209] *Civil Code Section 1945, Moskovitz and Warner, California Tenants' Rights, page 9/2 (NOLO Press 2001).*

[210] *Moskovitz and Warner, California Tenants' Rights, page 11/8 (NOLO Press 2001). See Brown and Warner, The California Landlord's Law Book, Vol. 1: Rights & Responsibilities, page 18/24 (NOLO Press 2001).*

[211] *Code of Civil Procedure Sections 1161(2)-(4).*

- Substantially interfered with other tenants ("committed a nuisance").
- Used the rental property for an unlawful purpose.

Three-day notices are explained on pages 44-46.

Written Notices of Termination

Thirty-day or sixty-day notice

A landlord who wants to terminate (end) a month-to-month **tenancy** can do so by properly serving a written 30-day or 60-day notice on the tenant. Generally, a 30-day or 60-day notice doesn't have to state the landlord's reason for ending the tenancy. The **Thirty-Day or Sixty-Day Notice** is discussed on pages 33-35, and proper service of notices is discussed on pages 46-47.

In some localities or circumstances, special rules may apply to 30-day or 60-day notices:

- Some rent control cities require "just cause" for **eviction**, and the landlord's notice must state the reason for termination.
- Subsidized housing programs may limit allowable reasons for eviction, and may require that the notice state one of these reasons (see pages 34-35).
- Some reasons for eviction are unlawful. For example, an eviction cannot be **retaliatory** or discriminatory (see pages 50-51).

How to respond to a thirty-day or sixty-day notice

Suppose that you have lived in the **rental unit** for less than a year and that the landlord has properly served you with a 30-day notice to terminate the tenancy. During the 30-day period, you should either move out or try to make arrangements with the landlord to stay. If you want to continue to occupy the rental unit, ask the landlord what you need to do so make that possible. While a landlord is not required to state a reason for giving a 30-day or 60-day notice, most landlords do have a reason for terminating a tenancy. If you want to stay, it's helpful to know what you can do to make your relationship with the landlord a better one.

If your landlord agrees that you can continue to occupy the rental unit, it's important that your agreement with the landlord be in writing. The written agreement might be an attachment to your **lease** or **rental agreement** that both the landlord and you sign, or an exchange of letters between you and the landlord that states the details of your agreement. Having the agreement in writing ensures that you and your landlord are clear about your future relationship.

If the landlord doesn't agree to your staying, you will have to move out. You should do so by the end of the 30 days. Take all of your personal belongings with you, and leave the rental property at least as clean as when you rented it. This will help with the refund of your **security deposit** (see "Refunds of Security Deposits," page 35).

If you have haven't moved at the end of the 30 days, you will be unlawfully occupying the rental unit, and the landlord can file an **unlawful detainer (eviction) lawsuit** to evict you.

If you believe that the landlord has acted unlawfully in giving you a 30-day or 60-day notice, or that you have a valid defense to an unlawful detainer lawsuit, you should carefully weigh the pros and cons of contesting the landlord's likely eviction lawsuit against you if you don't move out. As part of your decision-making process, you may wish to consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic. (See "Getting Help From a Third Party," pages 52-53.)

Three-day notice

A landlord can use a written three-day notice (**eviction notice**) if the tenant has done any of the following:[212]

- Failed to pay the rent.
- Violated any provision of the lease or rental agreement.
- Materially damaged the rental property ("committed waste").
- Substantially interfered with other tenants ("committed a nuisance").
- Used the rental property for an unlawful purpose, such as selling illegal drugs.

If the landlord gives the tenant a three-day notice because the tenant hasn't paid the rent, the notice must accurately state the amount of rent that is due. In addition, the notice must state:

- The name, address and telephone number of the person to whom the rent must be paid.

[212] *Code of Civil Procedure Sections 1161(2)-(4).*

- If payment may be made in person, the usual days and hours that the person is available to receive the rent payment. If the address does not accept personal deliveries, then you can mail the rent to the owner at the name and address stated in the three-day notice. If you can show proof that you mailed the rent to the stated name and address (for example, a receipt for certified mail), the law assumes that the rent payment is received by the owner on the date of postmark.
- Instead, the notice may state the name, street address and account number of the financial institution where the rent payment may be made (if the institution is within five miles of the unit). If an electronic fund transfer procedure was previously established for paying rent, payment may be made using that procedure.[213]

If the three-day notice is based on one of the other four conditions listed on page 44, the notice must either describe the tenant's violation of the lease or rental agreement, or describe the tenant's other improper conduct. The three-day notice must be properly served on the tenant (see pages 46-47).

Depending on the type of violation, the three-day notice demands either (1) that the tenant correct the violation or leave the rental unit, or (2) that the tenant leave the rental unit. If the violation involves something that the tenant can correct (for example, the tenant hasn't paid the rent, or the tenant has a pet but the lease doesn't permit pets), the notice must give the tenant the option to correct the violation.

Failing to pay the rent, and most violations of the terms of a lease or rental agreement, can be corrected. In these situations, the three-day notice must give the tenant the option to correct the violation. However, the other three conditions listed on page 44 *cannot* be corrected, and the three-day notice can simply order the tenant to leave at the end of the three days.

If you pay the rent that is due or correct a correctable violation of the lease or rental agreement during the three-day notice period, the tenancy continues.[214] If you attempt to pay all the past-due rent demanded after the three-day period expires, the landlord can either file a lawsuit to evict you or accept the rent payment. If the landlord accepts the rent, the landlord **waives** (gives up) the right to evict you based on late payment of rent.[215]

See page 46 on how to count the three days.

How to respond to a three-day notice

Suppose that your landlord properly **serves** you a three-day notice because you haven't paid the rent. You must either pay the full amount of rent that is due or vacate (leave) the rental unit by the end of the third day, unless you have a legal basis for not paying rent (see pages 27-31).

If you decide to pay the rent that is due, it's best to call the landlord or the landlord's agent immediately. Tell the landlord or agent that you intend to pay the amount demanded in the notice (if it is correct) and arrange for a time and location where you can deliver the payment to the landlord or agent. *You must pay the rent by the end of the third day*. You should pay the unpaid rent by cashier's check, money order, or cash. Whatever the form of payment, be sure to get a receipt signed by the landlord or agent that shows the date and the amount of the payment.

If the amount of rent demanded is not correct, it's essential that you discuss this with the landlord or agent immediately, and offer to pay the amount that is actually due. Make this offer orally and in writing, and keep a copy of the written offer. The landlord's notice is not legally effective if it demands more rent than is actually due, or if it includes any charges other than for past-due rent (for example, late charges, unpaid utility charges, dishonored check fees, or interest).[216]

If the amount of rent demanded is correct and doesn't include any other charges, and if you decide not to pay, then you and any other occupants should move out promptly.

If you stay beyond the three days without paying the rent that is properly due, you will be occupying the rental unit unlawfully. The landlord then has a single, powerful remedy: a court action to evict you and recover the unpaid rent (called an "unlawful detainer [eviction] lawsuit" [see page 47]). Your failure to pay the rent and to leave

[213] *Code of Civil Procedure Section 1162 paragraph 2, as amended, effective January 1, 2002 (see Appendix 6). See California Practice Guide, Landlord-Tenant, Paragraphs 7:104.10-7:104.12, 7:119.3-7:110.4 (Rutter Group 2002).*

[214] *Code of Civil Procedure Section 1161(3).*

[215] *EDC Associates Ltd. v. Gutierrez (1984) 153 Cal.App.3d 167 [200 Cal.Rptr. 333].*

[216] *Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 16/2-16/3 (NOLO Press 2001).*

promptly may also become part of your credit history, which could affect your ability to rent from other landlords.

If the three-day notice is based on something other than failure to pay rent, the notice will state whether you can correct the problem and remain in the rental unit (see pages 44-45). If the problem can be corrected and you want to stay in the rental unit, *you must correct the problem by the end of the third day*. Once you have corrected the problem, you should promptly notify the landlord or the property manager.

Even if the notice does not state that you can correct the problem, you can try to persuade the landlord that you will correct the problem and be a good tenant if the landlord agrees to your staying. If the landlord agrees, keep your promise immediately. The landlord should then waive (forgive) your violation, and you should be able to stay in the rental unit. However, in the event of another violation, the landlord probably will serve you with another three-day notice, or with a thirty-day or sixty-day notice.

If you believe that the landlord has acted unlawfully in giving you a three-day notice, or that you have a valid defense to an unlawful detainer lawsuit, you should carefully weigh the pros and cons of contesting the landlord's likely eviction lawsuit against you if you don't move out. As part of your decision-making process, you may wish to consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic. (See "Getting Help From a Third Party," pages 52-53.)

How to count the three days

Begin counting the three days on the first day after the day the notice was served. If the third day falls on a Saturday, Sunday, or holiday, the three-day period will not expire until the following Monday or nonholiday.[217] (See the next section for a discussion of service of the notice and the beginning of the notice period.)

Proper Service of Notices

A landlord's three-day, thirty-day, or sixty-day notice to a tenant must be "served" properly to be legally effective. The terms **"serve"** and **"service"** refer to procedures required by the law. These procedures are designed to increase the likelihood that the person to whom notice is given actually receives the notice.

A landlord can serve a *three-day* notice on the tenant in one of three ways: by personal service, by substituted service, or by posting and mailing. The landlord, the landlord's agent, or anyone over 18 can serve a notice on a tenant.

- Personal service — To serve you personally, the person serving the notice must hand you the notice (or leave it with you if you refuse to take it).[218] The three-day period begins the day *after* you receive the notice.
- Substituted service on another person — If the landlord can't find you at home, the landlord should try to serve you personally at work. If the landlord can't find you at home or at work, the landlord can use "substituted service" instead of serving you personally.

  To comply with the rules on substituted service, the person serving the notice must leave the notice with a person of "suitable age and discretion" at your home or work *and also* mail a copy of the notice to you at home.[219] A person of suitable age and discretion normally would be an adult at your home or workplace, or a teenage member of your household.

  Service of the notice is legally complete when *both* of these steps have been completed. The three-day period begins the day after both steps have been completed.
- Posting and mailing — If the landlord can't serve the notice on you personally or by substituted service, the notice can be served by taping or tacking a copy to the rental unit in a conspicuous place (such as the front door of the rental unit) *and* by mailing another copy to you at the rental unit's address.[220] (This service method is commonly called "posting and mailing" or "nailing and mailing.")

