

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2801 (Friedman)
Version: April 25, 2024
Hearing Date: June 11, 2024
Fiscal: No
Urgency: No
ID

SUBJECT

Tenancy: security deposits

DIGEST

This bill prohibits a landlord of residential property from deducting from a tenant's security deposit costs for materials or supplies, the work of a contractor, or for professional carpet cleaning services, unless they are reasonably necessary to restore the premises to their condition before the tenancy, less ordinary wear and tear, and requires landlords to take photographs of the premises, as specified.

EXECUTIVE SUMMARY

Rent and renting housing in California is incredibly expensive. In addition to rent, landlords often require tenants to provide an amount of money as security for the unit before they can move in. Under California law, landlords may only require specified amounts for deposits, and landlords must return the deposit at the end of the tenancy, less any specified, allowable deductions. Deposits pose significant burdens on prospective tenants, and the unlawful withholding of a tenant's deposit after the tenancy has ended threatens many tenant's savings. In order to limit landlords' wrongful and excessive withholding of a tenant's deposit, AB 2801 clarifies the laws regarding allowable charges by a landlord, prohibiting the landlord from deducting from a tenant's security deposit costs for materials or supplies, the work of a contractor, or for professional carpet cleaning services, unless they are reasonably necessary to restore the premises to their condition before the tenancy, less ordinary wear and tear. AB 2801 also requires landlords to document the condition of the leased premises by taking photographs of the premises before the tenancy and before and after any repairs or cleanings at the end of the tenancy, and that the landlord provide the photographs to the tenant. AB 2801 is sponsored by Student Homes Coalition, Power California Action, and the University of California Students Association, and is supported by various Democratic and pro-housing groups and labor unions. It is opposed by the California Association of Realtors.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “security” for the rental of residential property as a payment, fee, deposit, or charge, to be used for any purpose by the landlord, including but not limited to:
 - a) Processing a new tenant;
 - b) Ensuring advance payment of rent;
 - c) Compensating for nonpayment of rent;
 - d) Repairing damages to the property, other than ordinary wear and tear, caused by the tenant or the tenant’s guest or licensee;
 - e) For tenancies beginning on or after January 1, 2003, cleaning the property upon termination of the tenancy in order to restore the same level of cleanliness the property had at the beginning of the tenancy; or
 - f) Cover any obligation, as established by the rental agreement, to restore, replace, or return personal property or accessories, other than due to ordinary wear and tear. (Civ. Code § 1950.5 (b).)
- 2) Excludes from the definition of “security” any permissible application screening fee that a landlord charges a prospective tenant. (Civ. Code § 1950.6.)
- 3) Starting July 1, 2024, limits the amount of a security deposit a landlord can collect for a residential tenancy to no more than one month's rent, regardless of whether the property is furnished or unfurnished. (Civ. Code § 1950.5 (c)(1).)
- 4) Establishes that, notwithstanding (3), above, small landlords who meet the following requirements may demand or receive a security deposit of up to two months’ rent:
 - a) the landlord is a natural person or a limited liability company in which all members are natural persons; and
 - b) the landlord owns no more than two residential rental properties that collectively include no more than four dwelling units offered for rent. (Civ. Code § 1950.5 (c)(4)(A).)
- 5) Clarifies that notwithstanding (4), above, service members, as defined, may not be required to pay more than one month’s rent in security deposit. (Civ. Code § 1950.5 (c)(4)(B).)
- 6) Specifies that a tenant is guilty of an unlawful detainer and subject to court-ordered eviction if, within three days of a demand to vacate the premises or pay rent that lawfully accrued within the last 12 months, the tenant does neither. Specifies that a tenant is guilty of an unlawful detainer and subject to court-ordered eviction if, within three days of a demand to vacate the premises or comply with a material obligation under the lease other than the payment of rent, the tenant does neither. (Code of Civ. Procedure § 1161.)

