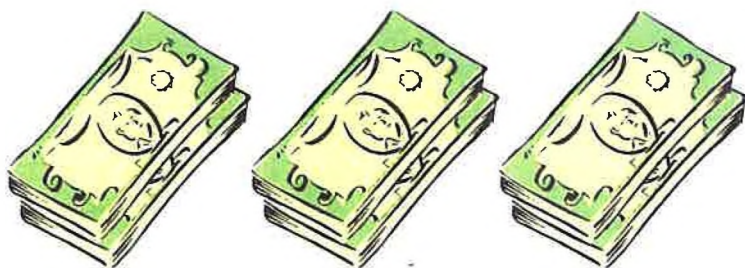


SECURITY DEPOSITS

Rights and Responsibilities of Tenants and Landlords in East Palo Alto



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Prepared by Community Legal Services in East Palo Alto
with support from the East Palo Alto Rent Stabilization Program
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About the East Palo Alto Rent Stabilization Program

East Palo Alto's Rent Stabilization Program administers the Rent Stabilization Ordinance. For units under rent control, the Program:

- Determines the maximum legal rent; and
- Provides fair and impartial hearings regarding rental rates, eviction and habitability to landlords and tenants.

Regular meetings of the Rent Stabilization Board are held on the second and fourth Wednesday of the month at 7:00 p.m. at 2415 University Avenue, East Palo Alto. The public is welcomed to attend.

For more information, please call the Program at tel: (650) 853-3109 or see <http://www.ci.east-palo-alto.ca.us/housingdiv/rent.html>.

Tenants' Rights Concerning Security Deposits Under East Palo Alto's Rent Control Ordinance

Thanks to East Palo Alto's rent control ordinance, tenants' rights concerning security deposits in East Palo Alto go beyond the protections afforded by state law. Specifically, for all units under rent control:

- Landlords must place security deposits in an interest-bearing, federally insured account until the deposits are returned to the tenant or used for repairs as allowed under state law.
- Tenants have the right to receive the interest earned by their security deposits. Landlords must pay security deposit interest to tenants annually, either as a cash payment or as a rent rebate.
- A landlord can demand an increase in the amount of a current tenant's security deposit only if the landlord petitions the Rent Stabilization Division for an individual rent adjustment and the petition is granted. The landlord must then give the tenant 30 days written notice of any increase.

FREQUENTLY ASKED QUESTIONS

(1) What is a security deposit?

A security deposit is a fee that the landlord charges when you start renting your unit to cover unpaid rent, or the cost of certain repairs or cleaning that the landlord might need to do after you move out. In the absence of those costs, the landlord must return the deposit to you.

(2) My landlord charged me several different fees when I started to rent. Do those count as part of my security deposit?

All fees that you pay when you start to rent your unit count as part of the security deposit and thus are owed back to you, *except* for the application screening fee if there is one. Suppose the landlord charges you these fees when you rent a furnished unit:

- | | |
|-----------------------------|---------|
| • Application screening fee | \$30 |
| • New tenant processing fee | \$50 |
| • Key deposit | \$25 |
| • Security deposit | \$1,000 |

Your total security deposit would be \$1,075.

Civil Code §§ 1950.5(b), 1950.6(j).

(3) Is there such a thing as a nonrefundable security deposit?

No. A landlord cannot make any part of the security deposit nonrefundable in your lease or rental agreement. The only initial fee that is nonrefundable is the application screening fee, if there is one.

Civil Code §§ 1950.5(m), 1950.6(h).

(4) How much can a landlord charge for a security deposit?

- For an unfurnished apartment, two months' rent.
- For a furnished apartment, three months' rent.
- The sum of all fees that count toward the security deposit cannot exceed these limits, regardless of what the landlord calls the fees. (See question 2.)

Civil Code § 1950.5(c).

(5) Can a landlord increase the security deposit later on?

- Your landlord cannot increase your security deposit if you have already paid the maximum amount. (See question 4).
- If your unit is under rent control, your landlord cannot increase the amount of the security deposit unless the Rent Stabilization Board grants a petition for individual rent increase. The landlord must then give you 30 days written notice of any increase.

Civil Code § 1950.5(c); Rules and Regulations for the Rent Stabilization and Good Cause for Eviction Ordinance § 704.

(6) What is the landlord supposed to do with my security deposit when I move out?

Under state law, within 21 calendar days after you move out the landlord must either:

1. Return the full amount of your security deposit to you (see question 2); or
2. Send to you: (1) an itemized statement of the charges that were deducted from your security deposit and the reasons for the charges, and (2) a refund of the remaining part of your security deposit, if any. In most circumstances, the landlord must also send copies of the receipts for the charges listed in the itemized statement, or provide a good faith estimate of the charges if the work cannot be completed within the 21 days.

If your landlord does not do one of these two things within 21 days, the landlord loses his/her right to keep any of the security deposit.

Civil Code § 1950.5(g).

(7) What repairs and other costs can a landlord deduct from a security deposit?