  Service of the notice is not complete until the copy of the notice has been mailed. The three-day period begins the day after the notice was posted *and* mailed.[221]

How to count the three days is explained on this page.

[217] *Code of Civil Procedure Sections 12, 12a.*
[218] *Code of Civil Procedure Section 1162(1).*
[219] *Code of Civil Procedure Section 1162(2).*
[220] *Code of Civil Procedure Section 1162(3).*
[221] *Walters v. Meyers (1990) 226 Cal.App.3d Supp. 15, 19-20 [277 Cal.Rptr. 316, 318-319] (service of a three-day notice is effective from the date the notice is mailed, not from the date the tenant received it).*

A landlord can use any of these methods to serve a *thirty-day* or *sixty-day* notice on a tenant, or can send the notice to the tenant by certified or registered mail with return receipt requested.[222]

The Eviction Process (Unlawful Detainer Lawsuit)

Overview of the eviction process

If the tenant doesn't voluntarily move out after the landlord has properly given the required notice to the tenant, the landlord can evict the tenant. In order to evict the tenant, the landlord must file an unlawful detainer lawsuit in superior court.

In an eviction lawsuit, the landlord is called the "plaintiff" and the tenant is called the "defendant."

An unlawful detainer lawsuit is a "summary" court procedure. This means that the court action moves forward very quickly, and that the time given the tenant to respond during the lawsuit is very short. For example, in most cases, the tenant has only *five days* to file a written response to the lawsuit after being served with a copy of the landlord's complaint.[223] Normally, a judge will hear and decide the case within 20 days after the tenant files an answer.[224]

The court-administered eviction process assures the tenant of the right to a court hearing if the tenant believes that the landlord has no right to evict the tenant. The landlord *must* use this court process to evict the tenant; the landlord *cannot* use self-help measures to force the tenant to move. For example, the landlord cannot physically remove or **lock out** the tenant, cut off utilities such as water or electricity, remove outside windows or doors, or seize (take) the tenant's belongings in order to carry out the eviction. The landlord *must use the court procedures*.

If the landlord uses unlawful methods to evict a tenant, the landlord may be subject to liability for the tenant's damages, as well as penalties of up to $100 per day for the time that the landlord used the unlawful methods.[225]

In an unlawful detainer lawsuit, the court holds a hearing at which the parties can present their evidence and explain their case. If the court finds that the tenant has a good defense, the court will not evict the tenant. If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay court costs (for example, the tenant's filing fees). The landlord also may have to pay the tenant's attorney's fees, if the rental agreement contains an attorney's fee clause and if the tenant was represented by an attorney.[226]

If the court decides in favor of the landlord, the court will issue a **writ of possession**. The writ of possession orders the sheriff to remove the tenant from the rental unit, but gives the tenant five days from the date that the writ is served to leave voluntarily. If the tenant does not leave by the end of the fifth day, the writ of possession authorizes the sheriff to physically remove and lock the tenant out, and seize (take) the tenant's belongings that have been left in the rental unit. *The landlord is not entitled to possession of the rental unit until after the sheriff has removed the tenant*.

The court also may award the landlord any unpaid rent if the eviction is based on the tenant's failure to pay rent. The court also may award the landlord damages, court costs, and attorney's fees (if the rental agreement or lease contains an attorney's fee clause and if the landlord was represented by an attorney). If the court finds that the tenant acted maliciously in not giving up the rental unit, the court also may award the landlord up to $600 as a penalty.[227] The judgment against the tenant will be reported on the tenant's **credit report** for seven years.[228]

How to respond to an unlawful detainer lawsuit

If you are served with an unlawful detainer complaint, you should get legal advice or assistance *immediately*. Tenant organizations, tenant-landlord programs, housing clinics, legal aid organizations, or private attorneys can provide you with advice, and assistance if you need it. (See "Getting Help From a Third Party," pages 52-53.)

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[222] *Civil Code Section 1946.1(e), Code of Civil Procedure Section 1162.*

[223] *Code of Civil Procedure Section 1167.3.*

[224] *Code of Civil Procedure Section 1170.5(a).*

[225] *Civil Code Section 789.3.*

[226] *Civil Code Section 1717; Trope v. Katz (1995) 11 Cal.4th 274 [45 Cal.Rptr.2d 241]; see California Practice Guide, Landlord-Tenant, Paragraphs 9:391.1-9:391.4, 9:391.10 and following (Rutter Group, 2002).*

[227] *Code of Civil Procedure Section 1174(b).*

[228] *Civil Code Sections 1785.13(a)(2),(3).*

You usually have only *five days* to respond in writing to the landlord's complaint. You must respond during this time by filing the correct legal document with the Clerk of the court in which the lawsuit was filed. If the fifth day falls on a weekend or holiday, you can file your written response on the following Monday or nonholiday.[229] Typically, a tenant responds to a landlord's complaint by filing a written "answer." (You can get a copy of a form to use for filing an answer from the Clerk of Court's office.)

You may have a legal defense to the landlord's complaint. If so, you must state the defense in a written answer and file your written answer with the Clerk of Court by the end of the fifth day. Otherwise, you will lose any defenses that you may have. Some typical defenses that a tenant might have are listed here as examples:

- The landlord's three-day notice requested more rent than was actually due.
- The rental unit violated the **implied warranty of habitability.**
- The landlord filed the eviction action in **retaliation** for the tenant exercising a tenant right or because the tenant complained to the building inspector about the condition of the rental unit.

Depending on the facts of your case, there are other legal responses to the landlord's complaint that you might file instead of an answer. For example, if you believe that your landlord did not properly serve the summons and the complaint, you might file a **Motion to Quash Service of Summons.** If you believe that the complaint has some technical defect or does not properly allege the landlord's right to evict you, you might file a **Demurrer.** *It is important that you obtain advice from a lawyer before you attempt to use these procedures.*

If you don't file a written response to the landlord's complaint by the end of the fifth day, the court will enter a **default judgment** in favor of the landlord. A default judgment allows the landlord to obtain a **writ of possession** (see pages 50-51), and may also award the landlord unpaid rent, damages and court costs.

The Clerk of Court will ask you to pay a filing fee when you file your written response. The filing fee typically is about $106. However, if you can't afford to pay the filing fee, you can request that the Clerk allow you to file your response without paying the fee (that is, you can request a waiver of the fee). An application form for a fee waiver, called an **"Application for Waiver of Court Fees and Costs,"** can be obtained from the Clerk of Court.

After you have filed your written answer to the landlord's complaint, the Clerk of Court will mail to both you and the landlord a notice of the time and place of the trial. If you don't appear in court, a default judgment will be entered against you.

Eviction of "unnamed occupants"

Sometimes, people who are not parties to the rental agreement or lease move into the rental unit with the tenant or after the tenant leaves, but before the unlawful detainer lawsuit is filed. When a landlord thinks that these "occupants" might claim a legal right to possess the rental unit, the landlord may seek to include them as defendants in the eviction action, even if the landlord doesn't know who they are. In this case, the landlord will tell the process server to serve the occupants with a **Prejudgment Claim of Right to Possession** form at the same time that the eviction summons and complaint are served on the tenants who are named defendants.[230] See additional discussion of "unnamed occupants" and Claim of Right to Possession forms on pages 56-57.

Before the court hearing

Before appearing in court, you must carefully prepare your case, just as an attorney would. Among other things, you should:

- Talk with a housing clinic, tenant organization, attorney, or legal aid organization. This will help you understand the legal issues in your case and the evidence that you will need.
- Decide how you will present the facts that support your side of the case —whether by witnesses, letters, other documents, photographs or video, or other evidence.
- Have at least four copies of all documents that you intend to use as evidence — an original for the judge, a copy for the opposing party, a copy for yourself, and copies for your witnesses.
- Ask witnesses to testify at the trial, if they will help your case. You can **subpoena** a

[229] *Code of Civil Procedure Section 1167.*
[230] *Code of Civil Procedure Section 415.46.*

witness who will not testify voluntarily. A subpoena is an order from the court for a witness to appear. The subpoena must be served on (handed to) the witness, and can be served by anyone but you who is over the age of 18. You can obtain a subpoena from the Clerk of Court. You must pay witness fees at the time the subpoena is served on the witness, if the witness requests them.

The parties to an unlawful detainer lawsuit have the right to a jury trial, and either party can request one. After you have filed your answer to the landlord's complaint, the court will send you a document called a **Memorandum to Set Case for Trial** (called an "At-Issue Memorandum" or a "Memo to Set" in some counties).[231] This document will indicate whether the plaintiff (landlord) has requested a jury trial. If not, and if you are not represented by a lawyer, tenant advisers usually recommend that you *not* request a jury trial.

There are several good reasons for this recommendation: first, presenting a case to a jury is more complex than presenting a case to a judge, and a nonlawyer representing himself or herself may find it very difficult; second, the party requesting a jury trial will be responsible for depositing the initial cost of jury fees with the court; and third, the losing party will have to pay all of the jury costs.

After the court's decision

If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay the tenant's court costs (for example, filing fees) and the tenant's attorney's fees. However, the tenant will have to pay any rent that the court orders.

If the landlord wins, the tenant will have to move. In addition, the court may order the tenant to pay the landlord's court costs and attorney's fees, and any proven damages, such as overdue rent or the cost of repairs if the tenant damaged the premises.

It is possible, but rare, for a losing tenant to convince the court to allow the tenant to remain in the rental unit. This is called **relief from forfeiture** of the tenancy. The tenant must convince the court of two things in order to obtain relief from forfeiture: that the eviction would cause the tenant severe hardship, and that the tenant is able to pay all of the rent that is due or that the tenant will fully comply with the lease or rental agreement.[232]

A tenant can obtain relief from forfeiture of a lease or a rental agreement, even if the tenancy has terminated (ended), so long as possession of the unit has not been turned over to the landlord. A tenant seeking relief from forfeiture (or the tenant's attorney) must apply for relief *immediately* after the court issues its judgment in the unlawful detainer lawsuit.[233]

A tenant who loses an unlawful detainer lawsuit may **appeal** the judgment if the tenant believes that the judge mistakenly decided a legal issue in the case. However, the tenant will have to move before the appeal is heard, unless the tenant obtains a stay of enforcement of the judgment or relief from forfeiture (described immediately above). The court will not grant the tenant's request for a stay of enforcement unless the court finds that the tenant or the tenant's family will suffer extreme hardship, and that the landlord will not suffer irreparable harm. If the court grants the request for a stay of enforcement, it will order the tenant to make rent payments to the court in the amount ordered by the court.[234]

A landlord who loses an unlawful detainer lawsuit also may appeal the judgment.

