

Advising FAQ

1) My landlord didn't give us an itemized list of deductions within 21 days of us vacating the rental. Can he keep our deposit?

If the landlord does not give you an itemized list within the 21 days allowed by California Civil Code 1950.5, he or she forfeits their right to retain any of the deposit and must return all of it to you. If he doesn't, it could be considered 'bad faith' on his part resulting in a penalty of twice the amount of the deposit if the case went to court. It might be necessary for the tenant to sue the landlord in court to get the deposit back and, at that time, the landlord could try to prove that the tenant damaged the unit or failed to clean. A judge could award damages to the landlord even if the landlord failed to return the deposit within 21 days as required under civil code section 1950.5. This is why it is always a good idea to take photos of the place when you move out. The process allowed in CCC 1950.5 is a unique process intended to allow a reasonable and fair way of dealing for both tenants and landlords. But if it is not followed, one loses the right to use it.

2) My landlord didn't tell me I had a right to a pre-move out inspection and did not do one. Now he wants to keep my deposit. Is this right?

No, it is not right since the landlord has not followed the process determined in CCC1950.5 (see question #1) which requires the landlord to offer a pre-move out inspection in writing. Another important reason is that the tenant MUST be given the 'right to cure'. The landlord must notify the tenant of their right to a pre-move out inspection AND to their right to be present at the pre-move out inspection in writing. They also MUST give the tenant an itemized list of what needs to be 'cured'-- cleaned, fixed, whatever the situation-- at the time of the inspection. If they don't do this, they may not keep your deposit. They should return the deposit and then they can take you to court to prove damages. It might be necessary to sue the landlord in court yourself, however. See #1 above. Good faith is a very important part of tenant-landlord law. Not only must the tenant be given notice of any deficiencies; they must also be given the time to 'cure'. An inspection the day before actual move out, for example, is not giving the tenant the time to "cure".

3) My landlord won't give me a copy of my rental agreement. What do I do?

Your landlord is required by law, California Civil Code 1962, to give you a copy of the rental agreement within 15 days of it being executed and additionally once a calendar year if you request it. Mail the landlord a letter requesting a copy of the contract along with the copy of the civil code.

We recommend written agreements, but if you have a verbal agreement, the landlord must provide these key things to you in writing:

1. Name, telephone number, and street address of manager or owner for serving notice
2. Who to pay the rent to
3. How you are to pay rent

4) Our landlord is evicting all of us because one of our roommates violated our lease. We haven't done anything wrong and really want to stay but she won't agree to it. Can she do that?

A landlord can legally hold all co-tenants responsible for the negative actions of just one, and terminate everyone's tenancy with the appropriate notice. For example, three co-tenants can be evicted even if only one of them seriously damages the property or otherwise violates the lease or rental agreement.

5) Our housemates aren't getting along. We all want to split up. How can we break our lease?

Tenants can break a lease; however, it can be a very expensive proposition. When a tenant breaks a lease, they are financially responsible for all advertisement and administrative costs, and are liable for lost rental income until the unit is re-rented or until the end of the term of the lease if a replacement tenant is not found. A landlord is legally required to try to find a replacement tenant and cannot unreasonably reject a similarly qualified tenant. However, a landlord can require an entire household to leave when only one tenant wants to break a lease.

Keep in mind, when there are a lot of vacant rentals in the market, re-renting your unit may not be easy. We recommend you try compromising and if that doesn't work or you have already tried, use UCSC Mediation Services.

If you do decide to break your lease because the other options are still not working, we highly recommend you contact California Rural Legal Assistance. If no one in your household qualifies, you can contact Lawyers Referral. Contact information is found on CRO's web pages.

6) We don't agree with the deductions our landlord took out of our security deposit. We know we are responsible for some of it but not all he took. Also, some of the damage was done by a tenant who left last year, not any of the rest of us. What should we do?

You should voice the reasons for your dispute in writing, in detail. As with all rental papers, keep a copy for yourself. Both the tenant's and landlord's responsibilities are spelled out in the California Civil Code 1950.5. You will find a copy on our Rental Forms and Resources web page. Read the code and make sure the landlord followed procedure and that you understand your rights and responsibilities. Include a copy in your correspondence.

Before you write the letter, research the issue you are having with your landlord in California Tenants handbook; a link can be found on our Rental Forms and Resources page. This will give you a printable PDF file of the latest version of the handbook. Isolate your issue and print out just that section. There is a lot about security deposits in the booklet. Narrow the search by using "painting" and "carpets" or "carpet cleaning" as a search parameter instead of "security deposit" to get you closer to the pages you need. Take some time to find language that supports what you believe is not being settled fairly. Send a copy along with your dispute.

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Regarding what a previous tenant did, the remaining household is responsible for dirt and damages based on the difference between the condition when a group moved into an empty house and the condition when the final group moved out, no matter who did the damage. The damage that was done should have been accounted for when he or she moved out.

7) We put in an application to one property manager but before they processed it we found another place. Now, we want our rental application packet back. They won't give me the entire packet, only my portion. They want all of us to come in and get our own sections. This seems really unreasonable. What can we do?

Actually, that property manager is following the law which was written to protect you. They are not allowed to give confidential information out to anyone but the person who gave it to them. They also must require you bring photo ID. If they had run your credit report, they would be required to keep the application (with your authorization on it) for a number of years.

8) I applied to rent a room in a home but the landlord will only live with someone who is the same religion as she is. Is this legal?

No, a landlord cannot discriminate on the basis of race, color, national origin, religion, familial, marital or handicap status, sexual orientation, sex, or age. There is an exception to discrimination laws, however, regarding sex but only when a landlord rents a room in the home they also occupy. A landlord can choose which sex with whom they care to live.

Sources: California Rural Legal Assistance, Watsonville; NoloPress.com; California Tenants, A Guide to Residential Tenants' and Landlords' Rights and Responsibilities by Consumer Affairs, Sacramento, CA, Fair Housing and Equal Opportunity Office.