

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 271
Judicial Proceedings

(Senator Brochin)

Real Property - Security Deposits - Interest

This bill repeals the requirement that a landlord or mobile home park owner must pay any interest upon the return of a tenant's or mobile home resident's security deposit. The bill requires the landlord or park owner to maintain the tenant's or mobile home resident's security deposit in a noninterest bearing account at a branch of a federally insured financial institution located within the State.

The bill applies to all security deposits received by a landlord on or after October 1, 2012.

Fiscal Summary

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

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

Small Business Effect: Potential meaningful.

Analysis

Current Law: "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. "Security deposit" is not defined for the purposes of a mobile park home.

A security deposit may not be greater than the equivalent of two month's rent per dwelling unit. The landlord or park owner must provide the tenant or resident with a receipt notifying the tenant or resident of his or her rights regarding the security deposit. Additionally, the landlord or park owner must hold all security deposits in specified federally insured financial institutions doing business in the State. The accounts must be devoted exclusively to the security deposits and bear interest. The landlord or park owner must deposit the security deposit into this account within 30 days of receipt. The interest must accrue at six-month intervals from the day the tenant or resident gives the landlord or park owner the security deposit.

Within 45 days after the contractual end of a tenancy, the landlord or park owner must return the security deposit to the tenant or resident, less any damages rightfully withheld. In addition to the principal of the security deposit, the landlord or park owner must return simple interest that has accrued in the amount of 3% per annum. If the landlord or park owner fails to return this amount within the specified time without a reasonable basis, the tenant or resident may bring an action for up to three times the withheld amount and reasonable attorney's fees.

Landlord/Tenant Only: If a tenant has been ejected or evicted or has abandoned the property prior to the termination of the tenancy, the landlord is not required to return the security deposit unless the tenant provides written notice to the landlord demanding return of the security deposit. This notice must be sent by first-class mail within 45 days of being evicted or ejected or of abandoning the premises. The landlord, within 45 days of receipt of this demand, must send, by first-class mail, a list of any damages and return the security deposit, less any damages rightfully withheld. If the landlord fails to send the list of damages as required, the landlord forfeits the right to withhold any part of the security deposit for damages. In addition to the principal of the security deposit, the landlord must return simple interest that has accrued in the amount of 3% per annum. If the landlord fails to return this amount within the specified time, the tenant may bring an action for up to three times the withheld amount and reasonable attorney's fees.

Background: Chapter 2 of 1973 imposed the duty on a landlord to pay interest on a tenant's security deposit at 3% simple interest annually, accruing at six-month intervals. Chapter 536 of 1980 increased the interest rate that must be paid on a security deposit from 3% to 4%. Chapter 369 of 2004 lowered the required interest rate to be paid on a tenant's security deposit to 3%.

Several neighboring states have statutes regarding the return of accrued interest on a security deposit. For example, security deposits in the Commonwealth of Virginia must accrue interest at a rate equal to four percentage points below the current year's Federal Reserve Board's discount rate. However, no accrued interest is returned unless the landlord has held the deposit for a period exceeding 13 months after the effective date of

the rental agreement. Over the past three years, security deposits in Virginia have accrued no interest due to a low Federal Reserve discount rate. New Jersey law requires landlords who rent more than 10 apartments to place the deposit in either an insured money market fund or a federally insured bank account. The rate of interest must equal the average rate the bank pays on a money market fund. Landlords who rent fewer than 10 apartments must place the security deposit in an account that pays at least the regular rate of interest. Landlords are required to pay tenants, or subtract from the rent, the interest earned on the deposit each year.

Small Business Effect: The bill has a potentially meaningful beneficial impact on landlords. Under current law, landlords must return each security deposit with an additional 3% simple interest per annum even if the security deposits are accruing less than 3% simple interest per annum from a financial institution. Given the economic climate, it is difficult to find a brick-and-mortar financial institution that pays interest on deposits at 1% or 2%, let alone 3%. Thus, landlords are required to use other funds, which may include rental profits, loans, or personal savings, to supply the equivalent of an additional 3% simple interest per annum for each returned security deposit.

Under the bill, landlords are not required to return interest on a security deposit. As a result, landlords could realize meaningful savings. The magnitude of savings would depend on the number of properties rented, the amount of collected security deposits, and the turnover rates of rental properties.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Department of Housing and Community Development, New Jersey Code, Virginia Code, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2012
mlm/kdm

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510