Writ of possession

If a judgment is entered against you and becomes final (for example, if you do not appeal or if you lose on appeal), and you do not move out, the court will issue a **writ of possession** to the landlord.[235] The landlord can deliver this legal

[231] *In some counties, the landlord must file the At-Issue Memorandum. California Practice Guide, Landlord-Tenant, Paragraphs 9:4, 9:11, 9:19-9:20 (Rutter Group, 2001).*

[232] *Code of Civil Procedure Section 1179, as amended, effective January 1, 2003 (see Appendix 6).*

[233] *California Practice Guide, Landlord-Tenant, Paragraph 9:444 (Rutter Group 1999). The tenant's written petition must be served on the landlord at least five days before the date of the hearing on the request for relief. If the tenant does not have an attorney, the tenant may orally apply to the court for relief, if the landlord either is present in court or has been given proper notice. The court also may order relief from forfeiture on its own motion. The court may order relief from forfeiture only on condition that the tenant pay all of the rent due (or fully comply with the lease or rental agreement). (Code of Civil Procedure Section 1179, as amended, effective January 1, 2003 (see Appendix 6).)*

[234] *Code of Civil Procedure Section 1176.*

[235] *Code of Civil Procedure Section 715.010.*

document to the sheriff, who will then forcibly evict you from the rental unit if you don't leave promptly.

Before evicting you, the sheriff will serve you with a copy of the writ of possession.[236] The writ of possession instructs you that you must move out by the end of the fifth day after the writ is served on you, and that if you do not move out, the sheriff will remove you from the rental unit and place the landlord in possession of it.[237] The cost of serving the writ of possession will be added to the other costs of the suit that the landlord will collect from you.

After you are served with the writ of possession, you have five days to move. If you have not moved by the end of the fifth day, the sheriff will return and physically remove you.[238] If your belongings are still in the rental unit, the sheriff may either remove them or have them stored by the landlord, who can charge you reasonable storage fees. If you do not reclaim these belongings within 18 days, the landlord can mail you a notice to pick them up, and then can either sell them at auction or keep them (if their value is less than $300).[239] If the sheriff forcibly evicts you, the sheriff's cost will also be added to the judgment, which the landlord can collect from you.

Setting aside a default judgment

If the tenant does not file a written response to the landlord's complaint, the landlord can ask the court to enter a **default judgment** against the tenant. The tenant then will receive a notice of judgment and writ of possession, as described above.

There are many reasons why a tenant might not respond to the landlord's complaint. For example, the tenant may have received the summons and complaint, but was not able to respond because the tenant was ill or incapacitated, or for some other very good reason. It is even possible (but not likely) that the tenant was never served with the landlord's summons and complaint. In situations such as these, where the tenant has a valid reason for not responding to the landlord's complaint, the tenant can ask the court to set aside the default judgment.

> ***"If the tenant does not file a written response to the landlord's complaint, the landlord can ask the court to enter a default judgment against the tenant."***

Setting aside a default judgment can be a complex legal proceeding. Common reasons for seeking to set aside a default judgment are the tenant's (or the tenant's lawyer's) mistake, inadvertence, surprise, or excusable neglect.[240] A tenant who wants to ask the court to set aside a default judgment must act promptly. The tenant should be able to show the court that he or she has a satisfactory excuse for the default, acted promptly in making the request, and has a good chance to win at trial.[241] A tenant who thinks that grounds exist for setting aside a default judgment should first seek advice and assistance from a lawyer, a legal aid organization, or a tenant organization.

Retaliatory Actions, Evictions and Discrimination

Retaliatory actions and evictions

A landlord may try to evict a tenant because the tenant has exercised a legal right (for example, using the **repair and deduct remedy**, pages 27-28) or has complained about a problem in the rental unit. Or, the landlord may raise the tenant's rent or otherwise seek to punish the tenant for complaining or lawfully exercising a tenant right.

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[236] *Code of Civil Procedure Section 715.020.*

[237] *Code of Civil Procedure Section 715.010(b)(2).*

[238] *Code of Civil Procedure Section 715.020(c).*

[239] *Code of Civil Procedure Sections 715.030, 1174(h); Civil Code Sections 1965, 1988. See the Department of Consumer Affairs' Legal Guides LT-4, "How to Get Back Possessions You Have Left in a Rental Unit," and LT-5, "Options for a Landlord: When a Tenant's Personal Property has Been Left in the Rental Unit." These Legal Guides are available on the Department of Consumer Affairs' Web site, www.dca.ca.gov.*

[240] *Code of Civil Procedure Section 473(b). See Moskovitz, California Eviction Defense Manual, Section 12.12 (Cal. Cont. Ed. Bar 2003).*

[241] *Moskovitz, California Eviction Defense Manual, Sections 12.15, 12.16 (Cal. Cont. Ed. Bar 2003).*

In either situation, the landlord's action is said to be **retaliatory** because the landlord is punishing the tenant for the tenant's exercise of a legal right. The law offers tenants protection from retaliatory eviction and other retaliatory acts.[242]

The law infers (assumes) that the landlord has a retaliatory motive if the landlord seeks to evict the tenant (or takes other retaliatory action) within six months after the tenant has exercised any of the following tenant rights:[243]

- Using the repair and deduct remedy, or telling the landlord that the tenant will use the repair and deduct remedy.
- Complaining about the condition of the rental unit to the landlord, or to an appropriate public agency after giving the landlord notice.
- Filing a lawsuit or beginning arbitration based on the condition of the rental unit.
- Causing an appropriate public agency to inspect the rental unit or to issue a citation to the landlord.

In order for the tenant to defend against eviction on the basis of retaliation, the tenant must prove that he or she exercised one or more of these rights within the six-month period, that the tenant's rent is current, and that the tenant has not used the defense of retaliation more than once in the past 12 months. If the tenant produces all of this evidence, then the landlord must produce evidence that he or she did not have a retaliatory motive.[244] If both sides produce the necessary evidence, the judge or jury then must decide whether the landlord's action was retaliatory or was based on a valid reason.

A tenant can also assert retaliation as a defense to eviction if the tenant has lawfully organized or participated in a tenants' organization or protest, or has lawfully exercised any other legal right. In these circumstances, the tenant must prove that he or she engaged in the protected activity, and that the landlord's conduct was retaliatory.[245]

If you feel that your landlord has retaliated against you because of an action that you've properly taken against your landlord, talk with an attorney or legal aid organization. An attorney also may be able to advise you about other defenses.

Retaliatory discrimination

A landlord, managing agent, real estate broker, or salesperson violates California's Fair Employment and Housing Act by harassing, evicting, or otherwise discriminating against a person in the sale or renting of housing when the "dominant purpose" is to retaliate against a person who has done any of the following:[246]

- Opposed practices that are unlawful under the Act;
- Informed law enforcement officials of practices that the person believes are unlawful under the Act; or
- Aided or encouraged a person to exercise rights protected by the Act.

A tenant who can prove that the landlord's eviction action is based on a discriminatory motive has a defense to the unlawful detainer action. A tenant who is the victim of retaliatory discrimination also has a cause of action for damages under the Fair Employment and Housing Act.[247]

RESOLVING PROBLEMS

Talk With Your Landlord

Communication is the key to avoiding and resolving problems. If you have a problem with your **rental unit,** it's usually best to talk with your **landlord** before taking other action. Your landlord may be willing to correct the problem or to work out a solution. By the same token, the landlord (or the landlord's agent or manager) should discuss problems with the **tenant** before taking formal action. The tenant may be willing to correct the problem once he or she understands the landlord's concerns. Both parties should bear in mind that each has the duty to deal with the other fairly and in good faith (see page 15).

If discussing the problem with the landlord doesn't solve it, and if the problem is the landlord's responsibility (see pages 24-27), you should write a letter to the landlord. The letter should describe the problem, its effect on you, how long the problem has existed, what you may have done to remedy the

[242] *Civil Code Section 1942.5.*

[243] *Civil Code Section 1942.5.*

[244] *Civil Code Sections 1945.2 (a),(b); see California Practice Guide, Landlord-Tenant, Paragraphs 7:368-7:380 (Rutter Group 1999).*

[245] *Civil Code Section 1942.5(c).*

[246] *Government Code Sections 12955(f), 12955.7.*

[247] *California Practice Guide, Landlord-Tenant, Paragraphs 7:205, 7:391-7:394 (Rutter Group 2002).*

problem or limit its effect, and what you would like the landlord to do. You should keep a copy of this letter.

If you have been dealing with an agent of the landlord, such as a property manager, you may want to directly contact the owner of the rental unit. The name, address and telephone number of the owner and the property manager, or the person who is authorized to receive legal notices for the owner, must be written in your **rental agreement** (or **lease)** or posted conspicuously in the building.[248] You can also contact your County Assessor's Office for this information.

If you don't hear from the landlord after you send the letter, or if the landlord disagrees with your complaint, you may need to use one of the tenant remedies that are discussed in this booklet (such as the **repair and deduct remedy,** pages 27-28), or obtain legal assistance. The length of time that you should wait for the landlord to act depends on the seriousness of the problem. Normally, 30 days is considered appropriate unless the problem is extremely serious.

Remember: The landlord and the tenant discussing problems with each other can prevent little problems from becoming big ones. Trying to work out problems benefits everybody. Sometimes, it's helpful to involve someone else, such as a mutual friend or a trained **arbitrator** or **mediator** (see page 53). If the problem truly cannot be resolved by discussion, negotiation, and acceptable compromise, *then* each party can look to the remedies provided by the law.

Getting Help From a Third Party

Many resources are available to help tenants and landlords resolve problems. Check which of the following agencies are available in your area, and call or write them for information or assistance:

- Local consumer protection agency. See the *City* and *County Government* listings in the white pages of the phone book.
- Local housing agency. See the *City* and *County Government* listings in the white pages of the phone book.
- Local district attorney's office. See the *County Government* listings in the white pages of the phone book.
- City or county rent control board. See the *City* and *County Government* listings in the white pages of the phone book.
- Local tenant association, or rental housing or apartment association. Check the white (business) and yellow pages in the phone book.
- Local dispute resolution program. To order a county-by-county list, see page 64.
- Local tenant information and assistance resources. See list on page 58.

