

ASSEMBLY BILL

No. 2801

Introduced by Assembly Member Friedman

February 15, 2024

An act to amend Section 1950.5 of the Civil Code, relating to tenancy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2801, as introduced, Friedman. Tenancy: security deposits.

Existing law regulates the terms and conditions of residential tenancies, including limitations on the demanding or receiving of security, as defined, from a tenant and charging amounts against the tenant or the security. Existing law limits the landlord's claim of the security to only those amounts as are reasonably necessary for specified purposes, including, but not limited to, the repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant, and the cleaning of the premises upon the termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy.

Existing law prohibits a landlord from asserting a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

This bill would limit claims against the tenant or the security for materials or supplies to the amount necessary to make reasonable replacements. The bill would limit claims against the tenant or the security for materials or supplies related to repairs to those necessary to restore the premises back to the same condition it was in at the inception of the tenancy, exclusive of ordinary wear and tear. The bill

would also prohibit a landlord from requiring a tenant to pay for, or asserting a claim against the tenant or the security for, professional carpet cleaning or other professional cleaning services.

Existing law requires the landlord to notify, within a reasonable time after notification of either party's intention to terminate the tenancy or before the end of the lease term, the tenant in writing of the tenant's option to request an initial inspection and of the tenant's right to be present at the inspection. Existing law sets forth procedures for requesting the inspection and requires the landlord to give the tenant an itemized statement specifying repairs or cleanings that are proposed to be the basis of any deductions from the security, as specified.

This bill would, if an initial inspection is conducted, prohibit the landlord from using the security for deductions for repairs or cleanings that are not identified in the itemized statement.

Existing law requires, no later than 21 calendar days after the tenant has vacated the premises, but not earlier than a specified time, the landlord to furnish the tenant an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security, and to return any remaining portion of the security to the tenant. Existing law requires the itemized statement to be accompanied by copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, including a copy of the bill, invoice, or receipt for materials or supplies deductions.

This bill would additionally require photographs justifying the cost of repairs or cleanings, as described, and would clarify that the landlord is required to include, along with and at the same time the itemized statement is sent, the specified copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises. The bill would prohibit the landlord from making a claim against the tenant or the security if the landlord fails to comply with these itemized statement requirements.

Existing law provides that the bad faith claim or retention by a landlord or their successors in interest of the security or any portion thereof in violation of the law may subject to the landlord or the successors in interest to statutory damages of up to twice the amount of the security, in addition to actual damages.

This bill would instead provide that the landlord or their successors in interest may be subject to statutory damages of up to 3 times the amount of the security, in addition to actual damages, the costs associated with filing an enforcement action, and the costs incurred as

a result of the landlord’s failure to comply with specified law, if the landlord or the successors in interest fail to strictly comply with the above-described provisions relating to security.

This bill would make other nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature, in enacting this
2 measure, to ensure that landlords do not subsidize improvements
3 to their rental properties with a former tenant’s security deposit.

4 SEC. 2. Section 1950.5 of the Civil Code, as added by Section
5 2 of Chapter 733 of the Statutes of 2023, is amended to read:

6 1950.5. (a) This section applies to security for a rental
7 agreement for residential property that is used as the dwelling of
8 the tenant.

9 (b) As used in this section, “security” means any payment, fee,
10 deposit, or charge, including, but not limited to, any payment, fee,
11 deposit, or charge, except as provided in Section 1950.6, that is
12 imposed at the beginning of the tenancy to be used to reimburse
13 the landlord for costs associated with processing a new tenant or
14 that is imposed as an advance payment of rent, used or to be used
15 for any purpose, including, but not limited to, any of the following:

16 (1) The compensation of a landlord for a tenant’s default in the
17 payment of rent.

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

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

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

1 (c) (1) Except as provided in paragraph (2), (3), or (4), a
2 landlord ~~may~~ *shall* not demand or receive security, however
3 denominated, in an amount or value in excess of an amount equal
4 to one month's rent, in addition to any rent for the first month paid
5 on or before initial occupancy.

6 (2) This subdivision does not prohibit an advance payment of
7 not less than six months' rent if the term of the lease is six months
8 or longer.

