

MEMORANDUM

To: Members of the Energy & Environment Committee
From: Aly Pennucci, Legislative Analyst
Date: September 23, 2016
Subject: CB 118817 – Security deposits, nonrefundable move-in fees & last month’s rent

Council Bill (CB) 118817 will be introduced on September 26, 2016, replacing CB 118756. The proposed bill adds 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. The new bill being introduced incorporates the following changes discussed at the Energy and Environment Committee on September 13, 2016:

- Adds authority for the Seattle Department of Construction and Inspections (SDCI) to enforce Chapter 7.24;
- Clarifies the eviction process and order in which payments will be applied to a tenant’s account;
- Adds requirements for the return or retention of security deposits;
- Adds requirements for move-in/move-out checklist requirements; and
- Updates 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.

A discussion and possible vote on CB 118817 is scheduled for the September 27, 2016. This memo describes: (1) proposed amendments for the Committee’s consideration and (2) other issues identified after September 13th for Committee discussion and potential amendments.

Proposed Amendments:**1. Pet Deposits**

Some landlords require an additional deposit or a non-refundable fee for any pets and/or charge a monthly pet fee. The bill as proposed would prohibit a 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.¹ This amendment would allow for an additional pet deposit and would prohibit any other one-time or ongoing charges to allow a tenant to have a pet.

See Attachment 1 for proposed amendment language

2. Evaluation

In order to monitor implementation and assess any unintended consequences that may result after implementation of these regulations, this amendment would request that the Office of City Auditor, in collaboration with SDCI, conduct an evaluation to analyze trends in the rental market to determine whether there are any impacts from the new regulations. This would

¹ A person with a service animal can request reasonable accommodation to waive a “no pets” policy.

include (but is not limited to), (1) analyses of existing data sources on changes in rents charged, evictions, vacancy rates; and (2) surveying tenants and landlords about their experience in the rental market including what landlords are requiring for security deposits, non-refundable move-in fees, installment plan terms and conditions, return of deposits, etc. The results of the evaluation will be used to identify possible areas for revision.

See Attachment 2 for proposed amendment language

Issue Discussion:

1. Enforcement

The replacement bill was introduced with new sections added to give SDCI the authority and responsibility to enforce Chapter 7.24. As drafted, SDCI would have the authority to issue citations to any person who violates the provisions of Chapter 7.24. An alternative approach would be to use a notice of violation (NOV) process. There are pros and cons to either approach. Generally, the citation process works best when there are one-time violations and the NOV process works best when there are on-going violations.

Citations provide motivation for landlords to comply by assessing an immediate penalty and placing the burden on the landlord to contest the violation. If a landlord fails to pay the citation penalty, the penalty can be referred to collections thereby damaging a landlord's credit rating. The immediate consequences and the harm to a landlord's credit motivates future compliance. The citation process works best for one time violations, not for on-going violations. When an inspector issues a citation, the landlord has the option of paying, mitigating or contesting the citation at the Hearing Examiner's Office. 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 issue a warning instead of a citation. The proposed penalty for the first citation would be \$500. The second and subsequent citations would be subject to a penalty of \$1,000 for each violation. The Hearing Examiner has concerns that the citation process will result in a large number of cases being contested. While that may be true in the short run, landlords will likely cease their appeals once they see that the citations are being upheld at the Hearing Examiner. The actual hearings should be fairly simple and straightforward as they will be based on a lease agreement or advertisement. Hearing Examiner decisions must be appealed by way of a Writ of Review to Superior Court. The Writ process would require a landlord to pay the court filing fee and likely need to hire an attorney. Landlords will be financially motivated to comply with the ordinance since the option is payment of penalties, harm to credit and/or an expensive appeal process.

