



Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
May 7, 2013

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Supporting Senate Bill 603, Changes to State Security Deposit Law

RECOMMENDATION:

Adopt a Resolution supporting Senate Bill (SB) 603, introduced by State Senator Mark Leno, which would change state Security Deposit law (Civil Code Section 1950.5) to require statewide the payment of interest on security deposits and mandates increased penalties for non-payment of security deposits, in addition to other changes. Copies of the Resolution to be sent to Governor Jerry Brown, Senate President Pro Tem Darrell Steinberg, Senator Loni Hancock, Senator Mark Leno, Assembly Speaker John A. Perez and Assemblymember Nancy Skinner.

BACKGROUND:

The non-payment of security deposits by rental property owners is one of most common grievances raised by tenants throughout California. In a recent survey by Tenants Together, a statewide renters' rights organization, over 60% of tenants surveyed reported that their landlords had improperly withheld security deposits. For many tenants, particularly lower-income tenants, the deposit is one of their biggest financial assets and loss of deposit funds creates significant hardship.

Berkeley has a large number of renters, particularly students who rent housing for shorter periods of time. In 1980, Berkeley voters adopted a Rent Stabilization Ordinance, which not only established rent control but also required that security deposits be held in a separate fund and that interest be paid back to tenants on the security deposit on an annual basis. Despite these protections one of the biggest landlord tenant problems is the lack of payment of security deposits when a tenant moves out. This is a problem even in communities that have rent control. However the other protections in the bill would help prevent the financial hardship of withholding security deposits, which many renters need to help pay for renting a new apartment.

Likewise, it is a matter of basic fairness that tenants should receive interest payments when their money is held as a deposit during the tenancy. Landlords regularly invest these funds and receive interest payments from financial institutions. As the security deposit is the tenant's money, interest on the deposit should be paid to the tenant. SB 603 will make the long-overdue change to California law to require that tenants across

the state receive interest on security deposits. This bill will promote fair treatment and payment of security deposits, an issue of great importance to California's 15 million tenants.

SB 603 is sponsored by Tenants Together, along with the Western Center on Law and Poverty and the California Rural Legal Assistance Foundation.

FINANCIAL IMPLICATIONS:

None

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4

981-7140

Attachments:

1. Resolution
2. Copy of Senate Bill 603

RESOLUTION NO.

SUPPORTING SENATE BILL (SB) 603 WHICH WOULD CHANGE STATE SECURITY DEPOSIT LAW (CIVIL CODE SECTION 1950.5) TO ESTABLISH STATEWIDE REQUIREMENTS FOR THE PAYMENT OF INTEREST ON SECURITY DEPOSITS AND MANDATES INCREASED PENALTIES FOR NON-PAYMENT OF SECURITY DEPOSITS, IN ADDITION TO OTHER CHANGES

WHEREAS, the non-payment of security deposits by rental property owners is one of most common grievances raised by tenants throughout California. In a recent survey by Tenants Together, a statewide renters' rights organization, over 60% of tenants surveyed reported that their landlords had improperly withheld security deposits; and

WHEREAS, for many tenants, particularly lower-income tenants, the deposit is one of their biggest financial assets and loss of deposit funds creates significant hardship; and

WHEREAS, Berkeley has a large number of renters, particularly students who rent housing for shorter periods of time. In 1980, Berkeley voters adopted a Rent Stabilization Ordinance, which not only established rent control but also required that security deposits be held in a separate fund and that interest be paid back to tenants on the security deposit on an annual basis; and

WHEREAS, despite these protections one of the biggest landlord tenant problems is the lack of payment of security deposits when a tenant moves out; and

WHEREAS, it is a matter of basic fairness that tenants should receive interest payments when their money is held as a deposit during the tenancy. Landlords regularly invest these funds and receive interest payments from financial institutions. As the security deposit is the tenant's money, interest on the deposit should be paid to the tenant; and

