

# No Deterrent: Improper Security Deposit Withholding in California

May 2, 2013



**TENANTS  
TOGETHER**

California's  
Statewide Organization  
for Renters' Rights

# No Deterrent: Improper Security Deposit Withholding in California

---

## **Executive Summary**

The stakes are high when it comes to security deposits in California. An estimated \$5 billion of tenant security deposits are held by California landlords. With an average tenancy statewide of less than three years, this means that in excess of \$1 billion of deposit money annually is either returned to or withheld from California tenants. Most California tenants are lower-income and their security deposits represent a significant financial asset for them.

Responding to widespread complaints about unfair withholding of security deposits, Tenants Together conducted two studies.<sup>i</sup> The first examined the experience of Tenants Together members with respect to their security deposits. The second examined court records in an effort to determine the outcome of security deposit cases and identify potential causes of improper withholding.

The survey of Tenants Together members found:

- 60% reported that they had experienced unfair withholding of some or all of their deposit;
- 53% reported that the last time they moved, they did not receive any of their deposit funds within 21 days of vacating;
- 36% reported that their entire deposit was withheld the last time they moved.

The three-courthouse study of small claims actions found:

- Tenants prevailed in over 70% of the cases that went to judgment;
- In only 3.5% of the security deposit cases filed by tenants was a landlord assessed a penalty by the court.

These studies evidence widespread improper security deposit withholding. Only a small minority of tenants sue to recover their deposit, even when they feel they have been deprived of deposit funds unfairly. When cases are litigated, the tenants usually prevail in court, but in only a small portion of cases are any damages beyond the amount of the deposit assessed, creating little deterrence for landlords who improperly withhold funds.

This report recommends two reforms to ensure that tenants are not unfairly deprived their deposits. First, tenant deposits should be kept in accounts that are separate from the landlord's personal funds. Second, meaningful, mandatory penalties should be imposed for improper retention of security deposit funds by landlords. Together these reforms will help ensure that deposit funds are preserved until the end of the tenancy and are returned as required by law.

## Background

Security deposits continue to be perhaps the single most recurring source of conflict between landlords and tenants. Many tenants report feeling resigned to getting little or nothing back on their deposits, which are only supposed to be used for damage to the unit, rent owed, or cleaning to bring the unit up to the level of cleanliness when the unit was rented. The law allows deduction only for “damage” beyond ordinary wear and tear.

California Civil Code section 1950.5 requires a landlord to return the deposit, or document legitimate withholdings, within 21 days of the tenant vacating. If a landlord fails to return the deposit, a tenant may sue (in small claims court up to \$10,000) to recover the deposit. If “bad faith” can be shown, the court may award up to twice the deposit as a statutory penalty, but is not obligated to do so.

The availability of “bad faith” damages is, in theory, a key component of California’s statutory regime for disposition of security deposits. However, a tenant suing for return of the security deposit faces several challenges in obtaining “bad faith” damages. Tenants must represent themselves in small claims court. As plaintiffs in these actions, tenants have the burden of proof in showing the landlord acted in bad faith. Discovery is not available to plaintiffs in small claims cases which is where virtually all security deposit cases are filed. Furthermore, if the tenant moved out of town, the tenant must pursue the claim in the district from which he or she moved, which poses logistical challenges. It appears that unscrupulous landlords know that they are unlikely to be held accountable for improper withholding.

Landlords are not required to hold deposits in any particular form. Although it is a recommended property management practice for landlords to hold deposit funds separate from their assets, California law does not require that funds be maintained in this way. This poses particular problems when landlords face bankruptcy and foreclosure, after which tenants are often unable to recover deposits.

