

CONCURRENCE IN SENATE AMENDMENTS

AB 12 (Haney)

As Amended September 8, 2023

Majority vote

SUMMARY

Prohibits tenants from having to pay more than one month's rent as a security deposit for furnished or unfurnished rental property, subject to certain exceptions.

Major Provisions

- 1) Limits the amount of a security deposit a landlord can collect for a rental property to no more than one month's rent, regardless of whether the property is furnished or unfurnished.
- 2) Establishes that notwithstanding 1), above, small landlords who meet the following requirements may demand or receive security up to two months' rent:
 - a) The landlord is a natural person or a limited liability company in which all members are natural persons.
 - b) The landlord owns no more than two residential rental properties that collectively include no more than four dwelling units offered for rent.
- 3) Clarifies that notwithstanding 2), above, service members, as defined, may not be required to pay more than one month's rent in security deposit.
- 4) Defines "natural person" as including any natural person who is a settlor or beneficiary of a family trust.
- 5) Defines "family trust" as a revocable living trust or irrevocable trust in which the settlors and beneficiaries of the trust are persons who are related to each other as sibling, spouse, domestic partner, child, parent, grandparent, or grandchild.
- 6) Delays implementation of the above provisions until July 1, 2024.

Senate Amendments

Exempt small landlords, as specified, from the one-month's-rent-security-deposit limitation, define relevant terms, and clarify that the service members cannot be charged more than one month's rent, regardless of the landlord's status.

COMMENTS

Almost 17 million people rent their homes in California, amounting to 44% of the state's population. (California Budget and Policy Center, *California's 17 Million Renters Face Housing Instability and Inequity Before and After COVID-19* (Jan. 2021).) Many of these renters are cost-burdened. As of 2020, over 52% of renter households paid more than 30% of their total income in rent, and 27% were severely cost-burdened, paying more than 50% of their income in rent. (California Housing Partnership, *California Affordable Housing Needs Report 2021* (March 2021).) Black households are nearly 50% more likely to be severely cost-burdened than white households. (*Ibid.*) Median rent in California has increased 35% since 2000, while median renter

household income has only increased by 6%. (*Ibid.*) Because the security deposit amount is anchored to the monthly rental amount, security deposit amounts have likewise seen a significant increase over the same period of time.

California established its current security deposit limit, of two months' rent for unfurnished apartments, in 1977. (AB 94 (Rosenthal), Chapter 971, Statutes of 1977.) Since then, the cost of renting housing has skyrocketed. According to the U.S. Bureau of Labor Statistics, the consumer price index (CPI)—a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services—has increased approximately 362% over the period of 1977 to 2023. The CPI for construction labor costs has increased approximately 388% over the same time period. While significant, these increases pale in comparison to the astronomical increases in rent. According to the California Department of Consumer Affairs, the median rental price for a one-bedroom apartment in California in 1977 was \$220 per month. As of 2022, the median rental price for a one-bedroom apartment in California is around \$1,700 per month. This represents an increase of approximately 673%. Against this backdrop, anchoring security deposits to rent means that the actual total amount a landlord can obtain on the front end would likely significantly exceed the actual amount they would need to expend in making necessary repairs.

The opposition argues that "[f]urther limiting a property owner's ability to financially cover property damage or unpaid rent is an unfair imposition for rental housing providing." It does not provide an explanation why the security deposit should be set at two times, as opposed to one time, the monthly rental amount to recover potential property damage. They argue that reducing the security deposit maximum to one month's rent may cause smaller owners to pull their rental units off the market. Senate amendments exempting small landlords should further obviate these concerns.

The other argument raised in opposition to this bill is that evictions are costly and that the information landlords have about their tenants' prior rental history is limited because, "[c]ourt records are sealed for most tenants." However, this overstates the scope of the existing law. California law restricts access to court records filed in an unlawful detainer or "eviction" action to any person after the complaint has been filed, unless the landlord prevails in the action within 60 days of filing the complaint. This means that in cases where a landlord prevails within 60 days of filing a complaint for eviction, the court records are not sealed. According to the most recent data from the Judicial Council, approximately 35% of unlawful detainer actions are disposed of within less than 45 days. For the cases that take longer, where the tenant prevails, or where there was no complaint filed at all, the opposition is correct that no court records would be available. But that may be appropriate. When a tenant prevails, the record of an eviction proceeding should not be used against them in the future.

Nothing in existing law, or any of the provisions of this bill, prevents a landlord from asking for references, and asking prior landlords of an applicant about failures to pay or prior evictions. A landlord can request references from a prospective tenant's previous landlords and make phone calls to find out if the person is a good tenant who pays rent on time, or is perhaps a "serial defaulter" instead. It is not known why this direct, common-sense practice of calling references is not sufficient to produce the information that a landlord needs to "find out the truth" about a prospective tenant, unless landlords do not routinely share truthful information with other landlords about past tenants.

According to the Author

California has the third lowest homeownership rate in the country, leaving 17 million families and individuals renting in cities, suburbs, and rural areas. Higher rents often translate to higher security deposits. Under current California law, every renter can be required to pay up to three months' rent for their security deposit. The average security deposit for a one-bedroom in San Francisco can be as much as \$10,000. In Los Angeles, the average renter can pay as much as \$8,000 for a security deposit. This does not include the first and last month's rent payment that many renters also have to pay prior to securing a rental unit. While many families are able to afford their monthly rent, the requirement for two or three months' rent solely for a security deposit places a financial burden on many who cannot afford it. 53% of California renters are able to afford their rent but they are unable to get their needed apartment due to the inability to afford the security deposit. As a result, many families have to choose between acquiring more debt to afford their security deposit or not being approved for their much-needed housing.

