

SUBJECT: Security and application deposits of residential tenants

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Brady, Crabb, Eiland, Giddings, Janek, Rhodes,
Solomons

1 nays — Corte

0 absent

WITNESSES: (*On original version*)

For — Katherine Stark, Austin Tenants Council; Robert Doggett, Legal Services of North Texas; Dorothy Masterson, Housing Crisis Center; Yasmin Thomas, Texas Tenant's Union

Against — Joe Sharp and Larry Niemann, Texas Apartment Association.

On — J. Raymond Schiflett, III, The University of Texas at Austin Students' Attorney Office; Kelly Rodgers, Texas Bankers Association.

BACKGROUND: Property Code Chapter 92 allows a landlord to accept security and application deposits for rental properties. Landlords are required to return security deposits, subtracting any lawful deductions, within 30 days of a tenant moving out. The code sets no deadline for return of an application deposit to an applicant who is rejected as a tenant.

DIGEST: CSHB 3028 would revise the responsibilities and liability of landlords regarding security and application deposits for residential rental units. Landlords would be required to separate tenant security deposits (except for all or a portion of the security deposit a landlord may keep under the law) from their own funds and assets. Landlords would be allowed to commingle tenant security deposits into one account.

Landlords would be required to protect security deposits from their creditors, including a foreclosed mortgage or trustee in bankruptcy, and would be allowed to transfer security deposits to a subsequent owner. A

tenant's claim to the security deposit would have priority over any landlord's creditors, including a trustee in bankruptcy.

Landlords would be liable for failure to separate deposits from their own funds and would forfeit the right to withhold a security deposit, would be liable to tenant for damages, fines equivalent to a security deposit, court costs and reasonable attorney fees. A landlord could be enjoined from future violations.

Landlords would be required to give acceptance notice to a prospective tenant within seven days of a completed application or upon acceptance of an application deposit, otherwise applicant would be considered rejected. Landlords would be required to return an application deposit to a rejected applicants by the first day after the rejection if the applicant's check or money order had not been deposited and the applicant's deposit was by check, cashier's check, certified check or money order. Cash deposits would have to be returned within seven days.

Unless a written agreement between a landlord and applicant existed, landlords would have to return application deposits to rejected applicants within 14 days if the deposit was made by check, cashier's check certified check or money order and deposited prior to applicant's rejection, but no later than 30 days.

A rejected applicant could be contacted by phone or mail. Refunds could be by mail or made available in the landlord's office. Landlords would be required to mail refunds upon request by applicant. Saturdays, Sundays and holidays would be excluded.

A landlord who failed to return an applicant's deposit would be subject to a \$100 fine plus three times the application deposit and reasonable attorney' fees as a result of a suit.

The bill would take effect January 1, 1996, and would require compliance for security and application fees received from tenants on or after this date.

**SUPPORTERS
SAY:**

Millions of Texans reside in rental properties, and many of them lose rental deposits each year. This bill would clearly address problems that arise when landlords go out of business or otherwise fail to properly safeguard tenant deposits. In cities like Austin, Dallas and Galveston, renters constitute nearly 60 percent of the housing market and need legal protection. CSHB 3028 proposes several remedies to safeguard tenant security deposits and applicant deposits.

Currently, landlords can keep security deposits with the same funds and assets they manage, thereby earning interest on those deposits and using them for whatever purposes they choose. Security deposits should have to be kept in a separate account, and commingling deposits with the landlord's own funds should be prohibited. If a landlord goes out of business or is foreclosed, a tenant's security deposit is not protected and is often lost. A tenant may sue a former landlord, but the time and money needed to pursue such an action is discouraging.

Application deposits of \$100 to \$200 are required by most landlords prior to renting. When a prospective tenant puts down an application deposit and is rejected, it can be several weeks before the applicant receives the deposit back. Many landlords do not return an applicant's deposit for 30 days. A financial hardship is placed on applicants, because many do not have any extra money to spare, particularly if they have had to pay out several hundred dollars in application deposits. An earlier deadline for landlords to return application fees would solve this concern.

Landlords whose property is foreclosed or in bankruptcy and is transferred are not required to return deposits, unless the new owner acknowledges the tenant's deposit. CSHB 3028 would add needed consumer protections by protecting a tenant's security deposit from a foreclosed mortgage or trustee in bankruptcy is needed.

**OPPONENTS
SAY:**

Landlords should not be required to separate tenant deposits from their own landlord funds. Over 50 percent of deposits are returned to tenants on a timely basis. This requirement would deny landlords the use of all funds until the tenant moves out, even in cases when that using the funds is warranted: where a tenant violated the lease, where past due charges remain outstanding or where property was damaged.

Landlords with just a few tenants would be affected the most by this bill. The bookkeeping and bank charges that would occur because of the requirement to keep deposits in a separate account could pose a financial hardship.

NOTES:

The committee substitute differs from the original by deleting language making the Texas Department of Housing and Community Affairs as a beneficiary of interest excluding landlords who lease three or fewer dwellings, changes in the rejection period and deadlines for returning applicant's fees, and changes the effective date of the bill from September 1, 1995, to January 1, 1996.