

**MEMORANDUM**

**To:** Members of the Energy & Environment Committee  
**From:** Aly Pennucci, Legislative Analyst  
**Date:** September 9, 2016  
**Subject:** CB 118756 – Security deposits, nonrefundable move-in fees & last month’s rent

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CB 118756 would add provisions to Chapter 7.24 to limit the amount a landlord can charge a tenant for a security deposit and non-refundable move-in fees to the amount of the first full month’s rent. In addition, the legislation will allow tenants to pay the security deposit, non-refundable move-in fees and last month’s rent in installments.

Requirements for upfront payment of security deposits, non-refundable move-in fees and last months’ rent can create a barrier for some renters to access housing. The upfront costs to obtain housing tends to negatively affect lower income tenants and younger households most, who often have less resources or time to accumulate the necessary capital for a deposit. Limiting the amount a landlord can charge for a security deposit and requiring that tenants are given the option of paying the deposit and last months’ rent in installments will help to alleviate this barrier to housing.

**Next Steps**

CB 118756 will be discussed at the September 13, 2016, Energy and Environment committee. The following potential changes will be discussed:

1. Clarifying/technical amendments;
2. Adding enforcement authority for SDCI to enforce Chapter 7.24;
3. Clarifying the eviction process and order in which payments will be applied to a tenant’s account;
4. Allowing for an additional deposit for pets;
5. Requirements for the return or retention of security deposits;
6. Requirements for move-in/move-out checklist requirements; and
7. Updating requirements for local and state regulations that must be included in the summary prepared by SDCI and that those summaries must be distributed by landlords to tenants annually.

More details on these potential changes are provided on pages three through eight. Two of the amendments (#2 & #7) will require the introduction of a new bill that updates the title. If committee members would like to move forward with either amendment two or seven, a new bill with those changes could be prepared for introduction prior to the next committee discussion on September 27<sup>th</sup>.

One additional issues has been raised that may not require changes to the bill. There may be situations where a tenant would like the ability to negotiate paying a higher security deposit to obtain housing. For example, a tenant with a poor credit history may want to negotiate payment of a higher security deposit if a landlord would otherwise deny their application due to

their credit score. There are existing provisions in Section 7.24.100 that would allow a landlord and tenant to agree to waive any of the requirements of chapter 7.24 if:

- The agreement is in writing and identifies the specific provisions to be waived; and
- The agreement may not appear in a standard form written lease or rental agreement; and
- There is no substantial inequality in the bargaining position of the two parties; and
- The attorney for the tenant has approved in writing the agreement as complying with the provisions listed above.

This process would ensure that if the limit on the amount a landlord can charge for a security deposit is waived, or any other provisions of Chapter 7.24, the tenant would have representation to try to help balance the bargaining positions.

## Potential Changes:

### 1. *Clean-up & clarifying amendments*

- a. Add or modify the following definitions
  - New definition of month-to-month tenancy  
“Month to month tenancy” means a residential tenancy of an indefinite period with monthly or other periodic rent reserved
  - Clarify in the definition of “non-refundable move-in fees” that charges for a criminal background checks or credit reports are considered non-refundable move-in fees  
“Non-refundable move-in fees” means non-refundable fees paid by a tenant to reimburse a landlord for the cost of obtaining a tenant screening report, criminal background check, credit report or to pay for cleaning of the dwelling unit upon termination of the tenancy.
  - Delete references to cleaning of the premises in the definition of “Security deposit” because a landlord is already authorized to charge for that if the cleaning required goes beyond normal wear-and tear and change “lease agreement” to “rental agreement”  
~~2. Cleaning the premises upon termination of the tenancy to the level of cleanliness present when the tenancy began, if a non-refundable move-in fee for cleaning was not required~~
- b. Installment payments
  - Clarify in the language for the security deposit installment plan for a month-to-month tenancy that the second payment is due only if the tenancy extends beyond the first month.  
The first payment is due at the inception of the tenancy and the second payment is due on the first day of the ~~((third week))~~ second month or period of the tenancy or, if agreed by the landlord and tenant, according to an installment schedule described in the rental agreement.
- c. Clarify language
  - Amend 7.24.035.D to replace the word “prescribed” with “authorized” for clarity.
- d. Update liability payments
  - Increase the maximum amount a landlord would be liable to a tenant to up to \$3,000 plus reasonable attorney fees and costs to be consistent with other housing code standards.

