

House Bill 3107

Sponsored by Representative NEARMAN; Representatives BARRETO, BENTZ, ESQUIVEL, HACK, HEARD, KRIEGER, POST, SMITH, SPRENGER, WEIDNER, WHISNANT, WHITSETT

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**.

Allows landlord to charge pet security deposit to tenant with disability for service animal or companion animal if landlord requests, and tenant does not provide, documentation that physician has recommended use of service animal or companion animal to mitigate symptoms or effects of disability.

A BILL FOR AN ACT

1
2 Relating to assistance animals in residential rental units; 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 86.782 (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) **Except as provided in this subsection**, a landlord may not charge a tenant a pet secu-
17 rity deposit for keeping a service animal or companion animal that a tenant with a disability re-
18 quires as a reasonable accommodation under fair housing laws.

19 **(b)(A) A landlord may request written documentation of the medical value of a service**
20 **animal or companion animal. If a tenant does not provide the written documentation, the**
21 **landlord may charge the tenant a pet security deposit. If the landlord requests written doc-**
22 **umentation under this paragraph at any time after the landlord and tenant enter into a**
23 **rental agreement, the landlord shall provide written notice in the manner described in ORS**
24 **90.155.**

25 **(B) For purposes of this paragraph, written documentation of the medical value of a**
26 **service animal or companion animal must include a statement from a physician licensed**
27 **under ORS chapter 677 that the physician recommends the tenant's use of the service animal**
28 **or companion animal to mitigate symptoms or effects of the tenant's disabling medical con-**
29 **dition.**

30 (5)(a) Except as otherwise provided in this subsection, a landlord may not change the rental

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

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

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

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

12 (A) To remedy the tenant's defaults in the performance of the rental agreement including, but
 13 not limited to, unpaid rent; and

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (10) A landlord shall account for and refund as provided in subsections (12) to (14) of this section
 45 any portion of a last month's rent deposit the landlord does not apply as provided under subsection

1 (9) of this section. Unless the tenant and landlord agree otherwise, the tenant may not require the
 2 landlord to apply a last month's rent deposit to rent due for any period other than the last month
 3 of the tenancy. A last month's rent deposit does not limit the amount of rent charged unless a
 4 written rental agreement provides otherwise.

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

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

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

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

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

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

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

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

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

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

1 posit or prepaid rent under subsection (11) of this section.

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

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