You may also obtain information from the California Department of Consumer Affairs' Consumer Information Center at 1-800-952-5210 (1-916-445-1254 for Sacramento area calls). For TDD, call 1-800-326-2297 (1-916-322-1700 for Sacramento-area calls). You can also visit the Department of Consumer Affairs' Web site at www.dca.ca.gov.

Many county bar associations offer lawyer referral services and volunteer attorney programs which can help a tenant locate a low-fee or free attorney. **Legal aid organizations** may provide **eviction** defense service to low-income tenants. Some law schools offer free advice and assistance through landlord-tenant clinics.

Tenants should be cautious about using so-called eviction defense clinics or bankruptcy clinics. While some of these clinics may be legitimate and provide good service, others are not legitimate. Some of these clinics may use high-pressure sales tactics, make false promises, obtain your signature on blank forms, take your money, and then do nothing.

These clinics may promise to get a **federal stay** of an eviction action. This usually means that the clinic intends to file a bankruptcy petition for the tenant. While this may stop the eviction temporarily, it can have an extremely bad effect on the tenant's future ability to rent property or to obtain credit, since the bankruptcy will be part of the tenant's credit record *for as long as 10 years*.

"Unlawful detainer assistants" are non-lawyers who are in business to provide advice and assistance to landlords and tenants on unlawful detainer issues. Unlawful detainer assistants (UDAs) must be registered with the County Clerk's office in the counties where they have their principal place of business and where

[248] *Civil Code Sections 1961, 1962, 1962.5.*

they do business.[249] A tenant who signs a contract with a UDA can cancel the contract within 24 hours after signing it.[250]

"Legal document assistants" (LDAs) are non-lawyers who type and file legal documents as directed by people who are representing themselves in legal matters. Similar registration and contract cancellation requirements apply to legal document assistants.[251]

The fact that a UDA or LDA is properly registered with the County Clerk does not guarantee that the UDA or LDA has the knowledge or ability to help you.

Arbitration and Mediation

Some local housing agencies refer landlord-tenant disputes to a local dispute resolution center or mediation service. The goal of these services is to resolve disputes without the burden and expense of going to court.

Mediation involves assistance from an impartial third person who helps the tenant and landlord reach a voluntary agreement on how to settle the dispute. The mediator normally does not make a binding decision in the case.

Arbitration involves referral of the dispute to an impartial third person, called an **arbitrator**, who decides the case. If the landlord and tenant agree to submit their dispute to arbitration, they will be bound by the decision of the arbitrator, unless they agree to nonbinding arbitration.

Tenants and landlords should always consider resolving their disputes by mediation or arbitration instead of a lawsuit. Mediation is almost always faster, cheaper, and less stressful than going to court. While arbitration is more formal than mediation, arbitration can be faster, and is usually less stressful and burdensome, than a court action.

Mediation services are listed in the yellow pages of the telephone book under *Mediation Services*. To obtain a county-by-county listing of dispute resolution services, see page 64.

GLOSSARY

[All words in **boldface** type are explained in this Glossary. The number at the end of each explanation refers to the page in the text where the term is discussed.]

abandon/abandonment — the tenant's remedy of moving out of a **rental unit** that is **uninhabitable** and that the landlord has not repaired within a reasonable time after receiving notice of the defects from the tenant. (28)

amount of advance notice — the number of days' notice that must be given before a change in the tenancy can take effect. Usually, the amount of advance notice is the same as the number of days between rent payments. For example, in a month-to-month tenancy, the landlord usually must give the tenant 30 days' advance written notice that the landlord is increasing the amount of the security deposit. (11)

appeal — a request to a higher court to review a lower court's decision in a lawsuit. (49)

Application for Waiver of Court Fees and Costs — a form that tenants may complete and give to the Clerk of Court to request permission to file court documents without paying the court filing fee. (48)

arbitration — using a neutral third person to resolve a dispute instead of going to court. Unless the parties have agreed otherwise, the parties must follow the arbitrator's decision. (53)

arbitrator — a neutral third person, agreed to by the parties to a dispute, who hears and decides a dispute. An arbitrator is not a judge, but the parties must follow the arbitrator's decision (the decision is said to be "binding" on the parties). (See **arbitration**.) (53)

assign/assignment — an agreement between the original tenant and a new tenant by which the new tenant takes over the lease of a rental unit and becomes responsible to the landlord for everything that the original tenant was responsible for. The original tenant is still responsible to the landlord if the new tenant doesn't live up to the lease obligations. (See **novation**; compare to **sublease**.) (24)

[249] *Business and Professions Code Sections 6400-6415.*

[250] *Business and Professions Code Section 6410(e). The contents of the UDA's contract are governed by regulation. See 16 California Code of Regulations, Section 3890.*

[251] *Business and Professions Code Sections 6400-6415. The contents of the legal document assistant's contract for self-help services are governed by regulation. See 16 California Code of Regulations, Section 3950.*

California Department of Fair Employment and Housing — the state agency that investigates complaints of unlawful discrimination in housing and employment. (10)

Claim of Right to Possession — a form that the occupants of a rental unit can fill out to temporarily stop their eviction by the sheriff after the landlord has won an **unlawful detainer (eviction) lawsuit**. The occupants can use this form only if: the landlord did not serve a **Prejudgment Claim of Right to Possession** form with the summons and complaint; the occupants were not named in the **writ of possession;** and the occupants have lived in the rental unit since before the unlawful detainer lawsuit was filed. (56)

credit report — a report prepared by a **credit reporting service** that describes a person's credit history for the last seven years (except for bankruptcies, which are reported for 10 years). A credit report shows, for example, whether the person pays his or her bills on time, has delinquent or charged-off accounts, has been sued, and is subject to court judgments. (6)

credit reporting agency — a business that keeps records of people's credit histories, and that reports credit history information to prospective creditors (including landlords). (6)

default judgment — a judgment issued by the court, without a hearing, after the tenant has failed to file a response to the landlord's complaint. (50)

Demurrer — a legal response that a tenant can file in an **unlawful detainer lawsuit** to test the legal sufficiency of the charges made in the landlord's complaint. (48)

discrimination (in renting) — denying a person housing, telling a person that housing is not available (when the housing is actually available at that time), providing housing under inferior terms, harassing a person in connection with housing accommodations, or providing segregated housing because of a person's race, color, religion, sex, sexual orientation, national origin, ancestry, source of income, age, disability, whether the person is married, or whether there are children under the age of 18 in the person's household. Discrimination also can be refusal to make reasonable accommodation for a person with a disability. (8)

escrow account — a bank account into which a tenant deposits withheld rent, to be withdrawn only when the landlord has corrected uninhabitable conditions in the rental unit or when the tenant is ordered by a court to pay withheld rent to the landlord. (30)

eviction — a court-administered proceeding for removing a tenant from a rental unit because the tenant has violated the rental agreement or did not comply with a notice ending the tenancy (also called an **"unlawful detainer" lawsuit**). (44, 47)

eviction notice (or **three-day notice)** — a three-day notice that the landlord serves on the tenant when the tenant has violated the lease or rental agreement. The three-day notice usually instructs the tenant to either leave the rental unit or comply with the lease or rental agreement (for example, by paying past-due rent) within the three-day period. (20, 44)

fair housing organizations — city or county organizations that help renters resolve housing discrimination problems. (10)

federal stay — an order of a federal bankruptcy court that temporarily stops proceedings in a state court, including an **eviction** proceeding. (52)

guest — a person who does not have the rights of a tenant, such as a person who stays in a transient hotel for fewer than seven days. (3)

habitable — a rental unit that is fit for human beings to live in. A rental unit that substantially complies with building and safety code standards that materially affect tenants' health and safety is said to be "habitable." See **uninhabitable** and **implied warranty of habitability**. (24)

holding deposit — a deposit that a tenant gives to a landlord to hold a rental unit until the tenant pays the first month's rent and the security deposit. (7)

implied warranty of habitability — a legal rule that requires landlords to maintain their rental units in a condition fit for human beings to live in. A rental unit must substantially comply with building and housing code standards that materially affect tenants' health and safety. The basic minimum requirements for a rental unit to be habitable are listed on pages 25-26. (24-27)

initial inspection — an inspection by the **landlord** before the tenancy ends to identify defective conditions that justify deductions from the **security deposit**. The landlord must perform an initial inspection if the **tenant** requests it. (37-41)

item of information — information in a **credit report** that causes a creditor to deny credit or take other adverse action against an applicant (such as refusing to rent a rental unit to the applicant). (7)

landlord — a business or person who owns a rental unit, and who rents or leases the rental unit to another person, called a **tenant.** (2)

lease — a rental agreement, usually in writing, that establishes all the terms of the agreement and that lasts for a predetermined length of time (for example, six months or one year). Compare to **periodic rental agreement.** (12)

legal aid organizations — organizations that provide free legal advice, representation, and other legal services in noncriminal cases to economically disadvantaged persons. (10, 52, 58)

lockout — when a landlord locks a tenant out of the rental unit with the intent of terminating the tenancy. Lockouts, and all other self-help eviction remedies, are illegal. (47)

lodger — a person who lives in a room in a house where the owner lives. The owner can enter all areas occupied by the lodger, and has overall control of the house. (3)

mediation — a process in which a neutral third person meets with the parties to a dispute in order to assist them in formulating a voluntary solution to the dispute. (53)

Memorandum to Set Case for Trial — a court document that notifies the parties in an **unlawful detainer lawsuit** that the case has been set for trial. This document also states whether the plaintiff (the landlord) has requested a jury trial. (49)

Motion to Quash Service of Summons — a legal response that a tenant can file in an **unlawful detainer lawsuit** if the tenant believes that the landlord did not properly serve the summons and complaint. (48)

negligence/negligently — a person's carelessness (that is, failure to use ordinary or reasonable care) that results in injury to another person or damage to another person's property. (18)

novation — in an **assignment** situation, a novation is an agreement by the landlord, the original tenant, and the new tenant that makes the new tenant (rather than the original tenant) solely responsible to the landlord. (24)

periodic rental agreement — an oral or written rental agreement that states the length of time between rent payments — for example, a week or a month — but not the total number of weeks or months that the agreement will be in effect. (11)

