



Office of the Mayor

40

ACTION CALENDAR

April 14, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Amending Tenant Screening Fees Ordinance for Existing Tenancies

RECOMMENDATION

Adopt first reading of an Ordinance to amend Berkeley Municipal Code 13.78 (Tenant Screening Fees) to add subsections to prohibit additional fees for existing tenancies and lease terminations.

POLICY COMMITTEE RECOMMENDATION

On February 6, 2020, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Arreguin/Bartlett) to move the item with a positive recommendation as written. Vote: All Ayes.

CURRENT SITUATION AND ITS EFFECTS

An owner of a residential rental property or their agent can charge an applicant of a rental property a fee to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property. The fee is currently set at \$52.59 and increases to the fee are tied to the Consumer Price Index (CPI). The fee cannot exceed the costs of the services needed to review the application.

Multiple tenants have contacted the Rent Stabilization Board and the Mayor's Office to express concern over the usage of additional fees that have been applied. Specifically, some owners of residential rental property charge fees for tenants who wish to vacate and lawfully surrender possession of their tenancy. In addition, some owners charge fees to existing tenant households when they wish to replace a member of that household. No statute expressly permits the levying of such fees. While tenants who "break" leases are susceptible to incurring damages after they depart per California Civil Code section 1951.2, the imposition of additional fees charged "up front" creates a windfall for property owners/management companies that use such fees as a predatory practice to simply collect additional rent and creates an unnecessary burden for tenants seeking to either surrender possession or replace a roommate. Other than a small administrative burden, for which Civil Code Section 1950.6 already provides relief, owners and management companies should not have to expend a substantial amount of administrative resources to process such routine tenancy transactions. To allow for such fees is to simply transfer what is a standard management transaction from those who own or manage the property to those who rent it.

To the extent that these fees are designed to cover the costs to screen tenants, this is in violation of state law as described in the background section. There is a predatory nature to such fees, as it places additional financial burdens on a tenant's right to move out of the unit they are renting, or for adding or replacing roommates. Updating BMC 13.78 will help clarify and make explicit that such fees are unlawful.

BACKGROUND

In April 2011, the City Council unanimously approved Ordinance 7171, to add Section 13.78 to the Berkeley Municipal Code relating to tenant screening fees. This was enacted to advance implementation of state law by requiring a copy of California Civil Code Section 1950.6 (the state tenant screening fee law) and information regarding the current maximum allowable fee as set by state law, be given to all applicants who pay an application fee for rental housing. The ordinance also provides a private right of action for individual tenants if an owner is found to be in violation of the ordinance.

Adopted in 1996 by the California Legislature, Civil Code Section 1950.6 set a cap on the amount that can be charged for a screening fee at \$30.00, with increases annually based on the CPI. In October 2014, BMC Section 13.78 was updated to designate the Rent Stabilization Board to calculate the maximum allowable tenant screening fee in accordance to Civil Code Section 1950.6.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

FISCAL IMPACTS OF RECOMMENDATION

None

RATIONALE FOR RECOMMENDATION

As we approach the lease renewal season, these amendments will clarify existing protections for tenants who are targeted by excessive fees.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Ordinance

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.78 TO PROHIBIT NON-REFUNDABLE APPLICATION FEES ASSOCIATED WITH EXISTING TENANCIES AND LEASE TERMINATION FEES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.78 is hereby amended to read as follows:

Chapter 13.78
TENANT SCREENING AND LEASE FEES

Sections:

- 13.78.010 Notification of state law limitation on tenant screening fees.
- 13.78.015 Calculation and publication of maximum allowable tenant screening fee.
- 13.78.016 Prohibition of non-refundable application fees associated with existing tenancies.
- 13.78.017 Prohibition of lease termination fees.
- 13.78.018 Applicability to existing rental agreements.
- 13.78.020 Remedies – Civil penalty – Not exclusive.

13.78.010 Notification of state law limitation on tenant screening fees.

When an owner of residential rental property or ~~his or her~~ the owner's agent receives a request to rent residential property in the City of Berkeley from an applicant and ~~he or she~~ the owner charges that applicant a fee to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property, ~~he or she~~ the owner shall provide, either in the rental application or in a separate disclosure prior to receipt of the fee, a clear and conspicuous tenant screening fee rights statement and a statement of the maximum fee cap permitted under California Civil Code Section 1950.6(b). The "Tenant Screening Fee Rights Statement" shall mean the following statement or a statement substantially similar to the following statement:

"Pursuant to California law you have tenant screening fee rights, including the right to a copy of your consumer credit report if one is obtained with your screening fee, a refund of any unused portion of the fee and a receipt of the costs of the screening. For more information about your rights, please visit <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley13/Berkeley1378/Berkeley1378.html>~~[URL to be provided by City].~~"

13.78.015 Calculation and publication of maximum allowable tenant screening fee.

Beginning on January 1, 2015, the Rent Stabilization Board shall calculate and publish on an annual basis the maximum allowable tenant screening fee in accordance with California Civil Code Section 1950.6(b).

13.78.016 Prohibition of Non-refundable Application Fees Associated with Existing Tenancies

It is unlawful for an owner of residential rental property or the owner's agent to charge a non-refundable fee to any existing tenant for the purpose of renewing a tenancy, in whole or in part,

including any fee associated with the departure of a roommate or to request to add or replace a roommate in a pre-existing household.

Nothing in this law is intended to disallow a property owner, or the owner's agent, to charge a "tenant screening fee" as permitted under California Civil Code Section 1950.6 to any tenant, including any new or additional roommate who seeks to be added to an existing rental agreement or lease, seeking to rent or lease residential rental property.

13.78.017 Prohibition of Lease Termination Fees

It is unlawful for an owner of residential property, or the owner's agent, to charge any fee for the termination of their tenancy prior to the expiration of a lease. Nothing in this section shall prohibit a landlord from recovering any charges, fees or damages, associated with termination of tenancies that are authorized under California Civil Code Section 1951.2.

13.78.018 Applicability to Existing Rental Agreements

This chapter is applicable to all residential rental agreements regardless of any contractual language in any rental agreement or lease to the contrary. Any provision of an existing rental agreement or lease that violates the provisions of this chapter shall be null, void, and unenforceable.

13.78.019 Reserved

13.78.020 Remedies – Civil penalty – Not exclusive.

A. The remedies provided under this section are in addition to any the City or any person might have under applicable law.

B. Any owner of residential rental property shall be liable to any applicant or tenant harmed for a civil penalty of two hundred fifty dollars (\$250.00) if the owner fails to comply with any part of this Chapter.

C. Any person aggrieved by the owner's failure to comply with this Chapter may bring a civil action against the owner of the residential rental property for all appropriate relief including damages and costs which ~~she or he~~ the applicant may have incurred as a result of the owner's failure to comply with this Chapter.

D. In any action to recover damages resulting from a violation of this Chapter the prevailing plaintiff(s) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