- 7) Specifies that a tenant who maintains, commits, or permits the maintenance or commission of a nuisance on rental property thereby terminates the lease and may on that basis be subject to an unlawful detainer action seeking a court order for the eviction of the tenant if the tenant does not vacate within three days of receiving notice from the landlord about the nuisance. (Code of Civ. Procedure § 1161(4).)
- 8) Permits a landlord to claim only that portion of the security deposit reasonably necessary for the purposes set forth in 1) above. Prohibits a landlord from asserting a claim against the tenant or the security for damages or defective conditions that preexisted the tenancy, ordinary wear and tear, or the cumulative effects of wear and tear. (Civ. Code § 1950.5 (e).)
- 9) Provides that, 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 must notify the tenant in writing of the tenant's option to request an initial inspection where the tenant may be present. (Civ. Code § 1950.5 (f)(1).)
- 10) Establishes that, at a reasonable time, but no earlier than two weeks before the termination or the end of lease date, upon the request of the tenant, the landlord or their agent must make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. Establishes that the purpose of the initial inspection is 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. Provides that the landlord's obligation to conduct an initial inspection is triggered only upon the tenant's request. (*Ibid.*)
- 11) Provides that if an inspection is requested, the parties must attempt to schedule the inspection at a mutually acceptable date and time. The landlord must 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. Permits the tenant and landlord to agree to forgo the 48-hour prior written notice by both signing a written waiver. (*Ibid.*)
- 12) Establishes that a landlord must provide the tenant with an itemized statement, based on the inspection, specifying repairs or cleanings that are proposed to be the basis of any deductions from the security the landlord intends to make, as permitted. Provides that the landlord must give the statement in 17) to the tenant at the inspection, if the tenant is present, or must be left inside the unit, and that the statement must include the text of Civil Code Section 1950.5(b)(1)-(4). (Civ. Code § 1950.5 (f)(2).)

- 13) Provides that, during the period following the initial inspection until termination of the tenancy, the tenant has the opportunity to remedy identified deficiencies in order to avoid deductions from the security. (Civ. Code § 1950.5 (f)(3).)
- 14) Permits a landlord to use the security deposit for itemized deductions that were not cured by the tenant, as provided. (Civ. Code § 1950.5 (f)(4).)
- 15) Permits a landlord to use the security for any permitted purposes, as provided, that occurs between completion of the initial inspection and termination of the tenancy, or that was not identified during the initial inspection due to the presence of a tenant's possessions on the premises. (Civ. Code § 1950.5 (f)(5).)
- 16) Establishes 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 or not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord must furnish the tenant, by personal delivery or by pre-paid first-class mail, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security, and must return any remaining portion of the security to the tenant. (Civ. Code § 1950.5 (g)(1).)
 - a) Exempts from this requirement deductions for repairs and cleaning that together do not exceed \$125, or when the tenant waives the right to the above provision, as specified. (Civ. Code § 1950.5(g)(4).)
 - b) If the tenant requests documentation within 14 calendar days of receiving the itemized statement, the landlord must provide the required documentation within 14 calendar days of the request from the tenant. (Civ. Code § 1950.5(g)(5).)
- 17) Requires the landlord to provide to the tenant, along with the itemized statement, 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 did the work, the itemized statement must reasonably describe the work performed. The itemized statement must include the time spent and the reasonable hourly rate charged;
 - b) If the landlord or landlord's employee did not do the work, the landlord must provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. The itemized statement must provide the tenant with the name, address, and telephone number of the person or entity, if the bill, invoice, or receipt does not include that information;
 - 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 or supply item is purchased by the landlord on an ongoing basis, the landlord may

document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit. (Civ. Code § 1950.5 (g)(2).)

18) Specifies that a tenant may receive statutory damages of up to twice the amount of the security deposit, in addition to actual damages, if the landlord retains or claims the tenant's deposit or any portion thereof in bad faith violation of Civil Code Section 1950.5. Provides that, in any action under Section 1950.5, the landlord has the burden of proof as to the reasonableness or lawfulness of the amounts claimed. (Civ. Code § 1950.5(l).

19) Specifies that an action under Civil Code Section 1950.5 may be brought in small claims court, if the damages claimed are within the jurisdictional amount allowed for small claims court cases. (Civ. Code § 1950.5(n).)