Prejudgment Claim of Right to Possession — a form that a landlord in an **unlawful detainer (eviction) lawsuit** can have served along with the summons and complaint on all persons living in the rental unit who might claim to be tenants, but whose names the landlord does not know. Occupants who are not named in the unlawful detainer complaint, but who claim a right to possess the rental unit, can fill out and file this form to become parties to the unlawful detainer action. (57)

prepaid rental listing services — businesses that sell lists of available rental units. (5)

relief from forfeiture — an order by a court in an **unlawful detainer (eviction) lawsuit** that allows the losing tenant to remain in the rental unit, based on the tenant's convincing the court that the eviction would cause the tenant severe hardship and that the tenant can pay all of the rent that
is due, or to otherwise fully comply with the lease. (49)

rent control ordinances — laws in some communities that limit or prohibit rent increases, or that limit the circumstances in which a tenant can be evicted. (19)

rent withholding — the tenant's remedy of not paying some or all of the rent if the landlord does not fix defects that make the rental unit **uninhabitable** within a reasonable time after the landlord receives notice of the defects from the tenant. (29)

rental agreement — an oral or written agreement between a tenant and a landlord, made before the tenant moves in, which establishes the terms of the tenancy, such as the amount of the rent and when it is due. See **lease** and **periodic rental agreement.** (11)

rental application form — a form that a landlord may ask a tenant to fill out prior to renting that requests information about the tenant, such as the tenant's address, telephone number, employment history, credit references, and the like. (6)

rental period — the length of time between rental payments; for example, a week or a month. (11)

rental unit — an apartment, house, duplex, or condominium that a **landlord** rents to a **tenant** to live in. (2)

renter's insurance — insurance protecting the **tenant** against property losses, such as losses from theft or fire. This insurance usually also protects the tenant against liability (legal responsibility) for claims or lawsuits filed by the landlord or by others alleging that the tenant **negligently** injured another person or property. (18)

repair and deduct remedy — the tenant's remedy of deducting from future rent the amount necessary to repair defects covered by the **implied**

warranty of habitability. The amount deducted cannot be more than one month's rent. (27)

retaliatory eviction or action — an act by a landlord, such as raising a tenant's rent, seeking to evict a tenant, or otherwise punishing a tenant because the tenant has used the **repair and deduct remedy** or the **rent withholding** remedy, or has asserted other tenant rights. (50)

security deposit — a deposit or a fee that the landlord requires the tenant to pay at the beginning of the tenancy. The landlord can use the security deposit, for example, if the tenant moves out owing rent or leaves the unit damaged or less clean than when the tenant moved in. (16)

serve/service — legal requirements and procedures that seek to assure that the person to whom a legal notice is directed actually receives it. (46)

sixty-day notice — a written notice from a **landlord** to a **tenant** telling the tenant that the **tenancy** will end in 60 days. A sixty-day notice usually does not have to state the landlord's reason for ending the tenancy. (33-35, 44)

sublease — a separate rental agreement between the original tenant and a new tenant to whom the original tenant rents all or part of the rental unit. The new tenant is called a "subtenant." The agreement between the original tenant and the landlord remains in force, and the original tenant continues to be responsible for paying the rent to the landlord and for other tenant obligations. (Compare to **assignment.)** (23)

subpoena — an order from the court that requires the recipient to appear as a witness or provide evidence in a court proceeding. (48)

subtenant — see **sublease**.

tenancy — the tenant's exclusive right, created by a **rental agreement** between the **landlord** and the tenant, to use and possess the landlord's **rental unit.** (11)

tenant — a person who rents or leases a **rental unit** from a **landlord**. The tenant obtains the right to the exclusive use and possession of the rental unit during the lease or rental period. (2)

tenant screening service — a business that collects and sells information on tenants, such as whether they pay their rent on time and whether they have been defendants in **unlawful detainer lawsuits**. (6)

three-day notice — see **eviction notice.**

thirty-day notice — a written notice from a **landlord** to a **tenant** telling the tenant that the **tenancy** will end in 30 days. A thirty-day notice usually does not have to state the landlord's reason for ending the tenancy. (33-35, 44)

uninhabitable — a **rental unit** which has such serious problems or defects that the tenant's health or safety is affected. A rental unit may be uninhabitable if it is not fit for human beings to live in, or if it fails to substantially comply with building and safety code standards that materially affect tenants' health and safety. (Compare to **habitable**.) (25-26)

unlawful detainer lawsuit — a lawsuit that a landlord must file and win before he or she can evict a tenant (also called an **"eviction"** lawsuit). (44, 47)

U.S. Department of Housing and Urban Development — the federal agency that enforces the federal fair housing law, which prohibits discrimination based on sex, race, religion, national or ethnic origin, familial status, or mental handicap. (10)

waive — to sign a written document (a "waiver") giving up a right, claim, privilege, etc. In order for a waiver to be effective, the person giving the waiver must do so knowingly, and must know the right, claim, privilege, etc. that he or she is giving up. (40)

writ of possession — a document issued by the court after the landlord wins an **unlawful detainer** (**eviction**) **lawsuit**. The writ of possession is served on the tenant by the sheriff. The writ informs the tenant that the tenant must leave the rental unit by the end of five days, or the sheriff will forcibly remove the tenant. (47)

APPENDIX 1 — OCCUPANTS NOT NAMED IN EVICTION LAWSUIT OR WRIT OF POSSESSION

Occupants Not Named in Eviction Lawsuit

People who are not named as **tenants** in the **rental agreement** or **lease** sometimes move into a rental unit before the **landlord** files the **unlawful detainer (eviction) lawsuit.** The landlord may not know that these people (called "occupants") are living in the rental unit, and therefore may not name them as defendants in the summons and complaint. As a result, these occupants are not named in the **writ of possession** if the landlord wins the unlawful detainer action. A sheriff enforcing the writ of possession cannot lawfully evict an

occupant whose name does not appear on the writ of possession and who claims to have lived in the unit since before the unlawful detainer lawsuit was filed. (See "Writ of possession," page 47.)

The landlord can take steps to avoid this result. The landlord can instruct the process server who **serves** the summons and complaint on the named defendants to ask whether there are other occupants living in the unit who have not been named as defendants. If there are, the person serving the summons and complaint can serve each of the so-called "unnamed occupants" with a blank **Prejudgment Claim of Right to Possession** form and an extra copy of the summons and complaint.[252]

These occupants then have 10 days from the date they are served to file a Prejudgment Claim of Right to Possession form with the Clerk of Court, and to pay the clerk the required filing fee (or file an **"Application for Waiver of Court Fees and Costs"** if they are unable to pay the filing fee). Any unnamed occupant who does not file a Prejudgment Claim of Right to Possession form with the Clerk of Court (along with the filing fee or a request for waiver of the fee) can then be evicted.

An unnamed occupant who files a Prejudgment Claim of Right to Possession form automatically becomes a defendant in the unlawful detainer lawsuit, and must file an answer to the complaint within five days after filing the form. The court then rules on the occupant's defense to the eviction along with the defenses of the other defendants.[253] If the landlord wins, the occupant cannot delay the eviction, whether or not the occupant is named in the writ of possession issued by the court.[254]

Occupants Not Named in Writ of Possession

The landlord sometimes does not serve a Prejudgment Claim of Right to Possession form on the unnamed occupants when the unlawful detainer complaint is served. When the sheriff arrives to enforce the writ of possession (that is, to evict the tenants [see "Writ of possession," page 47]), an occupant whose name does not appear on the writ of possession, and who claims a right of possession, may fill out a **Claim of Right to Possession** form and give it to the sheriff. The sheriff must then stop the **eviction** of that occupant, and must give the occupant a copy of the completed form or a receipt for it.[255]

Within two business days after completing the form and giving it to the sheriff, the occupant must deliver to the Clerk of Court the court's filing fee (or file an "Application for Waiver of Court Fees and Costs" if the occupant is unable to pay the filing fee). The occupant also should deliver to the court an amount equal to 15 days' rent for the rental unit (the writ of possession must state the daily rental value of the rental unit).

Five to fifteen days after the occupant has paid the filing fee (or has filed a request for waiver of the fee), and has deposited an amount equal to 15 days' rent, the court will hold a hearing. If the occupant does not deposit the 15 days' rent, the court will hold the hearing *within 5 days*.

At the hearing, the court will decide whether or not the occupant has a valid claim to possession. If the court decides that the occupant's claim to possession is valid, the amount of rent deposited will be returned to the occupant. The court will then order further proceedings, as appropriate to the case (for example, the occupant may be given five days to answer the landlord's complaint).

If the court finds that the occupant's claim to possession is not valid, an amount equal to the daily rent for each day the eviction was delayed will be subtracted from the rent that is returned to the occupant, and the sheriff or marshal will continue with the eviction.[256]

APPENDIX 2 — LIST OF CITIES WITH RENT CONTROL[257]

Berkeley	Oakland
Beverly Hills	Palm Springs
Campbell	San Francisco
East Palo Alto	San Jose
Fremont	Santa Monica
Hayward	Thousand Oaks
Los Angeles	West Hollywood
Los Gatos	

[252] *Code of Civil Procedure Section 415.46.*
[253] *Code of Civil Procedure Section 1174.25.*
[254] *Code of Civil Procedure Section 415.46.*
[255] *Code of Civil Procedure Section 1174.3.*
[256] *Code of Civil Procedure Section 1174.3.*
[257] *See Brown and Warner, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, Appendix B (NOLO Press 2001) for descriptions of rent control ordinances and finding aides.*

APPENDIX 3 — TENANT INFORMATION AND ASSISTANCE RESOURCES

This Tenant Information and Assistance Resources listing also is available through the Department of Consumer Affairs' Web site at www.dca.ca.gov.

The Web site listing is updated periodically. You can also locate lawyer referral services and legal aid programs through these other resources:

- Lawyer referral services: Go to the State Bar of California's Web site, www.calbar.ca.gov. Click on the "Public Services" button, then click on the "Locating a local lawyer referral service link," and then click on the "County Programs" button.
- Legal aid programs: Go to the Public Interest Clearinghouse's Web site, www.pic.org and click on the "Directory of California and Nevada Legal Services Programs" link.

