

Tenant-Landlord Advising FAQ

1) “My landlords didn’t give us an itemized list of deductions within 21 days of us vacating the rental. Can they 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 his or her right to retain *any* of the deposit and must return *all* of it to you and then take you to court to prove the deductions are valid. You may need to take them to small claims court. This is why it is always a good idea to take photos that highlight the condition of the property when you moved out.

The process allowed in CCC1950.5 is a unique process intended to allow a reasonable and fair way of dealing for both tenants and landlords. However, if the landlord does not follow this procedure correctly, he or she 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, which requires the landlord to offer a pre-move out inspection *in writing*. Review your original rental agreement and see if it was disclosed there. The landlord must notify the tenant, in writing, of their right to a pre-move out inspection AND of their right to be present at the pre-move out inspection. The pre-move out inspection should have been done within two weeks prior to your move-out date unless you did not ask for it or waived it.

If you did request one, they also must give you a written itemized list of what needs to be “cured”-- cleaned, fixed, whatever the situation--**at the time of the pre-move out inspection**. If they don’t do this, they may not keep your deposit. They can take you to court to prove damages and win. Good faith is a very important part of tenant-landlord law. Not only must the tenant be given written notice of any deficiencies, they must also be given enough **time** to “cure” them. A pre-move out inspection two days before actual move out, for example, is not giving the tenant enough 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 once additionally every 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 still provide these key items 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 and where
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 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 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 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 or room will not be easy. We recommend you try compromising, and if that doesn’t work or you have already tried, use the [Campus Conflict Resolution Services](#) to try to sort things out amongst the housemates.

If you still decide to break your lease, we highly recommend you contact California Rural Legal Assistance at 831-688-6535. If no one in your household qualifies, you can contact [Lawyers Referral](#) service at 831-425-4755. Staff at Community Rentals are not qualified to advise on individual cases.

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 she took. Also, some of the damage was done by a tenant who left last year, not any of us. What should we do?”

You should voice the reasons for your dispute in writing and 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](#). Read the code and make sure the landlord followed procedure and that you understand your rights and responsibilities. Include a copy of it in your correspondence to your landlord.

Before you write the letter, research the issue you are having with your landlord in the [California Tenants handbook](#) or other self-help resources available [online](#). This will give you a printable PDF file of the latest version of the handbook. Isolate your issue and print out 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 of a [dispute letter](#) along with your dispute.

Regarding what a previous tenant did, the remaining household is responsible for dirt and damages based on the difference between the condition when the first group moved into the empty house and the condition when the final group moved out, no matter who did the damage. If damage was done it should have been accounted for when the person who did it moved out and charged to him or her.

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 and who it is regarding. They also must require that you bring photo ID. If they had run your credit report, they would be required to keep the application with your authorization for the credit check on it for a number of years.

8) “I applied to rent a room in a home but the landlords will only live with someone who is the same religion as them. 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 in California. However, there is an exception to discrimination laws regarding sex, but only when a landlord rents one bedroom in the home they also occupy. A landlord may then express a preference on the basis of gender.

9) “The landlord’s friend is acting as a manager for my rental. He told us he is not a real estate agent. Is this OK?”

One must be a licensed real estate broker or a licensed real estate associate working under a real estate broker in order to manage rentals in California for a third party. An exception to this is for a manager who lives on-site and a close relative to the owner.

10) “Is there a clear definition of what constitutes ‘ordinary wear and tear’?”

There are not many legal guidelines on this issue so many judges use what they consider a common sense approach. We understand a good way to determine this is to seek the opinion from the manufacturer or dealer of drapes, carpets, and appliances as to their expected lifetime, assuming ordinary wear and tear. If the item in question needed replacing before that time, you can use that as a guideline to determine the pro rata amount to expect to pay. (Example: an item’s lifetime is estimated to be 10 years. It was 5 years old when the tenants moved in and a year later it needs to be replaced [it’s now 6 years]. If a similar quality replacement item costs \$1500, the tenant would be responsible for \$600.)

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.