

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 603

(Senators Benson and Jackson)

Judicial Proceedings

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**Real Property – Residential Leases – Fee in Lieu of Security Deposit**

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This bill generally authorizes a landlord to offer the payment of a fee in lieu of a security deposit in a residential lease, subject to specified procedures and requirements (including the purchase of mandatory insurance coverage for unpaid sums due under the lease). The bill has prospective application only and may not be applied or interpreted to have any effect on or application to lease entered into before the bill's October 1, 2023 effective date.

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially affect State operations or finances.

**Local Effect:** The bill is not anticipated to materially affect local operations or finances.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** “Unpaid sums due under the lease” means (1) any unpaid rent, fees, costs, or charges required under a lease; (2) a landlord’s losses due to breach of lease; or (3) costs to repair 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, major appliances, and furnishings owned by the landlord.

### *Fee in Lieu of Security Deposit*

A landlord may offer a fee in lieu of a security deposit in accordance with the bill's provisions and any other applicable State and federal law. However, a county or municipality may not require a landlord to offer a fee in lieu of a security deposit. An agreement to pay a fee in lieu of a security deposit is not a defense in an action brought by a landlord for a tenant's failure to pay rent.

A landlord that opts to offer a fee in lieu of a security deposit (1) must inform the tenant in writing of the amount of the fee in lieu of a security deposit and the amount of the security deposit that the landlord would otherwise require; (2) is prohibited from charging a tenant for costs of repairing ordinary wear and tear as part of the fee in lieu of a security deposit; (3) must collect the fee in lieu of a security deposit in equal monthly payments with rent; and (4) is prohibited from increasing the monthly rate of the fee in lieu of a security deposit during the term of the lease. A landlord and tenant may agree to payment of a recurring fee as part of a lease agreement.

If a tenant and a landlord agree to a fee in lieu of a security deposit, 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 by paying the landlord the full amount of the security deposit;
- 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 taking action against the tenant to recover 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.

### *Inspections*

A tenant who chooses to pay a fee in lieu of a security deposit may have the premises inspected by the landlord in the tenant's presence for the purpose of making a written list of any damage that exists at the beginning of the tenancy. A tenant who wishes to have a unit inspected prior to the beginning of the tenancy must notify the landlord by certified mail at least 15 days prior to the start of the tenancy.

Upon request of a 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 intends to vacate the premises. The bill specifies additional requirements for such inspections.

### *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. A landlord may not charge a fee in lieu of a security deposit that exceeds the cost of obtaining insurance or other expenses arising out of establishing insurance coverage for a unit. If an insurer refuses or is otherwise unable to provide coverage for unpaid sums due under the lease, the landlord may either (1) continue to charge a fee paid in lieu of a security deposit without penalty provided that the landlord attempts to purchase new insurance coverage for unpaid sums due under a lease retroactive to the date of cancellation of the prior coverage or (2) discontinue the fee in lieu of a security deposit and require a security deposit notwithstanding terms of a lease agreement.

If a landlord is unable to secure insurance coverage following an insurer refusing or otherwise not providing insurance, the landlord must discontinue the fee in lieu of a security deposit and may require a security deposit from the tenant. However, a landlord must provide 60 days notice prior to terminating a fee in lieu of a security deposit. Any fee amount already paid by a tenant must be credited toward the security deposit. If a landlord continues to charge a fee in lieu of a security deposit after failing to purchase or maintain insurance, and a tenant continues to pay a monthly fee in lieu of a security deposit, on termination of the tenancy, the landlord must credit the total insurance coverage stated in the disclosure to any amount owed by the tenant vacating the unit.

### *Termination of Tenancy*

When the tenancy of a tenant paying a fee in lieu of a security deposit terminates, the landlord must provide the tenant with (1) an itemized list and a description of alleged unpaid sums due under the lease, if any, including the dates the sums were due and (2) a statement of costs actually incurred to repair any damages in excess of ordinary wear and tear. A landlord may not submit a claim to an insurer for unpaid sums due under the

lease before the termination of a tenancy or for 45 days following the date the landlord provided the tenant with the above information.

### *Reimbursement and Debt Collection Efforts*

The bill prohibits a landlord from engaging in any debt collection efforts against the tenant until 60 days after (1) notifying the tenant and providing required documentation and (2) submitting a claim to the insurer. A landlord that files a claim for unpaid sums due under a lease must provide an insurer with specified information.

An insurer that seeks to collect reimbursement from the tenant for amounts paid by the insurer to the landlord must 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 that fails to comply with these requirements may not make a claim against a tenant. An insurer has the ability to cure any violation within a one-year period after the date the landlord's claim was filed with the insurer.

### *Additional Claim and Debt Collection Requirements*

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 an insurer and a 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 any charges brought by an insurer against the tenant for reimbursement of a claim paid to a landlord by sending a response to the insurer within 30 days after receiving notice of such charges by an insurer.

If a tenant fails to pay a request by an insurer (or a collector on behalf of the insurer) for reimbursement, the party seeking reimbursement may not engage in any debt collection efforts against the tenant until 60 days after sending a request for reimbursement and providing required documentation.

If a tenant disputes the claim, the party seeking reimbursement must defer any debt collection efforts for an additional 60 days to resolve the dispute. A landlord may not accept

payments from a tenant and an insurer that collectively exceed the sums due under the lease.

After an insurer approves a claim, a landlord may not send an invoice to a tenant or engage in any debt collection efforts against a tenant for any amounts. However, a landlord may invoice the tenant and engage in debt collection efforts against a tenant for the landlord's losses if the insurer denies the claim because the loss is not covered under the insurance agreement or the losses exceed the insurance coverage loss limit.

In a proceeding against a tenant by an insurer, the tenant must retain all rights and defenses otherwise available in a proceeding between a tenant and a landlord and be liable to the insurer only for sums due under the lease. A tenant may challenge claims by a landlord for sums due under a lease in court. A landlord may not submit a claim to an insurer for any debt that has been declared void by a court and must immediately withdraw a claim if the amount is declared void following the submission of the claim.

If the debt is declared void by a court after an insurer has paid the claim, the landlord must return the payment to the insurer. If in any proceeding a court determines that a landlord or an insurer materially violated the bill's provisions, the tenant may recover damages of up to three times the monthly 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. The bill also establishes requirements for insurers related to fees in lieu of security deposits.

## **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 1076 (Delegate Wells) - Environment and Transportation.

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

**Fiscal Note History:** First Reader - March 3, 2023  
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