ALAMEDA COUNTY

Bay Area Legal Aid
Alameda County Regional Office
405 14th St., 11th Floor
Oakland, CA 94612
(510) 663-4744
www.baylegal.org

Berkeley Rent Stabilization Board
2125 Milvia St.
Berkeley, CA 94704
(510) 644-6128

City of Fremont – Office of Neighborhoods
39550 Liberty St., Second Floor
Fremont, CA 94538
(510) 494-4511 (510) 494-4500

Department of Fair Employment and Housing
1515 Clay St., Suite 701
Oakland, CA 94612
(housing discrimination complaints only)
(510) 622-2945 (800) 884-1684

Eden Council for Hope and Opportunity, Inc. (ECHO)
770 A St.
Hayward, CA 94541
(510) 581-9380
Livermore (925) 449-7340

Fremont Fair Housing
(housing discrimination only)
39155 Liberty St., Suite D440
Fremont, CA 94538
(510) 574-2270
fairhousing510@cs.com

Housing Rights, Inc.
1966 San Pablo Ave.
Berkeley, CA.
(510) 548-8776
(northern Alameda County)
hri@housingrights.com
www.housingrights.com

Law Center for Families
510 16th St., Suite 300
Oakland, CA 94612
(510) 538-6507
(510) 451-9261

BUTTE COUNTY

Community Legal Information Center
West 2nd & Cherry Street
Chico, CA 95929
(530) 898-4354

Legal Services of Northern California
Butte Regional Office
541 Normal Ave.
Chico, CA 95929
(530) 345-9491
butte@ lsnc.net
www.lsnc.net

CONTRA COSTA COUNTY

Bay Area Legal Aid
Contra Costa Regional Office
1017 MacDonald Ave.
Richmond, CA 94801
(510) 233-9954 (800) 551-5554
www.baylegal.org

Bay Area Legal Aid
Pittsburg Office
1901 Railroad Ave., Suite D
Pittsburg, CA 94565
(925) 432-1123 (800) 551-5554
www.baylegal.org

Housing Rights, Inc.
2718 Telegraph St., No. 100
Berkeley, CA 94704
(510) 548-8776
(except Pittsburg)
www.housingrights.com
hri@housingrights.com

Pacific Community Services
329 Railroad Ave.
Pittsburg, CA 94565
(925) 439-1056

Shelter, Inc.
1815 Arnold Drive
Martinez, CA 94553
(925) 335-0698
www.shelterincofccc.org

DEL NORTE COUNTY

(See Humboldt County)

FRESNO COUNTY

California Rural Legal Assistance
Delano Regional Office
629 Main St.
Delano, CA 93215
(661) 725-4350
www.crla.org

City of Bakersfield Office of Fair Housing
900 Truxton Ave., Suite 201
Bakersfield, CA 93301
(661) 634-9245
www.ci.bakersfield.ca.us/edcd/faq/fairhouse.htm

Kern County Fair Housing Division
2700 M St., Suite 250
Bakersfield, CA 93301
(661) 862-5050 (800) 552-5376
kerncd@co.kern.ca.us
www.co.kern.ca.us/cd/cdhome.asp

LOS ANGELES COUNTY

Bet Tzedek Legal Services
145 South Fairfax Ave., Suite 200
Los Angeles, CA 90036
(323) 939-0506
www.bettzedek.org/html/apartment_repair.html

Citizens of Inglewood Tenant Association
6824 La Tijera Blvd.
Los Angeles, CA 90045
(310) 677-7294
cita107@aol.com

Coalition for Economic Survival
1296 North Fairfax Ave.
Los Angeles, CA 90046
(323) 656-4410
Tenants' Rights Clinic
(Wed 7 p.m., Sat 10 a.m.)
Plummer Park Community Building
7377 Santa Monica Blvd.
West Hollywood, CA 90046
contactces@earthlink.net
http://nkla.sppsr.ucla.edu/ces/

City of Santa Monica Consumer Affairs Protection, Fair Housing & Public Rights Unit
1685 Main St., Room 310
Santa Monica, CA 90401
(310) 458-8336
attorney@ci.santa-monica.ca.us
www.santa-monica.org/atty/consumer_protection/aboutus.htm

Culver City Housing Agency
(Contracts with Housing Rights Center. See entry below.)

Fair Housing Council of the San Fernando Valley
8124 Van Nuys Blvd., Suite 206
Panorama City, CA 91402
(818) 373-1185
(800) 287-4617
brunofhsfv@AOL.com
www.fairhousing.com/fhcsc/page33.html

Housing Rights Center
520 South Virgil Ave., Suite 400
Los Angeles, CA 90020
(213) 387-8400 (800) 477-5977
mheredia@hrc-la.org
www.fairhousingsource.org

Legal Aid Foundation of Los Angeles
1102 South Crenshaw Blvd., #240
Los Angeles, CA 90019
(323) 801-7989
Emergency help on landlord-tenant issues:
(213) 487-7609
www.lafla.org

Fair Housing Foundation
(For Compton, Lynwood, Downey, Long Beach, Huntington Park, Norwalk, Paramount and South Gate)
200 Pine Ave., Suite 240
Long Beach, CA 90802
(562) 901-0808 (800) 446-3247
www.fairhousing.com/fhcsc/page19.html

Long Beach Fair Housing Foundation
200 Pine Ave., Suite 240
Long Beach, CA 90802
(562) 901-0808 (800) 446-3247

Los Angeles County Department of Consumer Affairs
500 West Temple St., Room B-96
Los Angeles, CA 90012-2706
(213) 974-1452
(24-hr recorded info.)
http://consumer-affairs.co.la.ca.us

Los Angeles County Department of Consumer Affairs–East Los Angeles Service Center
133 North Sunol Drive
Los Angeles, CA 90063
(323) 260-2893
(Mon 8-4:30, Thurs 8-4:30)

Los Angeles County Department of Consumer Affairs–Florence Firestone Service Center
7807 South Compton Ave.
Los Angeles, CA 90001
(323) 586-6508
(Mon 8-4:30, Wed 8-4:30)

Los Angeles County Department of Consumer Affairs–Lancaster Public Library
601 West Lancaster Blvd.
Lancaster, CA 93534
(661) 726-7550 (Fri 10-3:30)

Los Angeles County Department of Consumer Affairs–San Gabriel Service Center
3017 Tyler Ave.
El Monte, CA 91731
(626) 575-5425
(Mon 8-4:30, Fri 8-4:30)

Los Angeles County Department of Consumer Affairs–South Bay/Lomita Center
24340 South Narbonne Ave.
Lomita, CA 90717
(310) 325-1035
(Tues 8-4:30, Thurs 8-4:30)

Los Angeles County Department of Consumer Affairs–Valencia/Court House
23747 West Valencia Blvd.
Valencia, CA 91355
(661) 253-7328 (Wed 8:30-4:30)

Los Angeles County Department of Consumer Affairs–San Fernando Valley Office
14340 Sylvan St.
Van Nuys, CA 91411
(818) 901-3829
(Tues 8-4:30, Wed 8-4:30)

San Fernando Valley Neighborhood Legal Services Program
13327 Van Nuys Blvd.
Pacoima, CA 91331
(818) 896-5211

Santa Monica Rent Control Board
1685 Main St., No. 202
Santa Monica, CA 90401
(310) 458-8751

MADERA COUNTY

California Rural Legal Assistance
Madera Regional Office
117 South Lake St.
Madera, CA 93638
(559) 674-5671

MARIN COUNTY

Fair Housing Program of Marin County
615 B St.
San Rafael, CA 94901
(415) 457-5025

Marin Mediation Services
4 Jeanette Prandi Way
San Rafael, CA 94903
(415) 499-7454

MERCED COUNTY

Central California Legal Services
357 West Main St., Suite 201
Merced, CA 95340
(209) 723-5466 (800) 464-3111

MONTEREY COUNTY

California Rural Legal Assistance
Salinas Regional Office
3 Williams Road
Salinas, CA 93905
(831) 757-5221

Conflict Resolution/Mediation Center of Monterey County
1900 Garden Road, Suite 110
Monterey, CA 93940
(831) 649-6219
From Salinas: (831) 424-4694

NAPA COUNTY

Greater Napa Fair Housing Center
611 Cabot Way
Napa, CA 94559
(707) 224-9720
robertj@napanet.net

Napa County Rental Information and Mediation Services
1716 Jefferson St.
Napa, CA 94559
(707) 253-2700
ncrims@ncrims.org

NORTHERN CALIFORNIA COUNTIES

Senior Legal Hotline
Free telephone advice to persons over 60 (without regard to income) in the following counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mariposa, Merced, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumme, Yolo, Yuba
(800) 222-1753
(916) 551-2140 in Sacramento
seniorhotline@lsnc.net
www.seniorlegalhotline.org

ORANGE COUNTY

Fair Housing Council of Orange County
201 S. Broadway
Santa Ana, CA 92701
(714) 569-0823
www.fairhousingoc.org

Legal Aid Society of Orange County
902 North Main St.
Santa Ana, CA 92701
(714) 571-5200
www.legal-aid.com

PLACER COUNTY

Legal Services of Northern California
190 Reamer St.
Auburn, CA 95603
(530) 823-7560 (800) 660-6107
(also serves Amador, Calaveras, Eldorado, Nevada, and Sierra counties)
www.lsnc.net

RIVERSIDE COUNTY

California Rural Legal Assistance
Coachella Regional Office
1460 6th St.
Coachella, CA 92236
(760) 398-7261

Fair Housing Council of Riverside County Inc.
3600 Lime St., Suite 613
Riverside, CA 92501
(909) 682-6581 (800) 655-1812
fhcrc@aol.com
www.fairhousing.net

SACRAMENTO COUNTY

California Apartment Association
980 9th St., Suite 2150
Sacramento, CA 95814
(916) 447-7881 (800) 967-4222
info@caanet.org
www.caanet.org

Human Rights/Fair Housing Commission for the City and County of Sacramento
1112 I St., Suite 250
Sacramento, CA 95814
Hotline: (916) 444-0178
(916) 444-6903
www.hrfh.org

Legal Center for the Elderly and Disabled
2862 Arden Way, Suite 200
Sacramento, CA 95825
(916) 488-5298

Legal Services of Northern California
515 12th St.
Sacramento, CA 95814
(916) 551-2150
sacto@lsnc.net
www.lsnc.net

Sacramento Mediation Center
2131 Capitol Ave., Suite 205
Sacramento, CA 95816
(916) 441-7979

SAN BERNARDINO COUNTY

Inland Fair Housing and Mediation Board
1005 Begonia Ave.
Ontario, CA 91762
(909) 984-2253 (800) 321-0911
inmedbd@aol.com
http://members.aol.com/inmedbd/index.html

SAN DIEGO COUNTY

Heartland Human Relations and Fair Housing
1068 Broadway, Suite 221
El Cajon, CA 92021
(619) 444-5700
heartlandhr@hotmail.com