This bill:

- 1) States that it is the intent of the Legislature to ensure that landlords do not subsidize improvements to their rental properties with a former tenant's security deposit.
- 2) Specifies that claims by the landlord against a tenant or the deposit for materials or supplies, and for work performed by a contractor, must be limited to a reasonable amount necessary to restore the premises back to the condition it was in before the tenancy, except for ordinary wear and tear.
- 3) Prohibits a landlord from requiring a tenant to pay for, or from deducting from the deposit, the costs for professional carpet cleaning or other professional cleaning services, unless those services are reasonably necessary to return the premises to the condition it was in before the tenancy, except for ordinary wear and tear.
- 4) Specifies that, if an initial inspection is conducted and the premises did not contain tenant possessions that prevented the identification of repairs or cleaning, a landlord may not deduct from the security deposit costs for repairs or cleaning that are not identified in the itemized statement the landlord provided to the tenant.
- 5) Requires that, for tenancies beginning on or after July 1, 2025, a landlord must take photographs of the leased unit immediately before, or at the inception of the tenancy.
- 6) Requires that, beginning April 1, 2025, a landlord must take photographs of the unit within a reasonable time after the possession of the unit is returned to the landlord, but before any repairs or cleanings for which the landlord will deduct from the

deposit are completed, and that the landlord take photographs of the unit within a reasonable time after the repairs or cleanings are completed.

- 7) Requires that the landlord include the photographs required by (5) and (6), above, along with a written explanation of the cost of the allowable repairs and cleanings as required, if deductions from the security deposit are made for allowable repairs or cleanings. Specifies that the landlord may provide the photographs by mail, email, computer flash drive, or by providing a link where the tenant may view the photographs online.
- 8) Specifies that a landlord is not entitled to claim any amount of the security deposit if the landlord fails to comply, in bad faith, with the requirement that they provide a tenant with an itemized statement, documentation of the charges incurred and deducted from the deposit, and the photographs and explanation as required in (7), above.

COMMENTS

1. Author's statement

According to the author:

As the Attorney General pointed out in a recent settlement with a predatory landlord, 'For many renters, especially those from lower income backgrounds, affording a security deposit entails a great deal of sacrifice.' By creating a burden of evidence on the part of the landlord we are giving tenants, especially our most vulnerable, another tool in the toolbox to protect themselves against egregious claims of their hard earned money.

2. The state of renting in California

Almost 17 million Californians rent their apartments or homes, accounting for about 44 percent of all individuals in the state.¹ Yet at the same time, California is experiencing record high prices for homes and rent. In the past decade, median rents in the state have increased dramatically. In 2022, the median gross rent in the state was \$1,870, which represented about an eight percent increase per year from the median gross rent in 2019.² As a result for these high rents, significant numbers of California renters pay a disproportionate amount of their income toward rent and struggle to make ends meet.

¹ Monica Davalos et al, California's 17 Million Renters Face Housing Instability and Inequity Before and After COVID-19, California Budget & Policy Center (Jan. 2021), available at <https://calbudgetcenter.org/resources/renters-face-housing-instability-and-inequity-before-and-after-covid-19/>.

² U.S. Census Bureau, Table: Median Gross Rent by Bedroom, American Community Survey (multiple years) (accessed May 29, 2024), available at <https://data.census.gov/>.

In 2019, 51.8 percent of California renters were cost-burdened, in which their rent costs exceeded 30 percent of their household income, and 27.3 percent were severely cost-burdened, in which their rent costs exceeded 50 percent of their household income.³ Moreover, 78 percent of extremely low-income households are severely cost burdened, meaning that they spend more than half of their income on housing costs, and 52 percent of low-income households are severely cost burdened.⁴ Data and multiple studies also have demonstrated a strong link between homelessness and the cost of housing, suggesting that California's increases in residential rental rates contributes directly to the state's growing population of individuals experiencing homelessness.⁵ The state's high rents significantly affects people of color, who disproportionately account for the state's renters.⁶

3. Current landlord-tenant laws

The financial strain of the high cost of renting in California is made worse by the fact that most rentals require a substantial security deposit in order to begin the tenancy. Security deposits are typically paid to ensure that the landlord will be covered in the case that the tenant fails to pay rent or causes significant damage to the property, and are required to be paid up front before the tenancy may start. In theory, the tenant will receive their deposit back at the end of the tenancy, less any costs for which the deposit was held as security. For lower income renters, this security deposit may be a major barrier to accessing housing or moving between rental units, as a renter needs to save up a month's rent just to be able to enter into the rental agreement.

