

## Assembly Bill No. 2330

### CHAPTER 1061

An act to amend Sections 1950.5 and 1954 of the Civil Code, relating to landlord and tenant.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2330, Migden. Landlord and tenant.

(1) Existing law regulates the amount of security a landlord may demand or receive pursuant to a rental agreement for residential property to be used as a dwelling. It limits that amount to 2 months' rent for unfurnished residential property, and to 3 months' rent for furnished residential property, in addition to rent for the first month, as specified. Existing law defines security for these purposes. Existing law permits landlords to apply security only if reasonably necessary for specified purposes, and prohibits the application of security for defective conditions that preexisted the tenancy or for ordinary wear and tear. Existing law requires a landlord to furnish to the tenant, within 3 weeks of vacating the premises, a copy of an itemized statement indicating the security received and the disposition of the security, as specified.

This bill would redefine security to include any charges imposed at the beginning of tenancy, excepting application screening fees, and would specifically include within the definition costs associated with processing a new tenant and costs associated with cleaning the property, as specified. The bill would require the landlord under specified circumstances to notify the tenant in writing of the tenant's option to request an initial inspection and the tenant's right to be present at the inspection. If the tenant requests an initial inspection, the bill would require the landlord to make that inspection prior to a final inspection, after the tenant vacates, and to provide the tenant with an itemized list of potential deductions from the security, as specified. The bill would require that the tenant have the opportunity to remedy identified deficiencies, as specified, during the period following the initial inspection until the end of the tenancy. The bill would change the amount of statutory damages for certain violations from \$600 to twice the amount of the security.

(2) Existing law regulates the times and circumstances under which a landlord may enter a tenant's dwelling.

This bill would permit a landlord to enter a tenant's dwelling for the purpose of making an inspection related to the application of a tenant's security to repairs and cleaning.

(3) This bill would incorporate changes to Section 1954 of the Civil Code made by SB 1403 to become operative only if both bills are chaptered and this bill is chaptered last.

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

SECTION 1. Section 1950.5 of the Civil Code is amended to read:

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

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

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

(2) 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.

(3) The 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. The amendments to this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.

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

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent, in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy.

This subdivision does not prohibit an advance payment of not less than six months' rent if the term of the lease is six months or longer.

This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative,



furnishing, or other similar alterations, if the alterations are other than cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

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

(e) The landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision (b). The landlord may not assert 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, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

(f) (1) Within a reasonable time after notification of either party's intention to terminate the tenancy, or before the end of the lease term, the landlord shall notify the tenant in writing of his or her option to request an initial inspection and of his or her right to be present at the inspection. At a reasonable time, but no earlier than two weeks before the termination or the end of lease date, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection shall be to allow the tenant an opportunity to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security. If a tenant chooses not to request an initial inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours prior written notice of the date and time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written waiver. The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection.

(2) 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 the landlord intends to make pursuant to paragraphs (1) to (4), inclusive of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to



the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

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

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

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

(g) Within three weeks after the tenant has vacated the premises, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant.

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

(1) Transfer the portion of the security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security, of the amount of the security deposited, and of the names of the successors in interest, their address, and their telephone number. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

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

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

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



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

(3) His or her election under paragraph (1) or (2) of subdivision (h).

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

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

This subdivision does not preclude a successor in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a landlord's successor in interest has a good faith belief that the lawfully remaining security deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he or she is not liable for damages as provided in subdivision (l), or any security not transferred pursuant to subdivision (h).

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

(l) The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof in violation of this section, or the bad faith demand of replacement security in violation of subdivision (j), may subject the landlord or the landlord's successors in interest to statutory damages of up to twice the amount of the security, in addition to actual damages. The court may award damages for bad faith whenever the facts warrant such an award, regardless of whether the injured party has specifically requested relief. In any action under this section, the landlord or the landlord's successors in interest shall have the burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to demand additional security deposits.

(m) No lease or rental agreement may contain any provision characterizing any security as "nonrefundable."



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

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

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

SEC. 2. Section 1954 of the Civil Code is amended to read:

1954. A landlord may enter the dwelling unit only in the following cases:

(a) In case of emergency.

(b) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5.

(c) When the tenant has abandoned or surrendered the premises.

(d) Pursuant to court order.

Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours, unless the tenant consents at the time of entry.

The landlord shall not abuse the right of access or use it to harass the tenant. Except in cases of emergency, when the tenant has abandoned or surrendered the premises, or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his or her intent to enter and enter only during normal business hours. Twenty-four hours advanced notice shall be presumed to be reasonable notice in absence of evidence to the contrary.

SEC. 2.5. Section 1954 of the Civil Code is amended to read:

1954. A landlord may enter the dwelling unit only in the following cases:

(a) In case of emergency.

(b) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants,



workmen or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5.

- (c) When the tenant has abandoned or surrendered the premises.
- (d) Pursuant to court order.

Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents at the time of entry.

The landlord shall not abuse the right of access or use it to harass the tenant. Except in cases of emergency or when the tenant has abandoned or surrendered the premises, the landlord shall give the tenant reasonable notice in writing of his or her intent to enter and enter only during normal business hours. The notice may be personally delivered to the tenant, left with someone of a suitable age and discretion at the premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary. The notice may be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary.

If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice may be given orally, in person or by telephone, if the landlord or his or her agent has notified the tenant in writing within 120 days of the oral notice that the property is for sale and that the landlord or agent may contact the tenant orally for the purpose described above. Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary. At the time of entry, the landlord or agent shall leave written evidence of the entry inside the unit.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 1954 of the Civil Code proposed by both this bill and SB 1403. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1954 of the Civil Code, and (3) this bill is enacted after SB 1403, in which case Section 2 of this bill shall not become operative.

