

RCW 59.18.670 Security deposit—Landlord waiver, disclosure form—Fee in lieu—Claims for losses—Judicial action, collection activity—Violation. (1) Notwithstanding any other provision of law, if a landlord chooses to waive a security deposit requirement, and a tenant agrees to instead pay a fee in lieu of a security deposit, the landlord shall:

(a) Ensure that the fee in lieu of a security deposit is strictly optional for the tenant, and the tenant may choose to pay a full security deposit rather than a fee in lieu of a security deposit;

(b) Not use a prospective tenant's choice to pay a fee in lieu of a security deposit or a traditional security deposit as a criterion in the determination of whether to approve an application for occupancy;

(c) If choosing to offer the fee in lieu of a security deposit option, offer it to every prospective tenant whose application for occupancy has been approved, without further regard to income, race, gender, disability, source of income, sexual orientation, immigration status, size of household, or credit score;

(d) Allow any tenant that agrees to pay a fee in lieu of a security deposit to opt out of the continuing fee in lieu of a security deposit obligation upon full payment of the security deposit that is listed in the disclosure form pursuant to (f)(ii) of this subsection, and in the event the tenant seeks to pay a security deposit, RCW 59.18.610 shall apply;

(e) Provide a written checklist to the tenant pursuant to RCW 59.18.260; and

(f)(i) Disclose to the tenant in writing:

(A) The terms of any insurance coverage purchased by the landlord for landlord's losses associated with any unpaid amounts due from the tenant to the landlord pursuant to the lease, including but not limited to rent, fees, or unit damage in excess of wear resulting from ordinary use of the premises, and including the amount of exclusions or caps, if any, on coverage of any amounts due from the tenant to the landlord pursuant to the lease; and

(B) If the insurance provider requires the landlord to first attempt reimbursement from the tenant before filing a claim, that payment of the fee in lieu of a security deposit does not preclude the insurer or the landlord from proceeding against the tenant to recover any unpaid amounts due to the landlord pursuant to the lease and unpaid costs to repair damage to the property for which the tenant is responsible pursuant to the lease but never to include any sums for wear resulting from ordinary use of the premises, together with reasonable attorneys' fees.

(ii) Such disclosures to the tenant must be in substantially the following form:

YOU MAY PAY A MONTHLY FEE INSTEAD OF A SECURITY DEPOSIT. This fee is not a security deposit and will not be refunded when you move. By paying this fee the landlord is permitting you to move into the housing unit without paying a security deposit. If you do not make all payments or you damage the premises beyond wear resulting from its ordinary use, you may be required by the landlord, an insurance company, or a debt collector to pay the unpaid amounts, including costs of repairing the damages in excess of wear resulting from ordinary use of the premises.

Washington state law may allow you three different options:

- (1) Paying the full security deposit upon signing the lease.
- (2) If applicable, paying the full security deposit and other move-in fees in up to three installments (see below for more detail).

***some local laws provide for a longer period of time.*

(3) If offered by your landlord, paying a monthly deposit waiver fee instead of a security deposit. If you choose this option, you will not pay a security deposit or last month's rent in advance. Your recurring monthly charge will be \$_____ IN ADDITION to your monthly rent payment, instead of a security deposit and/or last month's rent in the amount of \$_____.

IF YOU CHOOSE TO PAY A MONTHLY DEPOSIT WAIVER FEE INSTEAD OF A SECURITY DEPOSIT, HERE IS THE AMOUNT YOU WILL PAY OVER THE LEASE TERM COMPARED TO THE ONE-TIME DEPOSIT PAYMENT:

Monthly Nonrefundable Deposit Waiver Fee:

One-time Refundable Security

Total cost of monthly fees over lease term:

Deposit: _____

In the event your tenancy terminates and you have not paid rent or other amounts due pursuant to the lease, and you have not paid to repair damages beyond wear resulting from ordinary use of the premises, insurance coverage will pay your landlord up to:

\$ _____ for any unpaid rent and fees, and

\$ _____ for any damages.