Recognizing the importance of housing and the significant financial impact that the high costs of housing have on Californians, the state has enacted a variety of laws to protect the state's renters and their security deposits. In 2023, the Legislature enacted AB 12, which will prohibit most landlords from charging a deposit of greater than one month's rent, starting July 1, 2024. (AB 12 (Haney), Ch. 733, Stats. 2023). In addition, existing law limits what landlords can deduct from a tenant's security deposit at the end of the tenancy. Landlords may only deduct from a tenant's deposit costs related to: the compensation of a landlord for a tenant's default in the payment of rent; the repair of damages to the property, except for ordinary wear and tear, caused by the tenant or their guest; the cleaning of the premises upon termination of the tenancy necessary to return the unit to the same cleanliness it was in at the beginning of the tenancy and to

³ Davalos *supra* note 1, p. 3.

⁴ California Housing Partnership, "Housing Needs Dashboard," Mar. 2024, available at <https://chpc.net/housingneeds/>.

⁵ Margot Kushel et al, "California Statewide Study of People Experiencing Homelessness, UCSF Benioff Homelessness and Housing Initiative (Jun. 2023), available at <https://homelessness.ucsf.edu/our-impact/studies/california-statewide-study-people-experiencing-homelessness>; Alex Horowitz et al, "How housing costs drive levels of homelessness: data from metro areas highlights strong connection," The APew Charitable Trusts (ug. 22, 2023), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness>.

⁶ Davalos *supra* note 1, p. 6.

remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace, or return personal property. (Civ. Code § 1950(b).) The landlord may only deduct from the deposit only those amounts reasonably necessary for those purposes, and may not deduct or claim any amount of the deposit to cover damages to the property that existed prior to the beginning of the tenancy or to cover ordinary wear and tear. (Civ. Code § 1950(e).)

In addition to these limitations on what a landlord may deduct from a tenant's deposit, the law outlines a process by which the tenant can be made aware of any repairs or costs that may be needed before the lease ends. The landlord must notify the tenant that they may request an "initial inspection" prior to their vacating the unit to document the condition of the unit and potential repairs needed or deductions from the tenant's deposit, and the tenant may request this inspection in writing. (Civ. Code § 1950.5(f).) This inspection must take place no earlier than two weeks before the end of the lease, and provides the tenant the opportunity to fix any deficiencies or damage to the unit before the lease ends in order to avoid deductions from their deposit. The landlord must give the tenant an itemized statement of the repairs and cleanings that the landlord intends to make and deduct from the deposit, and the tenant is allowed to try to remedy the deficiencies before the end of the tenancy. The landlord may still deduct from the tenant's deposit the costs of any deficiency identified in the inspection that was not remedied by the tenant, or the costs of deficiencies that either arose between the initial inspection and the end of the lease or that were not discovered during the inspection because of the presence of the tenant's possessions. (*Id.*) Exempt from this initial inspection requirements are circumstances in which the tenancy is terminated through an unlawful detainer action in court.

Within 21 calendar days of the tenant vacating the unit, the landlord must return the full deposit, or provide the tenant with a detailed, itemized statement describing the original reason for the deposit, the deposit amount received, and how much the landlord is returning. (Civ. Code § 1950.5(g).) Along with the statement, the landlord must include copies of documents showing the charges incurred and deducted from the deposit to clean or repair the unit, including a copy of any bill, invoice, or receipt for materials or supplies. (*Id.*) The law includes an exception to this documentation requirement for deductions for repairs and cleaning that together are not more than \$125. However, if the tenant requests documentation to support the itemized statement within 14 days of receiving the statement, the landlord must provide the documentation within 14 days. (*Id.*)

4. AB 2801 addresses landlords who try to keep more of a tenant's deposit than they are entitled to

The author asserts that AB 2801 is necessary to prevent landlords from unfairly withholding tenant's security deposits. They point out that a security deposit required just to begin a tenancy is the tenant's hard-earned money, and that being able to cover

the security deposit often entails significant sacrifice and saving. The author states that their office has received reports of landlords over-charging former tenants for expenses that go beyond what is reasonably necessary to repair damage to the premises or return it to the condition in which it was before the tenancy. The reports include charges for repairing damage or defective conditions that existed before the tenant moved into the unit, or that resulted from ordinary wear and tear. These charges included charges for materials to improve the unit, essentially using the tenant's deposit to subsidize renovations of the unit, even when the defective fixture was defective before the tenant moved into the unit. The author also cites to reports of landlords charging pre-set cleaning fees, regardless of whether cleaning is necessary or whether the tenant sufficiently cleaned the premises themselves.

