
THIRD READING

Bill No: SB 611
Author: Menjivar (D)
Amended: 5/25/23
Vote: 21

SENATE JUDICIARY COMMITTEE: 10-1, 5/2/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Stern,
Wiener
NOES: Niello

SUBJECT: Residential rental properties: fees and advertisements

SOURCE: Consumer Federation of California

DIGEST: This bill requires certain disclosures in the advertised rates for rental properties and prohibits certain fees from being charged by landlords.

Senate Floor Amendments of 5/25/23 delay the effective date of the advertisement provision, narrow the provision regarding security deposits, and clarify other provisions.

ANALYSIS:

Existing law:

- 1) Provides that if a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from the lessee, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year. (Civ. Code § 1945.)
- 2) Provides guidelines for lawful notice to terminate tenancies after initial term specified by the parties. (Civ. Code §§ 1946, 1946.1.)

- 3) Requires a landlord to allow a tenant, except as provided, to pay rent and any security deposit by at least one form of payment that is neither cash nor electronic funds transfer. (Civ. Code § 1947.3.)
- 4) Makes a tenant of real property guilty of unlawful detainer if, among other things, the tenant continues in possession of the real property after giving notice of termination of a hiring of residential property for an unspecified term. (Code Civ. Proc. § 1161.)

This bill:

- 1) Provides that every landlord or its agent who advertises or provides a quote for a residential property for rent and who includes a specific or range of monthly rent rates shall include in the monthly rate the range of the total maximum amount of any and all payments, fees, deposits, or charges required to be paid monthly, as part of the lease or the rental agreement. If a payment, fee, deposit, or charge is required to be paid prior to, or at the beginning of, the tenancy, then the advertisement shall include the total amount of the first month of paid rent and the range of the total maximum amount of any and all payments, fees, deposits, or charges, including, but not limited to, and to the extent permitted by law, an application fee, processing fee, and security deposit, required to be paid by the applicant.
- 2) Provides that in addition to the rate required to be stated above, an advertisement or quote may state separately the ongoing monthly rate after the tenant pays all one-time payments, fees, deposits, and charges.
- 3) Delays the effective date of the above provisions until July 1, 2024.
- 4) Prohibits a landlord from charging a fee in connection with notices provided pursuant to Sections 1946 and 1946.1 of the Civil Code and Section 1161 of the Code of Civil Procedure. A landlord is also prohibited from charging tenants a fee for paying for rent or a security deposit by check.
- 5) Requires a landlord that charges a higher security deposit on a service member tenant based on the service member's history of poor credit or of causing damage to the rental property to clearly disclose the amount and the reasoning in the lease agreement. The landlord is required to refund the additional amount within six months if the tenant is not in arrears for any rent due and the basis for charging the higher amount is not due to a prior history of residential property damage, and that date shall also be set forth in the lease agreement.

Background

The issue of “junk” fees and other pricing schemes gained more prominence nationally when President Joe Biden took aim at them in his State of the Union address in February 2023. When merchants include hidden or “junk” fees in the purchase price of goods and services, their customers are not able to make fully informed decisions. There are various types of pricing schemes generally deemed unfair or unlawful business practices, but this bill specifically targets transparency in the rental housing context.

Just as with consumers, renters can be hit hard by hidden fees and other unknown costs related to rental housing contracts. In addition to traditional upfront costs such as first and last months’ rents and security deposits, renters are often charged application fees, “convenience” fees, pet fees or deposits, and guest-related fees. Given the scope of the housing affordability crisis already, these additional burdens on renters, especially when not expected or understood, only exacerbate the problem.

This bill seeks to address the problem by prohibiting certain add-on fees from being charged and imposes transparency requirements on advertisements for rental properties. This bill is sponsored by the Consumer Federation of California. It is supported by the California Association of MicroEnterprise Opportunity and Consumer Watchdog. It is opposed by the California Apartment Association and the California Association of Realtors who assert concerns about the practicability of the provisions.

Comments

According to the author:

SB 611 will force landlords to clearly state to consumers what their monthly payments will be to stay in an apartment or rental unit. The state of California has some of the most expensive rental housing markets in the United States and this bill provides transparency for consumers to help them make the best-informed decisions that can prevent future financial burdens.

California is grappling with a housing affordability crisis that has left many tenant households “rent-burdened,” meaning that 30 percent or more of their income goes to the rent, and over a quarter of tenant households “severely rent-burdened” meaning that they spent over half their income on rent alone. These issues are only exacerbated when landlords tack onto already high rents, hidden or surprise fees that can push tenants over the brink.

As part of the Biden Administration's effort to combat junk fees, the FTC solicited written comment, data, and argument concerning the need for rulemaking to prevent the imposition of certain fees on consumers. Writing in response, the National Consumer Law Center, on behalf of its low-income clients and the National Housing Law Project highlighted the need for regulation of these fees in the rental housing market:

Even before the COVID-19 pandemic, many renters struggled to find safe and stable housing, in part because of the severe affordable housing shortage. Pre-pandemic, over 20 million renter households were burdened with housing costs that threatened their financial security.¹ The COVID-19 economic crisis has only exacerbated this crisis.²

Renters now face not only an affordable housing shortage and rising rent prices,³ but also a number of junk fees that they must pay to secure and maintain housing. If a tenant ultimately cannot afford to pay these unavoidable junk fees (described in detail below), the fees may become an alleged rental debt that a housing provider seeks to collect through a third-party debt collector who reports the debt to the Big Three credit bureaus.⁴

The detailed and research-driven letter concluded with the following call to regulators:

Junk fees charged to tenants and rental housing applicants make securing and maintaining rental housing even more difficult for rent-burdened households. To help ensure renters' future ability to secure safe and affordable housing by keeping unfair debt collection off of their credit reports, we urge the CFPB to work with the FTC to investigate and prevent the imposition of unavoidable and exploitative junk fees. The CFPB and the

¹ Joint Ctr. for Hous. Studies of Harvard Univ., *America's Rental Housing* (2020), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-foodhousing-and>.

