



Jesse Arreguín
Councilmember, District 4

ACTION CALENDAR
September 28, 2010

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Tenant Application Screening Fees

RECOMMENDATIONS

Adopt first reading of an ordinance providing guidelines for rental application screening fees and notice to rental applicants of those guidelines and their rights.

BACKGROUND

Some property management firms and individuals that manage rental properties charge screening fees as a condition of consideration to become a tenant of a rental unit. These fees sometimes illegally exceed the actual out-of-pocket screening costs of the landlord and are instead effectively used to generate additional income. High application screening fees and a lack of public knowledge about the legal restrictions landlords must obey when charging screening fees are harmful to prospective renters, especially low-income renters who have limited resources for their housing search. This situation also threatens the competitiveness of fair landlords who do not exploit prospective tenants.

While existing state law (California Civil Code Section 1950.6.) takes some steps to address the problem, both landlords and applicants are not sufficiently informed about the state requirements. Additionally, unlike other states, California does not require that landlords provide written notice to applicants before acceptance of an application screening fee in order to inform applicants about the screening process, criteria used, the law, availability of the unit, and their rights. The City of Berkeley should require that landlords within its jurisdiction issue such a notice if they charge an application fee as provided for in Civil Code Section 1950.6.

California State Law

Section 1950.6 of the California Civil Code states that a landlord may charge an application screening fee to a prospective tenant, but it also puts restrictions on those fees. According to this law, landlords may only charge for their actual out-of-pocket costs, which may include a screening service or credit check as well as time spent contacting references, and the total possible fee is capped (at \$41.72 in 2010, although it is adjusted each year based on CPI). The landlord must provide an itemized receipt for the costs covered by the application fee and must refund an appropriate portion of the fee if they do not actually call an applicant's references, run a credit check, or use a screening service (because they rented the unit to a prior applicant, for example).

Despite this existing law, many Berkeley tenants are unaware of their rights. They do not know that they can ask for an itemized receipt, request a refund if the landlord accepts a prior applicant and has not yet screened their application, and do not have to pay over \$41.72. In addition, many landlords may not be aware of the restrictions imposed on application fees by state law. Also, there is no effective enforcement of our state law regarding screening fees due to the fact that the applicant must go through small claims court – a task typically not worth a \$40 screening fee.

To provide better accountability on the use of screening fees, the proposed ordinance adopts the state rules in order to provide local enforcement, in addition to requiring written notice to inform applicants of their rights.

Other State and Local Laws

Like California, many other states require the return of unused portions of screening fees, that fees cover only actual out-of-pocket costs, and that landlords provide an itemized receipt of those costs.

But some states have already taken steps to better regulate tenant screening fees. For example, Oregon and Washington (among others) require written notice to the renter by the landlord upon acceptance of the application fee providing information about their rights as applicants and the screening process. Washington's law (RCW 59.18.257) does not put an explicit cap on the application fee, but limits it to the customary cost of a tenant screening service in the area and requires that the landlord provide the prospective tenant with a written notice detailing what the tenant screening entails, the prospective tenant's rights to dispute the accuracy of information collected, and the name and address of the tenant screening service used by the landlord.

The written notice to applicants required in Oregon (ORS 90.295) is a useful model for amendments to the California law or a new Berkeley ordinance. In addition to the information required by Washington, Oregon also requires that the written notice disclose the explicit screening criteria considered by the landlord and an estimate, made to the best of the landlord's ability at that time, of the approximate number of similar local rental units that are, or soon will be, available to rent from that landlord. The

estimate must also include the approximate number of applications previously accepted and remaining under consideration for those units. This information – the explicit criteria an applicant must meet and the availability and competition for open units – enables a prospective tenant to best make completely informed decisions about their chances in the rental market for this unit.

The state of Minnesota currently puts some similar restrictions on applicant screening fees, but the Minnesota State Legislature is in the final stages of passing a bill that would make these requirements even stricter (modifying Section 50B.173). It would require landlords to disclose their reasons for rejecting an applicant and to refund a screening fee if the reason for rejecting the applicant was not part of the written criteria pre-established by the landlord and disclosed in the written notice to the applicant prior to acceptance of the fee. The Minnesota bill would also require landlords to screen applicants in the order their applications were received, and would forbid landlords from using, cashing, or depositing an application fee until all prior applicants have been either screened and rejected or offered the unit and declined to take it. The fee would then have to be refunded if a prior applicant was offered the unit and accepted.

