

STUDENT LEGAL SERVICES

GUIDE TO RENTAL AGREEMENTS AND LEASES

Before Moving In

For apartment searching advice, [check out Cal Rentals](#). Once you find a place to live, you will go through some or all of the steps below before you move in.

Step 1: “Holding” Deposit

Once you find a potential apartment, the landlord may request a “holding deposit” to ensure the landlord will not rent the unit to anyone else. Before paying this fee, find out how and when it will be applied and what will happen if you change your mind. If the landlord rents the apartment to someone else, you are entitled to your holding deposit and any other costs that you have incurred.

Step 2: Credit Check/Application Fee

As of early 2009, a landlord can charge you up to \$42.00 to check your references and credit, which is an amount based on the increase in California’s Consumer Price Index since January 1, 1998. (California Civil Code Section 1950.6 and California Dept. of Industrial Relations CPI data)

Step 3: Security Deposit

Once you decide to rent a unit, the landlord will probably require a security deposit. According to Civil Code Section 1950.5, a security deposit cannot be deemed “non-refundable.” Other important information to know about your security deposit:

- **Amount.** The security deposit cannot be more than two months’ rent for unfurnished premises, or three months’ rent for furnished premises. The landlord may also charge up to an additional ½ of one month’s rent if the tenant has a waterbed.
- **How it can be used.** According to Civil Code Section 1950.5, the landlord can only use the security deposit to pay for:

- Unpaid rent
- Repair of damage beyond “ordinary wear and tear”
- Cleaning of premises, if necessary to return them to the same level of cleanliness as when the tenant moved in
- Replacement of personal property (if provided in the lease)

Step 4: The Rental Agreement/Lease

The rental agreement is crucial, as it specifies all the terms of agreement between you and the landlord. Some important things to look for in the rental agreement/lease include, but are not limited to:

- **Duration and Term of Lease:** how long and whether it is periodic (month-to-month) or fixed (e.g., 12 months). This is extremely important, because the tenant is contractually obligated to pay rent for the entire lease term even when the tenant leaves early (subject to certain limitations — see below).
- **Rent:** monthly amount, whether any rent has been prepaid, when the rent is due each month, to whom it is to be paid, where it is to be paid, and any late fees.
- **Security Deposit:** make sure the amount you pay is specified in the lease.
- **Number of people** allowed to live in the rental unit
- **Promises by the landlord** for repairs or improvements, and when they will be done.
- Whether **pets** are allowed
- **Subleasing and assignment rights** of the tenant
- Who pays the **utilities** (garbage, water, gas, electricity, cable, etc.)

Read Your Agreement Carefully.

If you do not agree with any part of the agreement, make sure to negotiate it with the landlord BEFORE signing the agreement. If you don't comply with the terms of the agreement, the landlord may have the right to evict you.

Does it have to be in writing?

If your lease term is shorter than one year, it does not legally have to be in writing. An oral rental agreement is still a binding agreement between you and the landlord, but if problems arise, there is no written proof of the terms. That's why it's better to have a written agreement.

Step 5: Roommates

When signing the rental agreement, it is important to plan ahead for the unexpected, especially when it comes to roommate issues. The [roommate agreement on the SLS website](#) is a helpful planning tool.

Unlawful Discrimination

A landlord cannot refuse to rent to a tenant, or engage in any other type of discrimination, on the basis of group characteristics specified by law, which include: race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, medical condition, and personal characteristics. If you feel you are a victim of unlawful discrimination, act quickly! There are a number of resources available to you, including:

- [Local Fair Housing Organizations in the Bay Area](#)
- [California Department of Fair Employment and Housing](#)
- Student Legal Services

Living in the Premises

Once you've found a rental unit and signed an agreement, here's what you can do to avoid problems during your tenancy:

Move-In Checklist

- When you move in, print an inventory checklist. You can find a copy of one on the [Cal Rentals website](#).

- Conduct a joint walk-through of the unit with your landlord, using the checklist as a guide.
- It is extremely important to take note of any repairs or issues right away and **TAKE PICTURES** to avoid problems that may arise when you move out – make sure the “date stamp” function on your camera is turned on.
- If there are any needed repairs, identify them on the checklist, keep a copy of the checklist, and also mail a copy of it to your landlord by certified mail for an additional record of the pre-existing problems at your unit.

Rent

Paying Rent

The amount, due date of your rent, and name of the party the rent must be made out to should be specified in your rental agreement. You cannot be required to pay in cash unless you have submitted a “dishonored check.” If you do pay in cash, get a receipt.