Arguments in Support

Many labor organizations support this bill. They all point to the high cost of rent and security deposits—which are directly tied to the cost of rent—as highly problematic for working Californians to pay. The California Nurses Association, the UC Student Association, AFSCME, among others, point to some staggering statistics in supporting this bill:

The escalating cost of housing has pushed working families into extreme situations. In a recent survey, 41% of members surveyed reported that housing costs have forced them into one or more of the following experiences in the last five years:

- 1) Living in a vehicle
- 2) Living in a shelter
- 3) Living in a garage
- 4) Having to live with family or friends
- 5) Having to share a house with multiple families
- 6) Living more than 2 hours away from work in order to afford housing

Additionally, the high-security deposit laws are exacerbating California's homelessness crisis. There are approximately 172,000 Californians experiencing homelessness. The collective cost of housing is pushing people into homelessness at a faster rate than the State is able to provide services. Please support tenants across the state by lowering the barriers to renters getting into much-needed housing.

The Western Center on Law and Poverty also adds:

One of the biggest barriers for [low-income Californians] is coming up with two or three months of rent for a security deposit. As housing prices and inflation have skyrocketed, so have security deposits. The average California rent statewide is about \$2950 which means a tenant has to pay about \$5900 up front, not including application fees, miscellaneous fees,

pet deposit, and first and last month's rent. For unhoused and low-income people, getting that money together can be the main factor determining whether they can rent an apartment.

Arguments in Opposition

The California Rental Housing Association, and many of its regional members, oppose this bill:

First, charging security deposits allows for rental property providers to balance risk associated with renting out property. Without the ability to collect enough in security deposit to cover potential damages, rental property providers may decide to remove their homes from the rental market - further exacerbating the housing supply crisis. Past security deposit limitations have been fair to balance the risk and revenue potential of providing housing. Especially with our smaller owners, may not feel they have the appropriate "risk/revenue" balance and may pull their rental units off the market. Secondly, there are regional differences in rent throughout the state that makes a one size fits all approach of limiting security deposits to only one month's rent is impractical. While one month's rent in more expensive areas of the state may be enough to cover potential damages, one month's rent in more affordable parts of the state is much less. Security deposits are not the main driver preventing tenants from finding housing in the state, rather it is the lack of affordable housing units.

The California Apartment Association also opposes this bill:

Today because of California law, a rental property owner is making a decision about renting to a tenant without a clear understanding of past rental history. Court records are sealed for most tenants, making it almost impossible for a rental property owner to know whether a prospective tenant has a history of evictions. Further limiting a property owner's ability to financially cover property damage or unpaid rent is an unfair imposition for rental housing providers. If a tenant fails to live up to their obligations under their rental agreement, including their obligation to pay rent, an owner who proceeds with an eviction to move the tenant out will spend thousands of dollars and wait months for a court decision. This is not a process that most rental property owners enter into lightly and without first attempting to work with the tenant. The average court eviction can take up to six months or longer. All the while the owner is receiving no rent on that unit but is still required to make the monthly mortgage payments and to pay attorney fees and court costs for the eviction. Adding to court delays are some unethical tenant attorneys who advertise their ability to delay evictions for a year or longer. These existing hurdles are pushing more and more rental property owners (especially single-family rental owners) to remove their homes from the rental market. AB 12 will add to this troubling trend by reducing the security deposit amount to a sum that will almost never come close to covering the total outstanding rent.

The California Association of Realtors also opposes limiting security deposits to a month's rent:

As of 2022, there were over 20 states that had no statutory limit on security deposits for residential rental units. California law currently takes a balanced approach, allowing small housing providers the flexibility to ask for a security deposit of up to two months' rent for an unfurnished residential rental unit and up to three months' rent for a furnished unit. Additionally, existing law gives special consideration to tenants who are military personnel; for those tenants, a housing provider may ask for up to one month's rent for an unfurnished unit and up to two months' rent for a furnished unit. In sharp contrast, AB 12 imposes a one-size-fits-all approach on a state with almost 40 million people and with housing units of

different types and with different amenities. Specifically, the bill prohibits small housing providers from asking for a security deposit from any tenant in an amount greater than one month's rent under any circumstance and without taking into consideration the size, condition, amenities, and physical location of the property. AB 12 denies small housing providers the flexibility needed to continue offering housing in the state, thereby exacerbating California's housing crisis.

FISCAL COMMENTS

None.

VOTES:

ASM JUDICIARY: 8-3-0

YES: Maienschein, Connolly, Haney, Kalra, Pacheco, Papan, Reyes, Robert Rivas

NO: Essayli, Dixon, Sanchez

ASSEMBLY FLOOR: 53-14-13

YES: Addis, Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Grayson, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Ortega, Pacheco, Papan, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Schiavo, Soria, Ting, Villapudua, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

NO: Alanis, Megan Dahle, Davies, Dixon, Essayli, Flora, Vince Fong, Gallagher, Hoover, Mathis, Jim Patterson, Joe Patterson, Sanchez, Ta

ABS, ABST OR NV: Bains, Chen, Gipson, Lackey, Stephanie Nguyen, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Rodriguez, Valencia, Waldron, Wallis

UPDATED

VERSION: April 5, 2023

CONSULTANT: Shiran Zohar / JUD. / (916) 319-2334

FN: 0002223