

## CHAPTER 7. SECURITY DEPOSITS

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701. Security Deposits

(A) Any security deposit or payment, as that term is defined in Section 7 of the Ordinance, shall be held by the landlord in a fiduciary capacity for the benefit of the tenant until such time as it is returned to the tenant or entitled to be used by the landlord pursuant to Section 1950.5 of the California Civil Code.

(B) Until such time as it is returned to the tenant or is entitled to be used by the landlord as provided in Civil Code section 1950.5, the security deposit or payment shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by insured commercial banks. The Rent Board shall compute and publicize the interest rates applicable under this section as provided in Regulation 702 on an ongoing basis.

(C) The 12-month average of the rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board on the first business day of each month for each calendar year between 1980 and 2013 is set forth in the following table:

| <b>Year</b> | <b>Rate</b> | <b>Year</b> | <b>Rate</b> |
|-------------|-------------|-------------|-------------|
| 1980        | 13.6%       | 1997        | 5.7%        |
| 1981        | 15.0%       | 1998        | 5.5%        |
| 1982        | 12.8%       | 1999        | 5.4%        |
| 1983        | 9.2%        | 2000        | 6.6%        |
| 1984        | 10.7%       | 2001        | 3.8%        |
| 1985        | 8.3%        | 2002        | 1.8%        |
| 1986        | 6.6%        | 2003        | 1.2%        |
| 1987        | 6.9%        | 2004        | 1.6%        |
| 1988        | 7.8%        | 2005        | 3.4%        |
| 1989        | 9.1%        | 2006        | 5.1%        |
| 1990        | 8.3%        | 2007        | 5.3%        |
| 1991        | 6.0%        | 2008        | 3.4%        |
| 1992        | 3.8%        | 2009        | 1.1%        |
| 1993        | 3.4%        | 2010        | 0.4%        |
| 1994        | 4.8%        | 2011        | 0.4%        |
| 1995        | 6.0%        | 2012        | 0.5%        |
| 1996        | 5.5%        | 2013        | 0.3%        |

(D) The 12-month average of the rates of interest paid on six-month certificates of deposit by insured commercial banks doing business in the City of Berkeley since 2009 is set forth in the following table:

| <b>Year</b> | <b>Rate</b> |
|-------------|-------------|
| 2009        | 0.9%        |
| 2010        | 0.4%        |
| 2011        | 0.3%        |
| 2012        | 0.2%        |
| 2013        | 0.1%        |
| 2014        | 0.1%        |
| 2015        | 0.1%        |
| 2016        | 0.1%        |
| 2017        | 0.1%        |
| 2018        | 0.1%        |
| 2019        | 0.2%        |
| 2020        | 0.2%        |
| 2021        | 0.0%        |
| 2022        | 0.1%        |
| 2023        | 0.7%        |
| 2024        | 1.2%        |
| 2025        | 0.9%        |

[Amended 8/08, removed wording in Section (B) "as published by the Federal Reserve Board" and added "as provided in Regulation 702" in last sentence of (B); amended 3/10 to correct (C) 2007 rate to 5.3% and added rates for 2008 and 2009; amended 2/11 to correct (C) with 2008 rate of 3.4% and added rate for 2010; amended 4/14 to add language to Section (C) and add Section (D).]

## 702. Payment of Interest on Security Deposits

(A) **Background and Purpose.** As amended by Measure P in 2004, Berkeley Municipal Code (B.M.C.) Section 13.76.070 provides that tenant security deposits held by a landlord “shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by insured commercial banks” until the deposit is returned to the tenant. The section further provides that the interest accrued through October 31st of each year shall be returned to the tenant annually in December of each year “at a rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board on the first business day of each month for the prior 12 months ending on November 1st.” Following the enactment of Measure P, the Rent Board amended Regulation 702 to implement the language of section 13.76.070 by requiring the Board to calculate the average of the six-month CD rates published in the Federal Reserve Board’s Statistical Release H.15 on the first business day of each month. The Federal Reserve Board’s Statistical Release H.15 contains daily interest rates for selected U.S. Treasury and private money market and capital market instruments, including rates for one-, three- and six-month CDs.