## **2. Enforcement**

Add authority for SDCI to enforce the existing and proposed provisions of Chapter 7.24

The bill as proposed adds several new requirements that would make the landlord liable to the tenant if the new requirements are violated, however, it does not grant SDCI the authority to enforce these requirements; this has been the case from the beginning with Chapter 7.24: Rental Agreement Regulation Ordinance. For example, the requirement to provide a 60 day notice to tenants when a rent increase exceeds 10 percent was added to Chapter 7.24 in 1998. This was not enforced by SDCI until Title 22 was amended in July 2016 ([ORD 125054](#)) to include this requirement and giving SDCI authority to enforce it.

Tenant protections that do not provide for administrative enforcement can cause confusion and frustration by tenants who believe they enjoy protections enforced by the City that in actuality they must pursue on their own. Amending Chapter 7.24 to authorize SDCI to enforce these provisions will provide better assistance to tenants, but may also require additional staff resources as it will increase SDCI's workload.

This amendment would give SDCI the authority to issue citations to any person who violates the provisions of Chapter 7.24. A violation could be confirmed, for example, after SDCI has reviewed a rental agreement and finds that there are provisions that require a security deposit that exceeds the amount of the first full months' rent. If it is the first time a person or entity has been found to violate Chapter 7.24, the Director would have the authority to determine if the person should be subject to a penalty or issued a warning (that could be followed by a penalty if the landlord does not comply). The penalty the first time a person or entity is found in violation would be ~\$500. The second and subsequent violations would be subject to a penalty of ~\$1000 for each violation. The person or entity who was issued the citation could request a mitigation hearing or request a contested hearing that would go before the Hearing Examiner.

*Draft language is being prepared; the language will be included in a substitute bill, if the committee provides direction to include this change.*

### **3. Eviction process/order of payment**

Amend the bill to specify that:

- a. if a tenant fails to make an installment payment to the landlord for the security deposit or non-refundable move-in fees, it is a breach of the rental agreement and subject to a 10-day comply or vacate notice (and not a 3-day pay or vacate notice); and
- b. any payments made by the tenant to the landlord are applied to the rent due first.

CB 118756 would require that landlord's give tenants the option of paying required security deposits, non-refundable move-in fees, and last month's rent in installments. This amendment would address a situation where a tenant misses an installment payment and/or does make full payment of rent plus the installment payment due for the security deposit or last month's rent.

If a tenant is delinquent on payment of rent, the landlord can issue a three-day pay or vacate notice. It is unlikely that a tenant can stop an eviction for non-payment of rent, if they actually owe the money, besides paying the rent in full within the three day timeframe. If a tenant is in violation of other provisions of the rental agreement (such as meeting the requirements of an installment payment for the security deposit), the landlord may serve a 10-day notice to comply or vacate. The obligation to pay last month's rent is an obligation to pay rent, either at the inception of the tenancy or throughout the tenancy in installments, missing an installment payment for last month's rent could subject the tenant to a 3-day pay or vacate notice. Because nonpayment of rent due would place the tenant at a greater risk of being evicted, the amendment will also require that any money paid by the tenant to the landlord is first applied to the rent due.

For example, if one-months' rent is \$1,000 and the installment due for the security deposit is \$200, and the tenant only pays the landlord \$1,100, this amendment would require that the landlord applies monies received to the rent first, and the security deposit installment second, and could then only issue a 10-day comply or vacate notice for the delinquent payment of \$100.

*3a - DRAFT Language for subsection 7.24.035.C:*

A tenant's failure to pay a security deposit and non-refundable move-in fee according to an agreed payment schedule is a breach of the rental agreement and subjects the tenant to a 10-day notice pursuant to RCW 59.12.030(4).

