

## Protecting Your Security Deposit

San Francisco Tenants are all too familiar with the security deposit. What many tenants don't realize, however, is that there are laws that control how much can be charged and how the security deposit can be used. Under the law, "security" means any payment, fee deposit or charge used for any purpose, including:

- Unpaid back rent
- Repairs of damages caused by the tenant to the premises — this does not include having to pay for ordinary wear and tear caused during the tenancy or any defective conditions that existed before the tenancy
- Cleaning the unit when the tenant vacates.

## Moving In

When moving in to your apartment, it is always a good idea to do your own inspection of your new home. Note the condition of the carpets, drapes, appliances, paint, and so forth. You can even take photos of the unit to document its condition. If you can, get your landlord to sign a copy of your inventory list and keep this with your lease and other documents related to your tenancy.

## How Much is Too Much?

The maximum a landlord may charge for a security deposit depends upon whether the rental unit is furnished or not. If the unit is furnished, the landlord may charge up to three times the amount of the monthly rent for the security deposit. If the unit is unfurnished, the landlord may charge only two times the amount of the monthly rent. You should also be aware that no security deposit is "nonrefundable," even if the lease says otherwise. You are also entitled to interest on the deposit every year after the first year of your occupancy, to be paid to you annually.

Prior to August 4, 2002, the amount of interest was 5%. However, the percentage now changes annually. Contact the San Francisco Rent Board to find out the current percentage.

## Moving Out

When you move out, try to get the landlord to do a walk-through inspection with you. Have him immediately sign off on any damage beyond normal wear and tear. Try to work out an exchange with your landlord that may provide incentive for a prompt return of your deposit, for example, the apartment keys for your security deposit. If your landlord won't meet you at the unit to inspect for damages, the next best option is to clean the place and take photos showing the apartment's condition. The photos should ideally be date-stamped or include the most recent newspaper with the date visible to head off any arguments that the photos were taken earlier in your tenancy.

## When Do I Get My Deposit Back?

When you do move out, you are entitled to your deposit, minus any valid deductions, within 21 days of your move out date. Any and all deductions that your landlord makes for damage beyond normal wear and tear, unpaid rent, application fees, or "reasonable" cleaning charges must be individually itemized and delivered to you in writing within the 21-day period. Be sure to leave your landlord your new address so that he may send you your deposit.

## What Is My Recourse?

Should your landlord withhold all or part of your security deposit without justification or make unreasonable deductions for items that should have cost less, you may be entitled to actual damages, meaning the amount that was unjustly withheld from you and an additional \$600 in statutory damages. You are not entitled to the \$600 in statutory damages if the only money your landlord wrongfully withheld was the interest on your security deposit.

## Write A Letter

If you have not been contacted within 21 days after moving out, you should write a letter to your landlord stating that he is in violation of California Civil Code Section 1950.5 and should return your security deposit immediately or face liability for the deposit and \$600 in statutory damages. Once again, be sure you include your new address or other contact information so the landlord knows where to send the deposit. It is a good idea to send the letter via certified mail, return receipt requested, so that your landlord can't deny getting it. Always keep a copy of the letter for your records.

## Small Claims Court

If your landlord is still dragging his or her feet and won't respond to your letter, your next step is to sue your landlord in small claims court. You will need proof of the existence and amount of the security deposit. Items such as a cancelled check, a receipt, or a lease stating the amount of the security deposit are good examples of proof.

## A Winning Argument

When you appear in court, present the judge with photographs of the apartment, your itemized list of damages upon move-in, copies of your letters to the landlord, and any other evidence you think will help your case. Bring any witnesses such as roommates who might be able to support your argument. You may want to write down what you are going to say in advance so that you will present a clear, organized argument. Keep your presentation brief and stick to the relevant facts. Judges do not like to hear rambling stories.

## Where To Go

You can get help with your case from the New College of California School of Law Small Claims Clinic at (415) 241-1300 ext. 337. You can also get help preparing for court from the San Francisco Small Claims Court and Legal Advisor's Clinic at (415) 551-4000. Small claims advice by telephone is available at (415) 292-2124. The AIDS Legal Referral Panel's Housing Advocacy Project can be reached at (415) 701-1200, ext. 314, or the Oakland office at (510) 451-5353. Please note that ALRP attorneys cannot represent you in court. However, they may be able to help you prepare for Small Claims Court.

# SECURITY DEPOSITS A GUIDE FOR PERSONS LIVING WITH HIV/AIDS



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