H-2470.2

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**SUBSTITUTE HOUSE BILL 2064**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** House Housing, Human Services & Veterans (originally sponsored by Representatives Peterson, Simmons, Chopp, Lekanoff, and Taylor)

AN ACT Relating to security deposits and damages arising out of residential tenancies; reenacting and amending RCW 59.18.030; and adding a new section to chapter 59.18 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 59.18 RCW to read as follows:

(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 this act 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.

**Sec.**  RCW 59.18.030 and 2021 c 212 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Active duty" means service authorized by the president of the United States, the secretary of defense, or the governor for a period of more than 30 consecutive days.

(2) "Certificate of inspection" means an unsworn statement, declaration, verification, or certificate made in accordance with the requirements of chapter 5.50 RCW by a qualified inspector that states that the landlord has not failed to fulfill any substantial obligation imposed under RCW 59.18.060 that endangers or impairs the health or safety of a tenant, including (a) structural members that are of insufficient size or strength to carry imposed loads with safety, (b) exposure of the occupants to the weather, (c) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (d) not providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant, (e) providing heating or ventilation systems that are not functional or are hazardous, (f) defective, hazardous, or missing electrical wiring or electrical service, (g) defective or hazardous exits that increase the risk of injury to occupants, and (h) conditions that increase the risk of fire.

(3) "Collection activity" means attempts by the landlord or other third party to collect any monetary obligation or damages from the tenant, including threats or notice to collect any such amounts through a collection agency, filing of a judicial action, and withholding any portion of a security deposit. It shall not include the transmission of an invoice to the tenant by the landlord along with any supporting detail of unpaid rent, unpaid fees or the costs to repair damages beyond wear resulting from ordinary use of the premises.

(4) "Commercially reasonable manner," with respect to a sale of a deceased tenant's personal property, means a sale where every aspect of the sale, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a landlord may sell the tenant's property by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

((~~(4)~~)) (5) "Comprehensive reusable tenant screening report" means a tenant screening report prepared by a consumer reporting agency at the direction of and paid for by the prospective tenant and made available directly to a prospective landlord at no charge, which contains all of the following: (a) A consumer credit report prepared by a consumer reporting agency within the past 30 days; (b) the prospective tenant's criminal history; (c) the prospective tenant's eviction history; (d) an employment verification; and (e) the prospective tenant's address and rental history.

((~~(5)~~)) (6) "Criminal history" means a report containing or summarizing (a) the prospective tenant's criminal convictions and pending cases, the final disposition of which antedates the report by no more than seven years, and (b) the results of a sex offender registry and United States department of the treasury's office of foreign assets control search, all based on at least seven years of address history and alias information provided by the prospective tenant or available in the consumer credit report.

((~~(6)~~)) (7) "Designated person" means a person designated by the tenant under RCW 59.18.590.

((~~(7)~~)) (8) "Distressed home" has the same meaning as in RCW 61.34.020.

((~~(8)~~)) (9) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

((~~(9)~~)) (10) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

((~~(10)~~)) (11) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes.

((~~(11)~~)) (12) "Eviction history" means a report containing or summarizing the contents of any records of unlawful detainer actions concerning the prospective tenant that are reportable in accordance with state law, are lawful for landlords to consider, and are obtained after a search based on at least seven years of address history and alias information provided by the prospective tenant or available in the consumer credit report.

((~~(12)~~)) (13) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

((~~(13)~~)) (14) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

((~~(14)~~)) (15) "Immediate family" includes state registered domestic partner, spouse, parents, grandparents, children, including foster children, siblings, and in-laws.

((~~(15)~~)) (16) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least 30 days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed property conveyance.

((~~(16)~~)) (17) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

((~~(17)~~)) (18) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

((~~(18)~~)) (19) "Orders" means written official military orders, or any written notification, certification, or verification from the service member's commanding officer, with respect to the service member's current or future military status.

((~~(19)~~)) (20) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

((~~(20)~~)) (21) "Permanent change of station" means: (a) Transfer to a unit located at another port or duty station; (b) change in a unit's home port or permanent duty station; (c) call to active duty for a period not less than 90 days; (d) separation; or (e) retirement.