*3b - Draft language is being prepared; the language will be included in a substitute bill, if the committee provides direction to include this change.*

#### **4. Pet Deposits**

Amend 7.24.035 to allow for an additional security deposit for pets. The regular security deposit would be capped at the equivalent of the first full month's rent, any pet deposit added on top of that capped at not more than 25 percent of the first full month's rent.

Some landlords require an additional deposit or a non-refundable fee for any pets and/or payment of monthly "pet rent." The bill as proposed would prohibit the landlord from charging a non-refundable fee for pets specifically (though they could require a non-refundable cleaning fee provided it does not exceed ten percent of the first full month's rent) and would prohibit an additional pet deposit. This could result in some landlords refusing to accept pets.<sup>1</sup> This amendment would allow for an additional "pet deposit." Council could limit this further by only allowing the additional pet deposit if the landlord is not also charging additional "pet rent."

*DRAFT Language for subsection 7.24.035:*

The total amount of the security deposit and nonrefundable move-in fees may be increased to allow the tenant to have pets if it is specified in the lease agreement as a deposit or nonrefundable move-in fee and the landlord does not charge the tenant pet rent except that the amount may not be increased for accommodation of a service animal. The additional deposit to allow a tenant to have a pet may not exceed 25 percent of the first full month's rent.

#### **5. Return of security deposit**

Amend 7.24.035 to specify that the landlord must comply with RCW 59.18.280 requirements related the return or retention of a security deposit.

When SDCI's code compliance division receives calls from tenants whose deposits have not been refunded after they have moved out often expect that the City will be able to help them with this problem, however, this is regulated by the State's Residential Landlord-Tenant Act (RCW 59.18.280) and the City does not have the authority to enforce. As above, this amendment would be meaningful only if SDCI is responsible for enforcing Chapter 7.24. Alternatively, Council could amend Title 22, Section 22.206.180 to include this (this would also require introduction of a new bill with a new title).

*DRAFT Language for Section 7.24.035:*

Return or retention of Security deposits. The return or retention of a security deposit, or portion thereof, must comply with the requirements of RCW 59.18.280.

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<sup>1</sup> A person with a service animal can request reasonable accommodation to waive a "no pets" policy.

**6. Move-in/move-out check list.**

Amend 7.24.035 to specify that the landlord must provide a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings.

This amendment would replicate language in the State’s Residential Landlord-Tenant Act (RCW 59.18.260) and would be most meaningful if SDCI is authorized to enforce Chapter 7.24 (see above), or if Council amends Title 22, Section 22.206.180, to include this (this would also require introduction of a new bill with a new title).

*DRAFT Language for subsection 7.24.030.C:*

The landlord shall prepare and provide to the tenant at the commencement of tenancy a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the dwelling unit at the time of occupancy including damages to the premises and furnishings, which include but are not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement.

**7. Summaries of landlord and tenant rights**

Amend Section 7.24.070 to update the list of landlord and tenant related regulations that should be included in the summary prepared by the Department and amend Section 7.24.080 to specify that these summaries must be distributed annually to tenants having month to month tenancies.

This amendment would ensure that the document SDCI prepares titled “*Information for Tenants*” covers a more comprehensive list of topics and clarifies the responsibilities of the landlord to distribute copies. As above, this would be most meaningful for tenants if SDCI is authorized to enforce the requirement.

This would amend section 7.24.070 to add the Mobile Homes and Mobile Home Parks Ordinance, the Third Party Billing Ordinance, the Rental Registration and Inspection Ordinance, and the Washington State residential Landlord Tenant Act to this list of regulations that should be included in the department summary and would amend Section 7.24.080 to note that the summary should be distributed annually to tenants having a month to month tenancy. Because the sections this would amend were not included in CB 118756 at introduction, a new bill would need to be introduced.

*Draft language is being prepared; the language will be included in a substitute bill, if the committee provides direction to include this change.*

cc: Kirstan Arestad, Central Staff Executive Director  
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