

Section 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 and stop paying the fee, and instead, to pay a security deposit in the amount that is otherwise offered to new tenants for substantially similar housing on the date the tenant chooses to pay the security deposit; and
- (3)** of the charges for each option described by Subdivision (1) or (2).

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

- (1)** the landlord or the landlord's legal representative; and
- (2)** the tenant.

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

- (1)** a recurring fee of equivalent amount; and
- (2)** payable at the time each rent payment is due during the lease.

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

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

- (1)** the fee is being paid only to secure occupancy without a requirement of paying a security deposit;
- (2)** the fee, unless otherwise specified, is not refundable;
- (3)** payment of the fee, unless otherwise specified, does not eliminate, release, or otherwise limit the requirements of the lease, including that the tenant must pay for:
  - (A)** rent as the rent becomes due; and
  - (B)** damages for which the tenant is legally liable under the lease, other than normal wear and tear; and
- (4)** the fee, unless otherwise specified, is not paying for insurance that covers the tenant or otherwise changes the tenant's obligation to pay rent and damages beyond normal wear and tear.

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

- (h)** A fee collected under this section is not a security deposit for purposes of this chapter if:
- (1)** an agreement was signed under Subsection (c); and
  - (2)** the fee is used to purchase insurance coverage for damages and unpaid rent for which the tenant is legally liable under the lease or as a result of breaching the lease.
- (i)** A landlord may not charge a tenant for normal wear and tear of a dwelling.
- (j)** A landlord may not submit a claim for damages or unpaid rent to an insurer for insurance described by Subsection (e) unless the landlord notifies the tenant of the damages or unpaid rent indebtedness not later than the 30th day after the date the tenant surrendered possession of the dwelling. The notice must include a written description and itemized list of all damages, if any, and of unpaid rent, if any, including the dates the rent payments were due.
- (k)** If the tenant challenges the claim for damages or unpaid rent and that challenge results in a determination by the landlord or by a court that the notice of indebtedness is incorrect, the indebtedness is void and the landlord may not file an insurance claim for insurance purchased under Subsection (e) in the amount of the voided indebtedness. If the landlord has already submitted to the insurer a claim for the voided indebtedness, the claim must be withdrawn. If the insurance company has already paid the landlord for the invalidated claim, the landlord shall return the payment.
- (l)** If an insurer compensates a landlord for a tenant's damages or unpaid rent under a valid claim:
- (1)** the landlord may not seek or collect reimbursement from the tenant of the amounts that the insurer paid to the landlord;
  - (2)** the insurer that has paid a landlord after receipt of a claim filed by a landlord, if allowed by a subrogation clause in the insurance described by Subsection (e) and before the first anniversary of the termination of the tenant's occupancy, may seek reimbursement from the tenant of only the amounts paid to the landlord; and
  - (3)** the tenant is entitled to any defenses to payment against the insurer as against the landlord.
- (m)** If an insurer seeks reimbursement under Subsection (l)(2), the insurer must include in the reimbursement demand:
- (1)** evidence of damages or unpaid rent that the landlord submitted to the insurer;
  - (2)** evidence of damage repair costs that the landlord submitted to the insurer; and
  - (3)** a copy of the settled claim that documents payments made by the insurer to the landlord.

*Tex. Prop. Code § 92.111*

Added by Acts 2021, Texas Acts of the 87th Leg. - Regular Session, ch. 189, Sec. 1, eff. 9/1/2021.