

By: Turner of Tarrant

H.B. No. 3541

Substitute the following for H.B. No. 3541:

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C.S.H.B. No. 3541

A BILL TO BE ENTITLED

AN ACT

relating to a fee collected by a landlord in lieu of a security deposit.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 92, Property Code, is amended by adding Section 92.111 to read as follows:

Sec. 92.111. FEE IN LIEU OF SECURITY DEPOSIT. (a) If a security deposit is required by a residential lease, the landlord may choose to offer the tenant an option to pay a fee in lieu of a security deposit. If a landlord offers a tenant the option of paying a fee in lieu of a security deposit, the landlord:

(1) shall offer the tenant the option to instead pay a security deposit; and

(2) may not use a prospective tenant's choice to pay a fee in lieu of a security deposit or a security deposit as a criterion in the determination of whether to approve an application for occupancy.

(b) At the time a landlord offers to a tenant the option of paying a fee in lieu of a security deposit, the landlord shall notify the tenant in writing:

(1) that the tenant has the option to instead pay a security deposit;

(2) that the tenant has the option to terminate the agreement to pay the fee in lieu of a security deposit at any time

1 and stop paying the fee, and instead, to pay a security deposit in  
2 the amount that is otherwise offered to new tenants for  
3 substantially similar housing on the date the tenant chooses to pay  
4 the security deposit; and

5 (3) of the charges for each option described by  
6 Subdivision (1) or (2).

7 (c) If the tenant decides to pay a fee in lieu of a security  
8 deposit, an agreement to collect the fee must be in writing and  
9 signed by:

10 (1) the landlord or the landlord's legal  
11 representative; and

12 (2) the tenant.

13 (d) A fee in lieu of a security deposit must be:

14 (1) a recurring fee of equivalent amount; and

15 (2) payable at the time each rent payment is due during  
16 the lease.

17 (e) A fee collected under this section may be used to  
18 purchase insurance coverage for damages and charges for which the  
19 tenant is legally liable under the lease or as a result of breaching  
20 the lease. A landlord may not charge the tenant a fee that is more  
21 than the reasonable cost of obtaining and administering the  
22 insurance purchased under this subsection.

23 (f) If the tenant decides to pay a fee in lieu of a security  
24 deposit and the landlord purchases insurance coverage as described  
25 by Subsection (e), an agreement required under Subsection (c) must  
26 clearly specify the following terms:

27 (1) the fee is being paid only to secure occupancy

1 without a requirement of paying a security deposit;

2 (2) the fee, unless otherwise specified, is not  
3 refundable;

4 (3) payment of the fee, unless otherwise specified,  
5 does not eliminate, release, or otherwise limit the requirements of  
6 the lease, including that the tenant must pay for:

7 (A) rent as the rent becomes due; and

8 (B) damages for which the tenant is legally  
9 liable under the lease, other than normal wear and tear; and

10 (4) the fee, unless otherwise specified, is not paying  
11 for insurance that covers the tenant or otherwise changes the  
12 tenant's obligation to pay rent and damages beyond normal wear and  
13 tear.

14 (g) Except as provided by Subsection (h), a fee collected  
15 under this section is a security deposit for purposes of this  
16 chapter.

17 (h) A fee collected under this section is not a security  
18 deposit for purposes of this chapter if:

19 (1) an agreement was signed under Subsection (c); and

20 (2) the fee is used to purchase insurance coverage for  
21 damages and unpaid rent for which the tenant is legally liable under  
22 the lease or as a result of breaching the lease.

23 (i) A landlord may not charge a tenant for normal wear and  
24 tear of a dwelling.

25 (j) A landlord may not submit a claim for damages or unpaid  
26 rent to an insurer for insurance described by Subsection (e) unless  
27 the landlord notifies the tenant of the damages or unpaid rent

1 indebtedness not later than the 30th day after the date the tenant  
2 surrendered possession of the dwelling. The notice must include a  
3 written description and itemized list of all damages, if any, and of  
4 unpaid rent, if any, including the dates the rent payments were due.

5 (k) If the tenant challenges the claim for damages or unpaid  
6 rent and that challenge results in a determination by the landlord  
7 or by a court that the notice of indebtedness is incorrect, the  
8 indebtedness is void and the landlord may not file an insurance  
9 claim for insurance purchased under Subsection (e) in the amount of  
10 the voided indebtedness. If the landlord has already submitted to  
11 the insurer a claim for the voided indebtedness, the claim must be  
12 withdrawn. If the insurance company has already paid the landlord  
13 for the invalidated claim, the landlord shall return the payment.

14 (l) If an insurer compensates a landlord for a tenant's  
15 damages or unpaid rent under a valid claim:

16 (1) the landlord may not seek or collect reimbursement  
17 from the tenant of the amounts that the insurer paid to the  
18 landlord;

19 (2) the insurer that has paid a landlord after receipt  
20 of a claim filed by a landlord, if allowed by a subrogation clause  
21 in the insurance described by Subsection (e) and before the first  
22 anniversary of the termination of the tenant's occupancy, may seek  
23 reimbursement from the tenant of only the amounts paid to the  
24 landlord; and

25 (3) the tenant is entitled to any defenses to payment  
26 against the insurer as against the landlord.

27 (m) If an insurer seeks reimbursement under Subsection

1 (1)(2), the insurer must include in the reimbursement demand:

2 (1) evidence of damages or unpaid rent that the  
3 landlord submitted to the insurer;

4 (2) evidence of damage repair costs that the landlord  
5 submitted to the insurer; and

6 (3) a copy of the settled claim that documents  
7 payments made by the insurer to the landlord.

8 SECTION 2. Section 92.111, Property Code, as added by this  
9 Act, applies only to a lease entered into or renewed on or after the  
10 effective date of this Act. A lease entered into or renewed before  
11 the effective date of this Act is governed by the law as it existed  
12 immediately before the effective date of this Act, and that law is  
13 continued in effect for that purpose.

14 SECTION 3. This Act takes effect September 1, 2021.