

WHAT ARE YOUR BASIC RIGHTS?

You are legally obligated to have a rental property that meets basic structural, health, and safety standards

YOUR BASIC RIGHTS UNDER THE LAW

California Civil Code

Civil Code Section 1941.1 and Section 1941.3 contain the main laws regarding housing habitability. The codes define the minimum requirements that dwellings must have, including:

- plumbing and gas
- heating and electric
- weatherproofing

California Health & Safety

Section 17920.3 provides an extensive and detailed list of landlord obligations, such as:

- adequate sanitation
- smoke and carbon monoxide detectors

Uniform Housing & Local Codes

The Uniform Housing Code contains unique standards that might increase protections and requirements, including:

- private working toilet washbasin, and bathtub
- safe fire & emergency exits

YOUR REPAIR AND MAINTENANCE RESPONSIBILITIES

STEPS YOU CAN TAKE

1. Keep rental clean
2. Use premises as it is designed to be used
3. Use ALL facilities properly
4. Dispose of all garbage
5. Do NOT let anyone on the premises who willfully causes any damage

MAJOR REPAIRS

- Does the issue make the unit **unlivable** or **untenable**?
- Does the issue infringe on a **basic right**, for example no heating, no safe electric service?

MINOR REPAIRS

- Is it a mere **inconvenience**?
- Multiple issues might include minor repairs, for example a minor roof leak in a seldom-used room, a leaky faucet, etc.

SECURITY DEPOSITS

A landlord is entitled to collect a refundable security deposit upon move-in that cannot be more than 2 months rent for a furnished unit or 3 months' rent for an unfurnished unit.

Security Deposit Uses:

- Unpaid rent
- Repairing damage
- Cleaning fees (only if you leave the premises less clean than when you moved in)
- Unrestored personal property if specified in lease
- Last month's rent if specified in lease

Things to Do in Advance:

- Document amount of security deposit in lease
- Inspect premises carefully before move-in and inform landlord in writing of any problems
- Clean premises before moveout
- Request a pre-move-out inspection

Resources: *[add links]*

- California Courts Small Claims Self-Help Website
- Alameda County Small Claims Information Page
- Small Claims Court, A Guide to Its Practical Use
- Berkeley Rent Board's FAQs
- Department of Consumer Affairs California Tenants Guide
- Go to SLS website to make an appointment online



Returning the Deposit: The landlord must return your entire security deposit or provide an itemized statement explaining deductions within 21 days of your vacating the premises.

Know That: If there are multiple roommates, the landlord doesn't have to return the deposit until everyone moves out.

If Deposit is Withheld:

- Send your landlord a demand letter.
- Follow up with your landlord!
- File a lawsuit in Small Claims Court (maximum claim of \$10,000) by suing building owner for the unre-funded amount. If the amount was not returned within 21 days, you can sue for up to 2x the amount of the withheld security deposit for "bad faith."

IF THE LANDLORD DOESN'T RESPOND TO MAJOR REPAIR REQUESTS



Before employing any of the remedies listed here, confirm that:

- ☐ The problem is a serious one, such as a major repair, and not simply a slight inconvenience.
- ☐ You didn't cause the problem.
- ☐ You told the landlord about the problem and allowed time to get it fixed (generally 30 days unless the issue is drastic).
- ☐ You have considered the repair and deduct option.
- ☐ You are willing to risk eviction if a judge or jury decides you shouldn't have used one of these remedies (even if you're sure of your decisions, a judge or jury may disagree).

Calling Local Building or Health Inspectors

A local building, health, or fire department usually inspects buildings in response to tenant complaints. For example, in the City of Berkeley, you can request an inspection through the Rental Housing Safety Program (510 981-5444).

How it Works:

If problems are found, they issue a notice that requires the owner to remedy all violations. A landlord who fails to comply with these remedies can face civil and criminal penalties, including the loss of the right to evict a tenant for nonpayment of rent.

Keep in Mind:

Landlords cannot evict you for exercising this right as that would constitute "retaliation," which is illegal and offers the tenant the ability to sue and recover actual damages, statutory damages, punitive damages, and attorney fees.

Berkeley Rent Board

If your unit is rent controlled under the Berkeley Rent Ordinance, you may be able to file an Individual Rent Adjustment (IRA) Petition for reduction in services and/or habitability problems. Contact the Rent Stabilization Board (510 981-7368) and talk with a counselor to learn about this option.