A landlord can use the security deposit to cover the cost of:

- Unpaid rent;
- Cleaning the unit after you move out, but only to make it as clean as it was when you moved in;
- Repairing damage beyond normal wear and tear that is caused by you or your guests; and

- Repairing or replacing items like furniture or keys. To use the security deposit for these ends, the lease or rental agreement must allow it; and the need for repair or replacement must be caused by something other than normal wear and tear.

A landlord cannot use the security deposit for:

- Repairing damage to the unit that existed when you moved in; or
- Repairing normal wear and tear caused by you or your guests.

Civil Code § 1950.5(b), (e).

(8) What if the landlord doesn't return my money and doesn't give me a list of the repairs and costs deducted from my deposit?

Talk with your landlord. Try to find out if there is a misunderstanding or a reason for the landlord's delay. Ask if there is anything that you can do to help resolve the problem.

If your landlord does not respond within a week:

- Follow up with a letter, like the sample letter provided on page 5. Explain your reasons for being concerned, and include a copy of your initial checklist if you made one. Keep a copy of your letter.
- Make sure your landlord gets your letter. Send it by certified mail or deliver it in person.
- If your landlord responds, try to reach a compromise that you both think is fair.

If you cannot work out the problem with your landlord:

- Consider taking legal action in small claims court. The outcome will be uncertain; but you might recover the full amount of the security deposit, court costs, and interest. At the judge's discretion, you might also recover a penalty. *Civil Code § 1950.5(l).*
- A risk of going to small claims court is that the landlord can file a counterclaim against you. In the counterclaim, the landlord can seek damages greater than your security deposit.
- For more information, see "Where to Get Help" on the back cover.

(9) Am I supposed to get interest on my security deposit?

Yes, if your unit is under rent control. Under East Palo Alto's rent control ordinance, tenants have rights concerning security deposit interest that go beyond the protections of state law.

If your unit is under rent control:

- Your landlord must place your security deposit in a federally insured, interest-bearing savings account.
- Your landlord must pay you the interest on your deposit each year in December. The landlord can either pay you directly or deduct the amount of the interest from your rent for December.
- If you paid both a security deposit and last month's rent, the landlord must pay you the interest each year on the entire amount of the last month's rent and the security deposit.

If your landlord has not paid you the interest each year:

- Talk to your landlord. It might be a simple mistake.
- If your landlord still does not pay the security deposit interest to you, you have the right to petition the Rent Stabilization Board to get the payment. See "Where to Get Help" for the Rent Stabilization Board's contact information.

Rent Stabilization Ordinance of East Palo Alto § 7; Rules and Regulations for the Rent Stabilization and Good Cause for Eviction Ordinance §§ 701, 702.

(10) Can I use my security deposit to pay the rent?

- No. The landlord does not have to give you credit for your security deposit until after you have moved out and the landlord has had a chance to inspect the apartment.
- If you paid last month's rent as well as a security deposit, you can apply the amount that you paid as last month's rent toward your final rent payment. Otherwise, your landlord will owe the last month's rent payment back to you with your security deposit.

SAMPLE LETTER

Change this letter to suit your needs. It should be nicer if the landlord is cooperative and just slow; and it should be more demanding if the landlord refuses to acknowledge your rights.

[today's date]

[your name and address]

[landlord's name and address]

Dear [landlord's name]:

This letter is to follow up on our conversation on [the date you talked with the landlord], concerning the return of my security deposit for address:

At the time I moved out of this [house/apartment], I did not owe any rent and I left the unit in good condition. However, I have not yet received my security deposit back. The amount of the security deposit was \$ _____.

I understand that delays sometimes occur, but I have not heard from you since our last conversation. I would appreciate hearing from you soon concerning this matter.

I wish to settle the matter in as reasonable a manner as possible. However, please be advised that I know my rights under California Civil Code Section 1950.5. This section allows me to sue my landlord for my deposit; and under it a landlord who retains a security deposit in bad faith may be liable for damages up to twice the amount of the deposit.

Sincerely,

[your name]

5 STEPS TENANTS CAN TAKE TO PREVENT DISPUTES**3. Read your rental agreement or lease before you sign it.**

- Make sure the agreement states that you paid a deposit, and that it states the amount of the deposit. Or, get a receipt of your security deposit payment.
- Make sure you understand the conditions under which the landlord can keep some or all of your security deposit. Your lease or agreement should state the conditions.
- Keep a copy of your rental agreement or lease. Keep a copy of the receipt for your payment of the security deposit

4. When you move in, go through your unit with the landlord and fill out a checklist.

- Use a checklist like the one provided on pages 8-9. Use extra paper if needed.
- Check the apartment carefully. Take detailed notes on anything that is damaged, worn, or does not work properly. *Take pictures.*
- Have the landlord sign and date the completed checklist.
- If the landlord will not inspect the apartment with you, have a friend go through with you and have him/her sign the completed checklist as your witness.
- Send a copy of the completed, signed checklist to the landlord and keep the original with your lease or rental agreement.

