

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 892

(Senator Augustine, *et al.*)

Judicial Proceedings

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

This bill authorizes a landlord and a tenant to agree for the tenant to pay a fee in lieu of a security deposit that is (1) paid in any amount and at any interval and (2) partially or wholly nonrefundable. The bill prohibits a landlord from requiring a tenant to pay a fee in lieu of a security deposit and establishes that a landlord is not required to consent to payment by a tenant of a fee in lieu of a security deposit. The bill applies prospectively only and may not have any effect on or application to any lease entered into before its October 1, 2021 effective date.

Fiscal Summary

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

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: If a landlord and a tenant agree to payment of a fee in lieu of a security deposit, the landlord must disclose in the terms of the lease, and the tenant must separately acknowledge:

- that the tenant has agreed to pay, and the landlord has agreed to accept, a fee in lieu of a security deposit;

- the method by which the fee in lieu of a security deposit may be paid, including as a lump sum or as a periodic payment; and
- whether the fee in lieu of a security deposit is refundable and, if so, the amount that is refundable.

A landlord that uses a fee paid in lieu of a security deposit to purchase insurance coverage for nonpayment of rent, breach of lease, or damages caused by the tenant must purchase coverage issued by an admitted carrier licensed by the Maryland Insurance Administration. Pursuant to existing statutory provisions, the requirements under the bill regarding a fee paid in lieu of a security deposit may not be waived in any lease.

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. A security deposit may include advance payment of the last month’s rent. Statutory provisions set forth various 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. Requirements regarding security deposits, as established under § 8-203 of the Real Property Article, may not be waived in any lease.

If a landlord requires from a prospective residential tenant any fees *other than* a security deposit, and the fees exceed \$25, the landlord must return the fees or be liable for twice the amount of the fees in damages. The return must be made within 15 days following the date of occupancy or the written communication that no tenancy will occur. However, the landlord may retain the portion of the fee that was actually expended for a credit check or other expenses arising out of the application, as specified. These provisions are not applicable to landlords who offer four or fewer dwelling units for rent at one location or to seasonal or condominium rentals.

Small Business Effect: Small business landlords are authorized to accept a fee in lieu of a security deposit, including a fee that may be partially or wholly nonrefundable, but they are subject to specified requirements if doing so.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Maryland Insurance Administration; Department of Legislative Services

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md/jkb

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