The author points to a recent settlement that the California Attorney General reached against a corporate landlord that manages properties in Los Angeles and Orange County for illegally withholding deposits from former tenants.⁷ The basis of that case alleged that the company had automatically deducted pre-set cleaning charges. The settlement was actually predated by a 2001 settlement between the same company and the Attorney General, in a case in which the company had been accused of charging former tenants for ordinary wear and tear and unreasonable clean-up and repair costs, and of withholding tenants' entire deposits regardless of the condition of the unit.⁸

5. AB 2801 proposes to strengthen protections for tenants regarding residential security deposits

- a. *AB 2801 limits charges for materials or supplies, or work performed by a contractor*

AB 2801 revises the rules relating to a tenant's deposit and what the landlord can deduct in two significant ways. First, it specifies that any deductions against a deposit for materials, supplies, or work performed by a contractor to restore the premises must be limited to a reasonable amount necessary to restore the premises back to the condition it was before the tenancy began, except for ordinary wear and tear. It also prohibits the landlord from requiring the tenant to pay for, or have deducted from the security deposit, the costs for professional carpet cleaning or other professional cleaning services, unless the cleaning services are reasonably necessary to return the premises to the condition it was in before the tenancy began, except for ordinary wear and tear.

⁷ Office of the Attorney General, "California Attorney General Rob Bonta Announces Settlement with Arnel Management Company over Illegal Withholding of Security Deposits," California Department of Justice (Mar. 29, 2024), available at <https://oag.ca.gov/news/press-releases/california-attorney-general-rob-bonta-announces-settlement-arnel-management>.

⁸ Office of the Attorney General, "Attorney General Lockyer Files Legal Action Against Arnel Management Company to Provide Refunds to Renters in Orange County," California Department of Justice (Sept. 28, 2001), available at <https://oag.ca.gov/news/press-releases/attorney-general-lockyer-files-legal-action-against-arnel-management-company>.

Under current law, it is already the case that a landlord may only claim from the deposit amounts that are reasonably necessary for the allowed purposes, and may not deduct costs for damage that occurred to the premises before the tenancy or for ordinary wear and tear.

These requirements arguably already apply to materials and supplies and to professional cleaning costs; however, current law does not specifically address such charges. AB 2801 would specify that these requirements apply to materials and supplies, work performed by a contractor, and professional cleaning, including carpet cleaning. Furthermore, it would specify that the charges related to materials or supplies, or work performed by a contractor, must be limited to an amount reasonably necessary to restore the premises back to the condition in which it was before the tenancy, except for normal wear and tear. That requirement could be read to mean that, if such materials or supplies or contracted work is necessary, the landlord can only charge the tenant the portion of those materials or supplies or work that would return the premises to the condition was in before the tenancy. The landlord would not be able to charge an amount for more than that, such as for more materials than necessary or for work done both to restore and improve the premises.

b. AB 2801 revises the initial inspection process

AB 2801 also makes clarifying changes to the initial inspection process. It specifies that a landlord may not deduct charges from the deposit not identified in the itemized statement, unless: the damage necessitating the repair or cleaning occurs after the initial inspection and before possession is returned to the landlord; or the tenant's possessions were in the unit at the time of the inspection and prevented the landlord from identifying repairs or cleanings. While current law specifies these two circumstances as allowable deductions, it does not specify that no other deductions for repairs or cleanings not identified in the initial inspection are allowed. Thus, AB 2801 clarifies that a landlord may only make deductions from a deposit or otherwise charge the tenant for repairs or cleanings that are identified in the initial inspection, that are necessary due to damage that occurs after the initial inspection, or that were not identified during the initial inspection because of the presence of the tenant's possessions in the unit. AB 2801 does not change the current rule that the initial inspection process does not apply to tenancies terminated through an unlawful detainer proceeding or when a tenant does not request an initial inspection.