5. During your tenancy, keep receipts and copies of letters that you send to the landlord.

- Keep receipts of rent payments and any other payments.
- If your landlord does not pay security deposit interest to you each year, request it in writing. Keep copies of your letters.
- You are responsible for damage that you or your guests cause, beyond normal wear and tear. Keep records of any repairs that you have done.
- The landlord is responsible for repairing damage that existed before you moved in or that is caused by normal wear and tear.
- If there are any problems with your unit, write to the landlord to explain the problems and to request repairs. Keep copies of your letters.

1. As you get ready to move out, give your landlord written notice and have an initial inspection.

- Write to your landlord. In the letter:
 - Give your landlord 30 days' written notice, and give the date on which you will move out.
 - Provide your new address or say that you will provide it later.
 - If you paid last month's rent, request that it be applied.
 - Request an initial inspection and a final inspection.
- Hold the initial inspection. If you request one, the landlord *must* cooperate. *See Civil Code § 1950.5(f)*. But if you do not request it, the landlord cannot conduct one.
 - The initial inspection must be held during the last two weeks of your tenancy. The purpose is to give you a chance to repair damage (beyond wear and tear) and clean adequately.
 - Take notes on the landlord's comments during the inspection.
 - Following the initial inspection, the landlord must give you an itemized list of any damage or cleaning problems that he/she plans to address by using your security deposit.
 - If you disagree with the landlord's list, write to the landlord explaining why you disagree. Keep a copy of your letter.
 - If you decide to any major repairs on the list, get professional help and keep copies of all receipts.

2. Prepare for and conduct the final inspection.

- Remove all belongings. Leave the unit as clean as it was when you moved in. Remove all trash, inside and out.
- Take pictures of the unit.*
- Go through the unit with the landlord when he/she does the final inspection. Have him/her sign and date a final checklist. Bring a friend with you as a witness, preferably someone who speaks English. Take notes on the landlord's comments.
- If the landlord will not do a final inspection with you, get a friend to walk through the unit with you. Have him/her sign and date a final checklist.
- Send a copy of the final checklist to the landlord and keep a copy.
- Give the landlord your new address in writing, if you have not already done so.
- Return the key.

INVENTORY CHECK LIST

Address: _____ Unit no. _____

ITEM	Move-in condition	Move-out condition
EXTERIOR		
House, driveway		
Garage		
Fence		
Yard		
KITCHEN		
Cabinets		
Floor		
Walls & ceiling		
Counter surfaces		
Stove or oven		
Refrigerator		
Sink		
Garbage disposal		
Tables & chairs		
Windows & screens		
Curtains		
Doors		
Lights		
LIVING ROOM		
Floor or carpet		
Walls & ceiling		
Tables & chairs		
Sofa(s)		
Windows & screens		
Draperies		
Doors		
Lights		

Date Moved In: _____
 Inspection Date: _____
 Signature of Tenant: _____
 Signature of Owner or Agent: _____

INVENTORY CHECK LIST

Address: _____ Unit no. _____

ITEM	Move-in condition	Move-out condition
BATHROOM		
Floor		
Walls & ceiling		
Shower & tub		
Toilet		
Sink		
Plumbing fixtures		
Windows & screens		
Doors		
Lights		
BEDROOM		
Floor or carpets		
Walls & ceiling		
Closets		
Desk & chairs		
Bed		
Windows & screens		
Doors		
Lights		
OTHER -- hallways		
Floors or carpets		
Walls & ceiling		
Closets		
Lights		
Air conditioner		
Heater		
Other:		
Other:		

Date Moved In: _____
 Inspection Date: _____
 Signature of Tenant: _____
 Signature of Owner or Agent: _____

WHERE TO GET HELP

East Palo Alto Rent Stabilization Program

2200 University Ave., East Palo Alto

Tel: (650) 853-3109

San Mateo County Small Claims Court

500 County Center, Redwood City (602 Middlefield Rd.)

- This is where you pick up forms and file them.

San Mateo County Small Claims Court Advisory Program

- You can access information through the Telephone Advisory Program at (650) 363-4303; or through the Web at <http://www.sanmateocourt.org/>.
- You can also bring your questions to walk-in advisory workshops on small claims. These are held on Tuesday evenings from 5-7 p.m. at 800 N. Humbolt St., Courtroom I, San Mateo.

The following groups offer free or low-cost legal advice on housing issues. Call the offices for more information on how they might be able to help you.

Bay Area Legal Aid

2287 El Camino Real, San Mateo

Tel: (650) 358-0745 or (800) 551-5554

Community Legal Services in East Palo Alto

2117-B University Ave., East Palo Alto

Tel: (650) 326-6440

La Raza Centro Legal

474 Valencia St., Suite 295, San Francisco

Tel: (415) 575-3500

Legal Aid Society of San Mateo County

521 East 5th Ave., San Mateo

Tel: (650) 558-0915 / TDD: (650) 558-0786

Stanford Community Law Clinic

2117 University Ave., Suite A, East Palo Alto

Tel: (650) 475-0560