² See Andrew Aurand, et al., *The Gap: A Shortage of Affordable Homes* (2021) Nat'l Low Income Housing Coalition, https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf; see also *Tracking the COVID-19 Economy's Effects on Food, Housing, and Employment Hardships* (2021) Center on Budget & Policy Priorities, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economyseffects-on-food-housing-and>.

³ Abha Bhattarai, *Rents are up more than 30 percent in some cities, forcing millions to find another place to live* (Jan. 30, 2022) Washington Post, <https://www.washingtonpost.com/business/2022/01/30/rentinflation-housing/>.

⁴ *Comments to CFPB on Junk Fees Charged to Tenants & Rental Housing Applicants* (Apr. 11, 2022) National Consumer Law Center & National Housing Law Project, <https://www.nclc.org/resources/comments-to-cfpb-on-junk-fees-charged-to-tenants-rental-housing-applicants/>.

FTC should also work together to study and address the disproportionate impact of these practices on renters and renter applicants of color.

This bill seeks to respond to this call. First, this bill requires clear transparency in connection with the advertised rates for rental properties. Specifically, landlords are required to include in advertised monthly rates the total maximum amount of any and all payments, fees, deposits, or charges *required* to be paid monthly.

Where the payment, fee, deposit, or charge is required to be paid at the outset of the tenancy, then the advertisement must include the total amount of the first month of paid rent and the range of the total maximum amount of any and all payments, fees, deposits, or charges, including an application fee, processing fee, and security deposit, *required* to be paid by the tenant. This ensures potential renters are able to understand the real costs of housing when evaluating their options. Recent amendments delay the effective date of these provisions.

In addition, this bill prohibits certain fees from being charged by landlords or requires transparency when they are charged. This includes fees in connection with notices required to be provided pursuant to Civil Code Sections 1946 and 1946.1, and Code of Civil Procedure 1121. These notices are in regard to the termination of a tenancy upon the expiration of an unspecified lease term and in regard to the unlawful detainer statute. This bill prohibits fees being charged in connection with the landlord providing these notices.

Currently, landlords must give tenants the option to pay security deposits and rent by some method other than cash or electronic funds transfer. This bill prohibits a landlord from charging a fee for allowing a tenant to pay by check.

Existing law allows for security deposits to be charged at a maximum level of two times the monthly rent, unless furnished, in which case it is three times the monthly rent. Those caps are each one month lower for service members. However, if the service member has a history of poor credit or of causing damage to the rental property or its furnishings, the caps that apply generally control. This bill places an additional protection for service members, requiring clear transparency when landlords rely on this latter provision. In such cases, the lease must state the amount of the higher fee and an explanation for why the higher security deposit amount is being charged. Furthermore, the additional amount of security deposit shall be returned to the service member after no more than six months of residency if the service member is not in arrears for any rent due during that period and the basis for charging that higher amount was not a prior history of residential property damage. The date for return of the additional amount of security deposit must also be included in the lease.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/25/23)

Consumer Federation of California (source)
California Association of MicroEnterprise Opportunity
Consumer Watchdog

OPPOSITION: (Verified 5/25/23)

California Apartment Association
California Association of Realtors

ARGUMENTS IN SUPPORT: The Consumer Federation of California, the sponsor of this bill, makes the case for the bill: “As renting becomes the most ‘affordable’ option for consumers unable to afford buying a home, junk and hidden fees have seen a staggering increasing, forcing renters to pay much more than the advertised price per month for a rental unit. From high application fees required at each potential rental location, to excessive fees for processing, convenience, administration, trash, late fees and more, fees are hidden rent increases. These junk fees render safe and decent rental housing out of reach because renters must pay them on top of exorbitant fees, jeopardizing access to future housing and financial stability. For many renters these fees can lead to debt, haunting renters long after they have vacated a housing unit – whether they left because of an eviction case or voluntarily moved out – and continuing the cycle of housing insecurity in the state.

“SB 611 will force landlords to clearly state to consumers what their monthly payments will be to stay in an apartment or rental unit. The state of California has some of the most expensive rental housing markets in the United States and this bill provides transparency for consumers to help them make the best-informed decisions that can prevent future financial burdens.”

ARGUMENTS IN OPPOSITION: The California Apartment Association writes, “CAA agrees with the transparency required by SB 611. It is reasonable to expect that advertisements include a notice that some fees and charges are not included in the rent. There are expenses and fees that a tenant pays, however, which cannot be specifically quantified and totaled in an advertisement because those expenses and costs vary and are based on a tenant’s use or a choice by the tenant who typically orders the service in their own name such as, electricity and gas, water, WIFI, cable, telephone, satellite charges, parking, and the like.

“Also, as allowed by law, a security deposit may also vary based on whether the tenant has good credit, poor credit, or a history of evictions, or whether the rental

property owner allows pets. There are also charges that a tenant will never see so long as they pay their rent, such as late fees, attorneys' fees for service of notices, or eviction costs. These are not 'junk fees' and are commonly understood by applicant-tenants."

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