

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 681 (Senator Benson)
Judicial Proceedings

Real Property - Residential Leases - Fee in Lieu of Deposit

This bill authorizes a landlord to offer the payment of a fee in lieu of a security deposit in a residential lease, subject to specified requirements (including the purchase of mandatory insurance coverage for unpaid sums due under the lease). Among other provisions, the bill establishes (1) related requirements for landlords and insurers in regard to claims filed and (2) specified protections and remedies for tenants. The bill has prospective application only and may not be applied or interpreted to have any effect on or application to leases entered into before the bill’s October 1, 2022 effective date.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Unpaid sums due under the lease” means (1) any unpaid rent; (2) damage due to breach of lease; or (3) damage by the tenant or the tenant’s family, agents, employees, guests, or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord.

Fee in lieu of Security Deposit

The bill establishes that a landlord may offer a fee in lieu of a security deposit. However, a landlord is prohibited from (1) requiring a tenant to pay a fee in lieu of a security deposit and (2) considering a prospective tenant's choice to pay a fee in lieu of a security deposit in determining whether to approve a tenant's application for tenancy.

A landlord that opts to offer prospective tenants the option to pay a fee in lieu of a security deposit at the time an application for occupancy is approved must do so for all prospective tenants regardless of the prospective tenant's income, race, gender, disability, sexual orientation, immigration status, size of household, or credit score following application approval.

A landlord must provide the tenant with both the amount of the fee in lieu of a security deposit and the amount of the security deposit that the landlord would otherwise charge for the tenant's property or a similar property. A landlord may not charge a tenant for costs of repairing ordinary wear and tear as part of the fee. If a tenant elects to pay a security deposit rather than a fee in lieu of a security deposit, the total sum of the security deposit may not exceed one month's rent.

The bill authorizes a tenant and a landlord to agree to a fee in lieu of a security deposit that is recurring and paid along with the rent. The landlord must disclose in the terms of the lease – and the tenant must separately acknowledge – the following:

- that the tenant has agreed to pay, and the landlord has agreed to accept, a fee in lieu of a security deposit;
- the amount and frequency of the fee in lieu of a security deposit;
- whether the fee in lieu of a security deposit is nonrefundable;
- that the tenant may opt out of a recurring fee in lieu of a security deposit obligation paid with rent by paying the landlord the full amount of the security deposit, as specified;
- that a tenant paying a fee in lieu of a security deposit is not purchasing insurance and the tenant is not covered by insurance purchased by the landlord;
- that the payment of a fee in lieu of a security deposit does not remove the obligation of the tenant to (1) pay rent, fees, and all other payments required by the lease agreement; and (2) return the leased premises to the landlord in the condition required under the lease;
- that the payment of a fee in lieu of a security deposit does not preclude the landlord or an insurer from (1) taking action against the tenant to recover any unpaid sums due under the lease; or (2) transferring to a third party a claim for recovery of any unpaid sums due under the lease; and

- the terms of any insurance coverage purchased by the landlord for any unpaid sums under the lease, including the amount of exclusions or caps on the insurance coverage, if any.

The bill prohibits a landlord from considering a fee in lieu of a security deposit as rent in any lease or other agreement.

A tenant who chooses to pay a fee in lieu of a security deposit may, within 15 days prior to the commencement of a tenancy, have the premises inspected by the landlord in the tenant's presence for the purpose of assessing the condition of the premises and making a written list of any damage.

Upon request of a tenant, no later than five days following the termination of a tenancy by the tenant, a landlord or an agent of the landlord must inspect the premises in the tenant's presence to assess any damage incurred during the tenant's occupancy if the tenant notifies the landlord of the tenant's intention to vacate the premises (including the date that the tenant intends to return possession of the premises to the landlord) and provides the landlord with the tenant's new address.

Insurance Requirements and Coverage

A landlord is required to use a fee paid in lieu of a security deposit to purchase insurance coverage for unpaid sums due under the lease.

If a landlord intends to submit a claim to an insurer for unpaid sums due under the lease, the landlord must provide the tenant with an itemized list and a description of the alleged unpaid sums due under the lease, as specified. The bill prohibits a landlord from submitting a claim to an insurer for unpaid sums due under the lease before the termination of a tenancy or for 30 days following providing required notice to a tenant.

A landlord that files a claim for unpaid sums due under a lease must provide the insurer with an itemized list and a description of the alleged sums owed and provide the tenant with notice that a claim has been filed. The notice provided to the tenant must include the following:

- the legal name of the insurer;
- a phone number and address of the insurer's claim adjustment office;
- a complete copy of the claim submitted to the insurer; and
- a statement that the tenant is still responsible for all unpaid sums due under the lease and that the insurer may seek to collect reimbursement from the tenant for amounts that the insurer pays to the landlord.

After filing of a claim, an insurer must promptly provide to the tenant:

- an itemized list and written description of the unpaid sums owed under the lease that were submitted to the insurer by the landlord, including the dates when unpaid sums were due;
- a statement of costs actually incurred to repair damages in excess of ordinary wear and tear that were provided to the insurer by the landlord; and
- documentation of payments made by the insurer to the landlord for the claim.

An insurer may not report a claim filed by a landlord to a credit reporting agency unless a judgment has been obtained against the tenant. Unless a landlord and tenant have otherwise agreed in writing, an insurer must seek reimbursement for sums owed under a lease within one year after the date the landlord's claim was filed with the insurer. A tenant may dispute a claim filed by a landlord with an insurer by sending a response to the insurer within 30 days after receiving notice that a claim has been filed by the landlord.

A landlord may not accept payments from a tenant and an insurer that collectively exceed the sums due under the lease. In a proceeding against the tenant by the insurer, the tenant retains all rights and defenses otherwise available in a proceeding between a tenant and a landlord and is liable to the insurer only for sums due under the lease.

Cause of Action and Remedies

The bill authorizes a tenant to challenge claims by a landlord for sums due under a lease in court. If a court determines that the notice of unpaid sums due under the lease is incorrect, the unpaid sums under the lease claimed by the landlord must be declared void. A landlord may not submit a claim to an insurer for any debt that has been declared void and must immediately withdraw a claim if the amount is declared void following the submission of the claim. If a debt is declared void after an insurer has paid the claim, the landlord must return the payment to the insurer.

A landlord or an insurer that fails to comply with the requirements of the bill forfeits any claim to collect unpaid sums due under the lease. If in any proceeding a court determines that a landlord or an insurer committed a material violation, the tenant may recover damages not less than two months' rent paid by the tenant and reasonable attorney's fees.

Current Law: Generally, a "security deposit," with regard to residential leases, is defined as any payment of money to a landlord by a tenant for the purposes of protecting the landlord against nonpayment of rent; damages due to a breach of the lease; or damages to the leased premises, common areas, major appliances, and furnishings. Statutory provisions set forth extensive requirements regarding security deposits, including those relating to receipts, accounts in which security deposits must be maintained, timeframes

for returning security deposits, and withholding deposits from tenants. A landlord may not impose a security deposit that exceeds the equivalent of two months' rent per dwelling unit, regardless of the number of tenants. Statutory provisions also (1) authorize a tenant, instead of paying all or part of a security deposit, to purchase a surety bond to protect the landlord against specified loss and damages and (2) set forth related requirements. Requirements regarding security deposits (and surety bonds), as established under § 8-203 of the Real Property Article, may not be waived in any lease.

Small Business Effect: Landlords are afforded the flexibility to offer fees in lieu of security deposits, subject to the requirements of the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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