

# House Bill 2689

Sponsored by Representative GOMBERG (Pre-session filed.)

## Corrected 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**.

Reorganizes statute to clarify that cost of carpet cleaning that landlord may deduct from security deposit is not considered default or damage of tenant.

### A BILL FOR AN ACT

1  
2 Relating to landlord-tenant law; amending ORS 90.300, 90.472 and 90.475.

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 86.782 (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 cover the cost of carpet cleaning, without regard to whether the tenant cleans the**

**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 **carpet before the tenant delivers possession as described in ORS 90.147, if:**

2 (i) **The carpet cleaning is performed using a machine specifically designed for cleaning**  
 3 **or shampooing carpets;**

4 (ii) **The carpet was cleaned or replaced after the previous tenancy, or the most recent**  
 5 **significant use of the carpet, and before the tenant took possession; and**

6 (iii) **The written rental agreement provides that the landlord may deduct the cost of**  
 7 **carpet cleaning;**

8 [(A)] (B) To remedy the tenant's defaults in the performance of the rental agreement including,  
 9 but not limited to, unpaid rent; *[and]*

10 [(B)] (C) To repair damages to the premises caused by the tenant, not including ordinary wear  
 11 and tear[.]; **or**

12 (D) **To recover for loss of use of the dwelling unit during the performance of necessary**  
 13 **cleaning or repairs for which the tenant is responsible under this subsection, when the**  
 14 **cleaning or repairs are performed in a timely manner.**

15 (b) A landlord is not required to **clean the carpet or to** repair damage caused by the tenant  
 16 in order for the landlord to claim against the deposit for the cost to **clean the carpet or to** make  
 17 the repair. Any labor costs the landlord assesses under this subsection for cleaning or repairs must  
 18 be based on a reasonable hourly rate. The landlord may charge a reasonable hourly rate for the  
 19 landlord's own performance of cleaning or repair work.

20 *[(c) Defaults and damages for which a landlord may recover under this subsection include, but are*  
 21 *not limited to:]*

22 *[(A) Carpet cleaning, other than the use of a common vacuum cleaner, if:]*

23 *[(i) The cleaning is performed by use of a machine specifically designed for cleaning or shampooing*  
 24 *carpets;]*

25 *[(ii) The carpet was cleaned or replaced after the previous tenancy or the most recent significant*  
 26 *use of the carpet and before the tenant took possession; and]*

27 *[(iii) The written rental agreement provides that the landlord may deduct the cost of carpet cleaning*  
 28 *regardless of whether the tenant cleans the carpet before the tenant delivers possession as described in*  
 29 *ORS 90.147.]*

30 *[(B) Loss of use of the dwelling unit during the performance of necessary cleaning or repairs for*  
 31 *which the tenant is responsible under this subsection if the cleaning or repairs are performed in a*  
 32 *timely manner.]*

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

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

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

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

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

43 (10) A landlord shall account for and refund as provided in subsections (12) to (14) of this section  
 44 any portion of a last month's rent deposit the landlord does not apply as provided under subsection  
 45 (9) of this section. Unless the tenant and landlord agree otherwise, the tenant may not require the

1 landlord to apply a last month's rent deposit to rent due for any period other than the last month  
 2 of the tenancy. A last month's rent deposit does not limit the amount of rent charged unless a  
 3 written rental agreement provides otherwise.

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

9 (12) In order to claim all or part of any prepaid rent or security deposit, within 31 days after  
 10 the tenancy terminates and the tenant delivers possession the landlord shall give to the tenant a  
 11 written accounting that states specifically the basis or bases of the claim. The landlord shall give  
 12 a separate accounting for security deposits and for prepaid rent.

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

17 (14) The landlord shall give the written accounting required under subsection (12) of this section  
 18 or shall return the security deposit or prepaid rent as required by subsection (13) of this section by  
 19 personal delivery or by first class mail.