((~~(21)~~)) (22) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

((~~(22)~~)) (23) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

((~~(23)~~)) (24) "Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

((~~(24)~~)) (25) "Prospective landlord" means a landlord or a person who advertises, solicits, offers, or otherwise holds a dwelling unit out as available for rent.

((~~(25)~~)) (26) "Prospective tenant" means a tenant or a person who has applied for residential housing that is governed under this chapter.

((~~(26)~~)) (27) "Qualified inspector" means a United States department of housing and urban development certified inspector; a Washington state licensed home inspector; an American society of home inspectors certified inspector; a private inspector certified by the national association of housing and redevelopment officials, the American association of code enforcement, or other comparable professional association as approved by the local municipality; a municipal code enforcement officer; a Washington licensed structural engineer; or a Washington licensed architect.

((~~(27)~~)) (28) "Reasonable attorneys' fees," where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

((~~(28)~~)) (29) "Reasonable manner," with respect to disposing of a deceased tenant's personal property, means to dispose of the property by donation to a not-for-profit charitable organization, by removal of the property by a trash hauler or recycler, or by any other method that is reasonable under the circumstances.

((~~(29)~~)) (30) "Rent" or "rental amount" means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. Except as provided in RCW 59.18.283(3), these terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees.

((~~(30)~~)) (31) "Rental agreement" or "lease" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

((~~(31)~~)) (32) "Service member" means an active member of the United States armed forces, a member of a military reserve component, or a member of the national guard who is either stationed in or a resident of Washington state.

((~~(32)~~)) (33) A "single-family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

((~~(33)~~)) (34) "Subsidized housing" refers to rental housing for very low-income or low-income households that is a dwelling unit operated directly by a public housing authority or its affiliate, or that is insured, financed, or assisted in whole or in part through one of the following sources:

(a) A federal program or state housing program administered by the department of commerce or the Washington state housing finance commission;

(b) A federal housing program administered by a city or county government;

(c) An affordable housing levy authorized under RCW 84.52.105; or

(d) The surcharges authorized in RCW 36.22.178 and 36.22.179 and any of the surcharges authorized in chapter 43.185C RCW.

((~~(34)~~)) (35) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

((~~(35)~~)) (36) "Tenant representative" means:

(a) A personal representative of a deceased tenant's estate if known to the landlord;

(b) If the landlord has no knowledge that a personal representative has been appointed for the deceased tenant's estate, a person claiming to be a successor of the deceased tenant who has provided the landlord with proof of death and an affidavit made by the person that meets the requirements of RCW 11.62.010(2);

(c) In the absence of a personal representative under (a) of this subsection or a person claiming to be a successor under (b) of this subsection, a designated person; or

(d) In the absence of a personal representative under (a) of this subsection, a person claiming to be a successor under (b) of this subsection, or a designated person under (c) of this subsection, any person who provides the landlord with reasonable evidence that he or she is a successor of the deceased tenant as defined in RCW 11.62.005. The landlord has no obligation to identify all of the deceased tenant's successors.

((~~(36)~~)) (37) "Tenant screening" means using a consumer report or other information about a prospective tenant in deciding whether to make or accept an offer for residential rental property to or from a prospective tenant.

((~~(37)~~)) (38) "Tenant screening report" means a consumer report as defined in RCW 19.182.010 and any other information collected by a tenant screening service.

((~~(38)~~)) (39) "Transitional housing" means housing units owned, operated, or managed by a nonprofit organization or governmental entity in which supportive services are provided to individuals and families that were formerly homeless, with the intent to stabilize them and move them to permanent housing within a period of not more than ((~~twenty-four~~)) 24 months, or longer if the program is limited to tenants within a specified age range or the program is intended for tenants in need of time to complete and transition from educational or training or service programs.

(40) "Wear resulting from ordinary use of the premises" means deterioration that results from the intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated condition. Such wear does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, fixtures, equipment, appliances, or furnishings by the tenant, immediate family member, occupant, or guest.

**--- END ---**