

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: July 18, 2018

Final Decision Date Deadline: July 18, 2018

STATEMENT OF THE ISSUE: The Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") defines security deposits as rent and because one of the primary purposes of the Rent Ordinance is the stabilization of rent, the Regulation of security deposits falls both within the purview and purpose of the Rent Board. Recently, staff members have received complaints relating to security deposits. Specifically, there have been numerous attempts to increase security deposit amounts after a tenancy has commenced. Because security deposits are considered rent, the Rent Board considers such an attempt a rent overcharge. In fact, the Rent Board adopted Regulation 911 permitting tenants to petition on rent overcharges, including security deposits. However, Regulation 911 does not specify the circumstances where a retention or acceptance of a security deposit is impermissible, triggering a Tenant's right to file a petition. To provide greater clarity regarding security deposit increases and related petitions, staff finds it necessary to adopt Regulations explaining the circumstances where it is permissible to increase security deposits, and/or file a petition based on a Rent-Overcharge.

INDICATE APPROPRIATE BODY

- | | | | | |
|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

ITEM

- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- Public Hearing Regulation Other:
- Contract/Agreement Rent Board As Whole
- Grant Application/Acceptance Claims Filed Against City of Richmond
- Resolution Video/PowerPoint Presentation (contact KCRT @ 620.6759)

RECOMMENDED ACTION: (1) REMOVE Chapter 11 of the Regulations entitled "Remedies" and APPROVE a new Chapter 11 of the Regulation entitled "Security Deposit", (2) ADOPT Regulation 1101 describing the permissibility of security deposit increases, and ADOPT Regulation 1102 explaining the circumstances where a Tenant may file a petition based on an unlawful retention or increase in the security deposit– Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

AGENDA ITEM NO:
H-2.



AGENDA REPORT

DATE: July 18, 2018

TO: Chair Gray and members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Charles Oshinuga, Staff Attorney

SUBJECT: REGULATIONS CONCERNING SECURITY DEPOSITS

STATEMENT OF THE ISSUE:

The Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") defines security deposits as rent and because one of the primary purposes of the Rent Ordinance is the stabilization of rent, the Regulation of security deposits falls both within the purview and purpose of the Rent Board. Recently, staff members have received complaints relating to security deposits. Specifically, there have been numerous attempts to increase security deposit amounts after a tenancy has commenced. Because security deposits are considered rent, the Rent Board considers such an attempt a rent overcharge. In fact, the Rent Board adopted Regulation 911 permitting tenants to petition on rent overcharges, including security deposits. However, Regulation 911 does not specify the circumstances where a retention or acceptance of a security deposit is impermissible, triggering a Tenant's right to file a petition. To provide greater clarity regarding security deposit increases and related petitions, staff finds it necessary to adopt Regulations explaining the circumstances where it is permissible to increase security deposits, and/or file a petition based on a Rent-Overcharge.

RECOMMENDED ACTION:

- (1) REMOVE Chapter 11 of the Regulations entitled "Remedies" and APPROVE a new Chapter 11 of the Regulation entitled "Security Deposit",
- (2) ADOPT Regulation 1101 describing the permissibility of security deposit increases, and ADOPT Regulation 1102 explaining the circumstances where a Tenant may file a petition based on an unlawful retention or increase in the security deposit– Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

The Rent Ordinance explains that its purpose is to promote “neighborhood and community stability, healthy housing, and affordability for renters in the City of Richmond by controlling excessive rent[s]...to the greatest extent allowable under California law...” *Richmond Municipal Code Section 11.100.010*. To achieve this purpose, the Rent Ordinance broadly defines rents and includes security deposits within its definitions. *Richmond Municipal Code Section 11.100.040(j)*. Finally, it obligates the Rent Board to promulgate Rules and Regulations that will further the purpose of the Rent Ordinance. Because one of the Rent Ordinance’s purposes is to control excessive rent, and security deposits are considered rent, the Rent Board has both the duty and the power to control security deposits to the extent allowable by existing law.

Recently, Staff has received a number of complaints regarding attempted security deposit increases. Regulation 911 permits Tenants to file Rent-Overcharge petitions based on an increase of a security deposit, but the Regulation does not explain when said increase is impermissible.

Given the increase in complaints relating to security deposits and the need for more clarity, staff is proposing Regulations that would explain the circumstances where it is permissible to increase security deposits, and/or file a petition based on a Rent-Overcharge.