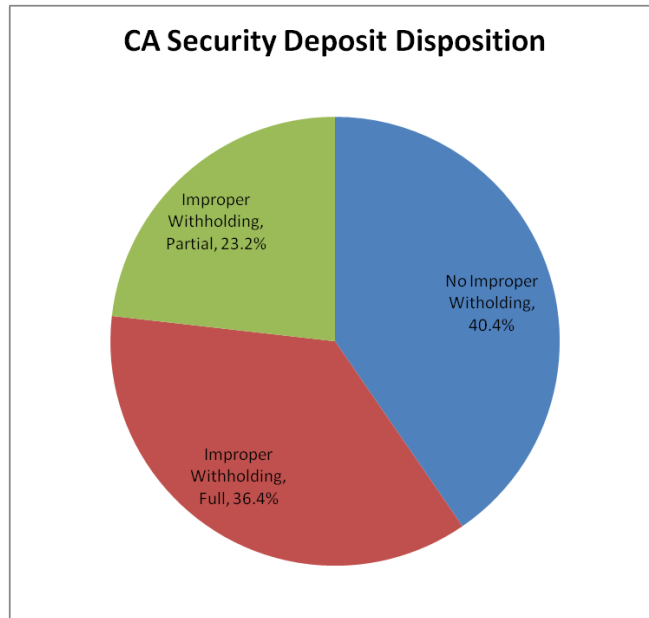
California security deposit law has been amended over the years to address ongoing problems with improper withholding. Most recently, in 2003, the option of a pre-move out inspection was added to the statute. This gives tenants the opportunity to have a landlord walk through the unit two weeks before the tenant moves to identify conditions that the landlord would use the deposit to repair, thereby giving the tenant an opportunity to make repairs and avoid deductions. This may work well where all parties are acting in good faith, but does little to address the landlord who withholds without regard for the legal basis for such withholding.

Senator Mark Leno (D-San Francisco) has introduced SB 603, a state bill that would require landlords to maintain funds in separate accounts and would impose mandatory damages against landlords that improperly withhold funds. The bill would also require payment of interest on the deposit to tenants. The bill is pending at the time of publication of this report.

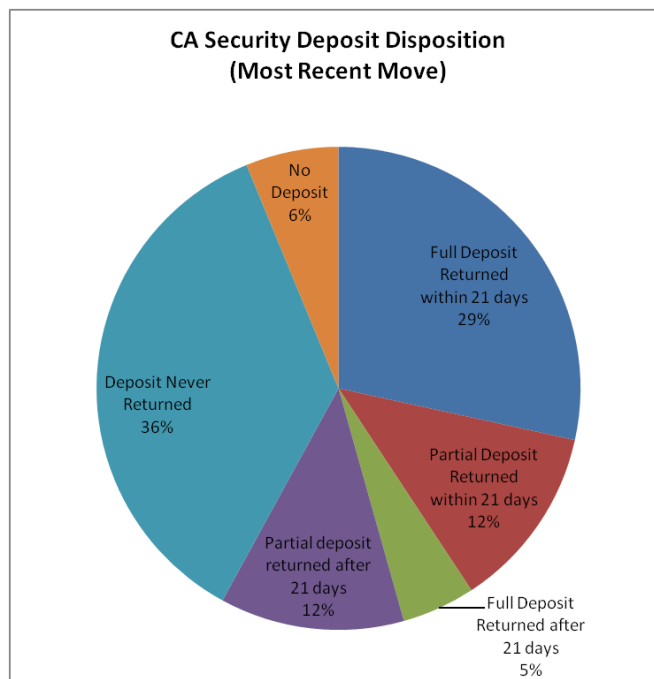
## Tenant Survey

In an effort to quantify the extent of the problem and understand the reasons for improper withholding, Tenants Together conducted an extensive survey of members during the months of January and February 2013. The survey was conducted by email and telephone, with follow up telephone calls. 100 tenants responded to the survey.

