

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 537 Fees in Lieu of Security Deposits

**SPONSOR(S):** Judiciary Committee, Civil Justice & Property Rights Subcommittee, Mooney

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 884

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	13 Y, 3 N, As CS	Brascomb	Jones
2) Judiciary Committee	14 Y, 5 N, As CS	Brascomb	Kramer

### SUMMARY ANALYSIS

A lease is an estate interest in real property held under a rental agreement by which the owner (landlord) gives another (tenant) the right to occupy or use land for a period of time. As part of a rental agreement, a landlord may require a tenant to pay a security deposit, which is a dollar amount that is often intended to cover damage to the premises beyond normal wear and tear. There is no limit to the security deposit amount a landlord may charge, but generally speaking, most landlords charge the equivalent of one to two month's rent.

For low-income families, a security deposit may pose a significant barrier to safe and affordable housing. A security deposit equal to one or more month's rent may be more than a low-income family can afford, preventing the family from accessing housing, or keeping the family in substandard housing even when the family could otherwise afford to move.

CS/CS/HB 537 creates s. 83.491, F.S., authorizing a landlord to offer a tenant the option to pay a fee in lieu of the security deposit. The bill does not require a landlord to offer a tenant this option; however, if a landlord offers this option, the landlord must make various written notifications to the tenant, including the following:

- That the tenant has the option to pay a security deposit instead of the fee;
- That the tenant may, at any time, terminate the agreement to pay the fee in lieu of the security deposit and instead pay a security deposit in the amount that is otherwise offered to other tenants;
- That the fee is nonrefundable, if applicable;
- That the fee is only for securing occupancy without the need to pay a security deposit;
- That the fee payment does not change the tenant's obligation to pay rent and fees or change the tenant's obligation to pay the costs of repairing damage to the premises; and
- That if the landlord uses any portion of the fee to purchase insurance:
  - The tenant is not insured and is not a beneficiary of the landlord's insurance coverage;
  - The insurance does not change the tenant's obligation to pay rent and fees; and
  - The insurance does not change the tenant's obligation to pay the costs of repairing damage to the premises in excess of ordinary wear and tear.

The bill also:

- Requires the landlord and the tenant to sign a written agreement for a fee in lieu of a security deposit;
- Provides that a fee collected under the bill is not a security deposit;
- Provides that a fee in lieu of a security deposit may be:
  - A recurring monthly fee, payable on the same date that the rent is due under the lease; or
  - Payable upon a schedule that the landlord and tenant choose;
- Provides requirements for a landlord who files an insurance claim for damages under lease agreements where the tenant has agreed to pay a fee in lieu of a security deposit; and
- Applies to rental agreements entered into or renewed on or after July 1, 2022.

The bill does not appear to have any fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Security Deposits

A lease is an estate interest in real property held under a rental agreement by which the owner (landlord) gives another (tenant) the right to occupy or use land for a period of time.<sup>1</sup> As part of a rental agreement, a landlord may require a tenant to pay a security deposit, which is a dollar amount that is often intended to cover damage to the premises beyond normal wear and tear.<sup>2</sup> Section 83.49, F.S., establishes landlord duties pertaining to security deposits for residential tenancies. There is no limit to the security deposit amount a landlord may charge, but generally speaking, most landlords charge the equivalent of one to two month's rent.<sup>3</sup> In Florida, a landlord may hold a tenant's deposit in three ways:

- By posting a surety bond;
- By storing the deposit in an account that bears interest;<sup>4</sup> or
- By storing the deposit in a non-interest yielding account.<sup>5</sup>

Florida law requires a landlord to notify a tenant in writing within 30 days after receiving the tenant's deposit. The notice must:

- Be given to the tenant in person or by mail;
- Either state:
  - The name and address of the financial institution holding the tenant's deposit; or
  - That the landlord has posted a surety bond; and
- State whether the tenant is entitled to interest on the deposit.<sup>6</sup>

If the landlord changes the location or terms at which the deposit is being held, he or she must notify the tenant in writing within 30 days.<sup>7</sup>

Florida law requires a landlord to return a tenant's deposit, and any interest accrued, within 15 days after the tenant vacates the premises at the end of the lease term.<sup>8</sup> If the landlord intends to impose a claim on part or all of the security deposit, the landlord must notify the tenant within 30 days. If the landlord fails to notify the tenant within 30 days, the landlord forfeits his or her right to make any deductions.<sup>9</sup>

If the tenant does not object to the deductions, the landlord has 30 days after the initial written notice to return the balance of the deposit to the tenant.<sup>10</sup> However, if the tenant objects, either party may file a civil action to adjudicate the party's right to the security deposit.<sup>11</sup>

##### Security Deposits as a Barrier to Affordable Housing

For low-income families, security deposits may pose a significant barrier to safe and affordable housing.<sup>12</sup> A security deposit equal to one or more month's rent is often more than a low-income family

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<sup>1</sup> West's Encyclopedia of American Law, Leasehold (2008), <https://legaldictionary.thefreedictionary.com/leasehold> (last visited Feb. 1, 2022). See s. 689.01, F.S.

<sup>2</sup> S. 83.43, F.S.

<sup>3</sup> Amy O'Connell, *Florida Security Deposit Limits and Deadlines*, Nolo Legal Encyclopedia (2020), <https://www.nolo.com/legal-encyclopedia/florida-security-deposits-36204.html> (last visited Feb. 1, 2021).

<sup>4</sup> The interest accrued should be paid to the tenant annually and at the end of the lease period. S. 83.49(1), F.S.