California Courts permit Rent Control jurisdictions to regulate both the amount of security deposits that may be charged the circumstances under which it may be charged.

California Civil Code Section 1950.5 defines and regulates the use of “security for a rental agreement for residential property.” Among other things, California Civil Code Section 1950.5 governs how the security deposit may be used by the Landlord, when the deposit must be refunded to the Tenant and limits the amount of security deposit the Landlord may demand. Specifically, California Civil Code Section 1950.5 explains that at the inception of the tenancy, a Landlord may request a security deposit not to exceed two times the monthly rent for unfurnished Rental Units, and three times the monthly rent for furnished Rental Units. However, California Civil Code Section 1950.5 does not govern what the amount of “rent” must be in determining the security deposit limit, nor does it govern the frequency that the security deposit can be increased. Instead, California courts have concluded that local jurisdictions may regulate the amount of security deposit that may be charged, insofar as these local jurisdictions are regulating rent. *People v. Tannenbaum* (1994) 23 Cal.App.4th Supp.6.

The Proposed Regulations would regulate both the permissibility of an increase in the security deposit and the filing of a Tenant petition based on an increase in the security deposit.

To achieve the Rent Ordinance's purpose and to address community concerns, staff finds the proposed regulations to be reasonably necessary. Regulation 1101 recognizes that a Landlord may set the amount of security in accordance with California Civil Code Section 1950.5, at the beginning of a tenancy, but limits the situations where a Landlord may increase the security deposit during the tenancy. It permits an increase in the security deposit only where a Tenant wants to have a pet, and pets were expressly prohibited in the Tenant's Rental Housing Agreement. Regulation 1102 clarifies that a Tenant may bring a petition for Rent Overcharges, where a Landlord either increases the security deposit in violation of Regulation 1101, or fails to return the security deposit in violation of California Civil Code Section 1950.5.

Conclusion

Staff members recommend the Rent Board adopt the aforementioned Regulations to describe the permissibility of security deposit increases and explain the circumstances where a Tenant may file a petition based on an unlawful retention or increase in the security deposit because it constitutes a Rent Overcharge.

DOCUMENTS ATTACHED:

Attachment 1 – Regulation 1101

Attachment 2 – Regulation 1102

ITEM H-2
ATTACHMENT 1

1101. Security Deposit Cannot be Increased During the Tenancy

- A. At the inception of a tenancy, a Landlord may set the security deposit in accordance with California Civil Code Section 1950.5 et seq, as amended. However, where a Landlord demands, accepts, or retains any payment as a security deposit within the meaning of California Civil Code Section 1950.5 et seq, as amended, the security deposit shall not be increased during the tenancy. The tenancy shall be measured by the existence of at least one original occupant occupying the Rental Unit as described in Regulation 703 and Regulation 706 . Where all of the original occupants have voluntarily vacated the Rental Unit, the Landlord may reset the security deposit amount in accordance with California Civil Code Section 1950.5 et seq, as amended, and other applicable State law.

- B. Notwithstanding Regulation 1101(A), where a pet is not a service animal or assistance animal, which includes emotional support animals, and where pets were prohibited or limited under the Rental Housing Agreement, a landlord may file a petition for an upward adjustment of the security deposit if the tenant provides written consent to the security deposit increase in exchange for being allowed to have a pet or pets. If an increase in the security deposit is granted, in no event shall the total security deposit exceed the limitations provided in California Civil Code Section 1950.5, et seq, as amended. Nothing in this section shall abrogate any rights afforded by Local, State or Federal law, including but not limited to, the Fair Housing Act and California Fair Employment and Housing Act.

ITEM H-2 ATTACHMENT 2

1102. Security Deposit as Rent Overcharges

- A. Richmond Municipal Code Section 11.100.030(j) defines security deposit as Rent. Where a security deposit, or increase in a security deposit, is demanded, accepted, or retained in violation of Regulation 1101(A), there exists a Rent increase. A Tenant may file a Petition for Rent Overcharges pursuant to Regulation 911 with the Richmond Rent Program to challenge the Rent increase.
- B. California Civil Code Section 1950.5 et seq., as amended, establishes a Landlords' obligation to return a security deposit. Where a Landlord retains a security deposit in violation of California Civil Code 1950.5 et seq, as amended, such an act shall constitute a Rent overcharge and a Tenant may bring a petition for Rent Overcharges pursuant to Regulation 911 with the Richmond Rent Program.