

Documenting Property Condition Before and After a Tenancy: A Good Idea for Both Tenant and Landlord

California law allows a property owner/landlord/property manager (housing provider) to collect from a residential tenant a security deposit before the tenant takes possession. The amount of the security can be equal to two-months' rent for an unfurnished dwelling, and three-months' rent for a furnished unit. At the end of the tenancy, the housing provider can use the security deposit (i) to recover the cost of repairing damage to the premises, exclusive or ordinary wear and tear, and (ii) for cleaning necessary to return the premises to the same level of cleanliness it was in at the beginning of the tenancy. The tenant is entitled to an itemized statement of the use of the security deposit within 21 days of vacating the premises. **The best way to determine if the security deposit is being used for a proper purpose is to document the condition of the property at both the beginning and end of the tenancy.**

Many standard form leases contain a provision similar to paragraph 10 in the C.A.R. Residential Lease or Month-to-Month Rental Agreement (C.A.R. Form LR) to address the condition of the premises. **Options A and B** provide that the premises are satisfactory with possible exceptions written into the lease, or that a Move-In/Move-Out form (C.A.R. Form MIMO) is provided with the lease detailing the condition of the property, room-by-room. These options are best used after a previous tenant has already moved out, the property has been prepared for rental, and the new tenant will take possession shortly after the lease has been signed.

Option C provides that the MIMO will be provided sometime after the lease has been signed and the tenant agrees to complete and sign it. If the housing provider has already indicated the condition of the property on the MIMO, and the tenant disagrees, the tenant should write remarks into the comment section of the form, sign it, make a copy and return it. This option is best for situations where the new tenant signs a lease with a delayed possession date because either an existing tenant has not yet moved out, or the housing provider has not yet had a chance to prepare a recently vacated unit for possession. **Option D** requires the tenant to provide the housing provider with a list of damaged or inoperable items within 3 days after commencement of the lease.

Regardless of which option is chosen, it is a good idea to take pictures of pre-occupancy possession to make it easy to verify the condition in case a dispute occurs later.

Prior to termination of a tenancy, a housing provider must give a tenant an opportunity to have an inspection before the tenant moves out. The purpose of the inspection is to give the tenant an opportunity to repair damage and clean the property to avoid having the security deposit used for those damages. The MIMO should not be used to document that inspection. Instead, use the Pre-Move Out Inspection Statement (C.A.R. Form PMOI) to list those items the tenant needs to repair to avoid deductions from the security deposit. Once the tenant moves out, the Move-Out portion of the MIMO is used to document the final condition of the premises to easily compare pre and post occupancy.

If there has been no damage, other than normal wear and tear, and the premises are as clean as when the tenant moved in, the security deposit cannot be used for those purposes, but can still be used for other allowed purposes such as unpaid rent, for example.