Rent Increases

The landlord may be able to increase your rent, subject to these rules:

- Rent CANNOT be raised during your initial fixed lease term unless the rental agreement specifies the increases.
- At the end of a lease term, allowable rent increases may be limited by a local rent control ordinance (as in Berkeley, Oakland, and San Francisco) or by California state law (California Civil Code Section 1947.12).
- If specified in the agreement, or if the initial lease term has ended and is now a month-to-month lease, the landlord must give you at least 30 days’ notice prior to a rent increase if it is 10% or less (per California Civil Code Section 827(b)(2)).
- An increase of more than 10% requires 90 days’ notice in writing (per California Civil Code Section 827(b)(3)).
- The landlord can only receive the higher rent for the remainder of the time you live there (i.e., no retroactive collection of increased rent).

Repairs and Maintenance

During the lease term, both the landlord and the tenant have maintenance responsibilities. However, under California law, the landlord is ultimately responsible for making sure that a rental unit is “**habitable**”. In legal terms, **habitable** means that a rental unit is fit for occupation by humans and substantially complies with state and local building and health codes that affect tenants’ health and safety.

This means that **a landlord has an obligation to repair problems that make a rental unit legally uninhabitable**. (*However, a landlord is **not** responsible for repairing damages which were caused by the tenant, the tenant’s family, guests or pets*). The law is very specific as to what kinds of conditions make a rental unit uninhabitable. For examples, check out the “Implied Warranty of Habitability” section of the “[Terminating a Lease](#)” Tip Sheet, and the following state laws: [California Civil Code §1941.1](#), [California Civil Code §1941.3](#), and [California Health and Safety Code §17920.3](#).

In general, state law requires **tenants to take reasonable care of their rental units and common areas**, such as hallways and outside areas. Tenants must also **repair all damages which resulted from their negligence** or abuse, as well as any **damages caused by their guests, family or pets**. In addition, the law specifically states that tenants are responsible for: using and operating gas and plumbing effectively, disposing of trash in a sanitary manner, not removing any part of the structure, facilities or equipment, using each room for its intended use (e.g. not using the bedroom as a kitchen), and notifying the landlord when deadbolt locks and window locks do not work properly.

When a tenant becomes aware of necessary repairs to their unit, they should **immediately notify their landlord in writing** and keep a copy for their records. If the repairs require urgent attention, the tenant can notify their landlord orally, but should memorialize it in writing as soon as they can afterwards. In the notice to the landlord, the tenant should **specifically describe the damage or defects needing repair**, and **document** the conditions **with photos or a video**.

The Repair and Deduct Remedy

If the landlord doesn't make the repairs requested, and doesn't have a valid reason for doing so, the tenant may have the option to use the "**Repair and Deduct**" remedy, which allows a tenant to **deduct money from their rent to pay for the repair of defects in their rental unit** that affect their health and safety and render the rental unit legally uninhabitable. However, **there are specific requirements and steps** for using this remedy, as follows:

1. The defects must be **serious and directly related to a tenant's health & safety**.
2. The repairs **cannot cost more than one month's rent**.
3. The tenant cannot use the repair and deduct remedy more than twice in any 12-month period.
4. The **tenant or the tenant's family, guests, or pets must not have caused the defects** that require repair.
5. The tenant **must inform the landlord**, either orally or in writing, of the repairs that are needed. Writing is strongly recommended. Keep a copy for your records.
6. The tenant **must give the landlord a reasonable period of time** to make the needed repairs before undertaking the repairs themselves.
 - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the situation.
 - For example, if the furnace is broken and it is very cold outdoors, one to two days may be considered reasonable (assuming that a qualified repair person is available within that time period).
7. **If the landlord does not make the repairs within a reasonable period of time, the tenant may either make the repairs or hire someone to do**

them. The tenant may then deduct the cost of the repairs from the rent when it is due. The tenant should keep all receipts for the repairs.

8. It is also recommended that you give the landlord a written notice that explains why you did not pay the full amount of the rent. Always keep a copy of this notice! Here's a **sample of a repair and deduct notice/letter** to a landlord.

Using the Repair and Deduct remedy can be effective, but it **carries some risk**. For example, it is possible that the defects to the unit are not serious enough to justify using the repair and deduct remedy. If so, the landlord can sue the tenant to recover the money deducted from the rent, or attempt to evict the tenant for nonpayment of rent. If the tenant deducted money for repairs not covered by this legal remedy, or they didn't give the landlord proper notice, or reasonable time to make the repairs, the court can order the tenant to pay the full rent (even though the tenant paid for the repairs), or order that an eviction could proceed.