c. AB 2891 requires a landlord to document the premises' condition with photographs

Perhaps most significantly, AB 2801 includes additional documentation requirements requiring the landlord to photograph the premises at multiple stages and provide these photographs to the tenant. For tenancies beginning on or after July 1, 2025, it requires the landlord to take photographs of the unit immediately before, or at the inception of

the tenancy. AB 2801 also requires, beginning April 1, 2025, that the landlord take photographs of the unit within a reasonable time after the possession of the unit is returned to the landlord, but prior to making any repairs or cleanings that will be deducted from the tenant's deposit. Lastly, the landlord must take photographs of the unit within a reasonable time after the repairs and cleanings are completed. Thus, AB 2801 requires photographs be taken by the landlord to document the condition of the unit at three separate times: before the tenant moves in; after the tenant moves out; and after the landlord has completed any repairs or cleanings necessary and for which they will be deducting charges from the deposit.

AB 2801 requires that the landlord provide these photographs to the tenant as part of the itemized statement and documents the landlord is currently required to provide the tenant within 21 calendar days of the tenant vacating the premises. The photographs must be provided along with a written explanation of the cost of the specified allowable repairs or cleaning, and can be provided by mail, email, computer flash drive, or by an online link.

d. AB 2801 prohibits landlords from deducting from a tenant's deposit if they fail, in bad faith, to provide an itemized statement and documentation of the deductions

Lastly, AB 2801 prohibits a landlord from keeping any part of the deposit if the landlord fails to comply with the requirements that they provide the tenant an itemized statement, documents showing the charges, and the photographs and written explanation within the 21-day deadline, if the failure was a result of bad faith. This provision requires that a landlord comply with the documentation requirements for any deductions from the deposit, or forfeit their ability to claim any amount of the security deposit. However, it does not require strict adherence; just a good faith attempt to comply. Thus, if a landlord believes they are complying with the requirements in good faith, they may still be able to withhold or deduct from the deposit for allowable charges relating to repairs or cleaning.

6. AB would be enforced through the courts

If a landlord violates the provisions of Civil Code Section 1950.5, including the provisions amended or created by this bill, the tenant may pursue a claim against the landlord through small claims court or through a civil cause of action in court. (Civ. Code §§ 1950.5(l), (n).) A tenant may obtain statutory damages up to twice the amount of the security deposit, as well as actual damages, for a bad faith violation of AB 2801's provisions. (Civ. Code § 1950.5(l).) However, if a landlord violates the provisions of Civil Code Section 1950.5 in good faith, a tenant may still pursue an action against the landlord, but the landlord may offset their damages by any amounts which they could have properly deducted from the tenant's deposit originally.⁹

⁹ 250 L.L.C. v. PhotoPoint Corp., (2005) 131 Cal. App. 4th 702, 727.

7. Arguments in support

According to the Student Homes Coalition, which is a co-sponsor of AB 2801:

The members of the Student HOMES Coalitions believe that every student has the right to accessible and affordable housing. With the majority of California's higher education institutions failing to guarantee undergraduate housing, the majority of students will have to rent while in college. Faced with limited options due to lack of available housing near college campuses, students often have to enter into any available lease. Landlords take advantage of the challenges facing student renters by refusing to return security deposits or manipulating the application process to shut out student renters all together. As first-time tenants often lack resources to contest unfair leasing practices, student renters are unlikely to get relief through the small claims court process.

AB2801 will address the concerns of student renters while also preserving the landlord's right to repair any damages caused by the tenant with the security deposit. Existing law limits the landlord's claim of a security deposit to only those amounts as are reasonably necessary for the repair of damages to the premises, exclusive of ordinary wear and tear, to return the unit to the same level of cleanliness it was in at the inception of the tenancy. Under the current system, however, landlords are able to overcharge tenants to subsidize upgrades to the unit after the termination of the tenancy. Bad-faith retentions like this reduce the accessibility of housing, as many renters depend on the return of their security deposit to cover the costs associated with moving to another unit.

