

**RESOLUTION 02-05-04**

**DIGEST**

Landlord and Tenant: Waiver of Claim to Security Deposit

Amends Civil Code section 1950.5 to provide that a landlord who fails to itemize damage deductions from a tenant's security deposit waives the right to those deductions.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 1950.5 to provide that a landlord who fails to itemize damage deductions from a tenant's security deposit waives the right to those deductions. This resolution should be approved in principle because it would assist tenants in determining whether any deductions were unreasonable, and would prevent landlords from arbitrarily withholding security deposits without providing any accounting.

Section 1950.5, subdivision (g)(1), requires the landlord to provide an itemized statement of all deductions from the tenant's security deposit. There is, however, no penalty if the landlord fails to provide the statement. If the landlord fails to comply, the tenant usually has no way to determine whether the deductions were unreasonable or whether to take action against the landlord (typically in small-claims court) to recover amounts wrongfully deducted and/or statutory penalties for withholding in bad faith. (See Civil Code, § 1950.5, subd. (l).) The present statute does not provide any effective deterrent to ensure that a landlord's withholding of security is proper.

Because landlords hold a special influence over their tenants' homes, the law construes landlords' obligations to their tenants strictly. Security deposits involve important principles of trust. Other states enforce the landlords' duties by requiring the landlord to return all of the security deposit (sometimes with additional penalties) if the landlord fails to provide an itemization of deductions. (See, e.g., Ariz. Rev. Stat., § 33-1321, subd. (E); Ill. Comp. Stat., ch. 765, § 710/1; Ohio Rev. Code, § 5321.16, subd. (C); Tex. Prop. Code, § 92.109, subd. (b), (d).) California law should provide a similar motivation for landlords to comply with their responsibilities to their tenants.

**TEXT OF RESOLUTION**

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

- 1 § 1950.5
- 2 [Subdivisions (a) through (f) remain unchanged.]
- 3 (g) (1) No later than 21 calendar days after the tenant has vacated the premises, but

4 not earlier than the time that either the landlord or the tenant provides a notice to terminate  
5 the tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or  
6 not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord  
7 shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy  
8 of an itemized statement indicating the basis for, and the amount of, any security received  
9 and the disposition of the security and shall return any remaining portion of the security to  
10 the tenant. If the landlord fails or refuses to deliver the itemized statement as provided  
11 herein, the landlord waives any claim or right to the security being held.

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

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

18 (B) If the landlord or landlord's employee did not do the work, the landlord shall  
19 provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity  
20 performing the work. The itemized statement shall provide the tenant with the name,  
21 address, and telephone number of the person or entity, if the bill, invoice, or receipt does  
22 not include that information.

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

28 (3) If a repair to be done by the landlord or the landlord's employee cannot  
29 reasonably be completed within 21 calendar days after the tenant has vacated the premises,  
30 or if the documents from a person or entity providing services, materials, or supplies are  
31 not in the landlord's possession within 21 calendar days after the tenant has vacated the  
32 premises, the landlord may deduct the amount of a good faith estimate of the charges that  
33 will be incurred and provide that estimate with the itemized statement. If the reason for the  
34 estimate is because the documents from a person or entity providing services, materials, or  
35 supplies are not in the landlord's possession, the itemized statement shall include the name,  
36 address, and telephone number of the person or entity. Within 14 calendar days of  
37 completing the repair or receiving the documentation, the landlord shall complete the  
38 requirements in paragraphs (1) and (2) in the manner specified.

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

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

43 (B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver  
44 shall only be effective if it is signed by the tenant at the same time or after a notice to  
45 terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section  
46 1161 of the Code of Civil Procedure has been given, or no earlier than 60 calendar days  
47 prior to the expiration of a fixed-term lease.

48           The waiver shall substantially include the text of paragraph (2).  
49           (5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2)  
50 and (3) when a tenant makes a request for documentation within 14 calendar days after  
51 receiving the itemized statement specified in paragraph (1). The landlord shall comply  
52 within 14 calendar days after receiving the request from the tenant.  
53           (6) Any mailings to the tenant pursuant to this subdivision shall be sent to the  
54 address provided by the tenant. If the tenant does not provide an address, mailings  
55 pursuant to this subdivision shall be sent to the unit that has been vacated.  
56           [Subdivisions (h) through (q) remain unchanged]

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

PROPONENT: San Fernando Valley Bar Association

STATEMENT OF REASONS:

Existing Law: Existing law provides no incentive to comply and no penalty to a landlord who either fails or refuses to provide a timely written itemized statement of the disposition of the security deposit.

This Resolution: Would provide for complete forfeiture of the security deposit if the landlord fails or refuses to provide a timely written itemized statement as required by California Civil Code § 1950.5 notwithstanding any damages to the property or breach of the lease agreement by the tenant.

The Problem: All too often landlords fail or refuse to provide a former tenant with a timely written itemized statement of the disposition of the tenant's security deposit. The tenant is then left to file a claim, usually in small claims court, without knowing how, or even if, the security has been spent and the basis for the expenditure. This resolution would provide an incentive for a landlord to comply with California Civil Code §1950.5(g) by timely informing a former tenant of the amount and the basis for the disposition of the security deposit. If the landlord fails to comply, then the landlord forfeits any claim to the security, notwithstanding any damages to the landlord's property or the tenant's breach of the lease agreement.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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**COUNTERARGUMENT**

**SAN DIEGO COUNTY BAR ASSOCIATION**

Quite often the only protection a landlord has against a tenant who breaches a lease and causes destruction to the leasehold is the security deposit. Providing an itemized statement of all damages, or even an estimate, within 21 days of the vacation of the premises may be difficult, particularly if a tenant has left no forwarding address. Moreover, existing law already provides a powerful incentive to the landlord to act in good faith. Note, under current law where the landlord acts in bad faith, section 1950 (l) allows the court to award the tenant up to twice the amount of the security, in addition to actual damages, with the burden of proof on the landlord with respect to the reasonableness of deductions from the security deposit. Resolution 2-05-04 proposes an automatic forfeit of the security deposit without regard to circumstances, which is a heavily punitive penalty to the unwary landlord. It is unfair and overkill.