

House Bill 3340

Sponsored by Representative DEMBROW; Representatives FREDERICK, LIVELY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies requirements for returning or retaining all or portion of security deposit or prepaid rent paid for residential tenancy.

A BILL FOR AN ACT

1
2 Relating to landlord-tenant law; amending ORS 90.300.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 90.300 is amended to read:

5 90.300. (1) As used in this section, "security deposit" includes any last month's rent deposit.

6 (2)(a) Except as otherwise provided in this section, a landlord may require a tenant to pay a
7 security deposit. The landlord shall provide the tenant with a receipt for any security deposit the
8 tenant pays. The landlord shall hold a security deposit or prepaid rent for the tenant who is a party
9 to the rental agreement. A tenant's claim to the security deposit or prepaid rent is prior to the claim
10 of a creditor of the landlord, including a trustee in bankruptcy.

11 (b) Except as provided in ORS 86.755 (10), the holder of the landlord's interest in the premises
12 at the time the tenancy terminates is responsible to the tenant for any security deposit or prepaid
13 rent and is bound by this section.

14 (3) A written rental agreement, if any, must list a security deposit paid by a tenant or required
15 by a landlord.

16 (4) A landlord may not charge a tenant a pet security deposit for keeping a service animal or
17 companion animal that a tenant with a disability requires as a reasonable accommodation under fair
18 housing laws.

19 (5)(a) Except as otherwise provided in this subsection, a landlord may not change the rental
20 agreement to require the tenant to pay a new or increased security deposit during the first year
21 after the tenancy has begun. Subject to subsection (4) of this section, the landlord may require an
22 additional deposit if the landlord and tenant agree to modify the terms and conditions of the rental
23 agreement to permit a pet or for other cause and the additional deposit relates to the modification.
24 This paragraph does not prevent a landlord from collecting a security deposit that an initial rental
25 agreement provided for but that remained unpaid at the time the tenancy began.

26 (b) If a landlord requires a new or increased security deposit after the first year of the tenancy,
27 the landlord shall allow the tenant at least three months to pay the new or increased deposit.

28 (6) The landlord may claim all or part of the security deposit only if the landlord required the
29 security deposit for any or all of the purposes specified in subsection (7) of this section.

30 (7)(a) The landlord may claim from the security deposit only the amount reasonably necessary:

31 (A) To remedy the tenant's defaults in the performance of the rental agreement including, but

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 not limited to, unpaid rent; and

2 (B) To repair damages to the premises caused by the tenant, not including ordinary wear and
3 tear.

4 (b) A landlord is not required to repair damage caused by the tenant in order for the landlord
5 to claim against the deposit for the cost to make the repair. Any labor costs the landlord assesses
6 under this subsection for cleaning or repairs must be based on a reasonable hourly rate. The land-
7 lord may charge a reasonable hourly rate for the landlord's own performance of cleaning or repair
8 work.

9 (c) Defaults and damages for which a landlord may recover under this subsection include, but
10 are not limited to:

11 (A) Carpet cleaning, other than the use of a common vacuum cleaner, if:

12 (i) The cleaning is performed by use of a machine specifically designed for cleaning or
13 shampooing carpets;

14 (ii) The carpet was cleaned immediately before the tenant took possession; and

15 (iii) The written rental agreement provides that the landlord may deduct the cost of carpet
16 cleaning regardless of whether the tenant cleans the carpet before the tenant delivers possession
17 as described in ORS 90.147.

18 (B) Loss of use of the dwelling unit during the performance of necessary cleaning or repairs, if
19 the cleaning or repairs are performed in a timely manner.

20 (8) A landlord may not require a tenant to pay or to forfeit a security deposit or prepaid rent
21 to the landlord for the tenant's failure to maintain a tenancy for a minimum number of months in
22 a month-to-month tenancy.

