



## AB-2297 Tenancy: fee in lieu of a security deposit. (2021-2022)

### As Amends the Law Today

#### **SECTION 1.** *Section 1950.5.1 is added to the Civil Code, to read:*

**1950.5.1.** (a) *As used in this section, "rental debt" means unpaid rent or any other unpaid financial obligation of a tenant under the tenancy.*

(b) *A landlord who offers a tenant or prospective tenant the option of paying a fee in lieu of a security deposit shall do both of the following:*

(1) (A) *Offer the tenant or prospective tenant the option to instead pay a security deposit.*

(B) *A landlord shall not use a prospective tenant's choice to pay a fee in lieu of a security deposit or make a security deposit as a criterion in the determination of whether to approve an application for occupancy.*

(2) *Offer the option of paying a fee in lieu of a security deposit to every prospective tenant unless the landlord chooses to cease offering the option of paying a fee in lieu of a security deposit for every prospective tenant.*

(c) *A tenant who accepts an offer to pay a fee in lieu of a security deposit may terminate the agreement to pay the fee in lieu of a security deposit at any time and stop paying the fee if the tenant chooses to instead make a security deposit in the amount that the landlord offers to new tenants for substantially similar housing on the date the tenant chooses to make a security deposit instead of paying a fee in lieu of a security deposit.*

(d) *At the time a landlord offers to a tenant the option of paying a fee in lieu of a security deposit, the landlord shall notify the tenant in writing of all of the following:*

(1) *The tenant has the option to instead make a security deposit.*

(2) *The tenant has the option to terminate the agreement to pay the fee in lieu of a security deposit and instead make a security deposit pursuant to subdivision (b).*

(3) *The charges associated with each option described in paragraphs (1) and (2).*

(e) *An agreement to pay a fee in lieu of a security deposit shall be in writing, signed by the landlord or the landlord's legal representative and the tenant, and shall include all of the following items:*

(1) *The fee is being paid only to secure occupancy without a requirement of making a security deposit.*

(2) *The fee, unless otherwise specified, is not refundable.*

(3) *Payment of the fee, unless otherwise specified, does not eliminate, release, or otherwise limit the requirements of the lease, including that the tenant shall pay for all of the following:*

(A) *Rent as it becomes due.*

(B) *Damages for which the tenant is legally liable under the lease.*

(C) *Any other payment obligations pursuant to the lease.*

(f) *A fee in lieu of a security deposit shall be payable at the time, and in the same amount each time, that each rent payment is due during the lease.*

*(g) (1) A landlord who collects a fee in lieu of a security deposit pursuant to this section shall not submit a claim for damages or rental debt to a third party unless the landlord has given notice to the tenant of the claim for damages or rental debt no later than 30 days after the date the tenant surrendered possession of the dwelling.*

*(2) The notice described in paragraph (1) shall include a written description and itemized list of any damages and rental debt, including the dates that any rental debt payments were due.*

*(3) (A) If a tenant challenges a claim for damages or rental debt noticed pursuant to this subdivision, and that challenge results in a determination by the landlord or by a court that the notice contained incorrect information, the notice shall be deemed void for purposes of this subdivision, and the landlord shall not file a claim with a third party for the amounts of damages or rental debt that were successfully challenged.*

*(B) If a landlord has submitted a claim for damages or rental debt to a third party before the notice to the tenant was voided pursuant to this paragraph, the landlord shall withdraw the claim and return any payment from the third party.*

*(h) If a landlord who collects a fee in lieu of a security deposit pursuant to this section receives compensation from a third party for a tenant's damages or rental debt pursuant to a claim of which the tenant was given proper notice pursuant to subdivision (g), both of the following shall apply:*

*(1) The landlord shall not seek or collect reimbursement from the tenant for the amount of compensation received.*

*(2) (A) A third party, if otherwise authorized by contract, may seek, on or before the date that is one year from the termination of the tenant's occupancy, reimbursement from the tenant of only the amounts paid to the landlord plus reasonable administration costs, legal fees, and collection costs.*

*(B) A third party seeking reimbursement from the tenant pursuant to this paragraph shall include in the claim for reimbursement any evidence of damages or rental debt that the landlord submitted to the third party, any evidence of damage repair costs that the landlord submitted to the third party, and a copy of the settled claim that documents payments made by the third party to the landlord.*

*(C) In an action seeking reimbursement from the tenant commenced pursuant to this paragraph, a tenant shall be entitled to any defenses to payment against the third party as against the landlord.*

*(i) A fee in lieu of a security deposit offered pursuant to this section is not "security," as defined in Section 1950.5.*



## **AB 2297**

### **The Undoing of California's Security Deposit Protections**

#### **What is AB 2297?**

AB 2297 is a bill introduced by Assemblymember Buffy Wicks. The bill claims to create a “choice” for tenants concerning security deposits. Instead, the bill legalizes landlords charging nonrefundable monthly fees instead of standard security deposits. The bill creates no tangible benefit for tenants, and instead makes them potentially liable for increased damages and attorneys’ fees.

#### **Does AB 2297 Set A Maximum Monthly Fee That Landlords Can Charge?**

No. If the bill were to pass, landlords could charge tenants hundreds of dollars in monthly fees.

#### **If a Tenant Causes Damages, Will The Fees be Used to Cover the Damage?**

No. The landlord will not need to account for the nonrefundable fees in any way. This means that if a landlord alleges that the tenant did not pay rent or damaged the unit, the money that the tenant paid in “fees” will not offset the claimed damage.

#### **Can a Tenant Choose to Pay a Regular Deposit?**

The bill states that landlords must offer tenants the choice to pay a traditional security deposit. However, the law does not provide any remedy against a landlord who only accepts fee-paying tenants. If presented with an option to pay a \$500 monthly fee or a one-time \$3,000 deposit that the landlord must return, tenants will know which option they must choose to have their application for tenancy accepted.

#### **Can a Tenant Stop Paying The Fees?**

AB 2297 states that a tenant can stop paying fees at any time if they provide the landlord with a standard deposit. However, a tenant forced to pay hundreds of dollars a month may never be in a position to pay a large deposit. Further, as the state lacks meaningful just cause, retaliation, and anti-harassment protections, many tenants will be playing with fire by withdrawing this income source from their landlords.

#### **What Happens if a Landlord Claims a Fee-Paying Tenant Damages a Rental Unit?**

The most troubling aspect of AB 2297 is the creation of an elaborate scheme to defraud tenants and saddle them with thousands of dollars in damages and legal fees. If AB 2297 were to pass, landlords could make a claim to a “third-party” collector that a tenant had damaged their unit. The tenant would have no meaningful ability to challenge this claim.

The collector could then sue the tenant not only for the alleged damage to the tenants’ home but for legal fees and costs. Even if the tenant didn’t challenge the lawsuit at all, they could still be saddled with thousands of dollars in fees. Tenants who fight the cases will almost always be worse off. AB 2297 creates a system where even if a tenant fights and dramatically reduces the landlord’s claims, they will still need to pay the opposing attorney’s fees unless they can prove they caused \$0 in damage to the apartment. For example, a landlord might claim that a tenant caused \$10,000 of scratches to a hardwood floor. If the tenant retained an attorney, fought the lawsuit, and proved they only caused \$100 in damages, they would still need to pay for all of the other side’s attorney’s fees (in addition to their own attorney’s fees). These fees could amount to tens of thousands of dollars.