9 (3) This subdivision does not preclude a landlord and a tenant
10 from entering into a mutual agreement for the landlord, at the
11 request of the tenant and for a specified fee or charge, to make
12 structural, decorative, furnishing, or other similar alterations, if
13 the alterations are other than cleaning or repairing for which the
14 landlord may charge the previous tenant as provided by subdivision
15 (e).

16 (4) (A) Notwithstanding paragraph (1), a landlord ~~may~~ *shall*
17 not demand or receive security, however denominated, in an
18 amount or value in excess of an amount equal to two months' rent,
19 in addition to any rent for the first month paid on or before initial
20 occupancy if the landlord meets both of the following requirements:

21 (i) The landlord is a natural person or a limited liability company
22 in which all members are natural persons.

23 (ii) The landlord owns no more than two residential rental
24 properties that collectively include no more than four dwelling
25 units offered for rent.

26 (B) Subparagraph (A) shall not apply if the prospective tenant
27 is a service member. A landlord shall not refuse to enter into a
28 rental agreement for residential property with a prospective tenant
29 who is a service member because this subparagraph prohibits the
30 landlord from demanding or receiving a greater amount of security
31 than that which is established in paragraph (1). For purposes of
32 this paragraph, "service member" has the same meaning as in
33 Section 400 of the Military and Veterans Code.

34 (C) For purposes of this paragraph:

35 (i) "Natural person" includes any natural person who is a settlor
36 or beneficiary of a family trust.

37 (ii) "Family trust" means a revocable living trust or irrevocable
38 trust in which the settlors and beneficiaries of the trust are persons
39 who are related to each other as sibling, spouse, domestic partner,
40 child, parent, grandparent, or grandchild.

1 (5) This subdivision shall not apply to a security collected or
2 demanded by the landlord before July 1, 2024.

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

6 (e) ~~The~~ (1) *Subject to paragraph (2), the* landlord may claim
7 of the security only those amounts as are reasonably necessary for
8 the purposes specified in subdivision (b). ~~The~~

9 (2) (A) ~~The~~ landlord ~~may~~ *shall* not assert a claim against the
10 tenant or the security for damages to the premises or any defective
11 conditions that preexisted the tenancy, for ordinary wear and tear
12 or the effects thereof, whether the wear and tear preexisted the
13 tenancy or occurred during the tenancy, or for the cumulative
14 effects of ordinary wear and tear occurring during any one or more
15 tenancies.

16 (B) *Claims against the tenant or the security for materials or*
17 *supplies shall be limited to the amount necessary to make*
18 *reasonable replacements.*

19 (C) *Claims against the tenant or the security for materials or*
20 *supplies related to repairs, as described in subdivision (b), shall*
21 *be limited to those necessary to restore the premises back to the*
22 *same condition it was in at the inception of the tenancy, exclusive*
23 *of ordinary wear and tear.*

24 (D) *The landlord shall not require a tenant to pay for, or assert*
25 *a claim against the tenant or the security for, professional carpet*
26 *cleaning or other professional cleaning services.*

27 (f) (1) Within a reasonable time after notification of either
28 party's intention to terminate the tenancy, or before the end of the
29 lease term, the landlord shall notify the tenant in writing of the
30 tenant's option to request an initial inspection and of the tenant's
31 right to be present at the inspection. The requirements of this
32 subdivision do not apply when the tenancy is terminated pursuant
33 to subdivision (2), (3), or (4) of Section 1161 of the Code of Civil
34 Procedure. At a reasonable time, but no earlier than two weeks
35 before the termination or the end of lease date, the landlord, or an
36 agent of the landlord, shall, upon the request of the tenant, make
37 an initial inspection of the premises prior to any final inspection
38 the landlord makes after the tenant has vacated the premises. The
39 purpose of the initial inspection shall be to allow the tenant an
40 opportunity to remedy identified deficiencies, in a manner

