

check drawn on insufficient funds or (2) put a stop payment order on a check, draft or money order. In the latter circumstances, cash may be required as the exclusive form of payment for no more than three months following the tenant's bounced check or stop payment order. [CC §1947.3; see CC §1947.3(c)—§1947.3 provisions non-waivable]

Cross-refer: For further discussion of the CC §1947.3 requirements, see §12:147.2 ff. with regard to the payment of rent.

e. [2:773] **Limitations on retaining security at termination of tenancy:** Unlike "rent," which belongs to the landlord, a security deposit is the tenant's property (unless and until properly used to remedy a tenant's rent default and/or to compensate the landlord for damage and cleaning). Thus, amounts paid as "security" under the Code must be held by the landlord for the tenant. [CC §1950.5(d); see *Action Apt. Ass'n v. Santa Monica Rent Control Board* (2001) 94 CA4th 587, 599, 114 CR2d 412, 420 & fn. 1; *Small Property Owners of San Francisco v. City & County of San Francisco* (2006) 141 CA4th 1388, 1397, 47 CR3d 121, 126 & fn. 2]

Landlords do not have unlimited discretion to use the deposits as they please or to retain deposits when tenants vacate.

(1) [2:774] **Amount retainable—"nonrefundable fees" prohibited:** A residential rental agreement cannot characterize tenant "security" as "nonrefundable." [CC §1950.5(m)] Rather, residential security deposits are "nonrefundable" only to the extent the Code expressly allows landlords to retain or use the deposits. [CC §1950.5(e); *People ex rel. Smith v. Parkmerced Co.* (1988) 198 CA3d 683, 690, 244 CR 22, 25]

Specifically, upon termination of a tenancy, only those amounts may be claimed by the landlord as are reasonably necessary to (CC §1950.5(e)):

(a) [2:775] **Remedy tenant default in rent.** [CC §1950.5(e),(b)(1)]

- This includes rent due because of the tenant's having given insufficient notice to terminate: i.e., a tenant who vacates on insufficient notice is obligated to pay rent for the minimum notice period beginning when the tenant did give notice or, if no notice was given, beginning when he or she vacated. [CC §1946; *Schmitt v. Felix* (1958) 157 CA2d 642, 648, 321 P2d 473, 477; and see *Ch. 7 on notice to terminate*]

(b) [2:776] **Repair damage to the premises.** But for this purpose, "damage" means only such damage that was caused by the tenant or his or her guests or licensees. Moreover, the security cannot be retained to remedy "ordinary wear and tear" during the tenant's term, or to repair any damage or defective conditions that preexisted the tenancy. [CC §1950.5(e),(b)(2)]

(c) [2:777] **Clean the premises.** And, as to tenancies for which the tenant's right to occupy commenced after January 1, 2003, so much of the security may be retained for cleaning as is necessary to return the unit to the same level of cleanliness it was in at inception of the tenancy. [CC §1950.5(e),(b)(3)]

(d) [2:778] **Restore, replace or return personal property or appurtenances . . .** but only to the extent that the rental agreement specifically authorized security to be applied for this purpose and, in all events, exclusive of "ordinary wear and tear." [CC §1950.5(e),(b)(4)]

(e) [2:779] **Compare—creditor claims subordinate:** A landlord's creditors have no recourse against security deposits held by the landlord for its tenants. Creditors' claims to any balance remaining (after lawful deductions, above) are subordinate to the tenants' rights to a refund of the balance (below). [CC §1950.5(d)]

(2) [2:780] **Vacating tenant's right to initial inspection:** Within a reasonable time following notification of either party's intent to terminate the tenancy, or before the end of the lease term, the landlord must give the tenant written notice of his or her right to request an initial inspection of the unit and to be present at the inspection. [CC §1950.5(f)(1)]

Exception—three-day notice terminations: The landlord is not required to provide notification of the tenant's right to an initial inspection when the tenancy is terminated pursuant to a three-day notice under CCP §1161(2),(3) or (4) (nonpayment of rent; breach of other lease covenant; or assignment, sublease or commission of waste or nuisance in breach of lease; see §17:99 ff.). [CC §1950.5(f)(1)]

FORM: Notice of Vacating Tenant's Right to Request Initial Inspection, see Form 2:F.

(a) [2:780.1] **Purpose of inspection:** The initial inspection allows the tenant the opportunity to remedy identified deficiencies, in a manner consistent

(2) [2:811] **"Unfair competition" suit (Bus. & Prof.C. §17200):** As discussed earlier, a landlord's collection of unlawful security and/or unlawful retention of a security deposit upon a tenant's vacancy (e.g., claiming security to be a "nonrefundable fee") constitutes an "unfair business act or practice" remediable under the Unfair Competition Law ("UCL," Bus. & Prof.C. §17200 et seq.); see ¶2:770.1. [Compare *Korens v. R. W. Zukin Corp.* (1989) 212 CA3d 1054, 1060, 261 CR 137, 141—landlord's refusal to pay interest on tenant deposits not "unfair competition" since no interest obligation under then-existing law]

In an aggrieved tenant's suit, UCL remedies include injunctive relief and/or *restitution* of the unlawfully collected/retained security, but *not* disgorgement of the landlord's benefits into a fluid recovery fund. [Bus. & Prof.C. §§17203, 17204; see *Kraus v. Trinity Management Services, Inc.* (2000) 23 C4th 116, 137, 96 CR2d 485, 500, discussed at ¶2:770.3]

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[2:812]

A UCL suit alternatively may be brought by the Attorney General or various local public prosecutors for injunctive relief and statutory civil penalties (up to \$2,500 for each violation). [See Bus. & Prof.C. §§17204, 17206]

Cross-refer: For a discussion of how Proposition 64 narrowed individual standing to pursue UCL remedies in a *representative* capacity, see ¶2:619.1.

⇨ [2:812] **PRACTICE POINTERS TO AVOID SECURITY DEPOSIT DISPUTES:** Certain fundamental steps can be taken to help avoid disagreement over the disposition of security deposits and circumvent risk of the issue ending up in court:

- If a tenant stops paying rent before vacating, the landlord should inspect the unit to determine if repair work or extraordinary cleaning will be required (CC §1950.5(f), ¶2:780 ff.), the cost of which might exceed the tenant's deposit.

Note also: These circumstances might be indicative of a tenant more likely to vacate *without leaving a forwarding address*. In this event, some landlord attorneys advise their clients to initiate an immediate unlawful detainer action and effect service of process while the tenant's whereabouts are still known; if the tenant vacates before trial (or the issue of possession