WHEREAS, SB 603 will make the long-overdue change to California law to require that tenants across the state receive interest on security deposits. However the other protections in SB 603 would help prevent the financial hardship of withholding security deposits, which many renters need to help pay for renting a new apartment. This bill will promote fair treatment and payment of security deposits, an issue of great importance to California's 15 million tenants.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby supports Senate Bill 603 which would change state Security Deposit Law (Civil Code Section 1950.3) to establish statewide requirements for the payment of interest on security deposits and mandates increased penalties for non-payment of security deposits, in addition other changes to the law.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Governor Jerry Brown, Senate President Pro Tem Darrell Steinberg, Senator Loni Hancock, Senator Mark Leno, Assembly Speaker John A. Perez and Assemblymember Nancy Skinner.

SENATE BILL**No. 603**

Introduced by Senator LenoFebruary 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as introduced, Leno. Landlord and tenant: security deposit.

Existing law governs the duties of a landlord and the rights of a tenant with respect to demanding, holding, and returning the security for a rental agreement for residential real property, as specified.

Existing law authorizes a court to award statutory damages of up to twice the amount of the security, in addition to actual damages, for 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 these provisions of existing law, or the bad faith demand of replacement security in violation of existing law.

This bill would instead require a court to award the above-described statutory damages for the bad faith claim or retention of security or the bad faith demand of replacement security by a landlord or the landlord's successor in interest. The bill would require an award of statutory damages of not less than the amount of the security, in addition to actual damages, for an unlawful claim or retention or demand of replacement security that is not claimed, retained, or demanded in bad faith.

The bill would require a tenant to be paid interest on security, as specified, and would require a landlord to provide notice of the tenant's right to this interest, except as specified.

The bill would also require all rental deposits to be held by the landlord on behalf of the tenant in an account at a financial institution that is insured by an agency of the federal government and would

prohibit the commingling of rental deposits with the personal funds of the landlord. The bill would require a landlord to notify the tenant of the name and address of where the account was established.

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) (1) 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~~

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

7 ~~This~~

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

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

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

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

1 rights and obligations of the parties under the rental agreement, in
2 order to avoid deductions from the security. If a tenant chooses
3 not to request an initial inspection, the duties of the landlord under
4 this subdivision are discharged. If an inspection is requested, the
5 parties shall attempt to schedule the inspection at a mutually
6 acceptable date and time. The landlord shall give at least 48 hours'
7 prior written notice of the date and time of the inspection if either
8 a mutual time is agreed upon, or if a mutually agreed time cannot
9 be scheduled but the tenant still wishes an inspection. The tenant
10 and landlord may agree to forgo the 48-hour prior written notice
11 by both signing a written waiver. The landlord shall proceed with
12 the inspection whether the tenant is present or not, unless the tenant
13 previously withdrew his or her request for the inspection. Written
14 notice by the landlord shall contain, in substantially the same form,
15 the following:

16
17 “State law permits former tenants to reclaim abandoned personal
18 property left at the former address of the tenant, subject to certain
19 conditions. You may or may not be able to reclaim property without
20 incurring additional costs, depending on the cost of storing the
21 property and the length of time before it is reclaimed. In general,
22 these costs will be lower the sooner you contact your former
23 landlord after being notified that property belonging to you was
24 left behind after you moved out.”

25
26 (2) Based on the inspection, the landlord shall give the tenant
27 an itemized statement specifying repairs or cleanings that are
28 proposed to be the basis of any deductions from the security the
29 landlord intends to make pursuant to paragraphs (1) to (4),
30 inclusive, of subdivision (b). This statement shall also include the
31 texts of paragraphs (1) to (4), inclusive, of subdivision (b). The
32 statement shall be given to the tenant, if the tenant is present for
33 the inspection, or shall be left inside the premises.

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

39 (4) Nothing in this subdivision shall prevent a landlord from
40 using the security for deductions itemized in the statement provided

1 for in paragraph (2) that were not cured by the tenant so long as
2 the deductions are for damages authorized by this section.