If you are unclear as to whether or not the defects in your unit warrant the use of Repair and Deduct remedy, speak with an attorney or (if you are a currently registered UC Berkeley student) make an appointment with SLS.

The Abandonment/Early Lease Termination Remedy

As an alternative to the Repair and Deduct remedy, the law may allow a tenant to abandon (leave) a rental unit, if the landlord refuses to repair defects that render a unit legally uninhabitable, **without further liability to the landlord under the lease contract**. For more information about this remedy, please see the "Implied Warranty of Habitability" section of the "Terminating a Lease" Tip Sheet. **Before utilizing the abandonment/early lease termination remedy, consult with an attorney or (if you are a currently registered UC Berkeley student) make an appointment with SLS.**

Subleases

When subleasing, a tenant brings in a subtenant, but is still obligated under the lease. The original tenant is now in the “middle,” acting as a landlord to the subtenant, but still a tenant under the original lease and responsible for fulfilling all tenant obligations under the original lease.

The biggest advantage of subleasing is that someone else is paying all or part of your rent. But depending on market conditions, you may need to reduce the amount of rent you will ask your subtenant to pay. You need to consider whether it is better to get some money to defray the cost of your rent or pay it all yourself. But there are also risks:

- If you sublease either all or part of your apartment/house, you still remain liable under the terms of your lease with the landlord. So if your subtenant fails to pay rent or damages the unit, the landlord will expect you to pay the rent or the cost of repairing the damage. Hence, it's a good idea to ask for a security deposit from the subtenant.
- Because the landlord has no direct contractual relationship with the subtenant, only you (as a master tenant) have the standing to evict a subtenant. Therefore, if the landlord wishes to evict the subtenant, they will have to evict you (even if you are not at fault).
- Another possible risk is that the subtenant may not leave the apartment when the lease ends. This is particularly problematic if the subtenant has stopped paying rent. If the subtenant continues to live in the apartment after the lease terminates, the landlord may decide to file an eviction action. See the FAQ section below for a discussion of the consequences of an eviction.
- If some of your roommates are staying in the apartment, there may be an issue if your roommates do not approve of your subtenant. If you have a roommate agreement, either written or oral, then the terms of the agreement would govern what type of permission may be necessary.

When subleasing, make sure to:

- Discuss your plans with your landlord in advance, EVEN IF your rental agreement does not directly prohibit subleasing. Remember, unauthorized subletting CAN lead to eviction.
- Understand that the subtenant has only the same rights and responsibilities as you do (for example, month to month rent or pet policy).
- Communicate with the subtenant and discuss the terms of the agreement, as the subtenant is responsible to YOU, not the landlord.
- Ask landlord to approve the sublease by signing under a line titled “Approved by Landlord” at the end of the document.
- To ensure communication and avoid future disputes, put the terms in a **written sublease agreement**. SLS has a [sample form](#).

Renewing a Lease

If your lease is about to end and you would like to continue living there, tell your landlord BEFORE the end of the term. If you do nothing, the lease automatically becomes a month-to-month periodic tenancy (Civil Code Section 1945), but the landlord can potentially terminate upon 30 days’ notice (although this termination right of the landlord is limited in some cities – see below). If you have a “Fixed term” lease, it can only be renewed automatically by the landlord for the same duration (e.g., a full additional year) if the automatic renewal provision is included in at least 8-point boldface type immediately above the space where you sign the lease (Civil Code Section 1945.5).

Early Lease Termination by Tenant

For information on early termination of your lease, refer to the tip sheet [“Terminating a Lease”](#).

Termination/Eviction by Landlord

If your lease is month-to-month, the Landlord can typically terminate by simply giving you 30 days’ notice and usually doesn’t have to state any reason, **unless you**

live in some California cities (including Berkeley, Oakland and San Francisco), where “just cause” is required for a landlord to terminate the lease. Consult with SLS if you have questions about whether a termination has “just cause.”