The Federal Reserve Board ceased publication of the H.15 rate in July of 2013. After six months of failing to publish an H.15 rate, the Federal Reserve Board issued a statement that the H.15 would cease publication of six-month CD rates due to the lack of data available to derive these rates. Since 2008, the Board has allowed landlords to return security deposit interest “at the rate equal to the 12-month average of the average rates of interest (APY) paid on the first business day of each month for six-month certificates of deposits (\$5,000 minimum deposit) by insured commercial banks doing business in the City of Berkeley” if the landlords identify the account in which the deposit is held when the yearly interest is paid.

Given that the H.15 rate is no longer published, the Board amended this regulation to mandate that tenants’ security deposits earn interest only at the rate equal to the 12-month average of the average rates of interest (APY) paid on the first business day of each month for six-month certificates of deposits (\$5,000 minimum deposit) by insured commercial banks doing business in the City of Berkeley. Should the Federal Reserve Board publish an H.15 or comparable rate in the future, the Board will amend this regulation to again use that rate to calculate tenants’ security deposit interest as mandated by B.M.C. Section 13.76.070.

(B) Once a year in December, the landlord shall return to each tenant the amount of interest accrued by the tenant’s security deposit through October 31 of that year either as a rent rebate or cash payment.

(C) The interest payable in December of each year shall be at the rate equal to the 12-

month average of the average rates of interest (APY) paid on the first business day of each month for six-month certificates of deposits (\$5,000 minimum deposit) by insured commercial banks doing business in the City of Berkeley. The Rent Board shall compute the interest rate applicable under this subdivision by averaging the interest rates offered for six-month certificates of deposit on the first business day of each month by commercial banks that are located in the City of Berkeley.

(D) (1) Upon the tenant's departure from the premises, the balance of any interest accrued since the last October 31<sup>st</sup> shall be paid at the applicable average monthly rate for the 12 months immediately preceding the date of departure and shall be returned to the tenant along with the appropriate part of the principal and any prior unpaid interest. (2) For terminating tenancies that spanned the immediately preceding October 31<sup>st</sup>, the applicable rate upon departure shall be computed on the same basis as the interest paid for the immediately preceding annual interest payment. (3) For terminating tenancies that commenced on or after the immediately preceding November 1<sup>st</sup>, the applicable rate shall be the rate computed pursuant to Subdivision (C).

(E) (1) If a landlord has not previously returned interest to which a tenant is entitled, the landlord shall return to the tenant all interest earned on said security deposit which has accrued from June 28, 1980, or the date of commencement of tenancy, whichever is later, until the date upon which the payment was made. (2) Except as provided in Regulation 704, interest that accrued and was not returned to the tenant shall be computed as follows:

a. The interest that accrued and was not returned to the tenant prior to December 31, 2004, shall be at the actual rate that the deposit earned or, if the actual rate cannot be established by documentation, the rate for each calendar year or part thereof shall be equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board on the first business day of each month during that calendar year, as printed in the table contained in Regulation 701(C).

b. The interest that accrued and was not returned to the tenant between 2004 and 2008, shall be at the rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board on the first business day of each month during that calendar year, as printed in the table contained in Regulation 701(C).

c. The interest that accrued and was not returned to the tenant between 2009 and 2013 shall be either:

(i) At the rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks

as published by the Federal Reserve Board on the first business day of each month during that calendar year, as printed in the table contained in Regulation 701(C); or,

(ii) Where the tenant's security deposit was held in an insured account at a bank or savings institution located within the City of Berkeley, equal to the 12-month average of the average rates of interest paid on the first business day of each month for six-month certificates of deposits by insured commercial banks doing business in the City of Berkeley, as printed in the table contained in Regulation 701 (D), provided that, at the time the interest is returned to the tenant, the landlord furnishes the tenant and the Rent Board with the identity of the bank account used during the time period claimed on a form provided by the Board. If a landlord is unable to identify the bank account where the deposit was held, the landlord must pay the rate as outlined in Section (E)(2)(c)(i) above.

d. After November 1, 2013, the interest that accrued and was not returned to the tenant shall be equal to the 12-month average of the average rates of interest paid on the first business day of each month for six-month certificates of deposits by insured commercial banks doing business in the City of Berkeley, as printed in the table contained in Regulation 701(D), regardless of whether the tenant's security deposit was held in an insured account at a bank or savings institution located within the City of Berkeley.

