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Portland's "FAIR" Ordinance: Security Deposits

Anna S. McCormack, Attorney at Law

APPLICABILITY: ONLY PROPERTIES IN PORTLAND, OREGON CITY LIMITS

Effective Date: FAIR's effective date is March 1, 2020.

Rental Agreements Entered into *On or After* March 1, 2020: All of the requirements below apply to any brand new (i.e. initial) Rental Agreement entered into on or after March 1, 2020.

Rental Agreements Entered Into *Prior To* March 1, 2020: For any Rental Agreement entered into prior to March 1, 2020, only the requirements in **highlights** apply.

I. LIMITS ON SECURITY DEPOSIT AMOUNT

A. One Month's Rent If No Last Month's Rent Deposit Required

1. Basic Rule: The security deposit cannot exceed one month's rent, if no last month's rent deposit is required. (NOTE: Under Oregon law, a last month's rent deposit is legally distinct from a security deposit; they are two entirely different things, so do not conflate the two. Get legal advice if you are not sure what the difference is).

2. Exception (Condition Acceptance / Installment Payments): Landlord may conditionally accept Financially Responsible Applicant who does not meet rent-to-income ratio criteria by requiring an additional half-month's rent as security deposit, but must allow tenant to pay the additional deposit in installments over a three-month period in "installment amounts reasonably requested by the Tenant."

B. One-Half Month's Rent If Last Month's Rent Deposit Is Required

1. Basic Rule: The security deposit cannot exceed *one half* of one month's rent if a last month's rent deposit *is* required.

2. Exception (Condition Acceptance / Installment Payments): Landlord may conditionally accept Financially Responsible Applicant who does not meet rent-to-income ratio criteria by requiring an additional half-month's rent as security deposit, but must allow tenant to pay the additional deposit in installments over a three-month period in "installment amounts reasonably requested by the Tenant."

II. MUST KEEP SECURITY DEPOSIT IN SEPARATE ACCOUNT

- A. **Security Deposits Must Be in Account Segregated from Personal/Operating Account**
- B. **Must Deposit Entire Security Deposit into FDIC-Insured Separate Bank Account Within 2 Weeks of Receipt**
- C. **Rental Agreement Must Reflect Name and Address of Bank, and Whether It's in an Interest-Bearing Account**
- D. **If Placed in Interest-Bearing Account, Interest Belongs to Tenant**
 - 1. **Account Receipt Requests:** At tenant's request (max once every 12 months), Landlord must provide an account receipt showing any interest earned
 - 2. **Keeping Interest (When Permissible):** If deposit plus interest is used entirely at end of tenancy (for unpaid amounts due, damage charges, etc.), landlord "keeps" interest.
 - 3. **5% Deduction:** If tenant is entitled to a deposit refund, refund must also include interest, minus (optional) 5% deduction for administrative costs. (Query: Is this a violation of the ORLTA?)

III. NEW RENTAL AGREEMENT PROVISIONS RE SECURITY DEPOSITS

- A. **Rental Agreement Must Reflect Name and Address of Bank, and Whether It's in an Interest-Bearing Account**
- B. **Additional Security Deposit Installment Plan Addendum (if applicable)**
- C. **Fixture, Appliance, Equipment, Personal Property Addendum**
 - 1. **Itemization:** Fixtures, appliances, equipment, and personal property must be itemized in the Rental Agreement in order to withhold any portion of the security deposit for repair/replacement of said items

Note: "Structural elements" like subfloor, walls, framing, roofing, piping, staircases are not subject to the depreciation schedule and don't have to be listed in Rental Agreement in order to withhold post-tenancy.
 - 2. **Description Required:** The itemization(s) must include description(s)
 - 3. **Depreciated Value Required:** The itemization must include a depreciated value in accordance with PHB depreciation schedule, as well as original purchase price and date.
 - a. **When Approximations Are Required:** If landlord doesn't have original purchase price and/or date, landlord must approximate age and depreciated value using same or comparable item.
 - b. **Documentation for Deviations from Depreciation Schedule:** Landlord may provide "documentation reasonably acceptable to a Tenant" to justify a value calculation that deviates from the depreciation schedule. Must include current depreciated value (per landlord), explanation of why the PHB depreciated value is inapplicable, and justification of alternative repair or replacement cost has been calculated.

FORM: PHB Fixture, Appliance, Equipment, and Personal Property Depreciation Schedule. This is not a form that must be provided to tenants, it is simply the form that landlords must use to complete the itemization required in the rental agreement for all non-structural items that they landlord may charge the tenant for in the event of damage.