Maryland state law (Md Real Property Section 8-213) allows a landlord to charge and keep up to \$25 as an application fee without itemizing his costs. If a landlord charges an application fee over \$25, he must demonstrate the use of funds over that amount and any amount not used to process the application must be returned within 15 days if no tenancy occurs. The Maryland statute also exempts small landlords from this requirement.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 13.76.075 of the Berkeley Municipal Code is added to read as follows:

Section 13.76.075 Tenant application screening fees.

- A. Notwithstanding California Civil Code Section 1950.5, when a landlord or his or her agent receives a request to rent a residential property from an applicant, the landlord or his or her agent may charge that applicant an application screening fee to cover the costs of obtaining information about the applicant. The information requested and obtained by the landlord or his or her agent may include, but is not limited to, personal reference checks and consumer credit reports produced by consumer credit reporting agencies as defined in Section 1785.3.**
- B. The amount of the application screening fee shall not be greater than the actual out-of-pocket costs of gathering information concerning the applicant, including, but not limited to, the cost of using a tenant screening service or a consumer credit reporting service, and the reasonable value of time spent by the landlord or his or her agent in obtaining information on the applicant.**
- C. Unless the applicant agrees in writing, a landlord or his or her agent may not charge an applicant an application screening fee when he or she knows or should have known that no rental unit is available at that time or will be available within a reasonable period of time.**
- D. Within 15 days of completion of the application screening process, the landlord shall provide, personally, or by mail, the applicant with a receipt for the fee paid by the applicant, which receipt shall itemize the out-of-pocket expenses and time spent by the landlord or his or her agent to obtain and process the information about the applicant.**
- E. If an application screening fee has been paid by the applicant and if requested by the applicant, the landlord or his or her agent shall provide a copy of the consumer credit report to the applicant who is the subject of that report.**
- F. Notice to applicant. Prior to accepting *an application screening fee in accordance with subdivision A of this Section*, the landlord *must provide* written notice to the applicant of:
 - 1. The amount of the screening fee;**
 - 2. The restrictions outlined in *California* Civil Code Section 1950.6, namely that the landlord must provide an itemized receipt for the****

application fee, may not charge more than his actual out-of-pocket costs, must provide a copy of a consumer credit report purchased to the applicant upon request, may not charge more than the fee cap established annually by the state, and must return any unused portion of the fee if he does not complete all parts of the screening;

3. The screening or admissions criteria he has established, including relevant credit score and income criteria;
4. The process that the landlord typically will follow in screening the applicant, including whether the landlord uses a tenant screening company, credit reports, public records or criminal records or contacts employers, landlords or other references;
5. The name, address, and telephone number of the tenant screening service the owner will use, unless the owner does not use a tenant screening service;
6. The applicant's rights to dispute the accuracy of any information provided to the landlord by a screening company or credit reporting agency;
7. An estimate, made to the best of the landlord's ability at that time, of the approximate number of rental units of the type, and in the area, sought by the applicant that are, or within a reasonable future time will be, available to rent from that landlord. The estimate shall include the approximate number of applications previously accepted and remaining under consideration for those units.
8. The remedy available under Subdivision H(2) of this Section.

G. Refund requirements.

1. If a landlord fills the vacant rental unit before screening the applicant or does not conduct a screening of the applicant for any reason, the landlord must refund the applicant screening charge to the applicant within 15 business days.
2. If a landlord does not perform a certain parts of the screening process, including a personal reference check or obtaining a consumer credit report or tenant screening report, the landlord must return any portion of the screening fee that was charged for those purposes, according to the itemized receipt delivered at the time of payment, within 15 business days.

H. Penalties

1. Any landlord violating any provision or failing to comply with any of the requirements of this section shall be deemed guilty of an infraction as set forth in Chapter 1.20 of this code.
2. In addition to any other penalties, a landlord who violates this section is liable to the applicant for the application fee plus a civil penalty of up to \$100, civil court filing costs, and reasonable attorney fees incurred to enforce this remedy.