The notice of violation process is more complex than the citation process and is best suited for on-going violations, where the City wishes to compel an offender to take some specific act. The Department must formally notify the landlord of the violation by way of a notice of violation that summarizes the violation, sets forth the required action the landlord must take and gives a compliance due date. If the landlord complies by the due date, the matter is closed. If the landlord fails to comply by the due date, the Department prepares a file and refers the matter to the City Attorney's Office. The City Attorney's Office drafts a complaint and files a lawsuit in Seattle Municipal Court. All of the civil court rules apply and the landlord has the right to a jury trial if so desired. If the City prevails, the court issues a judgment that the City will certify to Superior Court and it will then become a lien on the property. Generally these types of

judgments are not collected unless the property owner refinances or sells the property. This is a complex process that usually takes at least six months.

Councilmembers could amend the bill to either (a) adopt the NOV process instead of the citation process or (b) use the citation process for violations of specific sections and the NOV process for others [note – option b may require introduction of a new bill with a new title]. Potential amendment language will be available for discussion at the Energy and Environment committee on September 27th.

2. Renters who are undocumented immigrants

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions and the City's [unfair housing practices regulations](#) prohibit discrimination in housing transactions based on "race, color, creed, religion, ancestry, national origin..." Discrimination on the basis of national origin would include disparate or adverse treatment of an individual because of their actual or perceived place of birth, ancestry, culture or linguistic characteristics identified as common to a particular group. Existing City regulations prohibit discrimination in "[a]pplying different terms, conditions or privileges of a real estate transaction, including but not limited to the setting of rates for rental or lease, or establishment of damage deposits..." and prohibits retaliatory actions against those who exercise their rights under the unfair housing practices regulations. Further, City regulations prohibit an employee from inquiring into the immigration status of any person unless otherwise required by law or by court order.

However, even with these protections, immigrants, particularly undocumented immigrants, may hesitate in reporting violations and accessing the services and agencies that are designed to help renters due to fear of negative immigration consequences.

Councilmembers could amend the bill to request that SDCI, in coordination with other departments, design and implement an outreach and education plan for immigrant communities, with a particular focus on renters whose immigration status is undocumented. Potential amendment language will be available for discussion at the Energy and Environment committee on September 27th.

3. Implementation & effective date

SDCI has concerns about the timeline for implementation of these new provisions. To improve SDCI responsiveness and customer service at the time of implementation, SDCI has requested that the effective date is changed to January 1, 2017, to give time to:

- Provide staff training and hire additional staff (if authorized through the budget process);
- Develop and deploy outreach materials, website updates, etc.;
- Develop materials (warning letters, citations, etc.) and procedures for implementation;
- Develop a temporary tracking system (a permanent tracking system cannot be added to SDCI's new software system until after it is deployed in early 2017).

Councilmembers could consider changing the effective date for this ordinance to allow more time to implement software changes, develop outreach and educational materials and ensure that staff is prepared to support the anticipated increased workload.

4. Limit the application of the installment plan

Landlords and organizations representing landlords have raised concerns about the proposed requirement to allow tenants to pay the security deposit and last month's rent in installments. One of the concerns is that payment of the security deposit upfront provides better assurance to the landlord that the tenant is reliable and will not break a lease before paying the full deposit that would cover any damage to the unit [note that the bill does not prohibit the landlord from bringing an action against a tenant to seek compensation or damages that exceed the deposit]. On the other hand, tenants, and tenant's organizations, have identified upfront payment of security deposits, non-refundable move-in fees and last months' rent as a barrier for some renters to access housing and that the option to pay in installments will help alleviate this barrier to housing.

There are several options Councilmembers could consider to limit the application of the installment plan:

- eliminate the installment plan requirement
- only require an installment plan option if the security deposit exceeds a certain amount (i.e. an installment plan would only be an option for tenants if the deposit exceeds \$500 or \$1000)
- require that half of the deposit is paid at the inception of tenancy and the remaining half is paid in installments

Potential amendment language will be available for discussion at the Energy and Environment committee on September 27th.

5. Screening fees

As proposed, the legislation would include tenant screening reports in the definition of non-refundable move-in fees. Move-in fees would be capped at no more than 10 percent of the amount of the first full month's rent, or the actual cost of running a tenant screening report, and would be included in the installment plan. Because fees for a tenant screening report are charged to all prospective tenants and typically paid prior to finalizing a lease agreement, landlords would have to deduct the amount the tenant paid for the screening report from the amount due for the first installment payment that would be paid at the inception of tenancy; practically this may be challenging to implement.

