

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON JUDICIARY
Brian Maienschein, Chair
AB 12 (Haney) – As Amended April 5, 2023

SUBJECT: TENANCY: SECURITY DEPOSITS

KEY ISSUE: SHOULD SECURITY DEPOSITS FOR A RESIDENTIAL RENTAL PROPERTY BE CAPPED AT ONE MONTH’S RENT?

SYNOPSIS

The high up-front cost for renting property in the state—which often includes prepayment of first month’s rent and a security deposit of up to three times the amount of monthly rent—places a significant financial burden on many Californians. Security deposits are directly tied to rental amounts, and under existing law, a landlord may charge up to two month’s rent for an unfurnished property, and up to three month’s rent for a furnished property. With the average monthly rate for a one bedroom apartment in most California cities exceeding \$2,000, renters can be required to come up with thousands of dollars in order to commence a lease. While many Californians can afford to pay rent, many do not have sufficient savings to come up with the hefty up-front cost, resulting in reliance on private, high-interest loans, being priced out of the rental market, and exacerbating an ever-growing homelessness problem. This author-sponsored bill seeks to lower the up-front costs of commencing a lease on rental property by setting the maximum security deposit that a landlord can charge a tenant as one month’s rent for a furnished or unfurnished property. This bill is supported by dozens of organizations, including labor unions, low-income advocacy groups, and a board resolution adopted by the City and County of San Francisco. It is opposed by several rental housing industry associations, including the California Apartment Association and the Rental Housing Association.

SUMMARY: Prohibits tenants from having to pay more than one month’s rent as a security deposit for furnished or unfurnished rental property. Specifically, **this bill:**

- 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) Eliminates the previous service members’ security deposit cap of one month’s rent for unfurnished and two month’s rent for furnished.

EXISTING LAW:

- 1) Defines “security” for the rental of residential property as a payment, fee, deposit, or charge, to be used for any purpose by the landlord, including but not limited to:
 - a) Processing a new tenant;
 - b) Ensuring advance payment of rent;
 - c) Compensating for nonpayment of rent;

- d) Repairing damages to the property, other than ordinary wear and tear, caused by the tenant or the tenant's guest or licensee;
 - e) For tenancies beginning on or after January 1, 2003, cleaning the property upon termination of the tenancy in order to restore the same level of cleanliness the property had at the beginning of the tenancy; or
 - f) Cover any obligation, as established by the rental agreement, to restore, replace, or return personal property or accessories, other than due to ordinary wear and tear. (Civil Code Section 1950.5 (a).)
- 2) Excludes from the definition of "security" any permissible application screening fee that a landlord charges a prospective tenant. (*Ibid.*; Civil Code Section 1950.6.)
 - 3) Permits a landlord to require two months' rent as security for an unfurnished rental property or three months' rent as security for a furnished rental property, while clarifying that a landlord may separately require a tenant to pay the first month's rent on or before the tenant's initial occupancy. (Civil Code Section 1950.5 (c).)
 - 4) Permits a landlord to claim only that portion of the security necessary for the purposes set forth in 1) above. (Civil Code Section 1950.5 (e).)
 - 5) Prohibits a landlord from demanding or receiving as security from a prospective tenant who is a service member more than one month's rent for unfurnished rental property or two months' rent for furnished rental property, while clarifying that a landlord may separately require a tenant to pay the first month's rent on or before the tenant's initial occupancy. (Civil Code Section 1950.5 (c).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: As a result of the dramatic rent increases of the past decade, many prospective tenants find it difficult to save enough for a security deposit. Current California law permits a landlord to charge a tenant up to two months' rent as a security deposit for an unfurnished rental property, or three months' rent for a furnished rental property. This bill would set the maximum security deposit a landlord could collect as an amount equal to one month's rent for either a furnished or unfurnished rental property. 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

Renting in California. Almost 17 million people rent their homes in California, amounting to 44 percent 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’s security deposit limits can become exceptionally high as rents increase. California established its current security deposit limit, of two months’ rent for unfurnished apartments, in 1977. (AB 94 (Rosenthal, Chap. 971, Stats. 1977).) Since then, the cost of renting housing has skyrocketed. Recent inflationary increases and supply chain disruptions as a result of the Covid-19 pandemic and the war in Ukraine, have resulted in increased cost of manufactured products such as furniture and appliances. Labor costs have likewise gone up. 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 percent.

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.

Recent legislation relating to reduced security deposits for service members show that one month’s rent suffices. SB 644 (Glazer, Chap.602, Stats. 2019) demonstrated that one month’s rent suffices as a security deposit for any group of tenants. That bill set the maximum security deposit for unfurnished properties for service members at one month’s rent. The reasoning behind that bill—which passed unanimously in both houses—applies in equal force to many Californians as it does to service members: housing prices are higher, and prospective tenants have trouble paying the upfront costs associated with moving into an apartment.

Many labor organizations have come out in support of this bill, explaining that the burden of paying a security deposit in excess of one month’s rent in addition to the first month’s prepayment is a barrier to accessing stable housing. Many organizations that support this bill, point directly to the effect of high up-front security deposit costs as an often insurmountable

obstacle to finding housing. California School Employees Association, which represents classified employees that serve our public schools, notes that half of their members make less than \$30,000 per year. Even where their members can afford the price of rent, they argue, the up-front costs are often insurmountable.

Opposition arguments against the bill may be overstated. 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.

The other argument raised in opposition to the 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.

It should be noted that 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.

Nonetheless, to ensure that landlords do not simply raise rent further to offset the loss of potential security deposit funds, the author and all stakeholders are encouraged to continue discussions to ensure California adopts an approach to security deposits that will protect landlord’s legitimate interests while ensuring security deposits do not pose an undue burden to otherwise worthy tenants.

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:

- Living in a vehicle
- Living in a shelter

- Living in a garage
- Having to live with family or friends
- Having to share a house with multiple families
- 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, including 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 6 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Aids Legal Referral Panel (ALRP)
Asian Americans Advancing Justice - Asian Law Caucus
Asian Americans Advancing Justice - Southern California
Board of Supervisors for the City and County of San Francisco
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Labor Federation, AFL-CIO
California Nurses Association
California School Employees Association
California State Council of Service Employees International Union (SEIU)
California Teamsters Public Affairs Council
Coalition on Homelessness, San Francisco
Compass Family Services
End Poverty in California (EPIC)
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
Firepower Promotions INC
Glide
Justice in Aging
Larkin Street Youth Services

National Association of Social Workers, California Chapter
National Housing Law Project
Public Counsel
Service Employees International Union, Local 1000
Tenants Together
The Gubbio Project
UNITE-HERE, AFL-CIO
United Food and Commercial Workers, Western States Council
University of California Student Association
Utility Workers Union of America
Western Center on Law & Poverty, INC.

Opposition

Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Berkeley Property Owner's Association
California Apartment Association
California Association of Realtors
California Rental Housing Association
East Bay Rental Housing Association
Nor Cal Rental Property Association
North Valley Property Owners Association
Santa Barbara Rental Property Association
Small Property Owners of San Francisco
Southern California Rental Housing Association

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