

SENATE BILL REPORT

ESHB 2064

As Passed Senate, March 2, 2022

Title: An act relating to security deposits and damages arising out of residential tenancies.

Brief Description: Concerning security deposits and damages arising out of residential tenancies.

Sponsors: House Committee on Housing, Human Services & Veterans (originally sponsored by Representatives Peterson, Simmons, Chopp, Lekanoff and Taylor).

Brief History: Passed House: 2/13/22, 98-0.

Committee Activity: Housing & Local Government: 2/22/22, 2/23/22 [DP].

Floor Activity: Passed Senate: 3/2/22, 48-0.

Brief Summary of Bill

- Authorizes landlords to offer tenants the option of paying an entirely or partially nonrefundable fee in lieu of a security deposit.
- Requires landlords to use the fee in lieu of a security deposit to purchase insurance coverage for losses associated with unpaid rent or unit damage.
- Provides certain requirements, limitations, and timelines for landlords and insurers when undertaking collection activities to receive reimbursement from tenants who opt into paying a fee in lieu of a security deposit.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: Do pass.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Cleveland, Lovelett, Salomon, Sefzik, Trudeau, Warnick and Wilson, J.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Brandon Popovac (786-7465)

Background: Residential-Landlord Tenant Act—Generally. The Residential Landlord-Tenant Act (RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. The RLTA establishes rights and duties of both tenants and landlords, procedures for the parties to enforce their rights, and remedies for violations of the RLTA.

Deposits and Fees. Under the RLTA, a landlord may collect deposits, fees, and other amounts before, or at the outset of, a tenancy such as:

- a tenant screening fee, subject to provisions governing the amount that may be charged and the information that must be provided to the tenant;
- a deposit or fee to hold the dwelling unit after the tenant has been offered the unit and is no greater than 25 percent of the first month's rent—if the tenant moves in, the landlord must credit the fee or deposit to the first month's rent or the security deposit;
- a damage or security deposit, to cover any damage caused to the property by the tenant in excess of normal wear and tear;
- a nonrefundable fee, including a cleaning fee that is not for normal cleaning; and
- first and last month's rent.

Security Deposit. Under the RLTA, a landlord may collect a damage or security deposit to cover any damage caused to the property by the tenant in excess of normal wear and tear resulting from ordinary use, which must be placed in a trust account. To collect such a deposit, the rental agreement must be in writing, and the landlord must provide the tenant at the commencement of the tenancy a written checklist or statement specifically describing the condition and cleanliness of, or existing damages to, the premises and furnishings, including walls, floors, countertops, carpets, drapes, furniture, and appliances.

Within 21 days after the termination of the rental agreement and vacation of the premises, or after abandonment by the tenant, the landlord must give a full and specific statement of the basis for retaining any of the deposit and pay any refund owed to the tenant. Any portion of the deposit may not be withheld because of wear resulting from ordinary use of the premises.

Installment Payments. Upon written request from a tenant and if the total amount of the deposits and nonrefundable fees exceed 25 percent of the first full month's rent and payment of the last month's rent, a landlord must permit the tenant to pay any deposits, nonrefundable fees, and last month's rent in installments, as follows:

- in all cases where premises are rented for a specified time, three months or longer, the tenant may elect to pay in three consecutive and equal monthly installments, at the inception of the tenancy; and
- in all other cases, the tenant may elect to pay in two consecutive and equal monthly installments, at the inception of the tenancy.

Summary of Bill: A landlord may offer the tenant the option of paying a fee in lieu of a full security deposit. The landlord may not use the fact a prospective tenant opts to pay the fee in lieu of a security deposit as a criterion in determining whether to rent to that tenant. Any landlord who offers the fee in lieu of the security deposit must offer the choice of the fee to every prospective tenant whose application for occupancy has been approved, without regard to certain protected class statuses as well as income, household size, and credit score. Any tenant that agrees to pay a fee in lieu of a security deposit may opt out of the continuing fee and instead pay a security deposit that is otherwise in effect for the tenant's unit at the time the tenant chooses to opt out of the fee. The landlord must provide the tenant at the commencement of the tenancy a written checklist or statement specifically describing the condition and cleanliness of, or existing damages to, the premises and furnishings, as required when the tenant provides the security deposit to the landlord.

When a landlord offers the tenant the choice of paying a fee in lieu of the security deposit, the landlord must disclose to the tenant in writing, as part of a newly created disclosure form, the following:

- the terms of any insurance coverage purchased by the landlord for landlord losses associated with any unpaid rent and unit damage paid for by the fee, including rent, fees, unit damage in excess of wear resulting from ordinary use, or any coverage cap amounts and excluded coverage costs; and
- if the insurance provider requires the landlord to first attempt reimbursement from the tenant before filing a claim, that payment of the fee does not preclude the insurer or the landlord from filing an action against the tenant to recover unpaid amounts under the lease and unpaid costs for damage to the property for which the tenant is responsible, but not including wear resulting from ordinary use.

The landlord must provide the disclosure form with any lease and renewal that includes the option to pay a fee instead of a security deposit. The Office of the Attorney General must make this form available in the 12 most commonly spoken languages in Washington.

Any fee in lieu of a security deposit:

- may be entirely or partially nonrefundable as long as such terms are disclosed in the lease and acknowledged by the tenant;
- does not constitute rent and failure to pay the fee may not constitute a cause for eviction, but a landlord may pursue a civil action against a tenant to recover unpaid fees;
- must be used by the landlord to purchase insurance coverage for landlord losses associated with unpaid rent or fees or unit damage excluding wear resulting from ordinary use, but the landlord may not charge the tenant a fee that is more than the cost of obtaining and administering such coverage;
- may be a recurring monthly fee or payable upon any schedule and in any amount the landlord and tenant choose, but the first month's fee is nonrefundable as contemplated under RLTA provisions addressing installment payments; and
- must not be considered by a court, arbitrator, mediator, or any other dispute resolution

adjudicator to be a security deposit or governed by state or local codes governing security deposits.

