

MEMORANDUM

To: Energy and Environment Committee
From: Aly Pennucci, Legislative Analyst
Date: November 17, 2016
Subject: CB 118817 – Security deposits, nonrefundable move-in fees & last month’s rent

Council Bill (CB) 118817 amends Seattle Municipal Code (SMC) Chapter 7.24 to add provisions related to the amount, collection and retention of security deposits, nonrefundable move-in fees, and last month’s rent; and adds enforcement authority for the Seattle Department of Construction and Inspections (SDCI). More specifically, the bill:

- limits 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;
- includes an allowance for a separate pet deposit, limited to 25% of the first full month’s rent;
- allows tenants to pay the security deposit, non-refundable move-in fees and last month’s rent in installments;
- adds requirements for the return or retention of security deposits, including requirements for providing a move-in checklist;
- updates requirements for local and state regulations that must be included in a summary prepared by SDCI;
- adds authority for SDCI to enforce the regulations included in this chapter;
- requests a study of these requirements, completed by the Office of City Auditor; and
- requires that SDCI work with the Office of Immigrant and Refugee Affairs and the Department of Neighborhoods on outreach and education to better inform limited English proficient communities and immigrant and refugee communities about these regulations.

This proposal was first discussed at the Energy and Environment on September 13, 2016, under CB 118756. A new bill, CB 118817, was introduced on September 27, 2016 that incorporated amendments made at the September 13 committee meeting. CB 118817 was discussed, amended and voted out of committee on September 27. Following that, the Full Council re-referred the bill back to the Energy and Environment Committee on October 14 with direction that the Committee address any outstanding concerns and report back to the Full Council no later than December 12, 2016. This memo sets out six additional amendments proposed for the bill.

Amendments

There are six amendments to CB 118817 proposed for the Energy and Environment Committee's consideration; the amendments are described below (see Attachments 1-6 for specific amendment language). A discussion and possible vote is scheduled for the November 22, 2016 committee meeting.

1. Amend CB 118817 to make corrections and clarify language

Sponsors: Councilmembers Sawant and Herbold

This amendment clarifies language and adds specificity to address questions raised by stakeholders and SDCI. The amendment would:

- update the definition of "landlord" to mirror, rather than refer to, the State's definition of landlord in the Residential Landlord Tenant Act (RLTA) [Section 7.24.020];
- modify the definition of "security deposit" to clarify that a landlord can only charge for failure to return a key for a lock that is not required to be changed. Under Seattle's Housing Building Maintenance Code the landlord has a duty to change the locks after a change in tenancy except when an approved proprietary key system is used [Section 7.24.020];
- clarify in the definitions that non-refundable move-in fees and the security deposit do not include payment of a reservation fee authorized by RCW 59.18.253(2) [Section 7.24.020];
- clarify language to stipulate that if the tenant has been issued a 10-day comply or vacate notice, or a 3-day pay or vacate notice, any payment made after the notice is issued will first be applied to the payment due per the notice, then to rent due [Section 7.24.030.E];
- specify that the landlord must provide a receipt for any fees charged to run a screening report and provide the contact information for the reporting agency and the tenant's right to obtain a copy of the report pursuant to RCW 59.18.257 [Section 7.24.035.B.2];
- clarify that the landlord and tenant may agree to an alternative installment schedule, provided that the landlord does not include the alternative schedule in their standard lease language (i.e., alternative schedules must be negotiated on a case by case basis) [Sections 7.24.035.C.1, 7.24.035.C.2, 7.24.035.C.3, 7.24.036.A, 7.24.036.B, and 7.24.038.C];
- clarify that summaries provided by the landlord do not need to be both attached to a rental agreement and separately provided to the tenant and that, for renewal of a lease agreement, the summary can be provided electronically [Section 7.24.080.A];
- update language to specify that when a citation is mailed, the service shall be complete three days after the date of the mailing (rather than the day of the mailing) [Section 7.24.120.B]; and
- change the effective date to the standard effective date - 30 days after the Mayor's approval.

2. Amend CB 118817 to add anti-retaliation provisions

Sponsor: Councilmember González

This amendment would make retaliatory actions taken against a tenant or a prospective tenant, after they have exercised any of the rights provided by Chapter 7.24, a violation that is enforceable by SDCI. Anti-retaliation provisions are also included in several other sections of the SMC, including the Housing Maintenance Code. These provisions are designed to ensure that people feel secure in exercising their rights without fear of retaliation.

3. Amend CB 118817 to reference the state statute that addresses where landlords deposit monies paid for a refundable security deposit

Sponsor: Councilmember González

RCW 59.18.270 requires that a landlord place any required security deposit in a trust account or with a licensed escrow agent and provide a written notice to the tenant of the name, address and location of the depository and any subsequent changes. In addition, this state provision specifies that, unless otherwise agreed to in writing, the landlord is entitled to any interest paid on that deposit. The City does not have the authority to require that the interest earned is given to the tenant. This amendment would add the provisions of RCW 59.18.270 to Chapter 7.24, giving SDCI the authority to enforce the requirements.