By requiring any deductions from the security deposit to be justified with photo evidence and preventing landlords from making additional claims on a deposit after a valid initial inspection is conducted, AB 2801 will help protect the security deposits of tenants and close existing loopholes that allow landlords to violate the intention of the law.

8. Arguments in opposition

According to the California Association of Realtors, which is opposed to AB 2801:

AB 2801, among other things, establishes that claims against the tenant or the security deposit for work performed by a contractor, the housing provider, or the housing provider's employee must be limited to a "reasonable" amount necessary to restore the premises back to the condition it was in at the inception of the tenancy. It isn't clear what "reasonable" means in this context, and C.A.R. is concerned that this lack of clarity could lead to confusion in the marketplace and, in turn, increased litigation.

Does a reasonable amount for a repair mean that a small housing provider has to use an unscrupulous repair person with 1 star on Yelp because they only charge \$75 for that repair, or can a small housing provider pay \$150 to a respected repair person with 4 stars on Yelp to ensure that the repair is done properly? An urgent repair in Anaheim that has to be performed on Labor Day Weekend is going to cost a different amount than the same repair performed in Yreka on a random Tuesday in October – is that reasonable or unreasonable under the bill?

SUPPORT

Genup (Generation Up) (co-sponsor)
Student Homes Coalition (sponsor)
University of California Student Association (co-sponsor)
California Rural Legal Assistance Foundation
California State University Employees Union
Our Time to Act
Power California Action
Public Advocates
Tenants Together
UC San Diego Housing Commission
UC San Diego Associated Students Office of Local Affairs
UC Santa Barbara Campus Democrats
UCSC Student Housing Coalition
Youthbridge Housing

OPPOSITION

California Association of Realtors

RELATED LEGISLATION

Pending Legislation:

AB 2785 (Wilson, 2024) would require a landlord to deposit a tenant's security deposit into a bank account or other financial institution, that this account shall only contain deposit funds, and that, if the account is interest-bearing, the interest be paid to the tenant. AB 2785 is currently on the inactive file on the floor of the Assembly.

AB 2216 (Haney, 2024) would prohibit a landlord from inquiring about whether a prospective tenant plans to own or have a pet in the unit, prohibit a landlord from preventing a tenant from owning or keeping a pet in the unit without reasonable justification, prohibit a landlord from imposing payment of a separate or additional rent for the pet, and would specify that a landlord could deduct from a tenant's deposit

repair damages, or other related costs, caused by the tenant's pet. AB 2216 is currently in the Senate Rules Committee.

AB 611 (Menjivar, 2023) would, among other things, amend a prohibition on landlords requiring security deposits or more than one month's rent from a service member, requiring the landlord to specify the rental agreement that a higher deposit is being required because of the tenant's poor credit score, and requiring that the additional amount of deposit be returned after six months if the tenant does not owe rent or the higher amount is not because of the tenant's prior history of residential property damage. SB 611 is currently in the Assembly Judiciary Committee.

Prior Legislation:

AB 12 (Haney, Ch. 733, Stats. 2023) limited allowable security deposits that a landlord may charge a residential tenant to the amount equal to one month of rent, with exceptions.

AB 2297 (Wicks, 2022) would have required a landlord who offers a tenant the option of paying a fee in lieu of the security deposit to take certain action, including offering the tenant the option of paying a deposit, and would allow a tenant paying a fee in lieu of a deposit to stop paying the fee and pay a deposit at any time. AB 2297 died in the Assembly Judiciary Committee.

AB 3260 (Wicks, 2020) would have required a landlord of residential property to authorize a tenant, in place of paying the full amount of a security deposit, to satisfy security through obtaining and maintaining rental security insurance coverage, by obtaining a surety bond, or paying the security in monthly installments. AB 3260 died on the Assembly Third Reading file.

SB 644 (Glazer, Ch. 602, Stats. 2019) prohibits a landlord from demanding or receiving security from a service member who rents residential property in excess of one month's rent, or in excess of two month's rent if the unit is furnished.

PRIOR VOTES:

Assembly Floor (Ayes 54, Noes 14)

Assembly Judiciary Committee (Ayes 9, Noes 3)