Fair Housing Council of San Diego
625 Broadway, Suite 1114
San Diego, CA 92101
(619) 699-5888
www.fhcsd.com

Legal Aid Society of San Diego
110 South Euclid
San Diego, CA 92114
(619) 262-0896

Neighborhood House Association
841 South 41st St.
San Diego, CA 92113
(619) 263-7761 (900) 505-5663
(the charge is $2.50 for the first minute and $.54 for each additional minute)
www.neighborhoodhouse.org

San Diego Mediation Center
625 Broadway, Suite 1221
San Diego, CA 92101-5419
(619) 238-2400
www.sdmediate.com

Tenants Legal Center
5252 Balboa Ave., Suite 408
San Diego, CA 92117
(858) 571-7100
www.tenantslegalcenter.com

SAN FRANCISCO COUNTY

Asian Law Caucus
939 Market St., Suite 201
San Francisco, CA 94103
(415) 896-1701
alc@asianlawcaucus.org
www.asianlawcaucus.org

Bay Area Legal Aid
San Francisco Regional Office
50 Fell St., 1st Floor
San Francisco, CA 94102
(415) 982-1300
www.baylegal.org

Consumer Action Hot Line
717 Market St., #310
San Francisco, CA 94103
(415) 777-9635
hotline@consumer-action.org
www.consumer-action.org

Housing Rights Committee of San Francisco
427 S. Van Ness Ave.
San Francisco, CA 94103
(415) 703-8644
www.hrcsf.org

San Francisco County District Attorney–Consumer Protection Unit
(handles security deposit cases after tenants move out)
732 Brandon St.
San Francisco, CA 94103
(415) 553-1814

San Francisco Human Rights Commission
25 Van Ness Ave., Suite 800
San Francisco, CA 94102
(415) 252-2500
www.sfhrc.org

San Francisco Rent Board
25 Van Ness Ave., Suite 320
San Francisco, CA 94102-6033
(415) 252-4600
www.sfgov.org/rentboard

San Francisco Tenants Union
558 Capp St.
San Francisco, CA 94110
(415) 282-6622
www.sftu.org

Tenderloin Housing Clinic
126 Hyde St.
San Francisco, CA 94102
(415) 771-2427

SAN JOAQUIN COUNTY

California Rural Legal Assistance
242 North Sutter, Room 411
Stockton, CA 95202
(209) 946-0605
www.crla.org

SAN LUIS OBISPO COUNTY

Calfornia Rural Legal Assistance
1160 Marsh St., Suite 114
San Luis Obispo, CA 93401
(805) 544-7997
www.crla.org

San Luis Obispo County Government Center–Economic Crime Unit
1050 Monterey St., Room 235
San Luis Obispo, CA 93408
(805) 781-5856

SAN MATEO COUNTY

Bay Area Legal Aid
San Mateo Regional Office
2287 El Camino Real
San Mateo, CA 94403
(650) 358-0745 (800) 551-5554
www.baylegal.org

Legal Aid Society of San Mateo County
521 East 5th Ave.
San Mateo, CA 94402
(650) 558-0915 (800) 381-8898
TTD (650) 558-0786
www.legalaidsmc.org

San Mateo County District Attorney Consumer Fraud Unit
400 County Center, Third Floor
Redwood City, CA 94063
(650) 363-4651
www.co.sanmateo.ca.us./dao/consumer.htm

Peninsula Conflict Resolution Center
520 S. El Camino Real, Suite 640
San Mateo, CA 94402
(650) 373-3490
info@pcrcweb.org
www.pcrcweb.org

SANTA BARBARA COUNTY

California Rural Legal Assistance
324 E. Carrillo St., Suite B
Santa Barbara, CA 93101
(805) 963-5981
www.crla.org

SANTA CLARA COUNTY

Bay Area Legal Aid
Santa Clara Regional Office
2 West Santa Clara St., 8th Floor
San Jose, CA 95113
(408) 283-3700 (800) 551-5554
www.baylegal.org

California Rural Legal Assistance
Gilroy Regional Office
7365 Monterey Road, Suite H
Gilroy, CA 95020
(408) 847-1408
www.crla.org

Legal Aid Society of Santa Clara County
480 North 1st St.
San Jose, CA 95103
(408) 283-1540
www.legalaidsociety.org

Mid-Peninsula Citizens for Fair Housing
457 Kingsley Ave.
Palo Alto, CA 94301
(650) 327-1718

Project Sentinel
7365 Monterey Road, Suite D1
Gilroy, CA 95020
(408) 842-7740
www.housing.org

Project Sentinel
1055 Sunnyvale Saratoga Road, Suite 3
Sunnyvale, CA 94087
(408) 720-9888
www.housing.org/page18.html

Project Sentinel
430 Sherman Ave., Suite 308
Palo Alto, CA 94306
(415) 468-7464
www.housing.org/page16.html

Santa Clara District Attorney's Office
70 West Hedding St.
San Jose, CA 95110
(408) 299-7400

SANTA CRUZ COUNTY

California Rural Legal Assistance
21 Car St.
Watsonville, CA 95076
(831) 724-2253
www.crla.org

Santa Cruz District Attorney's Office
701 Ocean St., Room 200
Santa Cruz, CA 95060
(831) 454-2050
dat155@co.santa-cruz.ca.us
www.co.santa-cruz.ca.us

SHASTA COUNTY

Legal Services of Northern California–Shasta Regional Office
1370 West St.
Redding, CA 96001
(530) 241-3565 (800) 822-9687
www.lsnc.net

SOLANO COUNTY

Legal Services of Northern California – Solano
1810 Capitol St.
Vallejo, CA 94590
(707) 643-0054
(closed Wednesdays)
solano@lsnc.net
www.lsnc.net

SONOMA COUNTY

California Rural Legal Assistance
Santa Rosa Regional Office
725 Farmers Lane, #10, Building B
Santa Rosa, CA 95405
(707) 528-9941
www.crla.org

Fair Housing of Sonoma County
250 Sebastopol Road
Santa Rosa, CA 95407
Hotline: (707) 579-5033
www.fhosc.org

TULARE COUNTY

Central California Legal Services–Tulare Kings Legal Service
208 West Main St., Suite U-1
Visalia, CA 93291
(559) 733-8770
www.las.org

VENTURA COUNTY

California Rural Legal Assistance (and CRLA Migrant Project)
338 South A St.
Oxnard, CA 93030
(805) 486-1068
www.crla.org

Commission on Human Concerns
621 Richmond Ave.
Oxnard, CA 93030
(805) 436-4000

Housing Rights Center
Serving the cities of Camarillo, Filmore, Moorpark, Ojai, Oxnard, Port Hueneme, Santa Paula
1020 North Fair Oaks Ave.
Pasadena, CA 91103
(800) 477-5977
www.hrc-la.org

Oxnard Housing Department
435 South D St.
Oxnard, CA 93030
(805) 385-8095
www.ci.oxnard.ca.us

Ventura County District Attorney–Consumer Mediation Unit
800 South Victoria Ave.
Ventura, CA 93009
(805) 654-3110

YOLO COUNTY

Community Mediation Services and Office of Fair Housing
604 Second St.
Davis, CA 95616
(530) 757-5623
www.ci.davis.ca.us/pcs/socialservices

Legal Services of Northern California
619 North St.
Woodland, CA 95695
(530) 662-1065
www.lsnc.net/fairhousing.html

STATE DEPARTMENTS

Department of Consumer Affairs
400 R St.
Sacramento, CA 95814
(800) 952-5210
TDD (800) 326-2297
(916) 445-1254
TDD (916) 322-1700
www.dca.ca.gov

Department of Fair Employment and Housing
2000 O St., No. 120
Sacramento, CA 95814
(housing discrimination complaints only)
(800) 233-3212
www.dfeh.ca.gov

Department of Real Estate
2201 Broadway
Sacramento, CA 95818
(916) 227-0864 Consumer Info.
(916) 227-0931 Licensing Info.
www.dre.ca.gov

APPENDIX 4 — OTHER RESOURCES

Publications on Landlord-Tenant Law

Books

Brown and Warner, *The California Landlord's Law Book, Vol. I, Rights and Responsibilities* (NOLO Press 2001).

Department of Consumer Affairs, *Consumer Law Sourcebook for Small Claims Judicial Officers*, Ch. 18, Landlord-Tenant Disputes (1996).

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These books are available at county and university law libraries.

Department of Consumer Affairs– Legal Guides

LT-1 Security Deposits: Basic Information for Tenants and Landlords.

LT-2 How Often Can a Landlord Raise Rent?

LT-3 Rental Housing: Who's Responsible for What and How to Get Repairs Made

LT-4 How to Get Back Possessions You Have Left in a Rental Unit

LT-5 Options for Landlord: When Tenant's Personal Property Has Been Left in the Rental Unit

LT-6 Damaged or Destroyed Residential Rental Units: A Fact Sheet for Landlords and Tenants

LT-8 Habitability and Repairs: Outline of the Landlord's and Tenant's Responsibilities Under the California Civil Code

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Arbitration/Mediation

California Dispute Resolution Programs Act: Program Directory (lists arbitration and mediation programs by county).

Small Claims Court

Small Claims Advisors Directory (lists small claims court advisors by county).

The DOs and DON'Ts of Using the Small Claims Court.

These arbitration and small claims publications can be obtained by writing the Department of Consumer Affairs, Publications, P.O. Box 989004, Sacramento, CA 95798-004, or by calling the Department at 1-800-952-5210. Please specify publication by name.

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APPENDIX 5 — TEXT OF CALIFORNIA'S SECURITY DEPOSIT STATUTE

California Civil Code Section 1950.5 (January, 2003)

(a) This section applies to security for a rental agreement for residential property that is used as the dwelling of the tenant.

(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 advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

(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. 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.

(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.

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent, in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy.

This subdivision does not prohibit an advance payment of not less than six months' rent if the term of the lease is six months or longer.

This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision(e).

(d) Any security shall be held by the landlord for the tenant who is party to the lease or agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the landlord.

(e) The landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision(b). The 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.

(f) (1) Within a reasonable time after notification of either party's intention to terminate the tenancy, or before the end of the lease term, the landlord shall notify the tenant in writing of his or her option to request an initial inspection and of his or her right to be present at the inspection. At a reasonable time, but no earlier than two weeks before the termination or the end of lease date, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection shall be to allow the tenant an opportunity to remedy

identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security. If a tenant chooses not to request an initial inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours prior written notice of the date and time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written waiver. The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection.

