

**ASSEMBLY BILL**

**No. 1679**

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**Introduced by Assembly Member Bonilla**

February 14, 2012

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An act to amend Section 1950.5 of the Civil Code, relating to landlord-tenant relations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1679, as introduced, Bonilla. Landlord-tenant relations: security deposits.

Existing law requires that no later than 21 calendar days after the tenant has vacated the premises, but not earlier than the time that either the landlord or the tenant provides a notice to terminate the tenancy, as specified, or not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord 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 to return any remaining portion of the security to the tenant. Existing law also requires that along with the itemized statement, the landlord include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, as specified.

This bill would, in addition, authorize a landlord and tenant to mutually agree to have the landlord deposit any remaining portion of the security deposit directly to a bank account designated by the tenant. The bill would also authorize the landlord and the tenant to agree to have the landlord provide a copy of the itemized statement along with the copies of documents showing charges incurred and deducted by the

landlord to repair or clean the premises to an e-mail account provided by the tenant.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

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

3 1950.5. (a) This section applies to security for a rental  
4 agreement for residential property that is used as the dwelling of  
5 the tenant.

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

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

15 (2) The repair of damages to the premises, exclusive of ordinary  
16 wear and tear, caused by the tenant or by a guest or licensee of the  
17 tenant.

18 (3) The cleaning of the premises upon termination of the tenancy  
19 necessary to return the unit to the same level of cleanliness it was  
20 in at the inception of the tenancy. The amendments to this  
21 paragraph enacted by the act adding this sentence shall apply only  
22 to tenancies for which the tenant’s right to occupy begins after  
23 January 1, 2003.

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

29 (c) A landlord may not demand or receive security, however  
30 denominated, in an amount or value in excess of an amount equal  
31 to two months’ rent, in the case of unfurnished residential property,  
32 and an amount equal to three months’ rent, in the case of furnished

1 residential property, in addition to any rent for the first month paid  
2 on or before initial occupancy.

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

6 This subdivision does not preclude a landlord and a tenant from  
7 entering into a mutual agreement for the landlord, at the request  
8 of the tenant and for a specified fee or charge, to make structural,  
9 decorative, furnishing, or other similar alterations, if the alterations  
10 are other than cleaning or repairing for which the landlord may  
11 charge the previous tenant as provided by subdivision (e).

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

15 (e) The landlord may claim of the security only those amounts  
16 as are reasonably necessary for the purposes specified in  
17 subdivision (b). The landlord may not assert a claim against the  
18 tenant or the security for damages to the premises or any defective  
19 conditions that preexisted the tenancy, for ordinary wear and tear  
20 or the effects thereof, whether the wear and tear preexisted the  
21 tenancy or occurred during the tenancy, or for the cumulative  
22 effects of ordinary wear and tear occurring during any one or more  
23 tenancies.

24 (f) (1) Within a reasonable time after notification of either  
25 party's intention to terminate the tenancy, or before the end of the  
26 lease term, the landlord shall notify the tenant in writing of his or  
27 her option to request an initial inspection and of his or her right to  
28 be present at the inspection. The requirements of this subdivision  
29 do not apply when the tenancy is terminated pursuant to subdivision  
30 (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At  
31 a reasonable time, but no earlier than two weeks before the  
32 termination or the end of lease date, the landlord, or an agent of  
33 the landlord, shall, upon the request of the tenant, make an initial  
34 inspection of the premises prior to any final inspection the landlord  
35 makes after the tenant has vacated the premises. The purpose of  
36 the initial inspection shall be to allow the tenant an opportunity to  
37 remedy identified deficiencies, in a manner consistent with the  
38 rights and obligations of the parties under the rental agreement, in  
39 order to avoid deductions from the security. If a tenant chooses  
40 not to request an initial inspection, the duties of the landlord under

1 this subdivision are discharged. If an inspection is requested, the  
2 parties shall attempt to schedule the inspection at a mutually  
3 acceptable date and time. The landlord shall give at least 48 hours'  
4 prior written notice of the date and time of the inspection if either  
5 a mutual time is agreed upon, or if a mutually agreed time cannot  
6 be scheduled but the tenant still wishes an inspection. The tenant  
7 and landlord may agree to forgo the 48-hour prior written notice  
8 by both signing a written waiver. The landlord shall proceed with  
9 the inspection whether the tenant is present or not, unless the tenant  
10 previously withdrew his or her request for the inspection.

11 (2) Based on the inspection, the landlord shall give the tenant  
12 an itemized statement specifying repairs or cleaning that are  
13 proposed to be the basis of any deductions from the security the  
14 landlord intends to make pursuant to paragraphs (1) to (4), inclusive  
15 of subdivision (b). This statement shall also include the texts of  
16 paragraphs (1) to (4), inclusive, of subdivision (b). The statement  
17 shall be given to the tenant, if the tenant is present for the  
18 inspection, or shall be left inside the premises.