[Amended 8/08, changed Sections (C) to (D) and (D) to (E) and added a new Section (C); Amended 2/10, added Sub-sections (2), (3) & (4) to Section (D). Amended 4/11, changed Section (D)(1). Amended 10/13, added last two sentences to Section (B). Amended 4/14, added a new Section A, changed the previous Section (A) to (B), deleted section (B), deleted portions of Section (C), deleted portions of Section (D)(3) and Section (D)(4) in its entirety, added Subsections (1), (2)(a),(2)(b),(2)(c)(i), (2)(c)(ii), and (2)(d), to Section (E).]

703. Payment of Interest Where Funds are not Deposited – **\*\*REPEALED 12/6/04\*\***

(A) If the landlord fails to place the payment or deposit at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the landlord shall nevertheless pay interest on said deposit or payment to the tenant. The interest due the tenant shall be the greater of:

(1) The passbook rate which would have been paid by such an institution had the monies been properly deposited;

(2) The legal rate of interest on unpaid judgements established by the State of California; (Code of Civil Procedures 685.10)

(3) The interest actually earned by the deposit or payment in the use to which the landlord put the monies; or

(4) If the security deposit is in the form of an advance payment of six or more months= rent, twenty percent.

(B) Payment of interest pursuant to Regulation 703 shall not relieve the landlord of any of the penalties or disabilities otherwise imposed by Regulation or the Rent Stabilization and Eviction for Good Cause Ordinance and any amendments thereto.

[Effective Date: February 8, 1984 and amended November 5, 1999; **Repealed December 6, 2004**]

#### 704. Deduction of Interest from Rent

Where a tenant has not received refund of security deposit interest by January 31 of any year for any preceding calendar years, the tenant may recover the interest by deducting the interest amount from rent, under the procedure in this regulation. For purposes of this regulation, the interest rate for the immediately preceding calendar year is 10%. For all other preceding years, the interest rate shall be as set forth in the table contained in Regulation 701(C).

[Effective Date: May 25, 1990; amended November 5, 1999; amended April 4, 2005; amended to make clear that 10% interest rate automatically attaches to unpaid security deposit interest for the immediately preceding year after January 31 of any year, and tenant does not have to give landlord notice of intention to deduct interest from rent – 9/19/19]

705. Prohibiting the Increase of Security Deposit during a Tenancy

(A) Except as provided in subsection (B), any amount demanded, accepted or retained by a landlord as a security deposit within the meaning of Section 1950.5 of the California Civil Code shall not be increased for any tenant during the term of the tenancy. Landlords may demand, accept or retain the amount of security allowed in Civil Code Section 1950.5 upon the commencement of a new tenancy.

(B) With the written consent of the tenant and only to the extent allowed by state law, a landlord may collect and retain additional security during the tenancy as consideration for allowing the tenant to keep a pet or pets at the premises where such pet ownership was not previously permitted.

[Effective July 19, 1991, amended June 6, 2005 by adding Subsection (A) and (B)]

706. Refund of Security Deposit

(A) Any portion of a security deposit retained by a landlord in violation of Civil Code section 1950.5 is deemed to be a rent overcharge subject to recovery by the tenant under Regulation 1271.

(B) Unless otherwise agreed by the landlord and tenant, a landlord shall not be required to refund any portion of a security deposit until twenty-one (21) days after the landlord recovers possession of the rental unit. A landlord does not recover possession of a rental unit unless the premises are free of all occupants, including tenants, subtenants, guests, licensees, and squatters who entered the premises with knowledge and consent of the tenants or subtenants while the unit was in their possession.

(C) A co-tenant who vacates a rental unit and who is not reimbursed for his or her security deposit by the remaining or incoming co-tenant(s) or subtenants shall be entitled to recover his or her portion of the security deposit from the landlord in accordance with Civil Code section 1950.5 after the landlord has recovered possession of the rental unit as provided in Subsection (B). If a landlord was notified of a vacating tenant=s retention of his or her rights to a security deposit and of the vacating tenant=s forwarding address, the landlord shall mail or deliver the refund and/or itemization, in accordance with Civil Code section 1950.5(f), to the tenant=s forwarding address. A tenant=s failure to provide the aforementioned notice shall not by itself constitute a waiver of the tenant=s right to his or her security deposit. The one-year period for acceptance of petitions by former tenants set forth in Regulation 1206(D) shall not begin to run with respect to petitions seeking a refund of security deposit until possession of a rental unit is recovered by the landlord.

[Effective July 9, 1999]

707 - 799 (RESERVED)