23 (9) The landlord must apply any last month's rent deposit to the rent due for the last month of
24 the tenancy:

25 (a) When either the landlord or the tenant gives to the other a notice of termination, pursuant
26 to this chapter, other than a notice of termination under ORS 90.394;

27 (b) When the landlord and tenant agree to terminate the tenancy; or

28 (c) When the tenancy terminates in accordance with the provisions of a written rental agree-
29 ment for a term tenancy.

30 (10) A landlord shall account for and refund as provided in subsections (12) to (14) of this section
31 any portion of a last month's rent deposit the landlord does not apply as provided under subsection
32 (9) of this section. Unless the tenant and landlord agree otherwise, the tenant may not require the
33 landlord to apply a last month's rent deposit to rent due for any period other than the last month
34 of the tenancy. A last month's rent deposit does not limit the amount of rent charged unless a
35 written rental agreement provides otherwise.

36 (11) When the tenancy terminates, a landlord shall account for and refund to the tenant, in the
37 same manner this section requires for security deposits, the unused balance of any prepaid rent the
38 landlord has not previously refunded to the tenant under ORS 90.380 and 105.120 (5)(b) or any other
39 provision of this chapter. The landlord may claim from the remaining prepaid rent only the amount
40 reasonably necessary to pay the tenant's unpaid rent.

41 (12) In order to claim all or part of any prepaid rent or security deposit, within 31 days after
42 the tenancy terminates and the tenant delivers possession the landlord shall give to the tenant a
43 *written accounting that states specifically the basis or bases of the claim. The landlord shall give a*
44 separate **written** accounting for security deposits and for prepaid rent. **Each written account**
45 **must state the bases of the claim specifically, including a list of the repairs required, the**

1 **cost associated with each repair on the list and photographs documenting the damage that**
 2 **occurred during the tenancy.**

3 (13) The landlord shall return to the tenant the **full amount of the** security deposit or prepaid
 4 rent or the portion of the security deposit or prepaid rent that the landlord does not claim in the
 5 manner provided by subsections (11) and (12) of this section not later than 31 days after the tenancy
 6 terminates and the tenant delivers possession to the landlord.

7 (14) The landlord shall give the written accounting required under subsection (12) of this section
 8 or shall return the **full amount of the** security deposit or prepaid rent as required by subsection
 9 (13) of this section by personal delivery or by first class mail.

10 (15) If a security deposit or prepaid rent secures a tenancy for a space for a manufactured
 11 dwelling or floating home the tenant owns and occupies, whether or not in a facility, and the
 12 dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the 31-day period de-
 13 scribed in subsections (12) and (13) of this section commences on the earliest of:

- 14 (a) Waiver of the abandoned property process under ORS 90.425 (26) or 90.675 (22);
- 15 (b) Removal of the manufactured dwelling or floating home from the rented space;
- 16 (c) Destruction or other disposition of the manufactured dwelling or floating home under ORS
 17 90.425 (10)(b) or 90.675 (10)(b); or
- 18 (d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675
 19 (10)(a).

20 (16) If the landlord fails to comply with subsection (13) of this section or if the landlord in bad
 21 faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant
 22 under this chapter or the rental agreement, the tenant may recover the money due in an amount
 23 equal to twice the *[amount:]*

- 24 *[(a) Withheld without a written accounting under subsection (12) of this section; or]*
- 25 *[(b) Withheld in bad faith]* **full amount of the security deposit or prepaid rent.**

26 (17)(a) A security deposit or prepaid rent in the possession of the landlord is not garnishable
 27 property, as provided in ORS 18.618.

28 (b) If a landlord delivers a security deposit or prepaid rent to a garnishor in violation of ORS
 29 18.618 (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall
 30 allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is
 31 delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the
 32 tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph be-
 33 fore the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the
 34 tenant after the garnishment, the landlord is not required to refund or account for the security de-
 35 posit or prepaid rent under subsection (11) of this section.

36 (18) This section does not preclude the landlord or tenant from recovering other damages under
 37 this chapter.

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