

FALL 2019
APARTMENT REPORT
BREAKFAST

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FAIR ACCESS IN RENTING ORDINANCE (FAIR)

- Commissioner Eudaly's Ordinance passed 3-1 on June 19, 2019
- Ordinance makes sweeping changes to how Landlords deal with:
 - Applicant screening process
 - Security deposit accounting

FAIR ACCESS IN RENTING ORDINANCE (FAIR)

- Currently the effective date is set for March 1, 2020
- Due to the level of complexity, Landlords should get training and ensure forms are updated before March 1, 2020

APPLICANT SCREENING PROCESS

Two elements:

- 1 Changes to impact all Landlords when screening
- 2 Creation of a two-tier-system from which Landlords can choose how they want to screen, specifically:
 - “Low barrier” screening criteria set forth in the Ordinance with no mandatory individualized assessment of denied applicants
 - Landlord use of their own screening criteria with mandatory assessment of denied applicants

APPLICANT SCREENING PROCESS

All Landlords, regardless of whether they use the “Low Barrier” or their own screening, have to adhere to the following new rules:

APPLICANT SCREENING PROCESS

Advertising

- Landlords must publish notices for rental of a dwelling unit at least 72 hours before processing applications
- Advertising and applications must have specific disclosures, and there are specific requirements for waitlist procedures and handling of accessible units

APPLICANT SCREENING PROCESS

Identification

- Must have an expanded list and cannot be limited to Social Security Numbers only

APPLICANT SCREENING PROCESS

Financial responsibility of applicants

- If multiple applicants, applicants can choose which ones will be financially responsible for the unit and which will not
- Can only screen the financially responsible applicants for things like income and credit
- Rent to Income Ratio limited to:
 - 2.5 x the rent if rent is below 80% median family income (as determined by PHB)
 - 2 x the rent if rent is 80% or more than median family income (as determined by PHB)

APPLICANT SCREENING PROCESS

- Creates procedures for handling applicants with disabilities
- Limitation on screening fees to what screening companies charge, or various percentages based on how much the Landlord screens and how much of the screening is handled by an outside company
- Applicants have 30 days to appeal and Landlord can't charge new screening fee for 3 months if appeal granted

TWO OPTIONS

Low barrier screening - can't deny for:

- ANY misdemeanors older than 3 years
- ANY felonies older than 7 years
- Credit scores over 500/no credit
- Prior property damages less than \$500, unpaid debt less than \$1000
- Bankruptcy
- Medical/Student Debt
- Evictions older than 3 years and some types of poor rental history

TWO OPTIONS

Individualized assessment prior to denying any applicant - multiple factors

- Very subjective
- Within 2 weeks issue a Notice of Denial explaining the reason for rejection

DAMAGES

- \$250 per violation (not sure what that means)
- Actual Damages
- Attorney fees

SECURITY DEPOSIT ACCOUNTING

- Limits on what Landlords can request for security deposit:
 - ½ month's rent if pre-paid rent required
 - One month's rent otherwise
 - Can require extra ½ month's rent if approve despite risk factors in previous screening slides
- Execution deposits limited to ½ month rent

SECURITY DEPOSIT ACCOUNTING

- Tenants do not have to pay security deposit up front, but can pay via installments over three months

SECURITY DEPOSIT ACCOUNTING

- Must keep security deposits in a separate bank account
- If interest bearing account – tenant gets those funds

SECURITY DEPOSIT ACCOUNTING

- Funds from deposit used for repairs must be done in accordance with a depreciation schedule as yet to be published by PHB
- Landlord has to provide an itemized list of all provided fixtures, appliances and equipment with a replacement cost in order to use funds from deposit

SECURITY DEPOSIT ACCOUNTING

Cannot use security deposit for:

- Interior painting except for damages beyond normal wear and tear or unauthorized painting
- Cleaning or repair of flooring outside of the “discrete impacted area”
- Anything covered by warranty or insurance

SECURITY DEPOSIT ACCOUNTING

- Within 7 days of tenant moving in, tenant can complete and submit a condition report and noting any damage
- Unless landlord disputes and gets third party verification of the condition of the unit the tenant version of the condition of the unit is the one used for determining damages at end of tenancy
- Unresolved disputes go in favor of tenant

SECURITY DEPOSIT ACCOUNTING

- If tenant doesn't submit a condition report, Landlord must complete and provide photos within 10 days of the first week of tenancy

SECURITY DEPOSIT ACCOUNTING

- Landlord must offer tenant a walk-through within one week following termination date
- Landlords must provide itemization of all repairs, with photographs, with security deposit accounting
- If charging more than \$200 in labor costs to tenant, Landlord must provide documentation of reasonableness of costs and hourly rates

SECURITY DEPOSIT ACCOUNTING

Within 5 days of receiving a giving notice of intent to terminate, tenant receive:

- Written summary of rent payments
- Completed “rental history form” as yet provided by PHB

SECURITY DEPOSIT ACCOUNTING

Damages:

- 2x security deposit
- Attorney fees
(in addition to damages under ORLTA)

CONCLUSION

- Many changes, very complex, with penalties
- Each situation is different, crucial to get training, updated forms and help from an attorney

THANK YOU

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