Total coverage: \$ _____

IMPORTANT: IF YOU CHOOSE TO PAY A RECURRING MONTHLY FEE INSTEAD OF A SECURITY DEPOSIT:

- (1) YOU ARE NOT AN INSURED PARTY UNDER THE INSURANCE POLICY PURCHASED BY THE LANDLORD USING YOUR FEES;
- (2) YOU ARE NOT A BENEFICIARY TO ANY INSURANCE COVERAGE OR ANY INSURANCE BENEFITS UNDER THE INSURANCE POLICY THAT THE LANDLORD PURCHASES USING YOUR FEES; AND
- (3) YOU ARE STILL OBLIGATED TO PAY RENT AND ALL PAYMENTS REQUIRED BY THE LEASE, INCLUDING COSTS TO REPAIR DAMAGES BEYOND WEAR RESULTING FROM ORDINARY USE OF THE PREMISES.

The landlord may seek payment from you before filing any claims with the insurance provider. If you fail to pay the landlord for unpaid rent or other unpaid payments or the costs to repair damages beyond wear resulting from ordinary use of the premises, and an insurer pays the landlord instead, then the insurer may seek reimbursement from you of its payments to the landlord.

If you choose to pay a recurring monthly fee instead of a security deposit, then you are permitted at any time to pay the landlord a security deposit in the amount of \$_____ and stop paying the recurring fee beginning in the month following payment of the security deposit.

(iii) The landlord shall provide the disclosure form to the tenant with any lease and renewal that includes the option to pay a fee instead of a security deposit.

(iv) The office of the attorney general shall make this form available in the 12 most commonly spoken languages in Washington.

(2) Any fee in lieu of a security deposit:

(a) May be entirely or partially nonrefundable, so long as this is disclosed in the lease and separately acknowledged by the tenant;

(b) Does not constitute rent as defined in RCW 59.18.030 and failure to pay may not constitute a cause for eviction under any grounds set forth in RCW 59.18.650, provided that nothing in this section shall preclude the landlord from proceeding in a civil action against, and the landlord shall have the right to proceed against, a tenant to recover unpaid fees;

(c) Must be utilized by the landlord to purchase, from a lawful insurer, coverage for landlord's losses associated with any unpaid amounts due from the tenant to the landlord pursuant to the lease, including but not limited to rent, fees, or unit damage in excess of wear resulting from ordinary use of the premises, provided that a landlord may not charge a fee that is more than the cost of obtaining and administering such insurance;

(i) In the event the landlord fails to purchase or maintain the insurance provided for in this subsection (2)(c), and if the tenant pays the monthly fee as agreed, the landlord shall credit the total insurance coverage stated in the disclosure to any indebtedness owed by the tenant upon the tenant vacating the unit. However, if through no fault of the landlord, the insurer is suddenly unable to do business in Washington state 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.

(ii) The landlord may not discontinue or alter the terms of insurance during the term of the rental agreement. However, if the landlord decides to discontinue providing the option of paying a fee in lieu of a security deposit, the landlord shall:

(A) Provide 60 days' notice to the tenant prior to end of term or period;

(B) Reduce the deposit by the amount of a tenant's previous fee payments in lieu of the deposit; and

(C) Offer the tenant an installment plan to pay any remaining balance for the security deposit over three months;

(d) May be a recurring monthly fee, or payable upon any schedule and in any amount that the landlord and tenant choose, provided that the first month's fee is a nonrefundable fee as contemplated under RCW 59.18.610; and

(e) Shall 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.