NOTE: The ordinance does not contain clear definitions of the categories of items. When in doubt, pick a category with a *higher* rate of depreciation, as this would benefit the tenant.

IV. CONDITION REPORT

A. Landlord Must Give to Tenant by Commencement Date

The landlord must provide a condition report form to the tenant by the “commencement date” (which is the date tenant is entitled to possession of the premises).

B. Tenant Has 7 Days to Submit Condition Report to Landlord

1. Tenant can return Condition Report noting damages and condition of the fixtures, appliances, equipment and personal property listed in the Rental Agreement.
2. Tenant’s Condition Report establishes the baseline condition of the premises (*see exception below*).

C. Third-Party Validation *if* Landlord Disputes Tenant’s Condition Report

1. Tenant and landlord may obtain “joint third-party validation.”
2. Third party must be neutral (no friends or family of either side).
3. If third-party validation is unsuccessful, then “the Tenant’s Condition report shall establish the baseline condition of the Dwelling Unit.”

NOTE: The ordinance is silent about how this “neutral third-party” is chosen, the process and timeline for doing so, what happens if the parties can’t agree on the third-party, and so on.

D. If Tenant Does Not Submit Condition Report, Landlord Must Complete Condition Report Within 17 Days

If tenant does not submit the completed Condition Report within 7 days, Landlord must provide Condition Report *and* digital photographs of premises to tenant within 17 days of commencement date.

E. Landlord Must Provide Updated Condition Report After Repairs/Replacements

1. If Landlord intends to withhold any money from the security deposit to cover repairs or replacement, Landlord must update the Condition Report to reflect the repair/replacement. (If you know you will not charge Tenant for the repair, then no update is required).

2. Landlord must provide Tenant with an updated Condition Report, or with “maintenance work order history,” within 10 business days of the foregoing repair/replacement. The updated Condition Report or “maintenance work order history” must include:

- a. Date(s) of repair/replacement
- b. Damage being repaired/replaced
- c. Updated depreciated value
- d. Any funds applied from Security Deposit for repair/replacement

3. The PHB rule further provides:

- a. “Replaced items should be noted along with the item purchase date, item condition, and depreciated value.”
- b. “If the Tenant disputes the updated Condition Report or maintenance work order history, the Tenant and the Landlord may attempt to obtain third-party validation of the updated condition.”

V. SECURITY DEPOSIT WITHHOLDINGS

A. Limitations on Types of Charges Against Security Deposits

- 1. Actual Costs Only:** Landlord can only apply security deposit to “actual costs reasonably incurred to repair the premises to their condition existing at the commencement of the Rental Agreement.”
- 2. Prohibited Charges/Withholdings:** Landlord cannot charge for routine maintenance, ordinary wear and tear, replacement of fixtures/appliances/equipment/property not damaged by tenant’s acts/omissions, or for preexisting damage noted on Condition Report.
- 3. Effect of Warranty:** Landlord cannot charge for anything reimbursed by warranty or landlord’s insurance or a warranty.
- 4. Painting:** Landlord cannot charge for painting except to repair specific tenant-caused damage beyond ordinary wear and tear or to repaint when tenant painted without permission.
- 5. Cleaning/Repair of Flooring/Carpet:** Landlord can only charge if “additional cleaning or replacement is necessitated by use in excess of ordinary wear and tear,” and can only charge for the cost of cleaning/replacing the “discrete impacted area.”

B. Itemized Final Accounting

- 1. 30-Day Time Limit:** The final accounting (probably) must be sent within 30 days. Note: the ordinance language is garbled and unclear (how unusual!), so the safest bet is to assume the accounting must be mailed within 30 days of the termination of tenancy (not 31, as stated in the ORLTA).
- 2. Must Include Photos of Any Visual Damage**
- 3. Labor Costs in Excess of \$200:** If charging more than \$200 for labor, the itemized final accounting must include documentation demonstrating that labor cost is reasonable and consistent with typical hourly rates in metropolitan area.
- 4. Must Include Security Deposit Notice of Rights.** Can consist of a copy of PCC 30.01.087, plus contact info for Legal Aid Services of Oregon or online/physical address of Oregon State Bar.