4. Amend CB 118817 to modify the proposed enforcement process creating a three-tiered enforcement scheme

Sponsor: Councilmember Juarez

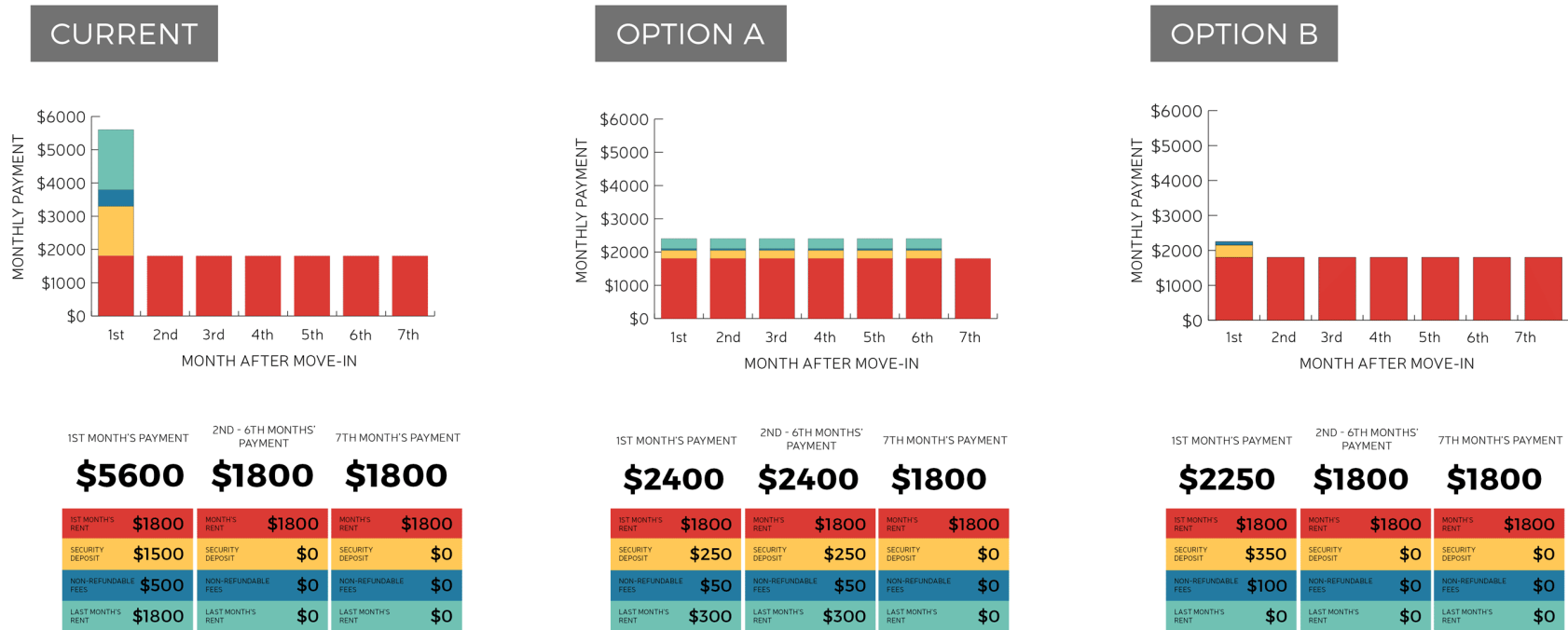
This amendment addresses a concern raised about reoccurring violations of Chapter 7.24 from the same person. SDCI recommended a tiered enforcement scheme where, after two violations, SDCI would have the discretion to move to a notice of violation (NOV) process and, following the NOV, an alternative criminal penalty could be pursued. The tiered approach is proposed as follows:

- 1st violation – issue a warning or citation with appropriate hearing examiner appeals;
- 2nd violation – issue a citation;
- 3rd violation – if two citations have been issued, a notice of violation may be issued at SDCI’s discretion;
- 4th and beyond – if two citations and a notice of violation have been issued, SDCI has the authority to seek criminal penalties.

- 5. Amend CB 118817 to remove the installment plan requirement if the security deposit and non-refundable move-in fees do not exceed 25 percent of the first month's rent and payment of last month's rent is not required.

Sponsor: Councilmember Juarez

This amendment would incentivize reduced move-in expenses by providing an option to landlords where they would not be required to offer an installment payment plan for move-in expenses. This would only be an option if the combined charges for the security deposit and non-refundable move-in fees do not exceed 25 percent of the first month's rent and payment of last month's rent is not required. In the graphic below, option A illustrates how the installment plan as proposed would be applied for a lease agreement of six months or longer; option B illustrates how this amendment would be applied (option B could apply regardless of lease term).



6. Amend CB 118817 to specify that the Director of SDCI can, by rule, establish procedures for enforcing the provisions for the return of security deposits.

Sponsor: Councilmember Johnson

CB 118817, as proposed, includes a requirement that the return or retention of security deposits must comply with the requirements of the State's Residential Landlord-Tenant Act (specifically RCW 59.18.280). These requirements are primarily technical, outlining the timeframe in which a landlord must return the deposit or provide a specific statement of the basis for retaining any of the deposit after termination of a rental agreement. In addition, these provisions specify that a landlord cannot retain any portion of the deposit for normal wear and tear. Because there is no legal standard for wear and tear, enforcing this provision may be difficult. This amendment will give SDCI the authority to establish rules on how this will be enforced. This could include providing general guidance on what may be considered normal wear and tear versus costs for damages that may be deducted for (i.e., faded, cracked or chipped paint versus writing on walls, unapproved paint colors or excessive dirt requiring more than one coat to cover) and outlining how landlords would document any damages and what they charge for the repairs.

Attachments:

1. Amend CB 118817 to make corrections and clarify language
2. Amend CB 118817 to add anti-retaliation provisions
3. Amend CB 118817 to reference the state statute that addresses where landlords deposit monies paid for a refundable security deposit
4. Amend CB 118817 to modify the proposed enforcement process creating a three-tiered enforcement scheme
5. Amend CB 118817 to remove the installment plan requirement if the security deposit and non-refundable move-in fees do not exceed 25% of the first month's rent and payment of last month's rent is not required
6. Amend CB 118817 to specify that SDCI may, by rule, establish procedures for enforcing the provisions for the return of security deposits

cc: Kirstan Arestad, Central Staff Executive Director
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