<sup>5</sup> S. 83.49(1), F.S.

<sup>6</sup> S. 83.49(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> S. 83.49(3), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

can afford, preventing the family from accessing housing, or keeping the family in substandard housing even when the family could otherwise afford to move.<sup>13</sup> Moreover, since Florida law permits landlords to keep security deposits for 15 days after a tenant has vacated a unit, the delay may keep a low-income tenant from being able to immediately move into new housing.<sup>14</sup>

## Effect of Proposed Changes

CS/CS/HB 537 creates s. 83.491, F.S., authorizing a landlord to offer a tenant the option to pay a fee in lieu of the security deposit. The bill does not require a landlord to offer a tenant this option; however, if a landlord offers this option, the landlord must notify the tenant in writing of all of the following:

- That the tenant has the option to pay a security deposit instead of the fee;
- That the tenant may, at any time, terminate the agreement to pay the fee in lieu of the security deposit and instead pay a security deposit in the amount that is otherwise offered to new tenants for a substantially similar dwelling unit on the date that the tenant terminates the agreement;
- Whether any additional charges apply;
- The payments required for each option offered;
- That the fee is nonrefundable, if applicable;
- That the fee is only for securing occupancy without the need to pay a security deposit;
- That the fee payment does not change the tenant's obligation to pay rent and fees or change the tenant's obligation to pay the costs of repairing damage to the premises in excess of ordinary wear and tear; and
- That if the landlord uses any portion of the fee to purchase insurance:
  - The tenant is not insured and is not a beneficiary of the landlord's insurance coverage;
  - The insurance does not change the tenant's obligation to pay rent and fees; and
  - The insurance does not change the tenant's obligation to pay the costs of repairing damage to the premises in excess of ordinary wear and tear.

If a tenant decides to pay a fee in lieu of the security deposit, the bill requires the landlord (or the landlord's agent) and the tenant to sign a written agreement to collect. The bill further requires the written agreement to specify:

- The amount of the fee;
- How the fee will be collected; and
- When the fee will be collected.

The bill also provides disclosure language which the written agreement must include in a substantially similar form.

A fee collected under the bill is not a security deposit as defined in s. 83.43(12), F.S. Under the bill, a fee in lieu of a security deposit may be:

- A recurring monthly fee, payable on the same date that the rent payment is due under the rental agreement; or
- Payable upon a schedule that the landlord and tenant choose and as specified in the written agreement.

If a landlord offers a tenant the option to pay a fee in lieu of a security deposit, the bill requires a landlord to offer all new tenants renting a dwelling unit on the same premises the option to pay a fee in lieu of a security deposit, unless the landlord chooses to terminate the fee option for all tenants.

In a situation where the tenant has agreed to pay a fee in lieu of a security deposit, at the conclusion of the tenancy, the bill requires the landlord, within 30 days, to notify the tenant of any costs or fees due

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<sup>12</sup> Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 Geo. J. on Poverty L. & Pol'y 97 (2019), [https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2020/01/05\\_Sabbeth\\_Article\\_v2.pdf](https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2020/01/05_Sabbeth_Article_v2.pdf) (last visited Feb. 1, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

resulting from unpaid rent, fees, or other obligations pursuant to the lease, including, costs required for repairing damage in excess of ordinary wear and tear. The landlord must wait at least 15 days after providing the tenant with notice to submit a claim with an insurer to recover the landlord's losses associated with unpaid rent, fees, or other obligations pursuant to the lease, including, but not limited to, costs required for repairing damage to the premises in excess of ordinary wear and tear.

The landlord's claim submission must include:

- An itemized list of unpaid amounts and the dates such amounts were due;
- Documentation supporting the itemized damages and costs of repairs; and
- A copy of any written objection or report of any communication of objection by the tenant.

If an insurer pays a claim to a landlord submitting a claim pursuant to this bill and the insurer has subrogation<sup>15</sup> rights, the insurer may, within 1 year after the tenancy subject to the claim ends, seek reimbursement from the tenant of the amounts paid to the landlord. If an insurer seeks reimbursement, the insurer must provide the tenant with all documentation for losses that the landlord provided the insurer in support of the landlord's claim and a copy of the settlement statement documenting the insurer's payment of the landlord's claim. The tenant retains any defenses against the insurer which the insurer would otherwise have against the landlord.

The bill prohibits a landlord from accepting payment from both a tenant and an insurer for amounts associated with the same rent, fee, or damages.

This bill applies to rental agreements entered into or renewed on or after July 1, 2022.

The bill provides an effective date of July 1, 2022.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 83.491, F.S., relating to fee in lieu of security deposit.

**Section 2:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>15</sup> Subrogation is the assumption by a third party of another party's legal right to collect a debt or damages.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 19, 2022, the Civil Justice & Property Rights Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that a landlord has the exclusive discretion to offer a tenant the option to pay a fee in lieu of security deposit.

On February 1, 2022, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Added specific written disclosures a landlord must make to a tenant if the option for paying a fee in lieu of a security deposit is offered.
- Required a landlord, who is seeking to recover under an insurance policy on a lease where the tenant has agreed to pay a fee in lieu of a security deposit, to:
  - Within 30 days of the tenancy's conclusion, notify the tenant of costs or fees due resulting from unpaid rent, fees, or other obligations pursuant to the lease;
  - Wait at least 15 days after providing the tenant with notice to submit a claim with an insurer;
  - Follow specific procedures in the event the landlord files the insurance claim; and
  - Not accept double recovery from both a tenant and an insurer for amounts associated with damages from the lease agreement.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.