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

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

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

34 (g) (1) No later than 21 calendar days after the tenant has  
35 vacated the premises, but not earlier than the time that either the  
36 landlord or the tenant provides a notice to terminate the tenancy  
37 under Section 1946 or 1946.1, Section 1161 of the Code of Civil  
38 Procedure, or not earlier than 60 calendar days prior to the  
39 expiration of a fixed-term lease, the landlord shall furnish the  
40 tenant, by personal delivery or by first-class mail, postage prepaid,

1 a copy of an itemized statement indicating the basis for, and the  
2 amount of, any security received and the disposition of the security  
3 and shall return any remaining portion of the security to the tenant.  
4 *The landlord and tenant may mutually agree to have the landlord*  
5 *deposit any remaining portion of the security deposit directly to*  
6 *a bank account designated by the tenant. The landlord and the*  
7 *tenant may also agree to have the landlord provide a copy of the*  
8 *itemized statement along with the copies required by paragraph*  
9 *(2) to an e-mail account provided by the tenant.*

10 (2) Along with the itemized statement, the landlord shall also  
11 include copies of documents showing charges incurred and  
12 deducted by the landlord to repair or clean the premises, as follows:

13 (A) If the landlord or landlord's employee did the work, the  
14 itemized statement shall reasonably describe the work performed.  
15 The itemized statement shall include the time spent and the  
16 reasonable hourly rate charged.

17 (B) If the landlord or landlord's employee did not do the work,  
18 the landlord shall provide the tenant a copy of the bill, invoice, or  
19 receipt supplied by the person or entity performing the work. The  
20 itemized statement shall provide the tenant with the name, address,  
21 and telephone number of the person or entity, if the bill, invoice,  
22 or receipt does not include that information.

23 (C) If a deduction is made for materials or supplies, the landlord  
24 shall provide a copy of the bill, invoice, or receipt. If a particular  
25 material or supply item is purchased by the landlord on an ongoing  
26 basis, the landlord may document the cost of the item by providing  
27 a copy of a bill, invoice, receipt, vendor price list, or other vendor  
28 document that reasonably documents the cost of the item used in  
29 the repair or cleaning of the unit.

30 (3) If a repair to be done by the landlord or the landlord's  
31 employee cannot reasonably be completed within 21 calendar days  
32 after the tenant has vacated the premises, or if the documents from  
33 a person or entity providing services, materials, or supplies are not  
34 in the landlord's possession within 21 calendar days after the tenant  
35 has vacated the premises, the landlord may deduct the amount of  
36 a good faith estimate of the charges that will be incurred and  
37 provide that estimate with the itemized statement. If the reason for  
38 the estimate is because the documents from a person or entity  
39 providing services, materials, or supplies are not in the landlord's  
40 possession, the itemized statement shall include the name, address,

1 and telephone number of the person or entity. Within 14 calendar  
2 days of completing the repair or receiving the documentation, the  
3 landlord shall complete the requirements in paragraphs (1) and (2)  
4 in the manner specified.

5 (4) The landlord need not comply with paragraph (2) or (3) if  
6 either of the following apply:

7 (A) The deductions for repairs and cleaning together do not  
8 exceed one hundred twenty-five dollars (\$125).

9 (B) The tenant waived the rights specified in paragraphs (2) and  
10 (3). The waiver shall only be effective if it is signed by the tenant  
11 at the same time or after a notice to terminate a tenancy under  
12 Section 1946 or 1946.1 has been given, a notice under Section  
13 1161 of the Code of Civil Procedure has been given, or no earlier  
14 than 60 calendar days prior to the expiration of a fixed-term lease.  
15 The waiver shall substantially include the text of paragraph (2).

16 (5) Notwithstanding paragraph (4), the landlord shall comply  
17 with paragraphs (2) and (3) when a tenant makes a request for  
18 documentation within 14 calendar days after receiving the itemized  
19 statement specified in paragraph (1). The landlord shall comply  
20 within 14 calendar days after receiving the request from the tenant.

21 (6) Any mailings to the tenant pursuant to this subdivision shall  
22 be sent to the address provided by the tenant. If the tenant does  
23 not provide an address, mailings pursuant to this subdivision shall  
24 be sent to the unit that has been vacated.

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

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

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

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

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

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

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

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

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

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

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

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

39 (l) The bad faith claim or retention by a landlord or the  
40 landlord's successors in interest of the security or any portion

1 thereof in violation of this section, or the bad faith demand of  
2 replacement security in violation of subdivision (j), may subject  
3 the landlord or the landlord's successors in interest to statutory  
4 damages of up to twice the amount of the security, in addition to  
5 actual damages. The court may award damages for bad faith  
6 whenever the facts warrant that award, regardless of whether the  
7 injured party has specifically requested relief. In any action under  
8 this section, the landlord or the landlord's successors in interest  
9 shall have the burden of proof as to the reasonableness of the  
10 amounts claimed or the authority pursuant to this section to demand  
11 additional security deposits.

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

14 (n) Any action under this section may be maintained in small  
15 claims court if the damages claimed, whether actual or statutory  
16 or both, are within the jurisdictional amount allowed by Section  
17 116.220 or 116.221 of the Code of Civil Procedure.

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

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

28 (q) The amendments to this section made during the 2003  
29 portion of the 2003–04 Regular Session of the Legislature that are  
30 set forth in paragraph (1) of subdivision (f) are declaratory of  
31 existing law.