

RESOLUTION 02-03-04

DIGEST

Landlord-Tenant: Removal of 48-Hour Notice Requirement

Amends Civil Code Section 1950.5, in cases of non-default termination of a tenancy, to remove the requirement for written notice of the inspection requested by a tenant when the landlord and tenant agree to such inspection.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code Section 1950.5, in cases of non-default termination of a tenancy, to remove the requirement for written notice of the inspection requested by a tenant when the landlord and tenant agree to such inspection. This resolution should be disapproved because, though it proposes to remove a redundancy, it removes a provision of the statute that may have the salutary effect of preventing potential disputes.

When a tenancy is in the process of termination either due to the expiration of the term or the tenant's decision to vacate, a tenant may request the landlord inspect the premises to allow the tenant to remedy deficiencies to reduce or avoid deductions from a security deposit. The statute requires the landlord to give at least 48 hours' prior written notice to the tenant of the date and time of the inspection even if the parties have agreed on the date and time for the inspection. The parties may waive this requirement, but such a waiver must also be in writing.

There is no showing that the written notice requirement is a particular burden on landlords or that it has anything but a salutary effect on the relationship between landlords and tenants. To require a landlord to give written notice to the tenant even when they have already reached agreement for the date and time for inspection may have the potentially positive effect of avoiding an unnecessary controversy if a misunderstanding later occurs concerning the actual agreement between the parties as to the date and time of inspection.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend California Civil Code Section 1950.5 to read as follows:

- 1 § 1950.5
- 2 (a) This section applies to security for a rental agreement for residential property
- 3 that is used as the dwelling of the tenant.
- 4 (b) As used in this section, "security" means any payment, fee, deposit or charge,
- 5 including, but not limited to, any payment, fee, deposit, or charge, except as provided in

6 Section 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the
7 landlord for costs associated with processing a new tenant or that is imposed as an advance
8 payment of rent, used or to be used for any purpose, including, but not limited to, any of
9 the following:

10 (1) The compensation of a landlord for a tenant's default in the payment of rent.

11 (2) The repair of damages to the premises, exclusive of ordinary wear and tear,
12 caused by the tenant or by a guest or licensee of the tenant.

13 (3) The cleaning of the premises upon termination of the tenancy necessary to
14 return the unit to the same level of cleanliness it was in at the inception of the tenancy. The
15 amendments to this paragraph enacted by the act adding this sentence shall apply only to
16 tenancies for which the tenant's right to occupy begins after January 1, 2003.

17 (4) To remedy future defaults by the tenant in any obligation under the rental
18 agreement to restore, replace, or return personal property or appurtenances, exclusive of
19 ordinary wear and tear, if the security deposit is authorized to be applied thereto by the
20 rental agreement.

21 (c) A landlord may not demand or receive security, however denominated, in an
22 amount or value in excess of an amount equal to two months' rent, in the case of
23 unfurnished residential property, and an amount equal to three months' rent, in the case of
24 furnished residential property, in addition to any rent for the first month paid on or before
25 initial occupancy.

26 This subdivision does not prohibit an advance payment of not less than six months'
27 rent if the term of the lease is six months or longer.

28 This subdivision does not preclude a landlord and a tenant from entering into a
29 mutual agreement for the landlord, at the request of the tenant and for a specified fee or
30 charge, to make structural, decorative, furnishing, or other similar alterations, if the
31 alterations are other than cleaning or repairing for which the landlord may charge the
32 previous tenant as provided by subdivision (e).

33 (d) Any security shall be held by the landlord for the tenant who is party to the
34 lease or agreement. The claim of a tenant to the security shall be prior to the claim of any
35 creditor of the landlord.

36 (e) The landlord may claim of the security only those amounts as are reasonably
37 necessary for the purposes specified in subdivision (b). The landlord may not assert a
38 claim against the tenant or the security for damages to the premises or any defective
39 conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof,
40 whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the
41 cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

42 (f) (1) Within a reasonable time after notification of either party's intention to
43 terminate the tenancy, or before the end of the lease term, the landlord shall notify the
44 tenant in writing of his or her option to request an initial inspection and of his or her right
45 to be present at the inspection. The requirements of this subdivision do not apply when the
46 tenancy is terminated pursuant to subdivision (2), (3), or (4) of Section 1161 of the Code
47 of Civil Procedure. At a reasonable time, but no earlier than two weeks before the
48 termination or the end of lease date, the landlord, or an agent of the landlord, shall, upon
49 the request of the tenant, make an initial inspection of the premises prior to any final
50 inspection the landlord makes after the tenant has vacated the premises. The purpose of the

51 initial inspection shall be to allow the tenant an opportunity to remedy identified
52 deficiencies, in a manner consistent with the rights and obligations of the parties under the
53 rental agreement, in order to avoid deductions from the security. If a tenant chooses not to
54 request an initial inspection, the duties of the landlord under this subdivision are
55 discharged. If an inspection is requested, the parties shall attempt to schedule the
56 inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours'
57 prior written notice of the date and time of the inspection if ~~either a mutual time is agreed~~
58 ~~upon, or~~ if a mutually agreed time cannot be scheduled but the tenant still wishes an
59 inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by
60 both signing a written waiver. The landlord shall proceed with the inspection whether the
61 tenant is present or not, unless the tenant previously withdrew his or her request for the
62 inspection.

