

LANDLORD-TENANT LAW

Most college students lease apartments or homes while pursuing their studies. It is therefore highly beneficial for students to have a good understanding of landlord-tenant law, which governs the leasing of real property. The following sections highlight major areas of landlord-tenant law that relate most frequently to students.

HOLDING DEPOSITS

A “holding deposit” is a sum of money paid by a potential tenant to a rental property owner to ensure that the property is not leased to someone else for a specific amount of time. For example, a landlord may ask you for a deposit to “hold” an apartment or house—*i.e.*, not rent it to others—while you decide whether you do in fact want to rent the property.

Holding deposits are designed to give potential tenants an opportunity to determine whether they would like to or are able to lease certain property. The holding deposit serves to compensate the owner if the potential tenant decides not to lease the property.

In theory, a property owner should only retain the amount of a holding deposit equivalent to the actual damages caused by a potential tenant not signing a lease contract. The owner should return the remainder of the deposit to the tenant. In actuality, California law is unresolved on this issue, and many landlords do retain the full amount of holding deposits that they receive.

SECURITY DEPOSITS

Landlords usually require a security deposit from tenants when renting residential property. The security deposit can be used only at the “natural expiration” of the lease to pay for:

- Damage to the property;
- Unpaid rent; and
- Other unpaid debts.

Amount

The California Civil Code establishes the maximum amount that landlords can charge tenants as a security deposit. For a non-furnished residence, a landlord cannot charge more than twice the rent, plus the first month’s rent, as a deposit. For a furnished residence, landlords can charge up to three times the rent in addition to the first month’s rent. Civil Code §1950.5(c).

Security Deposit as Last Month’s Rent

Tenants cannot elect to use the security deposit as the last month’s rent. Tenants must pay the last month’s rent when it comes due.

Return of the Security Deposit

A landlord should return the security deposit and/or provide the tenant with an accounting for any deductions withheld from the return of the deposit within 21 days from the day the tenant vacates the premises. The tenant should give the landlord a forwarding address to which the check for the return of the deposit is to be mailed.

Landlord's Withholding of the Security Deposit

If a landlord does not return all or some of a deposit, the tenant may demand that the property owner refund all or some of the security deposit and/or may request an accounting of charges.

Tenants are responsible for leaving leased property in the same or better condition than when the occupancy began. Tenants are not responsible for normal wear and tear to leased property. If a landlord withholds all or some of a security deposit for damages that do not exceed normal wear and tear, the tenant may have a claim against the property owner which can be pursued in small claims court. (Procedures regarding small claims court are discussed below.) To be successful, the tenant will need sufficient evidence to prove that damages to the unit did not exceed normal wear and tear.

Note: A security deposit cannot be “non-refundable”—*i.e.*, it may only be used by a landlord to pay for damage to property or unpaid rent or other unpaid debts, and otherwise must be returned.

BEFORE SIGNING THE LEASE

Prior to signing any rental agreement, tenants should pose any questions they may have about the agreement to the landlord. Future tenants should at the very least ask about:

1. The policy on subletting and/or assigning the rental property.
2. The policy on “breaking the lease,” or leaving early.
3. The policy on the landlord entering the property for repairs.
4. How many people may sign the lease.
5. When the rent is due and to whom.
6. To whom notices should be given.

Tenants can reduce the likelihood of confusion and court proceedings by asking the property owner these questions and ensuring that such details are included in the written rental agreement.

Not reading or understanding the terms of a lease agreement will not release you from its obligations. If you are unsure about what certain lease terms mean, ask the property owner or obtain assistance from Student Legal Services or another legal professional *before* you sign.

WHEN YOU TAKE OCCUPANCY

Tenants should conduct a thorough walkthrough of their rental property and document its condition immediately upon taking occupancy. Since tenants are responsible for leaving property in the same or better condition as when they took occupancy, it is imperative that tenants create this record. Documenting the condition of the property will be extremely helpful if the owner later wrongfully withholds the security deposit or bills for damages in excess of the security deposit amount. Tenants should be very specific while recording and describing the nature and extent of any existing damages to the unit.

It is crucial that you take photographs of your initial walkthrough. Student Legal Services recommends that you develop two sets of photographs; promptly mail one set to yourself via certified mail and do not open the envelope—the postmark will provide proof of the date the

photographs were taken. The photographs will serve as evidence as to the condition of the property upon original occupancy in the event a dispute arises.

WARRANTY OF HABITABILITY

By statute, there are certain minimum standards that must be met for a residence to be suitable for human habitation. Civil Code Section 1941.1(a)-(h) sets forth what must not “substantially lack” from a residential unit, including:

- Plumbing in good working order.
- Hot and cold running water.
- Heating facilities (although not air conditioning) in good working order.
- Floors, stairways, and railings maintained in good repair.