1 consistent with the rights and obligations of the parties under the
2 rental agreement, in order to avoid deductions from the security.
3 If a tenant chooses not to request an initial inspection, the duties
4 of the landlord under this subdivision are discharged. If an
5 inspection is requested, the parties shall attempt to schedule the
6 inspection at a mutually acceptable date and time. The landlord
7 shall give at least 48 hours' prior written notice of the date and
8 time of the inspection if either a mutual time is agreed upon, or if
9 a mutually agreed time cannot be scheduled but the tenant still
10 wishes an inspection. The tenant and landlord may agree to forgo
11 the 48-hour prior written notice by both signing a written waiver.
12 The landlord shall proceed with the inspection whether the tenant
13 is present or not, unless the tenant previously withdrew their
14 request for the inspection. Written notice by the landlord shall
15 contain, in substantially the same form, the following:

16 “State law permits former tenants to reclaim abandoned personal
17 property left at the former address of the tenant, subject to certain
18 conditions. You may or may not be able to reclaim property without
19 incurring additional costs, depending on the cost of storing the
20 property and the length of time before it is reclaimed. In general,
21 these costs will be lower the sooner you contact your former
22 landlord after being notified that property belonging to you was
23 left behind after you moved out.”

24 (2) Based on the inspection, the landlord shall give the tenant
25 an itemized statement specifying repairs or cleanings that are
26 proposed to be the basis of any deductions from the security the
27 landlord intends to make pursuant to paragraphs (1) to (4),
28 inclusive, of subdivision (b). This statement shall also include the
29 texts of paragraphs (1) to (4), inclusive, of subdivision (b). The
30 statement shall be given to the tenant, if the tenant is present for
31 the inspection, or shall be left inside the premises.

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

37 (4) *Subject to paragraphs (5) and (6), if an initial inspection is*
38 *conducted pursuant to this subdivision, the landlord shall not use*
39 *the security for deductions for repairs or cleanings that are not*
40 *identified in the itemized statement described in paragraph (2).*

1 ~~(4)~~

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

6 ~~(5)~~

7 (6) Nothing in this subdivision shall prevent a landlord from
8 using the security for any purpose specified in paragraphs (1) to
9 (4), inclusive, of subdivision (b) that occurs between completion
10 of the initial inspection and termination of the tenancy or was not
11 identified during the initial inspection due to the presence of a
12 tenant's possessions.

13 (g) (1) No later than 21 calendar days after the tenant has
14 vacated the premises, but not earlier than the time that either the
15 landlord or the tenant provides a notice to terminate the tenancy
16 under Section 1946 or 1946.1, Section 1161 of the Code of Civil
17 Procedure, or not earlier than 60 calendar days prior to the
18 expiration of a fixed-term lease, the landlord shall furnish the
19 tenant, by personal delivery or by first-class mail, postage prepaid,
20 a copy of an itemized statement indicating the basis for, and the
21 amount of, any security received and the disposition of the security,
22 and shall return any remaining portion of the security to the tenant.
23 After either the landlord or the tenant provides notice to terminate
24 the tenancy, the landlord and tenant may mutually agree to have
25 the landlord deposit any remaining portion of the security deposit
26 electronically to a bank account or other financial institution
27 designated by the tenant. After either the landlord or the tenant
28 provides notice to terminate the tenancy, the landlord and the tenant
29 may also agree to have the landlord provide a copy of the itemized
30 statement along with the copies required by paragraph (2) to an
31 email account provided by the tenant.

32 (2) ~~Along with the itemized statement, the~~ The landlord shall
33 also ~~include~~ *include, along with and at the same time the itemized*
34 *statement is sent*, copies of documents showing charges incurred
35 and deducted by the landlord to repair or clean the premises, as
36 follows:

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

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

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

14 (D) *The landlord shall provide photographs justifying the cost*
15 *of repairs or cleanings pursuant to this section and a written*
16 *explanation of the cost. At minimum, the landlord shall include*
17 *photographs of the relevant portions of the premises requiring*
18 *repair or cleaning from the beginning of the tenancy, from*
19 *immediately before the repair or cleaning, and from immediately*
20 *after the termination of the tenancy.*

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

36 (4) The landlord need not comply with paragraph (2) or (3) if
37 either of the following applies:

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

1 (B) The tenant waived the rights specified in paragraphs (2) and
2 (3). The waiver shall only be effective if it is signed by the tenant
3 at the same time or after a notice to terminate a tenancy under
4 Section 1946 or 1946.1 has been given, a notice under Section
5 1161 of the Code of Civil Procedure has been given, or no earlier
6 than 60 calendar days prior to the expiration of a fixed-term lease.
7 The waiver shall substantially include the text of paragraph (2).