63 (2) Based on the inspection, the landlord shall give the tenant an itemized statement
64 specifying repairs or cleaning that are proposed to be the basis of any deductions from the
65 security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive of
66 subdivision (b). This statement shall also include the texts of subdivision (d) and
67 paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the
68 tenant, if the tenant is present for the inspection, or shall be left inside the premises.

69 (3) The tenant shall have the opportunity during the period following the initial
70 inspection until termination of the tenancy to remedy identified deficiencies, in a manner
71 consistent with the rights and obligations of the parties under the rental agreement, in order
72 to avoid deductions from the security.

73 (4) Nothing in this subdivision shall prevent a landlord from using the security for
74 deductions itemized in the statement provided for in paragraph (2) that were not cured by
75 the tenant so long as the deductions are for damages authorized by this section.

76 (5) Nothing in this subdivision shall prevent a landlord from using the security for
77 any purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs
78 between completion of the initial inspection and termination of the tenancy or was not
79 identified during the initial inspection due to the presence of a tenant's possessions.

80 (g) (1) No later than 21 calendar days after the tenant has vacated the premises, but
81 not earlier than the time that either the landlord or the tenant provides a notice to terminate
82 the tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or
83 not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord
84 shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy
85 of an itemized statement indicating the basis for, and the amount of, any security received
86 and the disposition of the security and shall return any remaining portion of the security to
87 the tenant.

88 (2) Along with the itemized statement, the landlord shall also include copies of
89 documents showing charges incurred and deducted by the landlord to repair or clean the
90 premises, as follows:

91 (A) If the landlord or landlord's employee did the work, the itemized statement
92 shall reasonably describe the work performed. The itemized statement shall include the
93 time spent and the reasonable hourly rate charged.

94 (B) If the landlord or landlord's employee did not do the work, the landlord shall
95 provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity

96 performing the work. The itemized statement shall provide the tenant with the name,
97 address, and telephone number of the person or entity, if the bill, invoice, or receipt does
98 not include that information.

99 (C) If a deduction is made for materials or supplies, the landlord shall provide a
100 copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by
101 the landlord on an ongoing basis, the landlord may document the cost of the item by
102 providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that
103 reasonably documents the cost of the item used in the repair or cleaning of the unit.

104 (3) If a repair to be done by the landlord or the landlord's employee cannot
105 reasonably be completed within 21 calendar days after the tenant has vacated the premises,
106 or if the documents from a person or entity providing services, materials, or supplies are
107 not in the landlord's possession within 21 calendar days after the tenant has vacated the
108 premises, the landlord may deduct the amount of a good faith estimate of the charges that
109 will be incurred and provide that estimate with the itemized statement. If the reason for the
110 estimate is because the documents from a person or entity providing services, materials, or
111 supplies are not in the landlord's possession, the itemized statement shall include the name,
112 address, and telephone number of the person or entity. Within 14 calendar days of
113 completing the repair or receiving the documentation, the landlord shall complete the
114 requirements in paragraphs (1) and (2) in the manner specified.

115 (4) The landlord need not comply with paragraph (2) or (3) if either of the
116 following apply:

117 (A) The deductions for repairs and cleaning together do not exceed one hundred
118 twenty-five dollars (\$125).

119 (B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver
120 shall only be effective if it is signed by the tenant at the same time or after a notice to
121 terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section
122 1161 of the Code of Civil Procedure has been given, or no earlier than 60 calendar days
123 prior to the expiration of a fixed-term lease.

124 The waiver shall substantially include the text of paragraph (2).

125 (5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2)
126 and (3) when a tenant makes a request for documentation within 14 calendar days after
127 receiving the itemized statement specified in paragraph (1). The landlord shall comply
128 within 14 calendar days after receiving the request from the tenant.

129 (6) Any mailings to the tenant pursuant to this subdivision shall be sent to the
130 address provided by the tenant. If the tenant does not provide an address, mailings
131 pursuant to this subdivision shall be sent to the unit that has been vacated.

132 (h) Upon termination of the landlord's interest in the premises, whether by sale,
133 assignment, death, appointment of receiver or otherwise, the landlord or the landlord's
134 agent shall, within a reasonable time, do one of the following acts, either of which shall
135 relieve the landlord of further liability with respect to the security held:

136 (1) Transfer the portion of the security remaining after any lawful deductions made
137 under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter
138 notify the tenant by personal delivery or by first-class mail, postage prepaid, of the
139 transfer, of any claims made against the security, of the amount of the security deposited,
140 and of the names of the successors in interest, their address, and their telephone number. If

141 the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt
142 of the notice and sign his or her name on the landlord's copy of the notice.

