

RESOLUTION 01-04-2007

DIGEST

Security Deposits: Limiting Deductions for Cleaning

Amends Civil Code section 1950.5 to limit the deductions a landlord may withhold from a security deposit for cleaning.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 1950.5 to limit the deductions a landlord may withhold from a security deposit for cleaning. This resolution should be disapproved because an exclusion for “ordinary wear and tear” with respect to cleaning is too vague and ambiguous and would effectively nullify a 2002 amendment to the statute with respect to cleaning.

Civil Code section 1950.5 subdivision (b) paragraph (3) was amended in 2002 to provide that a landlord may deduct from a security deposit amounts “necessary to return the unit to the same level of cleanliness it was in at the inception of the” tenancy. This resolution would effectively nullify that amendment. An “ordinary wear and tear” exclusion with respect to how much cleaning must be done by a vacating tenant, or how much money could be withheld by the landlord, would render the tenant’s duties and the landlord’s rights with respect to cleaning vague, ambiguous and unenforceable.

Contrary to what the proponent argues, this resolution is not limited to long-term tenants. Furthermore, the statute presently does not permit a landlord to make deductions from a security deposit for repainting or re-carpeting the unit, or other costs in connection with a “remodel,” as the proponent suggests. Given that the Legislature has only recently amended this statute to rule out the deductions and charges that the proponent urges, the resolution should be disapproved.

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 (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 the
9 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 return
14 the unit to the same level of cleanliness it was in at the inception of the tenancy, exclusive of
15 ordinary wear and tear. ~~The amendments to this paragraph enacted by the act adding this~~
16 ~~sentence shall apply only to tenancies for which the tenant's right to occupy begins after~~
17 ~~January 1, 2003.~~

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

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

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

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

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

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

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

54 in order to avoid deductions from the security. If a tenant chooses not to request an initial
55 inspection, the duties of the landlord under this subdivision are discharged. If an inspection
56 is requested, the parties shall attempt to schedule the inspection at a mutually acceptable
57 date and time. The landlord shall give at least 48 hours' prior written notice of the date and
58 time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time
59 cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may
60 agree to forego the 48-hour prior written notice by both signing a written waiver. The
61 landlord shall proceed with the inspection whether the tenant is present or not, unless the
62 tenant previously withdrew his or her request for the 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 paragraphs (1) to (4),
67 inclusive, of subdivision 9b). The statement shall be given to the tenant, if the tenant is
68 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 to
72 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 the
75 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 91) 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 dispositions 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 time
93 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 not
98 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 not
107 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 paragraph (1) and (2) in the manner specified.

115 (4) The landlord need not comply with paragraph (2) or (3) if either of the following
116 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. The waiver shall substantially include the text
124 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 shall be
131 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 agent
134 shall, within a reasonable time, do one of the following acts, either of which shall relieve the
135 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 transfer,
139 of any claims made against the security, of the amount of the security deposited, and of the
140 names of the successors in interest, their address, and their telephone number. If the notice
141 to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice
142 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 landlord
147 shall deliver to the landlord's successor in interest a written statement indicating the
148 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 this subdivision (h).

152 This subdivision does not affect the validity of title to the real property transferred in
153 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 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 transferred
169 pursuant to subdivision (h).

170 (k) Upon receipt of any portion of the security under paragraph (l) of subdivision (h),
171 the landlord's successors in interest shall have all of the rights and obligations of a landlord
172 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 that 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 amounts
181 claimed or the authority pursuant to this section to demand additional security deposits.

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

184 (n) Any action under this section may be maintained in small claims court if the
185 damages claimed, whether actual or statutory or both, are within the jurisdictional amount
186 allowed by Section 116.220 or 116.221 of the Code of Civil Procedure.

187 (o) Proof of the existence of and the amount of a security deposit may be established
188 by any credible evidence, including, but not limited to, a canceled check, a receipt, a lease

189 indicating the requirement of a deposit as well as the amount, or a statement under penalty
190 of perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence
191 Code.

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

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

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

PROPONENT: Santa Barbara County Bar Association

STATEMENT OF REASONS

Existing Law: Allows a landlord to deduct any amount of money from the security deposit for cleaning of the premises without regard to the length of the term of tenancy and relies upon the Courts to interject reasonableness on the claim against the security. Thus, a landlord will claim the entire cost to clean a prepare for refurbishing a unit which has been occupied by the same tenant for 29 years. The landlord relies upon the fact that there exists a “except for ordinary wear and tear” limitation upon repairs and damages that is not currently specified under the cleaning section.

This Resolution: Would directly specify to the landlord that “ordinary wear and tear” limitations also apply with respect to cleaning.

The Problem: Consists of a mistaken belief by the landlord that while he or she cannot charge beyond an amount for damages and repairs to the residential rental unit upon the termination of the tenancy, that the “sky is the limit” with respect to cleaning. If the same tenant has occupied the unit for any number of years, a landlord has saved countless dollars in repainting, recarpeting, and remodeling said unit. In the example cited above, the landlord would have saved repainting the unit at his or her expense 14 times as paint is generally given a 2 year life in the rental property industry. Similarly, a landlord would have saved recarpeting that same unit 6 times as carpet is generally given a 5 year life in the rental property industry. This means that the landlord reaps all of the benefit of the long term tenancy in savings of thousands upon thousands of dollars and that the tenant receives none. Why should a long-term tenant who paid faithfully and respected all of the rules imposed by the landlord (or he or she would have been evicted) be forced at the end of this long-term tenancy to pay for all of the cleaning necessary to remodel the unit? It would be in furtherance of public policy to apply the same reasonable “ordinary wear and tear” limitation upon the cleaning of the unit as well as for repairs and damages such that all deductions from a security are treated equally.

IMPACT STATEMENT

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

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COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

Landlords should be able to charge cleaning fees. The law provides that these fees can be charged “to return the unit to the same level of cleanliness” as it was prior to the occupancy. This seems well-defined and not subject to misinterpretation. It is difficult to equate “clean” with “wear and tear.” They are not similar concepts. Section (b)(2) already provides for repair “exclusive of wear and tear” and that seems to be the more appropriate placement of that language. There are remedies when a landlord charges inappropriate charges.