In special cases, the landlord may seek to evict upon three days’ notice if the tenant:

- Failed to pay rent (the tenant can “cure” by paying rent)
- Violated provision of lease (the tenant can “cure” by correcting the violation)
- Materially damaged the rental property
- Substantially interfered with other tenants
- Used the rental property for an illegal purpose

What to do if you receive notice of eviction or termination

For a **30-day notice** (assuming “just cause” is not required, or has been provided): Either make arrangements to move out or, if you want to continue to occupy the rental unit, ask the landlord what you can do to make that possible. **IF the landlord does agree to let you stay, make sure this agreement is in writing!** Otherwise, you must move out. Make sure you do this within the time permitted; otherwise, the landlord can file an unlawful detainer lawsuit to evict you. Seek outside help or consult with SLS if this is the case.

For a **3-day notice**: If your notice is a demand to pay rent, it should specify the amount of rent you owe. You must either: pay the rent that is due, vacate within THREE days, or dispute the landlord’s unlawful detainer action in court if the amount of rent demanded is incorrect. If your 3-day notice is for something else, the notice should indicate whether you can correct the problem and remain in the unit. If this IS the case and you want to remain in the unit, you must correct the problem before the third day. If you can’t, you must either move out or dispute the landlord’s unlawful detainer action.

Note: Even if your notice does not indicate whether you can correct the problem, you can try to convince your landlord of this solution. If you feel that your landlord has improperly given you any termination notice, consult with SLS or another lawyer to evaluate your options.

General Advice for Dealing With Your Landlord

Communication. Make sure to try to talk to your landlord often to avoid any problems or to resolve any problems before seeking a legal remedy. Both you and the landlord have the duty to deal with one another “fairly and in good faith.” If talking with your landlord doesn’t work, there are many services available to help you, such as:

- Local Housing Code Enforcement Agency (In Berkeley: Housing Code Enforcement Program)
- City or Council Rent Control Board (In Berkeley: Rent Stabilization Board)
- Student Legal Services (see “Community Legal Resources” tip sheet, particularly the “Landlord-Tenant/Housing Rights” section)
- Some housing agencies also offer mediation services. It is always better to try this method before a lawsuit.

Moving Out

When your lease has expired and you are ready to move out of your apartment or house, there are a few steps you should take to ensure legal problems do not arise when you are gone.

Give and Receive Proper Notice

The best practice is to give your landlord 30 days’ notice that you plan to terminate the lease (California Civil Code section 1946.1). Make sure you DATE the notice and make a copy for yourself. Send this notice to the same place as your rent.

Walkthrough and Final Inspection

- Similar to the initial inspection, the final inspection is crucial.
- The landlord is supposed to notify you in writing that the tenant has a right to the walkthrough with landlord, within a reasonable time after either party

has provided notice of termination (Civil Code 1950.5). *If your landlord doesn't do this, make sure to request it!*

- The walk-through can be scheduled no earlier than 2 weeks before the termination date. Try to do it as early as possible before you move out, to ensure ample time for any repairs or cleaning that you may need to do in order to receive the return of your full deposit.
- Take photographs!

Steps to Getting your Security Deposit Back

Step 1: Provide a forwarding address for your landlord to return your security deposit to you.

Step 2: Know the legal deductions a landlord can make.

- **Proper deductions** include unpaid rent, actual cleaning costs (if the dwelling is not in the same state of cleanliness as when the tenant moved in), and repairs beyond normal wear and tear (such as holes in walls).
- **Improper deductions** include repair of normal wear and tear (like minor nicks or marks on walls) and general cleaning, if the premises are as clean as at the beginning of the lease.

Step 3: When you get your deposit in the mail, make sure you have received an itemized statement of deductions, so you know exactly how much was deducted and for what reasons. You are entitled to receipts if deposit deductions are more than \$125. (Civil Code Section 1950.5)

If your landlord does NOT return your security deposit to you within 21 days, or has made improper deductions, you can sue in Small Claims Court. Civil Code Section 1950 allows a tenant to make a claim for a penalty equal to **twice** the amount of the withheld security deposit if the landlord withheld it in bad faith. Consult Student Legal Services for assistance, and see sls.berkeley.edu for a [sample security deposit demand letter](#) that you should send before filing a Small Claims action.

For rent-controlled units in Berkeley, the Rent Board offers a petition process for the recovery of a security deposit from the landlord that is simpler and faster than Small Claims Court. You will need to file a “Tenant Petition for Individual Rent Adjustment.” See the [Rent Board Web site](#) for more details.

Roommates and Security Deposits

When two or more cotenants share a rental unit, the landlord is not required to return the security deposit until all of the original tenants have left. Roommates should sign an agreement in advance that governs how the security deposit will be handled if one tenant moves out before the other(s).