

# HOUSE BILL REPORT

## ESHB 1515

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**As Passed House:**

March 8, 2021

**Title:** An act relating to security deposit waiver fees.

**Brief Description:** Concerning security deposit waiver fees.

**Sponsors:** House Committee on Housing, Human Services & Veterans (originally sponsored by Representatives Peterson, Springer, Simmons, Santos, Taylor, Shewmake, Dufault, Barkis, Thai, Ormsby and Lekanoff).

**Brief History:**

**Committee Activity:**

Housing, Human Services & Veterans: 2/12/21, 2/15/21 [DPS].

**Floor Activity:**

Passed House: 3/8/21, 98-0.

**Brief Summary of Engrossed Substitute Bill**

- Modifies the Residential Landlord-Tenant Act so that landlords may offer tenants the choice of paying an entirely or partially nonrefundable fee in lieu of a security deposit.

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### HOUSE COMMITTEE ON HOUSING, HUMAN SERVICES & VETERANS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Peterson, Chair; Taylor, Vice Chair; Caldier, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Leavitt and Thai.

**Staff:** Lena Brodsky (786-7192).

**Background:**

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*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.*

### Residential Landlord Tenant Act.

The Residential Landlord-Tenant Act (RLTA) regulates the relationship between residential landlords and tenants, and includes provisions regarding the duties of tenants and landlords, remedies for violations of those duties, and definitions. Subject to a few exceptions spelled out in statute, the rental of a dwelling unit for living purposes is generally covered under the RLTA. "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place.

### Deposits and Fees.

Landlords often collect deposits, fees, and other amounts prior to, or at the outset of, a tenancy such as:

- the tenant screening fee: The RLTA includes provisions governing the amount that may be charged and the information that must be provided to the tenant;
- the holding deposit or fee to hold the dwelling unit after the tenant has been offered the unit. If the tenant moves in, the landlord must credit the fee or deposit to the first month's rent or the security deposit;
- the damage or security deposit: The purpose of such a deposit is to cover any damage caused to the property by the tenant, in excess of normal wear and tear;
- the nonrefundable fee: This may include a cleaning fee; if that is the case, the landlord may not also charge the tenant for normal cleaning; and
- first and last month's rent.

### Security Deposit.

Landlords often collect a damage or security deposit, the purpose of which is to cover any damage caused to the property by the tenant, in excess of normal wear and tear resulting from ordinary use. The RLTA requires that the deposit be placed in a trust account. Any interest earned generally belongs to the landlord.

The RLTA also requires that, in order to collect such a deposit, the rental agreement must be in writing and 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 be provided by the landlord to the tenant at the commencement of the tenancy.

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. No portion of any deposit may be withheld on account of wear resulting from ordinary use of the premises.

### Installment Payments.

Upon written request from a tenant, a landlord is generally required to 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 that is three months or

- longer, the tenant may elect to pay in three consecutive and equal monthly installments, beginning at the inception of the tenancy;
- in all other cases, the tenant may elect to pay in two consecutive and equal monthly installments, beginning at the inception of the tenancy; and
  - a landlord is not required to permit a tenant to pay in installments if the total amount of the deposits and nonrefundable fees do not exceed 25 percent of the first full month's rent and payment of the last month's rent is not required at the inception of the tenancy.

### **Summary of Engrossed Substitute Bill:**

A landlord may offer the tenant the choice of paying a fee in lieu of a full security deposit. The landlord may not use the fact that 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. 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.

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:

- the terms of any insurance coverage purchased by the landlord for unpaid rent and unit damage paid for by the fees in lieu of the security deposit; and
- that the payment of the fee does not preclude the insurer or the landlord from filing an action against the tenant to recover for damage to the property.

Any fee in lieu of a security deposit may be:

- entirely or partially nonrefundable as long as the terms are disclosed in the lease and acknowledged by the tenant;
- used by the landlord to purchase insurance coverage for unpaid rent or unit damage, provided that the landlord does not charge the tenant a fee that is more than the reasonable cost of obtaining and administering such coverage (by July 1, 2024, all such insurance policies must be from insurance companies authorized by the Insurance Commissioner to transact insurance in Washington); and
- payable upon any schedule and in any amount the landlord and tenant choose, provided that the first month's fee is a nonrefundable fee as contemplated under the statute concerning installment payments.

The fee does not constitute "rent" as defined in statute, but nothing precludes the landlord from filing an action against the tenant to recover unpaid fees.

The fee may not be considered by a court, arbitrator, mediator, or other dispute resolution

adjudicator to be a security deposit. However, any action taken against a tenant to recover for costs of repairs must begin within one year of the termination of the rental agreement or the tenant's abandonment of the premises and must comply with statutory 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill offers a tool that could be helpful for many tenants, given that it is difficult for many people to collect sufficient funds to move to a new rental unit. There needs to be consumer protections in place to ensure that those who are accessing this tool are not taken advantage of.

Optional programs, such as deposit waiver fees, are another tool to provide affordable move-in costs for renters seeking a new home. They provide additional flexibility to housing providers and renters. This bill encourages property owners and tenants, together, to eliminate security deposits, which create an unfortunate barrier to obtaining quality housing.

In Washington, security deposits average about \$1,500, and a monthly waiver fee averages about \$28. Nationwide, when given the option, 92 percent of renters prefer to pay the monthly waiver fee instead of the upfront security deposit. This bill gives tenants choice and flexibility, and helps people access better housing, with no cost to the state.

(Opposed) None.

(Other) There is concern that the bill, in its current form, would facilitate the use of products that are potentially harmful to renters without providing any remedy for renters who are harmed. Landlords are currently free to use the type of waiver fee products that this bill authorizes. While many of these products describe themselves as insurance, they do not actually indemnify renters against damage charges. When a landlord collects a security deposit, state law limits what kind of damage the landlord may charge the tenant for, and creates remedies for renters if the deposit is improperly withheld. The same protections do not apply for deposit waiver fees. Finally, there is concern that the bill will potentially cut renters off from consumer protections because violations of the RLTA do not constitute violations of the Consumer Protection Act. However, the products that this bill authorizes

are already in use, and they are a good option for some landlords and renters. There is more work to be done to ensure that this bill offers more protection for renters.

**Persons Testifying:** (In support) Representative Peterson, prime sponsor; Brett Waller, Washington Multi-Family Housing Association; and Jon Potter, LeaseLock.

(Other) Sarah Nagy, Columbia Legal Services.

**Persons Signed In To Testify But Not Testifying:** None.