(2) Based on the inspection, the landlord shall give the tenant 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 pursuant to paragraphs (1) to (4), inclusive of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision(b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

(3) The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security.

(4) Nothing in this subdivision shall prevent a landlord from using the security for deductions itemized in the statement provide for in paragraph (2) that were not cured by the tenant so long as the deductions are for damages authorized by this section.

(5) Nothing in this subdivision shall prevent a landlord from using the security for any purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs between completion of the initial inspection and termination of the tenancy or was not identified during the initial inspection due to the presence of a tenant's possessions.

(g) Within three weeks after the tenant has vacated the premises, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant.

(h) Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the security held:

(1) Transfer the portion of the security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security, of the amount of the security deposited, and of the names of the successors in interest, their address, and their telephone number. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

(2) Return the portion of the security remaining after any lawful deductions made under subdivision (e) to the tenant, together with an accounting as provided in subdivision (g).

(i) Prior to the voluntary transfer of a landlord's interest in the premises, the landlord shall deliver to the landlord's successor in interest a written statement indicating the following:

(1) The security remaining after any lawful deductions are made.

(2) An itemization of any lawful deductions from any security received.

(3) His or her election under paragraph (1) or (2) of subdivision(h).

This subdivision does not affect the validity of title to the real property transferred in violation of this subdivision.

(j) In the event of noncompliance with subdivision (h), the landlord's successors in interest shall be jointly and severally liable with the landlord for repayment of the security, or that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and (g). A successor in interest of a landlord may not require the tenant to post any security to replace that amount not transferred to the tenant or successors in interest as provided in subdivision (h), unless and until the successor in interest first makes restitution of the initial security as provided in paragraph (2) of subdivision (h) or provides the tenant with an accounting as provided in subdivision (g).

This subdivision does not preclude a successor in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a landlord's successor in interest has a good faith belief that the lawfully remaining security deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he or she is not liable for damages as provided in subdivision (l), or any security not transferred pursuant to subdivision (h).

(k) Upon receipt of any portion of the security under paragraph(1) of subdivision (h), the landlord's successors in interest shall have all of the rights and obligations of a landlord holding the security with respect to the security.

(*l*) The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof in violation of this section, or the bad faith demand of replacement security in violation of subdivision (j), may subject the landlord or the landlord's successors in interest to statutory damages of up to twice the amount of the security, in addition to actual damages. The court may award damages for bad faith whenever the facts warrant such an award, regardless of whether the injured party has specifically requested relief. In any action under this section, the landlord or the landlord's successors in interest shall have the burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to demand additional security deposits.

(m) No lease or rental agreement may contain any provision characterizing any security as "nonrefundable."

(n) Any action under this section may be maintained in small claims court if the damages claimed, whether actual or statutory or both, are within the jurisdictional amount allowed by Section 116.220of the Code of Civil Procedure.

(o) Proof of the existence of and the amount of a security deposit may be established by any credible evidence, including, but not limited to, a canceled check, a receipt, a lease indicating the requirement of a deposit as well as the amount, prior consistent statements or actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence Code.

(p) The amendments to this section made during the 1985 portion of the 1985-86 Regular Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.

APPENDIX 6 – SIGNIFICANT LANDLORD -TENANT LEGISLATION, 2001-2002

Civil Code Section(s) Affected	Legislation
827	Stats. 2001, ch. 593 (AB 1160 (Florez)), effective 1-1-02
1940.6	Stats. 2002, ch. 285 (SB 1576 (Bowen)), effective 1-1-03
1946.1	Stats. 2002, ch. 301 (SB 1403 (Kuehl)), effective 1-1-03
1950.5	Stats. 2002, ch. 1061 (AB 2330 (Migden)), effective 1-1-03
1954	Stats. 2002, ch. 1061 (AB 2330 (Migden)), effective 1-1-03
1961-1962.7	Stats. 2001, ch. 729 (SB 985 (Kuehl)), effective 1-1-02

Code of Civil Procedure Section Affected	Legislation
1162	Stats. 2001, ch. 729 (SB 985 (Kuehl)), effective 1-1-02
1179	Stats. 2002, ch. 301 (SB 1403 (Kuehl)), effective 1-1-03

APPENDIX 7 — TECHNICAL NOTES ON 2002 CHANGES TO CALIFORNIA'S SECURITY DEPOSIT LAW

[1] Beginning January 1, 2003, charges imposed by the landlord "at the beginning of the tenancy to be used to reimburse the landlord for *costs associated with processing a new tenant*" are part of the definition of "security." (Civil Code Section 1950.5(b), amended by Stats. 2002, ch. 1061, effective January 1, 2003 (AB 2330 (Migden)) (italics added).

[2] "Costs associated with processing a new tenant" probably include application forms, listing the unit for rent, interviewing and screening the tenant, and similar purposes. This is because AB 2330 supercedes the holding in Kraus v. Trinity Management Services, Inc. (2000) 23 Cal.4th 116, 141 [96 Cal.Rptr.2d 485, 503]. (Moskovitz *et al.* California Landlord-Tenant Practice, Section 4.23 (Cal. Cont. Ed. Bar 2002).) That holding had excluded these kinds of costs from the definition of "security" and had limited "security" to charges imposed by the landlord to secure the landlord against future tenant defaults. A legislative committee analysis of AB 2330 also indicates that the bill was meant to prohibit landlords from imposing tenant initiation or placement fees (Senate Judiciary Committee, Report on AB 2330 (2001-02 Regular Session), as amended May 21, 2002, pp. 14-15).

[3] By virtue of AB 2330, all fees imposed by the landlord at the beginning of the tenancy to reimburse the landlord for costs associated with processing a new tenant are part of the security deposit, and therefore are subject to Civil Code Section 1950.5's limits and requirements relating to security deposits. These include, for example, Section 1950.5(c)'s maximums on amounts allowed as security, Section 1950.5(e)'s limits on uses of security deposits, and Section 1950.5(m)'s prohibition of nonrefundable security deposits. The sole exception is for an application screening fee, which is authorized and limited by Civil Code Section 1950.6 (see page 7).

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INVENTORY CHECKLIST (1 OF 4)

This inventory form is for the protection of both the tenant and the landlord.

You (the tenant) and the landlord or the landlord's agent should fill out the "Condition Upon Arrival" section of the form within three days of your moving in. If you request an initial inspection before you move out, you and your landlord or agent should conduct the initial inspection about two weeks before the end of the tenancy or lease term and fill out the "Condition Upon Initial Inspection" section. As soon as possible after you have moved out, the landlord or agent should fill out the "Condition Upon Departure" section. It's a good idea for you to be present during the final inspection, but the law does not require that you be present or that the landlord allow you to be present.

The landlord or agent should sign a copy of this form following each inspection, and you should sign following each inspection for which you are present. Both you and the landlord or agent should receive a copy of the form following each inspection.

Be specific and check carefully when completing this form. Among other things, look for dust, dirt, grease, stains, burns, and excess wear.

Additions to this form may be made as necessary. Attach additional paper if more space is needed, but remember to include copies for both the landlord and the tenant. Both parties should initial any additional pages after each inspection. Cross out any items that do not apply.

Address _____ Unit Number _____

Name of tenant(s) _____

	ITEM	QUANTITY If Applicable	CONDITION UPON ARRIVAL Note condition, including existing damage and wear and tear.	CONDITION UPON INITIAL INSPECTION Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.	CONDITION UPON DEPARTURE Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.
KITCHEN	Cupboards				
	Floor covering				
	Walls and ceiling				
	Counter surfaces				
	Stove and oven, range hood (broiler pan, grills, etc.)				
	Refrigerator (ice trays, butter dish, etc.)				
	Sink and garbage disposal				
	Windows (draperies, screens, etc.)				
	Doors, including hardware				
	Light fixtures				

INVENTORY CHECKLIST (2 OF 4)

	ITEM	QUANTITY If Applicable	CONDITION UPON ARRIVAL Note condition, including existing damage and wear and tear.	CONDITION UPON INITIAL INSPECTION Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.	CONDITION UPON DEPARTURE Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.
LIVING ROOM	Floor covering				
	Walls and ceiling				
	Windows (draperies, screens, etc.)				
	Doors, including hardware				
	Light fixtures				
BATHROOM	Floor covering				
	Walls and ceiling				
	Shower and tub (walls, door, tracks)				
	Toilet				
	Plumbing fixtures				
	Windows (draperies, screens, etc.)				
	Doors, including hardware				
	Light fixtures				
	Sink, vanity, medicine cabinet				

INVENTORY CHECKLIST (3 OF 4)

	ITEM	QUANTITY If Applicable	CONDITION UPON ARRIVAL Note condition, including existing damage and wear and tear.	CONDITION UPON INITIAL INSPECTION Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.	CONDITION UPON DEPARTURE Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.
HALLWAYS OR OTHER AREAS	Floor covering				
	Walls and ceiling				
	Closets, including doors and tracks				
	Light fixtures				
	Furnace/Air conditioner filter(s)				
	Patio, deck, yard (planted areas, ground covering, fencing, etc.)				
	Other (specify)				
BEDROOM 1	Floor covering				
	Walls and ceiling				
	Closet, including doors and tracks				
	Windows (draperies, screens, etc.)				
	Doors, including hardware				
	Light fixtures				

INVENTORY CHECKLIST (4 OF 4)

	ITEM	QUANTITY If Applicable	CONDITION UPON ARRIVAL Note condition, including existing damage and wear and tear.	CONDITION UPON INITIAL INSPECTION Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.	CONDITION UPON DEPARTURE Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible.
BEDROOM 2	Floor covering				
	Walls and ceiling				
	Closet, including doors and tracks				
	Windows (draperies, screens, etc.)				
	Doors, including hardware				
	Light fixtures				
BEDROOM 3	Floor covering				
	Walls and ceiling				
	Closet, including doors and tracks				
	Windows (draperies, screens, etc.)				
	Doors, including hardware				
	Light fixtures				

Arrival Inspection: Date _____

Signature of Tenant _____

Signature of Landlord or Agent _____

Initial Inspection: Date _____

Signature of Tenant _____

Signature of Landlord or Agent _____

Final Inspection: Date _____

Signature of Tenant _____

Signature of Landlord or Agent _____

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