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

9 (g) (1) No later than 21 calendar days after the tenant has
10 vacated the premises, but not earlier than the time that either the
11 landlord or the tenant provides a notice to terminate the tenancy
12 under Section 1946 or 1946.1, Section 1161 of the Code of Civil
13 Procedure, or not earlier than 60 calendar days prior to the
14 expiration of a fixed-term lease, the landlord shall furnish the
15 tenant, by personal delivery or by first-class mail, postage prepaid,
16 a copy of an itemized statement indicating the basis for, and the
17 amount of, any security received and the disposition of the security,
18 and shall return any remaining portion of the security to the tenant.
19 After either the landlord or the tenant provides notice to terminate
20 the tenancy, the landlord and tenant may mutually agree to have
21 the landlord deposit any remaining portion of the security deposit
22 electronically to a bank account or other financial institution
23 designated by the tenant. After either the landlord or the tenant
24 provides notice to terminate the tenancy, the landlord and the tenant
25 may also agree to have the landlord provide a copy of the itemized
26 statement along with the copies required by paragraph (2) to an
27 ~~email~~ *e-mail* account provided by the tenant.

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

31 (A) If the landlord or landlord's employee did the work, the
32 itemized statement shall reasonably describe the work performed.
33 The itemized statement shall include the time spent and the
34 reasonable hourly rate charged.

35 (B) If the landlord or landlord's employee did not do the work,
36 the landlord shall provide the tenant a copy of the bill, invoice, or
37 receipt supplied by the person or entity performing the work. The
38 itemized statement shall provide the tenant with the name, address,
39 and telephone number of the person or entity, if the bill, invoice,
40 or receipt does not include that information.

1 (C) If a deduction is made for materials or supplies, the landlord
2 shall provide a copy of the bill, invoice, or receipt. If a particular
3 material or supply item is purchased by the landlord on an ongoing
4 basis, the landlord may document the cost of the item by providing
5 a copy of a bill, invoice, receipt, vendor price list, or other vendor
6 document that reasonably documents the cost of the item used in
7 the repair or cleaning of the unit.

8 (3) If a repair to be done by the landlord or the landlord's
9 employee cannot reasonably be completed within 21 calendar days
10 after the tenant has vacated the premises, or if the documents from
11 a person or entity providing services, materials, or supplies are not
12 in the landlord's possession within 21 calendar days after the tenant
13 has vacated the premises, the landlord may deduct the amount of
14 a good faith estimate of the charges that will be incurred and
15 provide that estimate with the itemized statement. If the reason for
16 the estimate is because the documents from a person or entity
17 providing services, materials, or supplies are not in the landlord's
18 possession, the itemized statement shall include the name, address,
19 and telephone number of the person or entity. Within 14 calendar
20 days of completing the repair or receiving the documentation, the
21 landlord shall complete the requirements in paragraphs (1) and (2)
22 in the manner specified.

23 (4) The landlord need not comply with paragraph (2) or (3) if
24 either of the following applies:

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

27 (B) The tenant waived the rights specified in paragraphs (2) and
28 (3). The waiver shall only be effective if it is signed by the tenant
29 at the same time or after a notice to terminate a tenancy under
30 Section 1946 or 1946.1 has been given, a notice under Section
31 1161 of the Code of Civil Procedure has been given, or no earlier
32 than 60 calendar days prior to the expiration of a fixed-term lease.
33 The waiver shall substantially include the text of paragraph (2).

34 (5) Notwithstanding paragraph (4), the landlord shall comply
35 with paragraphs (2) and (3) when a tenant makes a request for
36 documentation within 14 calendar days after receiving the itemized
37 statement specified in paragraph (1). The landlord shall comply
38 within 14 calendar days after receiving the request from the tenant.

39 (6) Any mailings to the tenant pursuant to this subdivision shall
40 be sent to the address provided by the tenant. If the tenant does

1 not provide an address, mailings pursuant to this subdivision shall
2 be sent to the unit that has been vacated.

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

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

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

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

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

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

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

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

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

1 (2) of subdivision (h) or provides the tenant with an accounting as
2 provided in subdivision (g).