(3)(a) If an insurer compensates a landlord for a valid claim associated with the landlord's losses pursuant to the lease, including but not limited to rent, fees, or unit damage in excess of wear resulting from ordinary use of the premises:

(i) The landlord may not seek reimbursement of the amounts from the tenant that the insurer paid to the landlord;

(ii) In the event the insurer has subrogation rights, the insurer may seek reimbursement from the tenant but only for the amounts paid to the landlord that were owed by the tenant to the landlord pursuant to the lease, and in no circumstances for amounts, if any, paid to the landlord for repair of wear resulting from ordinary use of the premises; and

(iii) The tenant is entitled to any defenses to payment against the insurer as against the landlord, including any defenses under RCW 59.18.280 or other relevant laws.

(b) If the insurer or any other collector seeks reimbursement from the tenant pursuant to any subrogation rights available to the insurer, with any request for reimbursement, the party must provide the tenant by first-class mail, and email if available, at the last known address as provided by the landlord:

(i) All documentation or other evidence submitted by the landlord for reimbursement by the insurer;

(ii) All documentation or evidence of repair costs that the landlord submitted to the insurer;

(iii) A copy of the settled claim that documents payments made by the insurer to the landlord; and

(iv) Information about how to contact the insurer or collector seeking reimbursement to dispute any claim.

(c) If the tenant fails to pay a request by an insurer or collector for reimbursement under this subsection, the party seeking reimbursement may not commence collection activities against the tenant less than 60 days after sending a request for reimbursement and providing documentation as required under (b) of this subsection. However, if the tenant has disputed the claim, the party seeking reimbursement shall defer any collection activities for an additional 60 days to resolve the dispute.

(d) Except as provided in (e) of this subsection, 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:

(i) The insurer approved the claim;

(ii) The insurer denied the claim because it is not a loss pursuant to the lease; or

(iii) The insurer denied the claim because the landlord submitted insufficient documentation or proof to substantiate the claim.

(e) Notwithstanding (d) of this subsection, the landlord may invoice the tenant and undertake collection activity against a tenant for landlord's losses if the insurer denies the claim because the loss is not covered pursuant to the insurance agreement, including if the value of the loss exceeded the insurance coverage loss limit.

(4) Any judicial action or other collection activity by a landlord to recover losses from a tenant who has paid a fee in lieu of a security deposit and has vacated the dwelling unit, including for unpaid rent, unpaid fees, or the costs of repairing damages in excess of wear resulting from ordinary use of the premises, shall be commenced within one year of the termination of the rental agreement or the tenant's abandonment of the premises and shall otherwise comply with the requirements in RCW 59.18.280 insofar as they relate to documentation of damages, standards for damages beyond wear resulting from ordinary use of the premises, or other standards of proof required to make a claim against a deposit in RCW 59.18.280.

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

(i) Notify the tenant of the damages or any unpaid rent or fees in a manner consistent with RCW 59.18.280 or other relevant law;

(ii) Forward to the tenant documentation substantiating the damages; and

(iii) For the purposes of allowing 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, not

undertake any collection activity for any debt against the tenant until 60 days after notifying the tenant and providing the documentation pursuant to (a)(i) and (ii) of this subsection, whichever is later.

(b) Where the tenant has opted into paying a fee in lieu of a security deposit in subsection (1) of this section, the landlord shall not undertake collection activities against the tenant unless 60 days have passed after the landlord has submitted a claim to the insurer. However, nothing in this subsection (4)(b) shall be construed to prohibit the landlord from sending an invoice to the tenant before submitting a claim to the insurer.

(c) This subsection (4) shall not apply where 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 prior to the termination of the rental agreement or the tenant's abandonment of the premises.

(5) A landlord found in material violation of chapter 81, Laws of 2022 shall be held liable to the tenant in a civil action up to two times the monthly rent of the real property unit at issue, as well as court or arbitration costs and reasonable attorneys' fees.

(6) As used in this section, "collection activity" means 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, provided that it shall not mean the transmission of an invoice and supporting detail of unpaid rent, unpaid fees[,] or the cost of repairing damages beyond wear resulting from ordinary use of the premises. [2022 c 81 § 1.]