

Student Legal Services

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Testimony in Support of Senate Bill 873 Before the Senate Judiciary Committee

April 2, 2019

Chair Prozanski, Vice Chari Thatcher, and members of the Committee:

On behalf of Portland State University (PSU) Student Legal Services (SLS), I submit this written testimony regarding Senate Bill 873. I thank you for the opportunity to submit comments.

I am the Assistant Director of Portland State University Student Legal Services. SLS is a pro bono student resource center that provides PSU students with advice and representation on a variety of legal issues. We encourage students' full participation in their academic endeavors by helping them navigate obstacles to fulfilling their educational and career goals. We pursue our mission through legal advice, representation, mentorship, community partnerships and education to empower student clients. Not surprisingly, landlord tenant legal problems is the most common reason that students use our services.

SB 873 is a much needed reform that will help reduce barriers to housing. During my time representing PSU students, I have seen renters face extreme difficulty finding housing if they have ever been a named party in an eviction (FED) action. This occurs even when the FED was dismissed and/or the renter prevailed in court against the landlord. For example, we represented a student in an FED where the student faced potential eviction due to her landlord's accounting error. The landlord had not properly credited a student's rent, deposit and utility payments. As a result, the landlord asserted that the student owed money that she did not in fact owe. We succeeded in having the FED dismissed at the first appearance in court. Months later, when the student was ready to move to a new home, she found it much harder to find a rental that would accept or even consider her even though her circumstances had not significantly changed since she had last hunted for an apartment. I have seen similar circumstances for other students with dismissed FEDs on their record. Because our clients have had such difficulty finding new housing without a credible explanation, our office suspects that some landlords and/or screening companies are taking notice of all FED actions regardless of the outcome of the proceeding and regardless of whether the law allows them to be considered.

ORS 90.303(1) addresses applicant screening and prior FED actions. The section lays out two scenarios where a prior FED action may not be used as grounds to deny an application. Subsection (a) bars the use of FED actions that were dismissed or resulted in a judgment for the applicant, and subsection (b) bars the use of FED actions that are 5 or more years of age at the time the application is received. The public policy justifications for section 90.303(1) are clear. The first subsection bars the use of FED actions where either (1) a determination was made by a neutral fact finder that the tenant was not at fault or (2) a stipulated agreement was reached between the parties that included the voluntary dismissal of the FED action by the landlord. In plain terms, these are instances where either

the court has found that the tenant could not or should not be evicted, or where the tenant and the landlord reach an agreement to their dispute that is satisfactory to both parties. FED actions of this nature that appear on an applicant's record might include actions filed in error, actions filed due to an excusable mistake or misunderstanding that are later dismissed, or actions filed for reasons contrary to law. The second subsection bars the use of FED actions in evaluating an applicant when those actions are greater than 5 years old. Section 90.303's prohibitions are reasonable. Many landlords might otherwise decide it is in their best interests to deny all tenant applicants who have a prior FED, regardless of the particular circumstances.

SB 873 would ensure that landlords and screening companies not access readily available FED records to which they are already prohibited from using against potential renters under ORS 90.303. By creating a procedure that allows a renter to seal records of an FED that is outside the 5 year time limit or that was dismissed, it would prevent landlords and screening companies from even being able to obtain FED records should the screening company or landlord be tempted to inappropriately use this information. Because this FED history cannot be used in the applications process, there is no reason to have this information so readily available to them. Once information is seen, it is difficult to "unsee." Furthermore, the current easy access to old FED records cannot be over stated. As I write this testimony, I searched the courthouse record system, OEI, to see the oldest FED actions I can find. FED cases back to the 1980s are readily available online. Without much effort, I can currently see evictions from more than 30 years ago.

The Oregon Residential Landlord Tenant Act currently lacks an adequate means of enforcing the prohibition against using old and dismissed FED actions. Providing a path for tenants to seal qualifying records would be an excellent means of enforcing these protections. This bill would further the state's goal of ensuring equal access to housing for all Oregonians. It would help ensure that (1) old FED actions do not impair a renter's access to housing indefinitely and (2) FED actions that were dismissed do not adversely impact the tenant in their future housing search. For these reasons, we support Senate Bill 873.

Thank you for the opportunity to submit written testimony.

Sincerely,

A handwritten signature in blue ink, appearing to read "April Kusters".

April L. Kusters
Attorney at Law

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