If the landlord fails to purchase or maintain insurance coverage with the fee in lieu of the security deposit as required, and if the tenant pays the monthly fee as agreed, the landlord must credit the total insurance coverage stated in the disclosure to any indebtedness owed by the tenant when the tenant vacates the unit. If through no fault of the landlord, the insurer is suddenly unable to do business in Washington or is otherwise incapable of fulfilling its obligation, the landlord is not required to credit the insurance coverage stated in the disclosure to any indebtedness owed by the tenant upon the tenant vacating the unit. The landlord may not discontinue or alter the terms of insurance during the term of the rental agreement. If the landlord decides to discontinue providing the option of paying a fee in lieu of a security deposit, the landlord must:

- provide 60 days notice to the tenant prior to end of term or period;
- reduce the deposit by the amount of a tenant's previous fee payments in lieu of the deposit; and
- offer the tenant an installment plan to pay any remaining balance for the security deposit over three months.

If an insurer compensates a landlord for a valid claim associated with the landlord losses pursuant under the lease:

- the landlord may not seek reimbursement of the amounts from the tenant that the insurer paid to the landlord;
- the insurer may seek reimbursement from the tenant, if the insurer has subrogation rights, but only for the amounts paid to the landlord that were owed by the tenant to the landlord under the lease and not for amounts, if any, paid to the landlord for repair of wear resulting from ordinary use; and
- the tenant is entitled to any defenses to payment against the insurer as against the landlord.

If the insurer or any other collector seeks and requests reimbursement from the tenant pursuant to any subrogation rights available to the insurer, the insurer or collector must provide the tenant by first-class mail, and e-mail if available, at the tenant's last known address:

- all documentation or evidence submitted by the landlord for reimbursement by the insurer;
- all documentation or evidence of repair costs that the landlord submitted to the insurer;
- a copy of the settled claim that documents payments made by the insurer to the landlord; and
- information on how to contact the insurer or collector seeking reimbursement to dispute any claim.

If the tenant fails to pay a request by an insurer or collector for reimbursement, the insurer

or collector may not commence collection activities against the tenant less than 60 days after sending a request for reimbursement and providing documentation. If the tenant has disputed the claim, the insurer or collector must defer any collection activities for an additional 60 days to resolve the dispute.

The landlord may not send an invoice to a tenant or undertake collection activity against the tenant for any amounts after submitting a claim to the insurer if:

- the insurer approved the claim;
- the insurer denied the claim because it is not a loss pursuant to the lease; or
- the insurer denied the claim because the landlord submitted insufficient documentation or proof to substantiate the claim.

The landlord may invoice the tenant and undertake collection activity against a tenant for the landlord's losses if the insurer denies the claim because the loss is not covered under the insurance agreement, including if the value of the loss exceeded the insurance coverage loss limit.

Any judicial action or other collection activity by a landlord to recover losses against a tenant who paid a fee in lieu of a security deposit for unpaid rent, fees, or damages in excess of wear resulting from ordinary use, and has vacated the unit, must begin within one year of the termination of the rental agreement or the tenant's abandonment of the premises and must comply with certain deposit requirements for the documentation of damage, standards for normal wear and tear, or other standards of proof required to make a claim against a deposit. The one-year requirement to initiate the action or collection activity does not apply if the tenant opts out of, or the landlord discontinues providing the option of, paying a continuing fee in lieu of a security deposit during the tenancy and the tenant provides full payment of a security deposit before termination of the rental agreement or the tenant's abandonment of the premises.

Before undertaking a collection activity for damages arising out of the tenancy after the tenant who paid a fee in lieu of a security deposit vacates, the landlord must:

- notify the tenant of the damages or any unpaid rent or fees in a manner consistent with the RLTA;
- forward to the tenant documentation substantiating the damages; and
- wait until 60 days after notifying the tenant of the damages and providing documentation substantiating the damages, whichever is later, to allow ample time for the insurance company to consider the landlord's insurance policy, including coverage and sufficiency of the claims and documentation submitted, including appeals, if any, of the insurer's claims decision.

If a tenant has opted into paying a fee in lieu of a security deposit, the landlord must not undertake collection activities against the tenant unless 60 days have passed after the landlord has submitted a claim to the insurer, but may send an invoice to the tenant before submitting a claim to the insurer.

A landlord found in material violation of the act must be held liable to the tenant in a civil action up to two times the monthly rent of the unit at issue, as well as court or arbitration costs and reasonable attorneys' fees.

"Collection activity" is defined as attempts to collect any monetary obligation or damages from the tenant, including threats or notice to collect any such amounts through a collection agency or filing of a judicial action, but does not include the transmission of an invoice and supporting detail of unpaid rent, unpaid fees, or the costs of repairing damages beyond wear resulting from ordinary use.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A security deposit is a very high cost for tenants in some instances, often forcing tenants to squeeze into smaller units. Tenants who live paycheck to paycheck cannot afford high security deposits. The bill resonates with younger tenants. Some insurance products available in the state as contemplated in the bill average a \$28 fee per month in Washington State. The bill addresses issues of tenant protections thanks to collaborative work with low-income housing and tenant advocates, and improves upon last year's version. Tenants will benefit from fairer disclosures when choosing this alternative fee option. The tenant will understand the full scope of what they are paying for if choosing the alternative fee. Damages not covered under an insurance policy are not subject to collections unless certain documentation is provided to the tenant.

Persons Testifying: PRO: Matt Dederer; Jon Potter, LeaseLock; Sarah Nagy, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: No one.