

SENATE BILL REPORT

ESHB 1515

As of March 18, 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: Passed House: 3/8/21, 98-0.

Committee Activity: Housing & Local Government: 3/18/21.

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.
- Authorizes landlords to use the fee in lieu of a security deposit to purchase insurance coverage for unpaid rent or unit damage.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

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:

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- 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.

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, including any coverage cap amounts and excluded coverage costs; 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 for which the tenant is responsible.

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;
- used by the landlord to purchase insurance coverage for unpaid rent or unit damage, provided 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
- a recurring monthly fee or payable upon any schedule and in any amount the landlord and tenant choose, provided the first month's fee is a nonrefundable fee as contemplated under RLTA provisions addressing installment payments.

Any fee in lieu of a security deposit does not constitute rent as defined under the RLTA, or preclude the landlord from filing an action against the tenant to recover unpaid fees.

Any fee in lieu of a security deposit may not be considered by a court, arbitrator, mediator, or other dispute resolution adjudicator to be a security deposit. 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 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.

Appropriation: None.

Fiscal Note: Not requested.

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: The bill addresses consumer protections for both landlords and tenants, ensuring that the insurance product works for landlords and that tenants have transparency in the process. The bill's mission is to eliminate the need for hefty security deposits by providing an alternative smaller monthly fee, opening up greater housing opportunities for tenants and potential clientele for landlords. Insurance carriers of

this product are looking for clarity in the law. Currently available insurance policies provide coverage up to \$500 in damages and \$5,000 in unpaid rent, for a monthly fee average of \$28 in lieu of a possible security deposit fee average of \$1,500. Nationwide, renters choose to pay the alternative fee 92 percent of the time. The bill provides better access to housing without any costs to state government. Such lease insurance is a valuable product that will become more widespread once made clearly lawful. The bill is a win-win policy solution. Washington State would be first state to adopt this proposal, with similar proposals in four other states.

CON: There are objections regarding the provision limiting lease insurance policies to be made available by admitted insurers only. Such a provision would be detrimental to the insurance-buying public. Surplus line carriers fill an insurance void where other policies are not available, and are regularly reviewed for compliance. This lease insurance product would provide more equitable opportunities for tenants accessing rental housing, and is already available and provided by surplus line insurance carriers. Requiring only admitted insurers to provide lease insurance policies in this regard would cancel insurance coverage for both parties.

OTHER: There are objections regarding the provision that limits the availability of lease insurance coverage to consumers. There are two insurance markets for property and casualty insurance in the state—admitted insurers authorized by Office of the Insurance Commissioner (OIC) and non-admitted (surplus line) insurers, which provide coverage for higher risk products and those products with not enough loss experience. Non-admitted insurance carriers operate as a safety net to consumers to provide financial protection for difficult risks. Surplus line brokers must perform a diligent search of the admitted market first and obtain a search certification before accessing surplus line policies. Surplus line carriers are not subject to review of rates and policies by the OIC. The bill has undergone significant work and offers tenant protections. These types of lease insurance products are new, and although LeaseLock is the only product of its kind, the industry market is likely to expand and change. The tenant is not a party to a contract between the landlord and insurance carrier and is not indemnified against party claims or protected by insurance laws or the RLTA. It is important to fully inform tenants as to their potential liability and to provide guardrails on the authority of the landlord or insurer to pursue damages or evict based on nonpayment of the fee.

Persons Testifying: PRO: Representative Strom Peterson, Prime Sponsor; Jon Potter, LeaseLock.

CON: Intisar Surur, Surplus Line Association of Washington.

OTHER: David Forte, Office of the Insurance Commissioner; Sarah Nagy, Columbia Legal Services.

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