



New Legislation Permitting Landlords To Accept “A Fee In Lieu Of A Security Deposit”

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Although a residential rent control initiative did not pass during the 2023 legislative session, Florida cities still have the power to impose temporary controls on a city-by-city basis. However, this does not help a growing population of Floridians who are priced out of initially getting into affordable places to live due to the initial security deposit most landlords require of new tenants.



In Florida, there is no limit to what a landlord can charge for a security deposit. However, there are strict rules that a landlord must comply with if he or she intend to collect security deposits from a tenant. Fla. Stat. § 83.49 (2023) governs the collection and the return of a security deposit. In relevant part, Fla. Stat. § 83.49(3)(a), states the following:

Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant’s last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. . . . If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

To help tenants afford to move into a new home, a bill offering an alternative to the traditional security deposit structure found its way to the Governor’s desk in spring of 2023 in Florida House Bill No. 133. Having taken effect July 1, 2023, new Fla. Stat. § 83.491, allows a landlord to, “offer a tenant the option to pay a fee in lieu of a security deposit.” However, the fee is nonrefundable under the new law.¹ New Fla. Stat. § 83.491(2)(a) states the following:

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If a tenant agrees to pay a fee in lieu of a security deposit, the landlord must notify the tenant within 30 days after the conclusion of the tenancy if there are any costs or fees due resulting from unpaid rent, fees, or other obligations under the rental agreement, including, but not limited to, costs required for repairing damage to the premises beyond normal wear and tear.

Naysayers of the bill argue that it could give landlords even more power over tenants who are already at an economic disadvantage. Given that this bill did not include a cap for how much a landlord could charge as a fee in lieu of a security deposit, a tenant runs the risk of paying exorbitant fees that he or she will never get back and will not apply to "repairing damage to the premises beyond normal wear and tear." What appears to be an incentive for landlords to accept this optional payment method, could result in a windfall for landlords across the state. Further, a tenant could end up in an even worse position if a landlord determines that there are damages that need to be repaired and demands payment that would have originally come out of the security deposit. A tenant could potentially be in the position where they still struggle to afford the total payments.

Attorneys who work with landlords and tenants of residential properties should familiarize themselves with this new law. Landlords do not have to offer this alternative fee option and

can still require tenants to pay a traditional security deposit. Additionally, if a tenant decides to pay a fee in lieu of a security deposit, "the written agreement may be terminated at any time as long as the tenant pays the amount of the security deposit specified in the rental agreement."²

Time will tell if this new law creates a win-win situation for both landlords and tenants, but at least the legislature is continuing to make moves to satisfy the growing need for solutions to common problems that Florida residents face when finding a place to rent in the state.



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Endnotes

- 1 Fla. Stat. § 83.491(3)(f) (2023).
- 2 Fla. Stat. § 83.491(4)(a)(4) (2023).

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