A tenant living in a residence that falls beneath the minimum standards of habitability may have the option of moving out early and/or receiving a reduction in the rental amount for the time during which the unit was below standards. Tenants who believe that their residence is uninhabitable should seek legal counsel to gain a fuller perspective of their rights and responsibilities.

REPAIRS AND MITIGATION

If a tenant finds that a rental property requires repair, he or she has a duty to promptly report the issue to the landlord. If the tenant fails to report negative conditions about the property, the tenant can be held liable for any increased damage to the property that results from not reporting the problem. This is called “mitigating the harm.”

The duty to mitigate means that even if tenants do not want an item repaired, they still have a responsibility to report damage, so that the landlord has the opportunity to attempt a repair.

Example:

Roommates Chris and Jo discover that the bathroom of the apartment they are renting has water leaking from a sink faucet. Chris and Jo decide not to call the landlord to repair the leak because they are busy studying for midterms and writing papers; they do not want to be disturbed by maintenance workers making repairs in their bathroom. The leak continues to worsen over time. Approximately three weeks after Chris and Jo discover the leak, what was a small trickle of water has become a steady stream. The water has caused mold to develop below the carpet and on the walls, and has damaged the paint.

Result

Because the water leak became worse and likely caused increased damage to the property as a result of Chris and Jo not initially reporting the problem, Chris and Jo may be held liable for the cost of remediating the mold infestation, repainting the walls, and repairing any other water damage. Had the landlord been able to repair the small leak three weeks prior, the major damage to the unit would not likely have occurred.

Tenants always should seek to *mitigate harm* because they have a duty to safeguard the landlord’s property while residing there. Failure to do so can be costly.

EVICTION

A landlord may evict a tenant for any substantial breach of a rental agreement. Examples of conduct by tenants generally serving as grounds for eviction include:

- Failing to pay rent.
- Having more occupants in the unit than permitted by the lease.
- Breaking the Homeowner Association rules.
- Failing to safeguard the property.
- Conducting illegal activities on the premises (drugs, underage drinking, etc.).
- Unauthorized subletting.
- Having pets or permitting pets to “visit” if pets are prohibited.

When a property owner decides to evict a tenant, the landlord must provide the tenant with a “Three-Day Notice to Pay or Quit” or a “Three-Day Notice to Cure or Quit,” depending upon whether the landlord wants the tenant to pay rent or to “cure” a breach of the contract.

A tenant has three days to comply with a demand for payment or curative action. If the tenant ignores or fails to adequately respond to the Three-Day Notice, the landlord may go to court to obtain a judgment to evict the tenant. Once the landlord obtains the judgment, the tenant must vacate the property immediately. If the tenant does not vacate immediately, the authorities may forcibly remove the tenant from the premises.

A tenant should immediately seek legal counsel upon receipt of a Three-Day Notice.

WHEN THE LEASE TERMINATES

When a lease ends, there are certain steps that tenants should take in order to protect their rights.

Give Notice

Although a lease will naturally terminate on a date specified in the rental agreement, ***tenants must still provide the property owner with a 30-day written notice of intent to vacate.*** If a tenant fails to give notice, the tenancy automatically becomes month-to-month, and the tenant may be held liable for an additional 30-days worth of rent until a 30-day written notice is properly given.

Conduct a Walkthrough

Tenants should conduct a walkthrough of the property with the landlord or the landlord’s agent two weeks before the lease ends. This allows the tenant to know in advance what potential problems may exist regarding the condition of the residence.

Based on what the landlord indicates may be problematic, tenants can make any repairs themselves or work with the landlord to hire a professional to conduct repairs. This will help to ensure that the maximum amount of the security deposit is returned to the tenant.

It is crucial that you take photographs of your final walkthrough, documenting the condition of the unit. Once again, Student Legal Services recommends that you develop two sets of

photographs; promptly mail one set to yourself via certified mail and do not open the envelope. In the event a dispute arises regarding the condition of the unit, you will have good evidence as to its condition upon vacancy.

Provide a Forwarding Address

Tenants should provide their landlord with a forwarding address to which the security deposit (less any deductions) should be returned.

SMALL CLAIMS COURT

Small claims court is the venue most often used to resolve tenant-landlord disputes.

Small claims court is designed for people to quickly and inexpensively address their legal problems. Parties in small claims court are not permitted to be represented by an attorney. There are small claims court branches throughout San Diego County that are staffed by attorneys who can assist individuals in preparing court filings.

If a student has a small claims court date, Student Legal Services can help the student prepare evidence/exhibits and a theory of the case.

GETTING HELP

The following are free resources for students who have landlord-tenant questions.

General Legal

Student Legal Services, 858.534.4374 or <http://sls.ucsd.edu>

Housing Discrimination

California Department of Fair Employment and Housing,
800.952.5210 or <http://www.dfeh.ca.gov>

Fair Housing Council of San Diego,
619.3699.5888 or <http://www.fhcsd.com>