VI. FINAL INSPECTION

A. Mandatory? Not Known

The language of this provision is very poorly written, resulting in ambiguity as to whether the final inspection/walk through within 7 days of termination is mandatory in all cases, or only when the tenant requests it. Here’s the provision:

“Within 1 week following the Termination Date [the/a] Landlord shall conduct a walk-through of the Dwelling Unit at the Tenant’s option, with the Tenant or Tenant’s representative, to document any damage beyond ordinary wear and tear not noted on the Condition Report (the “Final Inspection”). [A/The] Tenant, [and/or] the Tenant’s representative, may choose to be present for the Final Inspection. The Landlord must give notice of the date and time of the Final Inspection at least 24 hours in advance to the Tenant.”

B. Safest Strategy

The safest course of action to is to always conduct the Final Inspection and notify the tenant of the date and time 24 hours before. (NOTE: No one knows for sure what “Termination Date” means. It’s defined as “termination of the Rental Agreement.” Does that mean the date that a notice of termination expires, even if the tenant is still in possession? Does that mean the date Landlord actually gets possession?)

VII. RENT PAYMENT HISTORY FORM

A. Must Be Provided to Tenant Within 5 Business Days of Landlord Serving Any “Termination Notice”

(NOTE: A strong argument exists that the rent Payment History Form only needs to be served when the Landlord serves a no cause or a “qualifying landlord reason” termination notice. However, the relevant provisions are poorly drafted and ambiguous, with no certain answer. Because the damages for any violation are so severe, most Landlords will err on the side of caution and serve the Rent Payment History Form with every termination notice until this provision is clarified legislatively or judicially).

B. Must Be Provided to Tenant Within 5 Business Days of Tenant Request

C. Must Be Provided to Tenant Within 5 Business Days of TENANT Serving Any Termination Notice (?)

Note: PCC 30.01.087(F) *does not* contain this requirement, and PHB’s Permanent Administrative Rule (Rental Housing Security Deposits) *does not* contain this requirement. Accordingly, it does not currently appear to be law. Notwithstanding this, the actual PHB Rent History Form states that it must be served within 5 business days of “receiving notice from the tenant of intent to terminate the tenancy.” Accordingly, risk-averse Landlords will elect to provide the Rent Payment History Form to Tenants who give the Landlord a notice of termination (notice of intent to vacate).

FORM: PHB Rental History Form

VIII. DAMAGES

“A Landlord that fails to comply with **any** of the requirements of this Section **shall** be liable to the Tenant for an amount double to the amount of the Tenant’s Security Deposit, reasonable attorney fees, and costs (collectively, “Damages”). Any Tenant aggrieved by a Landlord’s noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.”

DISCLAIMER

THE INFORMATION AND MATERIALS PRESENTED BY ANNA S. McCORMACK AND WARREN ALLEN LLP ARE INTENDED TO BE EDUCATIONAL ONLY AND ARE NOT SPECIFIC LEGAL ADVICE. YOU SHOULD CONSULT YOUR OWN ATTORNEY FOR ADVICE REGARDING THE APPLICATION OF THE LAW TO YOUR INDIVIDUAL CIRCUMSTANCES. **THE LAW CAN CHANGE VERY RAPIDLY, SO DO NOT ASSUME THAT ANY LAW DISCUSSED HEREIN APPLIES IN PERPETUITY OR THAT IT REMAINS AS DESCRIBED HEREIN.**

ABOUT THE AUTHOR

Anna S. McCormack has been a litigator with Warren Allen LLP since 2003 and represents many of the region’s premier management companies and ownership groups. Ms. McCormack’s civil litigation practice emphasizes landlord’s rights and business disputes. She has appeared in state, federal, tribal, and municipal courts, as well as administrative and appellate proceedings. Ms. McCormack is committed to making the legal process understandable to her clients, and to finding practical and creative alternatives to litigation when possible. Ms. McCormack attained a B.A. summa cum laude from the University of Cincinnati and earned her J.D. cum laude from the Northwestern School of Law of Lewis and Clark College. When she is not parsing the Portland landlord/tenant ordinances or pondering Oregon’s utility statute, Ms. McCormack enjoys imagining what she might do if she had spare time.