Repair and Deduct

A powerful legal remedy under California state law (Civil Code § 1942) is called "repair and deduct." Essentially, you can hire a repairperson to fix it (or buy a replacement part and do it yourself), and subtract the cost from the following month's rent, while following certain constraints:

- You can't spend more than one month's rent.
- You can't use the repair and deduct remedy more than twice per 12-month period.

Tips:

- Gather bids and collect bills, receipts, or invoices, all of which should be attached to next month's rent check, along with a letter explaining the reduction.
- Do an online search for "California Repair and Deduct Letter" for a form of notice to your landlord.

Withhold the Rent

Initial Steps

Step 1: Withhold rent but set aside the money you would be paying, and save it until the matter is resolved, which occurs with the landlord or in court.

Step 2: Notify the landlord of your intent to withhold rent.

Step 3: Collect Evidence. Have defense in case the landlord attempts to evict you for nonpayment of rent: keep copies of correspondence with landlord and inspectors, and photographs of the problem. In court, testimony or reports from a repair person or inspector are required; written notes do not work.

Step 4: Repeat the request for repairs, and provide a final deadline.

Landlord's Possible Responses

First: Proceed with the needed repair and negotiate the portion of the withheld rent due.

Second: Wait through a couple of months of rent withholding and hope that you move out or just live there rent free with the issue.

Third: Landlord may issue a three-day notice to pay rent or quit, followed by filing a "summons and complaint." You then must file an answer and justify your rent withholding within 5 days. **The Court may order that you pay a portion of the rent.**

Sue the Landlord

Small Claims Court

- You can sue for up to \$10,000.
- You ask the judge to rule that your unrepaired rental was not worth what you've paid for it, and that you want money back from the landlord.
- The judge cannot necessarily order the landlord to fix your unit but can order the landlord to pay, based on the following formula:

$$\frac{(\text{Monthly Rent} - \text{Real Value of Unit}) \times (\text{Number of Months})}{1}$$

You can also sue for:

- The value of lost or damaged property caused by defects.
- Compensation for personal injuries caused by defects.

Superior Court

The Superior Court is similar to the Small Claims Court, **except for the following provisions:**

- You need a Lawyer
- You can sue for "tort" damages
- Some statutes provide attorney fees, despite rental agreements
- You can sue for over \$10,000 and the judge can require the landlord to repair defects.

Your landlord cannot retaliate because you sued

Moving Out

Before Moving Out

- Are you sure you want to move out? Rent could be more expensive elsewhere.
- You must give the landlord notice of the problem and a reasonable opportunity to fix it.

After Moving Out

You might be able to sue the landlord to compensate for the losses caused by moving out, such as:

- Living expenses between rentals.
- Suing for the difference between the value of the defective unit and the rent paid.

If circumstances beyond your control (such as a natural disaster) render the unit totally unlivable and destroyed, then your lease or rental agreement is void.

BEFORE MOVING OUT

When you're ready to move out,
follow these steps to prevent legal problems!



Give notice to your landlord 30 days in advance. Be sure to date the notice and make a copy for your records.



The landlord should notify you in writing of your right to a walk-through with the landlord within a reasonable time after either party has provided notice of termination. If the landlord doesn't tell you, request it.

A walk-through can be scheduled no earlier than 2 weeks before the termination date.

Take photographs right before moving out!



1. Provide a forwarding address for the deposit.
2. Deductions the landlord can make:

Proper Deductions:

unpaid rent, actual cleaning costs, repairs beyond normal wear and tear.

Improper Deductions:

minor wear and tear, general cleaning (if you left it as clean as when your lease started).

3. A landlord's itemized statement of deductions must indicate any deductions and reasons; you're entitled to a receipt for deductions of more than \$125

If the deposit is not received within 21 days, you can sue in small claims court for the deposit, plus a penalty twice the amount of the withheld security deposit.

If your unit is rent controlled, you may file a "Tenant Petition for Individual Rent Adjustment" for a simpler process and recovery of your security deposit. Consult the Berkeley Rent Stabilization Board for assistance.

When there are two or more co-tenants, the landlord is not required to return the deposit until the original tenants have left. Roommates should sign an agreement that governs how the deposit will be handled if one moves out before the other.