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

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

17 (7) *The landlord shall not be entitled to claim any amount of*
18 *the security if they fail to comply with this subdivision.*

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

25 (1) Transfer the portion of the security remaining after any
26 lawful deductions made under subdivision (e) to the landlord's
27 successor in interest. The landlord shall thereafter notify the tenant
28 by personal delivery or by first-class mail, postage prepaid, of the
29 transfer, of any claims made against the security, of the amount
30 of the security deposited, and of the names of the successors in
31 interest, their addresses, and their telephone numbers. If the notice
32 to the tenant is made by personal delivery, the tenant shall
33 acknowledge receipt of the notice and sign their name on the
34 landlord's copy of the notice.

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

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

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

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

4 (3) Their election under paragraph (1) or (2) of subdivision (h).

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

7 (j) (1) In the event of noncompliance with subdivision (h), the
8 landlord’s successors in interest shall be jointly and severally liable
9 with the landlord for repayment of the security, or that portion
10 thereof to which the tenant is entitled, when and as provided in
11 subdivisions (e) and (g). A successor in interest of a landlord may
12 not require the tenant to post any security to replace that amount
13 not transferred to the tenant or successors in interest as provided
14 in subdivision (h), unless and until the successor in interest first
15 makes restitution of the initial security as provided in paragraph
16 (2) of subdivision (h) or provides the tenant with an accounting as
17 provided in subdivision (g).

18 (2) This subdivision does not preclude a successor in interest
19 from recovering from the tenant compensatory damages that are
20 in excess of the security received from the landlord previously
21 paid by the tenant to the landlord.

22 (3) Notwithstanding this subdivision, if, upon inquiry and
23 reasonable investigation, a landlord’s successor in interest has a
24 good faith belief that the lawfully remaining security deposit is
25 transferred to the successor in interest or returned to the tenant
26 pursuant to subdivision (h), the successor in interest is not liable
27 for damages as provided in subdivision ~~(1)~~, (l), or any security
28 not transferred pursuant to subdivision (h).

29 (k) Upon receipt of any portion of the security under paragraph
30 (1) of subdivision (h), the landlord’s successors in interest shall
31 have all of the rights and obligations of a landlord holding the
32 security with respect to the security.

33 ~~(l) The bad faith claim or retention~~ *Failure to strictly comply*
34 *with the provisions of this section* by a landlord or the landlord’s
35 successors in interest of the security or any portion thereof in
36 violation of this section, ~~or the bad faith demand of replacement~~
37 ~~security in violation of subdivision (j)~~; *section* may subject the
38 landlord or the landlord’s successors in interest to statutory
39 damages of up to ~~twice~~ *three times* the amount of the security, in
40 addition to actual ~~damages~~. *damages, the costs associated with*

1 *filing an action to enforce this section, and the costs incurred as*
2 *a result of the landlord's failure to comply with Section 1962. The*
3 *court may award damages for bad faith whenever the facts warrant*
4 *that award, regardless of whether the injured party has specifically*
5 *requested relief. In an action under this section, the landlord or the*
6 *landlord's successors in interest shall have the burden of proof as*
7 *to the reasonableness of the amounts claimed or the authority*
8 *pursuant to this section to demand additional security deposits.*

9 (m) ~~No~~A lease or rental agreement ~~may~~ *shall not* contain a
10 provision characterizing any security as “nonrefundable.”

11 (n) An action under this section may be maintained in small
12 claims court if the damages claimed, whether actual, statutory, or
13 both, are within the jurisdictional amount allowed by Section
14 116.220 or 116.221 of the Code of Civil Procedure.

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

22 (p) The amendments to this section made during the 1985
23 portion of the 1985–86 Regular Session of the Legislature that are
24 set forth in subdivision (e) are declaratory of existing law.

25 (q) The amendments to this section made during the 2003
26 portion of the 2003–04 Regular Session of the Legislature that are
27 set forth in paragraph (1) of subdivision (f) are declaratory of
28 existing law.

29 (r) This section shall become operative on July 1, 2024.