143 (2) Return the portion of the security remaining after any lawful deductions made
144 under subdivision (e) to the tenant, together with an accounting as provided in subdivision
145 (g).

146 (i) Prior to the voluntary transfer of a landlord's interest in the premises, the
147 landlord shall deliver to the landlord's successor in interest a written statement indicating
148 the following:

149 (1) The security remaining after any lawful deductions are made.

150 (2) An itemization of any lawful deductions from any security received.

151 (3) His or her election under paragraph (1) or (2) of subdivision (h).

152 This subdivision does not affect the validity of title to the real property transferred
153 in violation of this subdivision.

154 (j) In the event of noncompliance with subdivision (h), the landlord's successors in
155 interest shall be jointly and severally liable with the landlord for repayment of the security,
156 or that portion thereof to which the tenant is entitled, when and as provided in subdivisions
157 (e) and (g). A successor in interest of a landlord may not require the tenant to post any
158 security to replace that amount not transferred to the tenant or successors in interest as
159 provided in subdivision (h), unless and until the successor in interest first makes restitution
160 of the initial security as provided in paragraph (2) of subdivision (h) or provides the tenant
161 with an accounting as provided in subdivision (g).

162 This subdivision does not preclude a successor in interest from recovering from the
163 tenant compensatory damages that are in excess of the security received from the landlord
164 previously paid by the tenant to the landlord.

165 Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a
166 landlord's successor in interest has a good faith belief that the lawfully remaining security
167 deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he
168 or she is not liable for damages as provided in subdivision (l), or any security not
169 transferred pursuant to subdivision (h).

170 (k) Upon receipt of any portion of the security under paragraph (1) of subdivision
171 (h), the landlord's successors in interest shall have all of the rights and obligations of a
172 landlord holding the security with respect to the security.

173 (l) The bad faith claim or retention by a landlord or the landlord's successors in
174 interest of the security or any portion thereof in violation of this section, or the bad faith
175 demand of replacement security in violation of subdivision (j), may subject the landlord or
176 the landlord's successors in interest to statutory damages of up to twice the amount of the
177 security, in addition to actual damages. The court may award damages for bad faith
178 whenever the facts warrant such an award, regardless of whether the injured party has
179 specifically requested relief. In any action under this section, the landlord or the landlord's
180 successors in interest shall have the burden of proof as to the reasonableness of the
181 amounts claimed or the authority pursuant to this section to demand additional security
182 deposits.

183 (m) No lease or rental agreement may contain any provision characterizing any
184 security as "nonrefundable."

185 (n) Any action under this section may be maintained in small claims court if the

186 damages claimed, whether actual or statutory or both, are within the jurisdictional amount
187 allowed by Section 116.220 of the Code of Civil Procedure.

188 (o) Proof of the existence of and the amount of a security deposit may be
189 established by any credible evidence, including, but not limited to, a canceled check, a
190 receipt, a lease indicating the requirement of a deposit as well as the amount, prior
191 consistent statements or actions of the landlord or tenant, or a statement under penalty of
192 perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence
193 Code.

194 (p) The amendments to this section made during the 1985 portion of the 1985-86
195 Regular Session of the Legislature that are set forth in subdivision (e) are declaratory of
196 existing law.

197 (q) The amendments to this section made during the 2003 portion of the 2003-04
198 Regular Session of the Legislature that are set forth in paragraph (1) of subdivision (f) are
199 declaratory of existing law.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Santa Barbara County Bar Association

STATEMENT OF REASONS:

Existing Law: The current code is requiring an unnecessary and unreasonable extra step or procedure in requiring the landlord to “serve” a 48 hour notice of the initial inspection even when the appointment with a specific date and time has been decided upon and set by both the landlord and tenant. Not only is this an extra burden on the landlord which seems to have no purpose whatsoever since the landlord and tenant specifically decided upon a date and time, but the tenant could likely be embarrassed unnecessarily by the service of this additional, unneeded notice as this could be served at the tenant’s place of work, etc. There is simply no need for this procedure which may have been an error in drafting which is having unintended consequences for both parties.

This Resolution: This Resolution would eliminate this confusion.

The Problem: The amendments to Civil Code Section 1950.5 which allow for an initial inspection plus a multitude of additional requirements with respect to the security deposit already require multiple notices without the notice of an appointment specially set and agreed upon between the tenant and the landlord.

Amending California Code of Civil Procedure Section 1162 will further the public policy by avoiding confusion and will not have a detrimental effect upon the process.

IMPACT STATEMENT

This proposed resolution will not affect any other code sections.

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