**PHB FIXTURE, APPLIANCE, EQUIPMENT AND PERSONAL PROPERTY
DEPRECIATION SCHEDULE**

**For Landlord Use in Determining Depreciated Value to Include in Itemization in Rental Agreement;
Does Not Have to Be Provided to Tenants**

(3-page document following this cover page)



Portland Housing Bureau

Rental Services Office

Mayor Ted Wheeler • Director Shannon Callahan

421 SW 6th Avenue, Suite 500 • Portland, OR 97204

PHONE 503-823-1303 • FAX 503-865-3260

portlandoregon.gov/phb/rso

Rental Services Helpdesk Hours

MON, WED, FRI 9-11am and 1-4pm

Fixture, Appliance, Equipment, and Personal Property Depreciation Schedule Required Under Portland City Code Title 30.01.087.C.1

Within the City of Portland, a landlord may only apply security deposit funds for the repair and replacement of those fixtures, appliances, equipment, or personal property that are identified in the rental agreement and to which a value is attached in accordance with the depreciation schedule published in this notice.

A landlord may provide documentation reasonably acceptable to a tenant demonstrating why a different calculation is justified for a particular item so long as the documentation includes:

1. The current depreciated value of the fixture, appliance, equipment, or personal property;
2. An explanation of why the depreciated value derived from the Depreciation Schedule is inapplicable for the fixture, appliance, equipment, or personal property; and
3. A justification of how the repair or alternative replacement cost of the fixture, appliance, equipment, or personal property has been calculated or determined.

City of Portland Requirements

When determining the amount of security deposit funds to withhold for the repair and replacement of appliances or equipment, fixtures, or personal property, a landlord must discount the estimated original purchase price by the following depreciation schedule:

Appliances or Equipment (includes items such as refrigerators, microwave ovens, stovetops, ovens, dishwashers, etc.) depreciate over 15 years, or 6.67% per year.

Fixtures that are Carpets and Window Dressings (includes items such as carpet, flooring that is not permanently attached, blinds, curtains, etc.) depreciate over 10 years, or 10% per year.

Fixtures not including Carpets and Window Dressings (includes items such as faucets, sinks, toilets, tubs, permanently attached flooring, cabinetry, etc.) depreciate over 20 years, or 5% per year.

Personal Property (includes all other non-structural elements not covered by the fixtures, appliances, or equipment depreciation schedule) depreciate over 30 years, or 3.34% per year.



Example of Calculating Depreciated Value

Year 0: Appliance or equipment purchased for \$300

Year 8: **Depreciated Value = \$140**

Calculation

\$300 purchase price / 15-year depreciation = \$20 depreciation per year

\$20 depreciation per year x 8 years = \$160 of value depreciation

\$300 purchase price - \$160 of value depreciation = **\$140 of depreciated value**



If you believe you have been harassed or discriminated against because of your race, color, national origin, religion, gender, familial status, disability, marital status, source of income, sexual orientation including gender identity, domestic violence, type of occupation, or age over 18 seek legal guidance regarding your rights under Fair Housing law.

For translation or interpretation, please call 503-823-1303
TTY at 503-823-6868 or Oregon Relay Service at 711

503-823-1303: Traducción e interpretación | Chuyển Ngữ hoặc Phiên Dịch | 翻译或传译
Письменный или устный перевод | 翻訳または通訳 | Traducere sau Interpretare
번역 및 통역 | Письмовий або усний переклад | Turjumida ama Fasiraadda
الترجمة التحريرية والشفوية | ການແປພາສາ ຫຼື ການອະທິບາຍ

This requirement is in addition to any other rights and responsibilities set forth in the Oregon Residential Landlord and Tenant Act under Oregon Revised Statute Chapter 90, and Portland Landlord-Tenant Law under Portland City Code Title 30.

The information in this form is for educational purposes only. You should review appropriate state statute, city code, and administrative rule as necessary. If you need legal guidance, or are considering taking legal action, you should contact an attorney.

PHB RENTAL HISTORY FORM

**Must Be Provided to Tenant Within 5 Business Days of 1) Tenant's Request and
2) Delivery of a Termination Notice**

(3-page document following this cover page)



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MON, WED, FRI 9-11am and 1-4pm

Rental History Form Required Under Portland City Code Title 30.01.087.F

Within the City of Portland, a landlord is required to provide this completed form to a tenant within 5 business days of receiving a request from a tenant, receiving notice from the tenant of intent to terminate the tenancy, or when a landlord gives notice of intent to terminate a tenancy. This form may be transmitted in digital or paper form.

Tenant Information

Tenant Name: _____

Tenant Name: _____

Tenant Name: _____

Tenant Name: _____

Tenant Name: _____

Tenant Name: _____

Landlord Information

Landlord Name: _____

Contact Information: _____

Residency Information

Address: _____

Move-in Date: _____ Move-out Date (if known): _____

Landlord Signature: _____ Date: _____





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