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

- 24 (a) Waiver of the abandoned property process under ORS 90.425 (26) or 90.675 (22);
- 25 (b) Removal of the manufactured dwelling or floating home from the rented space;
- 26 (c) Destruction or other disposition of the manufactured dwelling or floating home under ORS  
 27 90.425 (10)(b) or 90.675 (10)(b); or
- 28 (d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675  
 29 (10)(a).

30 (16) If the landlord fails to comply with subsection (13) of this section or if the landlord in bad  
 31 faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant  
 32 under this chapter or the rental agreement, the tenant may recover the money due in an amount  
 33 equal to twice the amount:

- 34 (a) Withheld without a written accounting under subsection (12) of this section; or
- 35 (b) Withheld in bad faith.

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

38 (b) If a landlord delivers a security deposit or prepaid rent to a garnishor in violation of ORS  
 39 18.618 (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall  
 40 allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is  
 41 delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the  
 42 tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph be-  
 43 fore the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the  
 44 tenant after the garnishment, the landlord is not required to refund or account for the security de-  
 45 posit or prepaid rent under subsection (11) of this section.

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

3 **SECTION 2.** ORS 90.472 is amended to read:

4 90.472. (1) As used in this section, “state service member” means a member of the organized  
 5 militia who is called into active service of the state by the Governor under ORS 399.065 (1) for 90  
 6 or more consecutive days.

7 (2) A tenant may terminate a rental agreement upon written notice if the tenant provides the  
 8 landlord with proof of official orders showing that the tenant is a state service member.

9 (3) A termination of a rental agreement under this section is effective the earlier of:

10 (a) Thirty days after the date the next rental payment is due; or

11 (b) On the last day of the month after the month in which written notice is given.

12 (4) Notwithstanding ORS 90.300 [(7)(a)(A)] **(7)(a)(B)** and 90.430, a tenant who terminates a lease  
 13 under subsection (2) of this section is not:

14 (a) Subject to a penalty, fee, charge or loss of deposit because of the termination; or

15 (b) Liable for any rent beyond the effective date of the termination as determined under sub-  
 16 section (3) of this section.

17 **SECTION 3.** ORS 90.475 is amended to read:

18 90.475. (1) A tenant may terminate a rental agreement upon written notice if the tenant provides  
 19 the landlord with proof of official orders showing that the tenant is:

20 (a) Enlisting for active service in the Armed Forces of the United States;

21 (b) Serving as a member of a National Guard or other reserve component or an active service  
 22 component of the Armed Forces of the United States and ordered to active service outside the area  
 23 for a period that will exceed 90 days;

24 (c) Terminating active service in the Armed Forces of the United States;

25 (d) A member of the Public Health Service of the United States Department of Health and Hu-  
 26 man Services detailed by proper authority for duty with the Army or Navy of the United States and:

27 (A) Ordered to active service outside the area for a period that will exceed 90 days; or

28 (B) Terminating the duty and moving outside the area within the period that the member is  
 29 entitled by federal law to the storage or shipment of household goods; or

30 (e) A member of the commissioned corps of the National Oceanic and Atmospheric Adminis-  
 31 tration ordered to active service outside the area for a period that will exceed 90 days.

32 (2) As used in subsection (1) of this section, “Armed Forces of the United States” means the  
 33 Air Force, Army, Coast Guard, Marine Corps or Navy of the United States.

34 (3) A termination of a rental agreement under this section is effective on the earlier of:

35 (a) A date determined under the provisions of any applicable federal law; or

36 (b) The later of:

37 (A) 30 days after delivery of the notice;

38 (B) 30 days before the earliest reporting date on orders for active service;

39 (C) A date specified in the notice; or

40 (D) 90 days before the effective date of the orders if terminating duty described under subsection  
 41 (1)(d)(B) of this section or terminating any active service described in this section.

42 (4) Notwithstanding ORS 90.300 [(7)(a)(A)] **(7)(a)(B)** and 90.430, a tenant who terminates a lease  
 43 under subsection (1) of this section is not:

44 (a) Subject to a penalty, fee, charge or loss of deposit because of the termination; or

45 (b) Liable for any rent beyond the effective date of the termination as determined under sub-

1 section (3) of this section.

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