

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2064

Chapter 81, Laws of 2022

67th Legislature
2022 Regular Session

RESIDENTIAL TENANCIES—FEE IN LIEU OF SECURITY DEPOSIT

EFFECTIVE DATE: June 9, 2022

Passed by the House February 13, 2022
Yeas 98 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate March 2, 2022
Yeas 48 Nays 0

DENNY HECK

President of the Senate

Approved March 17, 2022 12:43 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2064** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 17, 2022

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2064

Passed Legislature - 2022 Regular Session

State of Washington 67th Legislature 2022 Regular Session

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

READ FIRST TIME 02/03/22.

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

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 59.18
5 RCW to read as follows:

6 (1) Notwithstanding any other provision of law, if a landlord
7 chooses to waive a security deposit requirement, and a tenant agrees
8 to instead pay a fee in lieu of a security deposit, the landlord
9 shall:

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

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

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

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

7 (e) Provide a written checklist to the tenant pursuant to RCW
8 59.18.260; and

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

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

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

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

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

37 **Washington state law may allow you three different options:**

38 **(1) Paying the full security deposit upon signing the lease.**

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

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

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

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

13 Monthly Nonrefundable Deposit Waiver Fee:	One-time Refundable Security
14 Total cost of monthly fees over lease term:	Deposit: _____

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

19 \$ _____ for any unpaid rent and fees, and

20 \$ _____ for any damages.

21 Total coverage: \$ _____

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

24 (1) YOU ARE NOT AN INSURED PARTY UNDER THE INSURANCE POLICY
25 PURCHASED BY THE LANDLORD USING YOUR FEES;

26 (2) YOU ARE NOT A BENEFICIARY TO ANY INSURANCE COVERAGE OR ANY
27 INSURANCE BENEFITS UNDER THE INSURANCE POLICY THAT THE LANDLORD
28 PURCHASES USING YOUR FEES; AND

29 (3) YOU ARE STILL OBLIGATED TO PAY RENT AND ALL PAYMENTS REQUIRED
30 BY THE LEASE, INCLUDING COSTS TO REPAIR DAMAGES BEYOND WEAR
31 RESULTING FROM ORDINARY USE OF THE PREMISES.

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

1 the landlord instead, then the insurer may seek reimbursement from
2 you of its payments to the landlord.

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

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

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

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

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

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

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

29 (i) In the event the landlord fails to purchase or maintain the
30 insurance provided for in this subsection (2)(c), and if the tenant
31 pays the monthly fee as agreed, the landlord shall credit the total
32 insurance coverage stated in the disclosure to any indebtedness owed
33 by the tenant upon the tenant vacating the unit. However, if through
34 no fault of the landlord, the insurer is suddenly unable to do
35 business in Washington state or is otherwise incapable of fulfilling
36 its obligation, the landlord is not required to credit the insurance
37 coverage stated in the disclosure to any indebtedness owed by the
38 tenant upon the tenant vacating the unit.

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

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

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

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

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

15 (e) Shall not be considered by a court, arbitrator, mediator, or
16 any other dispute resolution adjudicator to be a security deposit or
17 governed by state or local codes governing security deposits.

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

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

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

30 (iii) The tenant is entitled to any defenses to payment against
31 the insurer as against the landlord, including any defenses under RCW
32 59.18.280 or other relevant laws.

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

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

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

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

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

7 (c) If the tenant fails to pay a request by an insurer or
8 collector for reimbursement under this subsection, the party seeking
9 reimbursement may not commence collection activities against the
10 tenant less than 60 days after sending a request for reimbursement
11 and providing documentation as required under (b) of this subsection.
12 However, if the tenant has disputed the claim, the party seeking
13 reimbursement shall defer any collection activities for an additional
14 60 days to resolve the dispute.

15 (d) Except as provided in (e) of this subsection, the landlord
16 may not send an invoice to a tenant or undertake collection activity
17 against the tenant for any amounts after submitting a claim to the
18 insurer if:

19 (i) The insurer approved the claim;

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

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

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

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

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

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

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

8 (iii) For the purposes of allowing ample time for the insurance
9 company to consider the landlord's insurance policy, including
10 coverage and sufficiency of the claims and documentation submitted,
11 including appeals, if any, of the insurer's claims decision, not
12 undertake any collection activity for any debt against the tenant
13 until 60 days after notifying the tenant and providing the
14 documentation pursuant to (a)(i) and (ii) of this subsection,
15 whichever is later.

16 (b) Where the tenant has opted into paying a fee in lieu of a
17 security deposit in subsection (1) of this section, the landlord
18 shall not undertake collection activities against the tenant unless
19 60 days have passed after the landlord has submitted a claim to the
20 insurer. However, nothing in this subsection (4)(b) shall be
21 construed to prohibit the landlord from sending an invoice to the
22 tenant before submitting a claim to the insurer.

23 (c) This subsection (4) shall not apply where the tenant opts out
24 of, or the landlord discontinues providing the option of, paying a
25 continuing fee in lieu of a security deposit during the tenancy and
26 the tenant provides full payment of a security deposit prior to the
27 termination of the rental agreement or the tenant's abandonment of
28 the premises.

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

33 (6) As used in this section, "collection activity" means attempts
34 to collect any monetary obligation or damages from the tenant,
35 including threats or notice to collect any such amounts through a
36 collection agency or filing of a judicial action, provided that it
37 shall not mean the transmission of an invoice and supporting detail
38 of unpaid rent, unpaid fees or the cost of repairing damages beyond
39 wear resulting from ordinary use of the premises.

Passed by the House February 13, 2022.
Passed by the Senate March 2, 2022.
Approved by the Governor March 17, 2022.
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