Respondents were initially asked whether they had ever had some or all of their security deposit unfairly withheld by a California landlord. The responses are summarized in the chart below:



Respondents were also asked in detail about their most recent move. The following chart summarizes the responses:



These survey results indicate that security deposit withholding is widespread. In fact, 53% of respondents report that the last time they moved, they had not received any of their deposit back within 21 days of vacating as required by law. That figure combines the tenants who never received deposit funds back (36%) with those who received funds eventually but not within the statutorily required 21 day period (17%)

The survey also revealed that few tenants file small claims actions, even if they feel they were unfairly deprived of their deposit. Just 11.6% of tenants who believe that their most recent landlord unfairly withheld some or all of their deposit filed small claims actions. Of those who did file, all were tenants who believed they were unfairly deprived of their entire deposit. Notably, none of the tenants who thought partial deductions were improper filed small claims actions.

### **Courthouse Study**

California law only allows for penalties against landlords who withhold security deposits where the judge determines that the landlord withheld the deposit “in bad faith.” Plaintiff has the burden of proving bad faith and the judge has discretion whether to award such a penalty and in what amount (up to a cap of twice the deposit). Based on our conversations with tenants, it was clear that tenants who were the victims of improper withholding were not being awarded these penalties in court. We set out to test our hypothesis that bad faith penalties were rare in tenant security deposit cases.

Tenants Together conducted a three-courthouse survey of small claims cases. The survey was conducted in March and April of 2013. Law students analyzed every small claims action filed in February 2013 in three courthouses: Oakland, Hayward and San Francisco.

Records of 675 small claims filings were reviewed. 57 (8.5%) were small claims actions filed by tenants seeking to recover their security deposit. In only two of these cases (3.5%) were any penalties assessed against the landlord. Of the 41 cases in which judgment was rendered, the tenant prevailed in 29 (70.7%).

This study suggests that when cases are litigated, the tenants usually prevail in court, but in only a tiny portion of cases are any damages beyond the amount of the deposit assessed, creating little deterrence for landlords who improperly withhold funds.

A recent Connecticut study (Lee Harris, *Judging Tenant Protections*, University of Memphis Law Review, Vol. 42, No. 1, 2011) may be instructive regarding the failure of judges to assess “bad faith” damages against landlords who withhold deposits. The study reviewed security deposit filings and interviewed magistrates in Connecticut. The study notes that some magistrates “reported that they had never imposed the statute-provided penalty on a landlord,” while others “seem to suggest that they used civil penalties only in cases of egregious misconduct.” As in Connecticut, California provides discretion to judges as to whether to assess bad faith damage, and such damages are rarely awarded. As a result, landlords can withhold with little fear of a consequence -- at worst, they may be ordered to pay the deposit funds that they owed in the first place.

## Policy Recommendations

Widespread security deposit withholding remains a difficult problem for California renters. So long as landlords have possession of the funds and get to decide whether and when to return them, some level of improper withholding will occur. To eliminate improper withholding entirely, the system could be transformed into one where security deposit funds are held in escrow by a neutral third party. The funds would be returned promptly to the tenant at the conclusion of the tenancy unless the landlord established to the entity holding the funds that deductions were warranted.

Short of restructuring security deposit law to require third party escrows, tenant security deposits should at minimum be held by landlords in accounts that are separate from the landlord's funds. This would promote transparency and accountability with respect to deposits, while also helping tenants recover deposits in the event of landlord bankruptcy and foreclosure.

In addition, meaningful, mandatory penalties should be imposed against landlords for improper retention of security deposit funds. This would create certainty for landlords who improperly withhold funds that they would face a consequence, beyond being ordered to pay what was owed in the first place, for improper withholding. If the amount were significant, this reform would help change the economic calculation with respect to improper withholding and encourage statutory compliance.

Together these reforms would help ensure that deposit funds are preserved until the end of the tenancy and are returned as required by law.

---

Research for this report was conducted by Aimee Inglis, Ayriel Bland, Morgan McGinnis, Andrea Banas & Sam Davidson. Tenants Together would also like to thank our volunteers who assisted with the phone survey, as well as our members who took the time to respond to the survey.