Councilmembers could amend the bill to exclude tenant screening reports from the limit placed on the total amount of non-refundable move-in fees and/or could exclude that amount from the installment plan. *Potential amendment language will be available for discussion at the Energy and Environment committee on September 27th.*

6. Allowing for a larger security deposit for prospective tenants with low credit scores.

There may be situations where a tenant would want 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. Existing provisions in Section 7.24.100 would allow a landlord and tenant to waive any of the requirements of chapter 7.24 if the tenant is represented by a lawyer. The requirement that the tenant is represented by an attorney may be

viewed as overly complicated and result in landlords being unwilling to work with tenants who do not meet the landlord's screening criteria.

Councilmembers could amend the bill to allow for a higher deposit if the tenant does not meet the posted criteria the owner uses to screen prospective tenants. *Potential amendment language will be available for discussion at the Energy and Environment committee on September 27th*

7. Exclusion for single-family residences where the owner maintains a permanent residence

The City's unfair housing practices regulations, including the recently adopted source of income/first-in time policies, exclude single-family dwellings from the regulations if the owner maintains a permanent residence at the same location. Councilmembers could consider amending the bill to include the same exclusion for the proposed security deposit, non-refundable move-in fees and last month's rent provisions that would be enacted by CB 118817.

Potential amendment language will be available for discussion at the Energy and Environment committee on September 27th.

Attachments:

1. Amend CB 118817 to allow for pet damage deposits and prohibit any other charges to allow a tenant to have a pet
2. Amend CB 118817 to add a new section requesting that the City Auditor evaluate implementation of this legislation.

cc: Kirstan Arestad, Central Staff Executive Director
Ketil Freeman, Supervising Analyst

Attachment 1: Amend CB 118817 to allow for pet damage deposits and prohibit any other charges to allow a tenant to have a pet.
Sponsor: CM Juarez

7.24.020 Definitions

“Pet damage deposit” means money that is paid by the tenant to the landlord at any time as security to pay for damage to the landlord’s property that is caused by a pet for which the tenant is responsible.

“Security deposit” means any payment, fee, charge, or deposit of money paid to the landlord by the tenant at the beginning of the tenancy as a deposit and security for performance of the tenant’s obligations in a written rental agreement, but does not include a pet damage deposit or a payment to assure the payment of rent, provided that a security deposit may be applied to rent as provided in Section 7.24.030. Security deposits include payments, charges, or deposits for the purpose of:

1. Repairing damage to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant, ~~or by pets.~~
2. Compensating the landlord for the tenant’s breach of the tenant’s duties prescribed in the rental agreement to restore, replace, or return personal property or appurtenances.
3. Compensating the landlord for the tenant’s failure to return keys to the premises.

7.24.030 Rental agreement requirements((τ))

F. Any rental agreement entered into after the effective date of the ordinance introduced as Council Bill 118817 is subject to the requirements of this subsection 7.24.030.F. Any payment of a pet damage deposit shall be authorized by a written rental agreement, or an addendum to the written rental agreement, that:

1. Identifies the amount of the pet damage deposit; and
2. Describes the terms and conditions of the payment schedule for the pet damage deposit if the tenant elects to pay the pet damage deposit in installments as authorized by Section 7.24.038.

7.24.035 Security deposits and nonrefundable move-in fees

A. Limit on the amount of charges for security deposits and non-refundable move-in fees. After the effective date of the ordinance introduced as Council Bill 118817, the total amount of a security deposit and nonrefundable move-in fees may not exceed the amount of the first full month's rent for the tenant's dwelling unit. If rent is not paid or otherwise apportioned on a monthly basis then for the sole purpose of applying this limit the total rent shall be pro-rated on an equal, monthly basis and the total charge to a tenant for the cost of a security deposit and nonrefundable move-in fees may not exceed the pro-rated, monthly rental amount.

B. Restrictions on fees

1. Other than non-refundable move-in fees, security deposits, pet security deposits, and last month's rent, landlords are prohibited from charging tenants any one-time fee at the beginning of the tenancy.

