



April 28, 2023

The Honorable Caroline Menjivar
California State Senate
1021 O Street, Suite 6720
Sacramento, CA 95814

RE: SB 611 (Menjivar) – Residential Rental Properties: Fees and Advertisements – As Amended April 25, 2023 - Oppose Unless Amended

Dear Senator Menjivar:

On behalf of the members of the California Apartment Association (CAA), I am writing to inform you that CAA continues to maintain an oppose unless amended position on SB 611, your bill that would require landlords or their agents who advertise or provide a quote for residential property for rent (1) to include in the advertised monthly rate all payments, fees, deposits, or charges required to be paid monthly, and (2) to also include in the first monthly amount all other nonrecurring costs, including an application fee, deposit, or charge that is required to be paid prior to, or at the beginning of, the tenancy.

Recent amendments to SB 611 also prohibit a rental property owner from charging the tenant any fee to serve a notice of termination of a month-to-month tenancy, as defined in the bill. The amendments also prohibit a landlord from charging a tenant a fee for payment by check for rent or a security deposit. And finally, amendments were added to the bill to require a rental property owner who charges a service member a higher than standard or advertised security deposit due to the service member's credit history, credit score, and/or housing history, to include in the lease agreement a statement setting forth the amount of the higher deposit and an explanation why the higher security deposit amount is being charged. Further, the bill requires the additional amount of security deposit to be returned to the tenant no later than six months from the start of the service member's residency if the tenant is not in arrears for any rent due during that period. The date for return of the additional amount of security deposit shall also be included in the lease agreement.

Advertisements - 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.

Requested Amendment - We respectfully request amendments to clarify that an advertisement or quote include the price of rent, the range of the security deposit, the range of screening fee, and any other mandatory fee or charge. If other fees are charged based on a tenant’s choice for a service, that should not be required in the advertisement. Fees that a tenant will never experience so long as they pay the rent, such as a late fee, fee for a bounced check, or other fees if selected by the tenant should not be required in an advertisement.

Higher Security Deposit Charged to Service Member: No Lease Language is Necessary - A conditional approval of an application to rent that requires the applicant (including an application to rent submitted by a service member) to pay a higher security deposit is considered an “adverse action.” Current state and federal law require landlords to provide a notice to any applicant when an “adverse action” is taken based on a consumer credit report. Adverse action notices, such as a notice of conditional acceptance of an application to rent, must include a credit score and a statement of the key factors that adversely affected the applicant’s credit score if that score was in whole or in part the reason for the adverse action (i.e., requiring payment of a higher security deposit). **Due to the “adverse action” notice requirements imposed under state and federal law, the recent amendments to SB 611 requiring property owners who charge a service member a higher security deposit to include a statement in the lease explaining why a higher deposit is being charged is duplicative of the “adverse action” notice and, therefore, unnecessary.**

Mandatory Return of the Additional Security Deposit Charged to a Service Member: Not Reasonable When the Tenant Has Poor Credit or History of Negative Actions – The April 25th amendments to SB 611 require that no later than 6 months from the date the service member moves into the property, the property owner must return that additional portion of the security deposit that was collected as a result of the tenant’s history of poor credit or due to past damage by the tenant to other rental properties. A rental property owner who elects to rent to a tenant with poor credit is “taking a risk” on that tenant and the higher security deposit required is based on that risk. At the same time, the security deposit is held by the landlord for protection against damages to the rental unit caused by the tenant. The owner won’t know the condition of the unit until after the tenant moves out. Mandating the return of the additional security deposit charged to a service member who has a history of causing damage to rental properties is not appropriate and will have the unintended consequence of some service members finding themselves being denied housing. **The alternative to an owner taking this risk is that the owner will elect not to rent to a service member who has poor credit or past negative activity at a property.**

Charging Fees for Payment of Rent and/or Deposit by Check – Current law allows landlords to charge additional fees when a tenant’s personal check is returned due to insufficient funds. Landlords can charge up to \$25 for the first check returned due to insufficient funds and \$35 for each additional bounced check. It is unclear whether the provision of SB 611 that prohibits landlords from charging tenants any fee in connection with paying their rent and/or security deposits by way of personal check would also prohibit landlords from charging tenants the legally allowed fees in the event a tenant’s personal check for the payment of rent or their security deposit is returned due to insufficient funds.

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Further, while some property owners may not charge a tenant an extra fee if the tenant pays by check, some owners may offer a "rent discount" if a tenant agrees to pay rent through the owner's online payment portal. Such systems were created for both the owner and the tenant's convenience. It is unclear whether SB 611 would prohibit such practice of offering "rent discounts" to tenants who agree to pay their rent via an owner's online payment portal.

The California Apartment Association is the largest statewide rental housing trade association in the country, representing over 50,000 single family and multi-family apartment owners and property managers who are responsible for over 2 million affordable and market rental units throughout the State of California. Thank you for considering our concerns.

Sincerely,

CALIFORNIA APARTMENT ASSOCIATION



By

Debra Carlton, Executive Vice President
State Public Affairs & Compliance

cc: Senate Judiciary Committee