

STEP BY STEP GUIDE FOR PRE-MOVE-OUT INSPECTIONS

(Known Also as Initial Inspections)

To aid operators of rental housing with the complex issues of the security deposit law, **CA Civil Code 1950.5** that incurred major revisions effective **January 1, 2003**, I prepared a guide. This law was further revised effective **January 1, 2004** necessitating the need to update this guide to reflect those changes. This guide is again being published as this code covering termination of a tenancy and the settlement of the security deposit are recurring areas for all operators of rental housing.

Please keep this article for reference as it will be needed time and again. *Remember:* **Failure to follow this law prevents you from being able to legally withhold from a tenant's security deposit.**

Amends CA Civil Code 1950.5 Establishes Move-Out Inspection Rights

Effective **January 1, 2003**, tenants have the right to request an inspection of the premises prior to move out. Purpose: To afford tenants an opportunity to remedy any identified deficiencies to the condition of the rented property so that deductions from their security deposits are lessened. Subsequently amendments to this law were made January 1, 2004 and are identified in **bold italics**.

The Association has two forms for your use in connection with this law. They both contain the necessary statutory language. The forms are: **Standard Notice of Right to Request Initial Inspection, Form 12.3** and **Standard Initial Inspection Statement, Form 21.1**. These forms are available on our website.

All of the forms have been available for members, on the Association's website www.sbrpa.org, for a number of years. Effective June 2011, the forms are now **PDF** writeable. This allows you to complete a form before printing it, a great boon for operators of rental housing.

PROCEDURES FOR THE MOVE-OUT INSPECTION ARE:

1. **Provide Notice of Inspection Rights:** Within a reasonable time after either notice has been given or received to terminate the tenancy, or before the end of a lease term, the landlord shall notify the tenant in writing of the tenant's option to request an initial inspection and of the tenant's right to be present at that inspection. ***The requirements of this section do not apply when the termination is the result of a three day notice.***
2. **Scheduling the Inspection:** If the tenant requests an inspection, the parties shall attempt to schedule a mutually acceptable date and time. If the tenant does not request an inspection, the landlord's duties regarding the inspection are discharged.
3. **Providing 48-Hour Notice of Inspection:** For a tenant requested inspection, the landlord must give at least 48 hours prior written notice of the date and time of the inspection, whether the parties agreed to a mutual time, or could not schedule a mutually acceptable time.
4. **Conducting the Inspection:** At a reasonable time, BUT no earlier than two weeks before the termination or the end of the lease, the landlord or designated agent, shall make an initial inspection whether the tenant is present or not, unless the tenant withdraws the request for an inspection.



Your use of any of these forms constitutes your representation that you have counseled with your personal attorney before using the form, and in using the form you are relying on your attorney's counsel and your own investigation and not on any express or implied representation by SBRPA or any of its officers, directors, employees, or representatives.



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5. **Preparing the Inspection Statement:** Based on the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security deposit. This statement must include the statutory language in California Civil Code sections 1950.5(b) and (d) which set forth, among other things, the items that may be properly deducted from the security deposit, including the following:

- a. Defaults in the payment of rent
- b. Repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or the tenant's guest or licensee
- c. Cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy. (This paragraph shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003)
- d. Future defaults by the tenant to restore, replace, or return personal property or appurtenances (anything that appertains - a "thing" added to a more important "thing" - as authorized by the rental agreement.

6. **Delivering the Inspection Statement:** The statement shall be given to the tenant, if the tenant is present for the inspection, or it shall be left inside the premises.

7. **Providing an Opportunity to Correct:** In order to avoid deductions from the security deposit, the tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy, to remedy any identified deficiencies in a manner consistent with the rental agreement, in order to avoid deductions from the security.

A change to the landlord's existing duty to give the tenant, within three weeks after the tenant surrenders possession of the premises, an itemized statement of the final disposition of the security deposit is: ***Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises as follows:***

(A) If the landlord or landlord's employee performed the work, the itemized statement includes the time spent and the reasonable hourly rate charged.

(B) If performed by others, landlord shall provide the tenant a copy of the bill supplied by the person/entity performing the work. The itemized statement shall provide the tenant with the name, address, and telephone number of that person/entity if not included on the bill.

(C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice or receipt. If a particular material is purchased in bulk on an ongoing basis, the cost may be documented by invoice or vendor price list that reasonably documents the cost of the item used in the repair or cleaning of the unit.

If a repair to be done by the landlord or the landlord's employee cannot reasonably be completed within 21 calendar days after the tenant surrenders possession of the premises, or if the documents from a person/entity providing services, materials, etc. are not in the landlord's possession within 21 calendar days after the tenant surrenders the premises, the landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement. Where no documents have been received for the estimate, the itemized statement shall include the name, address and telephone number of the person/entity to perform the service. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall submit a finalized itemized statement.



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No bill, invoice or receipt need be furnished if the deductions for repairs and cleaning together do not exceed one hundred twenty-five dollars (\$125) or the tenant waived the right to receive the documentation. Where documentation is not furnished, a tenant may make a request for documentation within 14 days after receiving the itemized statement; landlord shall comply within 14 calendar days after receiving the request from the tenant.

The security deposit may be used for deductions itemized in the Inspection Statement provided to the tenant, at the time of the inspection, that were not cured by the tenant; items arising between completion of the inspection and termination of the tenancy; and (c) items not identified during the inspection due to the presence of the tenant's possessions.

PONDERING POINTS:

1. **Waiver of 48-Hour Notice:** Waiver of the 48-hour notice of inspection is allowed by Section 1950.5(f) if the waiver is in writing signed by both the landlord and tenant. However, section 1954 independently requires the landlord to provide written notice of the landlord's intent to enter to conduct a move-out inspection; section 1954 does not provide for waiver. Prudence suggests that a landlord should provide written notice of an upcoming inspection, and refrain from using the right to waive that notice requirement until the courts or the Legislature clarifies this issue.

2. **Normal Business Hours:** Instances where the tenant wants a move-out inspection but mutual agreement as to the date and time has not been reached, the landlord shall unilaterally set a date and time for the inspection, and notify the tenant accordingly. A landlord should exercise caution by making sure that any unilaterally scheduled date and time for the inspection is during "normal business hours" as required by section 1964. There is no statutes definition for "normal business hours," but it has been interpreted as excluding evenings and weekends.



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