7.24.038. ((Reserved)) Pet Damage Deposits

A. Except as provided in subsection 7.24.038.B, the landlord may require payment of a pet damage deposit provided that the total amount of the pet damage deposit may not exceed 25 percent of the first full month's rent, regardless of the time when the pet damage deposit is paid. If rent is not paid or otherwise apportioned on a monthly basis then for the sole purpose of applying this limit the total rent shall be pro-rated on an equal, monthly basis and the total charge to a tenant for the pet damage deposit may not exceed 25 percent of the pro-rated, monthly rental amount.

B. The landlord may not require a pet damage deposit if the pet serves as an assistance animal for the tenant. This prohibition does not prohibit a landlord from bringing an action for damages resulting from damage to the landlord's property caused by the tenant's assistance animal.

C. If the pet's occupancy begins at the beginning of tenancy, the amount of the pet damage deposit shall be specified in a rental agreement. If the pet's occupancy begins after the beginning of the tenancy, the amount of the pet damage deposit shall be specified in an addendum to the rental agreement. The tenant may elect to pay the pet damage deposit in three consecutive, equal monthly installments that begin when the pet first occupies the rental unit or, if agreed by the landlord and tenant, according to an installment schedule described in the rental agreement or the addendum to the rental agreement.

D. The landlord cannot keep any portion of the pet damage deposit for damage that was not caused by pets for which the tenant is responsible. .

E. Other than the pet damage deposit authorized by subsection 7.24.038.A, the landlord may not charge the tenant any fee for keeping a pet.

7.24.060 (~~Landlord liability to tenant.~~) Private right of action

A. Landlord liability to tenant

1. If a landlord attempts to enforce provisions in a rental agreement that are ~~contrary to ((those required to be included in a rental agreement by Section 7.24.030 A or~~ includes provisions prohibited by Section 7.24.030 B in a rental agreement entered into after the ~~effective date of this ordinance))~~ the requirements of Sections 7.24.030, 7.24.035, ((~~or~~) 7.24.036, or 7.24.038, the landlord shall be liable to the tenant for: 1) any actual damages incurred by the tenant as a result of the landlord's attempted enforcement; ~~((plus))~~ 2) double the amount of any penalties imposed by the City; ~~((or))~~ 3) double the amount of any security deposit ~~((forfeited,))~~ unlawfully charged or withheld by the landlord; ~~((as well as))~~ and 4) reasonable attorney fees and costs. ((Prior to seeking damages and penalties for failure to return a security deposit, the tenant must have)) The landlord is not liable for double the amount of the security deposit for unlawfully withholding return of all or a portion of the security deposit unless the tenant has requested return of the security deposit from the landlord.

~~((B-))~~ 2. A landlord who includes provisions prohibited by ~~((Section~~ 7.24.030 B)) subsection 7.24.030.B, Section 7.24.035, ~~or~~ Section 7.24.036, or Section 7.24.038 in a new rental agreement, or in a renewal of an existing agreement, shall be liable to the tenant for ~~((One Thousand Dollars (\$1,000)))~~ up to \$3,000 plus reasonable attorney fees and costs.

Attachment 2: Amend CB 118817 to add a new section requesting that the City Auditor evaluate implementation of this legislation.
Sponsor: CM Herbold

Section #. The City Council requests that the Office of City Auditor, in consultation with the Seattle Department of Construction and Inspections and the Office of Housing, evaluate trends in the rental market to inform future decisions about maintaining or amending the provisions included in the ordinance introduced as Council Bill 118817. This should include an assessment at initial implementation and after one year of implementation of aspects of the rental market that may be impacted by this legislation, including but not limited to: analysis of existing data sources to measure changes in rents charged and evictions; surveying tenants and landlords about recent rental transactions including the amount charged for security deposits and non-refundable move-in fees, installment plan terms and conditions, and the return or retention of security deposits. The City Auditor, at their discretion, may retain an independent, outside party to conduct the evaluation. The evaluation shall be submitted to the City Council by June 2018.