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

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

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

17 (l) ~~(1) The bad faith claim or retention by a landlord or the~~
18 ~~landlord's successors in interest of the security or any portion~~
19 ~~thereof in violation of this section, or the bad faith demand of~~
20 ~~replacement security in violation of subdivision (j), may shall~~
21 ~~subject the landlord or the landlord's successors in interest to~~
22 ~~statutory damages of up to twice an amount not less than the~~
23 ~~amount of the security, in addition to actual damages. The~~

24 *(2) Notwithstanding paragraph (1), the bad faith claim or*
25 *retention by a landlord or the landlord's successors in interest of*
26 *the security or any portion thereof in violation of this section, or*
27 *the bad faith demand of replacement security in violation of*
28 *subdivision (j), shall subject the landlord or the landlord's*
29 *successors in interest to statutory damages of up to twice the*
30 *amount of the security, in addition to actual damages.*

31 ~~(3) The court may shall award statutory damages for bad faith~~
32 ~~pursuant to this subdivision whenever the facts warrant that award,~~
33 ~~regardless of whether the injured party has specifically requested~~
34 ~~relief. In any action under this section, the landlord or the~~
35 ~~landlord's successors in interest shall have the burden of proof as~~
36 ~~to the reasonableness of the amounts claimed or the authority~~
37 ~~pursuant to this section to demand additional security deposits.~~

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

1 (n) (1) Interest on the security shall be paid the second month
2 of each calendar year by the landlord to the tenant on a security
3 held by the landlord. The interest rate shall be the federal reserve
4 discount rate as of December 31 of the preceding calendar year.
5 This subdivision shall not apply in any city, county, or city and
6 county that by charter, ordinance, or regulation requires the
7 payment to tenants of interest on security, nor does it preempt a
8 local ordinance that requires the payment of security deposit
9 interest. A tenant who is entitled to interest under this section but
10 who does not receive the interest payment by the last day of
11 February may deduct three times the interest amount from any
12 rent due on or after March 1 of the same year.

13 (2) A landlord who is subject to this subdivision shall notify all
14 tenants regarding each tenant's right to annually receive interest
15 on his or her security deposit. Notification shall be accomplished
16 by any of the following:

17 (A) Posting a notice at a conspicuous location within the
18 residential premises.

19 (B) Providing a written notice to the tenant at the time of
20 entering into a rental or lease agreement.

21 (C) Sending by first-class mail a written notice to the tenant.

22 (o) (1) A security deposit held by the landlord shall be deposited
23 in an account established and maintained solely for this purpose
24 on behalf of the tenant in a bank, credit union, or other financial
25 institution that is insured by an agency of the federal government.
26 This account may include security deposits from multiple tenants.
27 However, moneys from a security deposit shall not be commingled
28 with the personal funds of the landlord. This account shall not be
29 used except as authorized pursuant to this section.

30 (2) The landlord shall within 20 days of receiving the security
31 deposit provide written notification to the tenant with the name
32 and address, whether physical or electronic, of the financial
33 institution where the account was established.

34 (3) Failure by a landlord to deposit the funds in a federally
35 insured financial institution within 20 days of receiving the funds,
36 or failure to disclose the location of the security deposit account
37 within 20 days of a written request by a tenant, unless the location
38 was disclosed as part of a written lease agreement, shall create a
39 rebuttable presumption in any action under subdivision (l) that

1 *the challenged claim, retention, or demand was undertaken in bad*
2 *faith.*

3 ~~(n)~~

4 *(p)* Any action under this section may be maintained in small
5 claims court if the damages claimed, whether actual or statutory
6 or both, are within the jurisdictional amount allowed by Section
7 116.220 or 116.221 of the Code of Civil Procedure.

8 ~~(o)~~

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

16 ~~(p)~~

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

20 ~~(q)~~

21 *(s)* The amendments to this section made during the 2003 portion
22 of the 2003–04 Regular Session of the Legislature that are set forth
23 in paragraph (1) of subdivision (f) are declaratory of existing law.

