

House Bill 3440

Sponsored by Representative BARNHART (at the request of David Hinkley)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits landlord from refusing to rent dwelling unit or charging excessive fee or deposit based on person's use or possession of companion animal. Provides cause of action for violation.

A BILL FOR AN ACT

Relating to companion animals; creating new provisions; and amending ORS 90.300 and 90.405.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Companion animal" means a dog or cat possessed by a person for purposes of companionship, security or providing assistance in relation to a physical disability.

(b) "Dwelling unit" has the meaning given that term in ORS 90.100.

(c) "Landlord" has the meaning given that term in ORS 90.100.

(2) A landlord may not refuse to rent a dwelling unit to a person on the basis of the person's use or possession of a companion animal.

(3) A person has a cause of action to recover compensatory damages or \$200, whichever is greater, from a landlord who refuses to rent a dwelling unit, or charges additional rent, on the basis of the person's use or possession of a companion animal. The court may award reasonable attorney fees to the prevailing party in an action under this section.

(4) A landlord may not require a person to pay an additional nonrefundable fee or an excessive deposit for keeping a companion animal.

(5) A person is liable for damages done to a dwelling unit by a companion animal.

SECTION 2. ORS 90.300 is amended to read:

90.300. (1) As used in this section, "security deposit" includes any last month's rent deposit.

(2) Except as otherwise provided in this section, a landlord may require the payment of a security deposit. A security deposit or prepaid rent shall be held by the landlord for the tenant who is a party to the rental agreement. The claim of a tenant to the security deposit or prepaid rent shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy. The holder of the landlord's interest in the premises at the time of termination of the tenancy is responsible to the tenant for any security deposit or prepaid rent and is bound by this section.

(3)(a) A landlord may not change the rental agreement to require the payment of a new or increased security deposit during the first year after the tenancy has begun, except that an additional deposit may be required if the landlord and tenant agree to modify the terms and conditions of the rental agreement to permit a pet or for other cause and the additional deposit relates to that modification. This paragraph does not prevent the collection of a security deposit that was provided for under an initial rental agreement but remained unpaid at the time the tenancy began. **This para-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

graph does not apply to an animal described in ORS 346.610 to 346.630 or 346.680 to 346.690 or section 1 of this 2001 Act.

(b) If a landlord requires a new or increased security deposit after the first year of the tenancy, the landlord shall allow the tenant at least three months to pay that deposit.

(4) The landlord may claim all or part of the security deposit only if the security deposit was made for any or all of the purposes provided by subsection (5) of this section.

(5) The landlord may claim from the security deposit only the amount reasonably necessary:

(a) To remedy the tenant's defaults in the performance of the rental agreement including, but not limited to, unpaid rent; and

(b) To repair damages to the premises caused by the tenant, not including ordinary wear and tear.

(6) A security deposit or prepaid rent shall not be required or forfeited to the landlord upon the failure of the tenant to maintain a tenancy for a minimum number of months in a month-to-month tenancy.

(7) Any last month's rent deposit shall be applied to the rent due for the last month of the tenancy:

(a) Upon either the landlord or tenant giving to the other a notice of termination, pursuant to this chapter, other than a notice of termination under ORS 90.400 (2);

(b) Upon agreement by the landlord and tenant to terminate the tenancy; or

(c) Upon termination pursuant to the provisions of a written rental agreement for a term tenancy.

(8) Any portion of a last month's rent deposit not applied as provided under subsection (7) of this section shall be accounted for and refunded as provided under subsections (10) to (12) of this section. Unless the tenant and landlord agree otherwise, a last month's rent deposit shall not be applied to rent due for any period other than the last month of the tenancy. A last month's rent deposit shall not operate to limit the amount of rent charged unless a written rental agreement provides otherwise.

(9) Upon termination of the tenancy, a landlord shall account for and refund to the tenant the unused balance of any prepaid rent not previously refunded to the tenant as required by ORS 90.380 and 105.120 (4)(b) or any other provision of this chapter, in the same manner as required for security deposits by this section. The landlord may claim from the remaining prepaid rent only the amount reasonably necessary to pay the tenant's unpaid rent.

(10) In order to claim all or part of any prepaid rent or security deposit, within 31 days after the termination of the tenancy and delivery of possession the landlord shall give to the tenant a written accounting that states specifically the basis or bases of the claim. The landlord shall give a separate accounting for security deposits and for prepaid rent.

(11) The security deposit or prepaid rent or portion thereof not claimed in the manner provided by subsections (9) and (10) of this section shall be returned to the tenant not later than 31 days after the termination of the tenancy and delivery of possession to the landlord.

(12) The landlord shall give the written accounting as required by subsection (10) of this section or shall return the security deposit or prepaid rent as required by subsection (11) of this section by personal delivery or by first class mail. Proof of timely compliance with this requirement shall include a postmark.

(13) If the landlord fails to comply with subsection (11) of this section or if the landlord in bad faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant

1 under this chapter or the rental agreement, the tenant may recover the money due in an amount
2 equal to twice the amount:

3 (a) Withheld without a written accounting under subsection (10) of this section; or

4 (b) Withheld in bad faith.

5 (14) This section does not preclude the landlord or tenant from recovering other damages under
6 this chapter.

7 **SECTION 3.** ORS 90.405 is amended to read:

8 90.405. (1) If the tenant, in violation of the rental agreement, keeps on the premises a pet ca-
9 pable of causing damage to persons or property, the landlord may deliver a written notice specifying
10 the violation and stating that the tenancy will terminate upon a date not less than 10 days after the
11 delivery of the notice unless the tenant removes the pet from the premises prior to the termination
12 date specified in the notice. If the pet is not removed by the date specified, the tenancy shall ter-
13 minate and the landlord may take possession in the manner provided in ORS 105.105 to 105.168.

14 (2) For purposes of this section, "a pet capable of causing damage to persons or property" means
15 an animal that, because of the nature, size or behavioral characteristics of that particular animal
16 or of that breed or type of animal generally, a reasonable person might consider to be capable of
17 causing personal injury or property damage, including but not limited to, water damage from medium
18 or larger sized fish tanks or other personal injury or property damage arising from the environment
19 in which the animal is kept. **"A pet capable of causing damage to persons or property" does**
20 **not include an animal described in ORS 346.610 to 346.630 or 346.680 to 346.690 or section 1**
21 **of this 2001 Act.**

22 (3) If substantially the same act that constituted a prior noncompliance of which notice was
23 given under subsection (1) of this section recurs within six months, the landlord may terminate the
24 rental agreement upon at least 10 days' written notice specifying the breach and the date of termi-
25 nation of the rental agreement.

26 (4) This section shall not apply to any tenancy governed by ORS 90.505 to 90.840.
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