

Community Alliance of Tenants – Tenant Education

Information is for general information purposes only, and is not a substitute for the advice of an attorney

FEES (ORS 90.302)

This handout does not apply to utility/service fees (ORS 90.315), which are described in our other handouts.

A **fee** is a payment from a tenant to the landlord that is **not refundable**. Landlords must give you a **receipt** for the fee. Additionally, any deposit a landlord charges must be refundable.

A landlord **may not charge a fee for an anticipated expense** at the beginning of the lease. Any fee must be described in the written rental agreement ORS 90.302(1) and must be disclosed in writing before a landlord can enter into a rental agreement or accept money for a reservation deposit or security deposit.

No new fees! If you are on a fixed term lease (like 6 months or a year), a landlord cannot add any new fees during the term of the lease. On a month-to-month rental agreement a landlord can add new fees with a month's written notice (assuming they follow the rest of the law about fees).

Fees Permitted in Rental Agreements on or after January 1, 2010
Lease break fee allowed, but limited to 1.5 times monthly rent.
Late rent payment fee allowed.
NSF check fee allowed (can be up to \$100 or 3x the amount of the check – whichever is higher plus bank charges ORS 30.701(5)).
Smoke alarm tampering or removal fee allowed.
Noncompliance with lease fee allowed. See below for more information.
Cleaning fee not allowed. Landlord can still charge if tenant leaves without cleaning.
Administrative fee not allowed.
Move-in/move-out fee not allowed.
Pet fee not allowed (although additional pet deposit is allowed).

For Section 42 tenants only: *If you live in low-income tax credit (Section 42) housing*, landlords are not allowed to charge a cleaning fee to clean the apartment after you move out, even if you entered a rental agreement prior to January 1, 2010.

Non-Compliance Fees: are permitted when a tenant does not comply with a written rule. A non-compliance fee can be assessed only when the tenant commits one of the following violations:

- Smokes in a non-smoking unit, common area, or building (new in 2014)
- Keeps a pet in the unit when prohibited by the lease (new in 2014)
- Is late in paying a utility or service charge that the tenant owes to landlord, or
- Fails to clean up pet waste from premises, or
- Fails to clean up garbage, rubbish, or other waste from premises, or
- Violates a parking rule or improperly uses vehicles on premises. (ORS 90.302(2)(f)).

Restrictions on how a landlord can charge a non-compliance fee

The law around fees changed on January 1st, 2014, with the following additional restrictions on non-compliance fees:

1. The landlord must first issue a written warning of the non-compliance violation before assessing a fee. The warning must state the violation and what the fee will be if the tenant continues to violate the lease.
2. If the tenant commits the same violation again within one year, the landlord may charge a \$50 fee.
3. For the third and all subsequent violations within one year, the landlord may charge \$50, + 5% of the monthly rent payment
4. The landlord may terminate the tenancy for some violations, but may not terminate and assess a fee for the same non-compliance violation.
5. The landlord may not deduct a fee from rent. A tenant who fails to pay a non-compliance fee cannot be evicted on a "nonpayment of rent notice". A landlord cannot deduct a late fee or noncompliance fee from a rent payment and claim that the tenant still owes rent. A rent check goes to pay rent.
6. A landlord must assess the fee within 30 days. A landlord cannot claim that the tenant owes a fee older than one month unless he/she provides documentation that the tenant was notified and assessed the fee within one month of the violation.

Applicant screening fees (ORS 90.295): A landlord may charge a fee to screen a tenant/applicant only if the landlord gives written notice of (1) the amount of rent and deposits the landlord will require in the rental agreement and (2) information about the landlord's screening criteria and screening process. See our "Denied Housing" handout for more information on screening fees and processes.

- *What is screening?* Screening includes but is not limited to checking references and obtaining a consumer credit report or tenant screening report.
- *Can I get a receipt for the screening fee?* Yes. The landlord must provide the applicant with a receipt for any applicant screening charge.
- *How much can the landlord charge for a screening fee?* The amount of any applicant screening charge cannot be greater than the landlord's average actual cost of screening applicants. Actual costs may include the cost of using a tenant screening company or a consumer credit reporting agency, and may include the reasonable value of any time spent by the landlord or the landlord's agents in otherwise obtaining information on applicants. In any case, the applicant screening charge may not be greater than the customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening.
- *Can I get the screening fee back?* In most instances, a landlord may keep the screening fee even if the landlord does not enter into a rental agreement with that tenant. The landlord must refund the screening charge to the applicant within a reasonable time if the landlord fills the vacant rental before screening the applicant or if for any other reason the landlord does not actually conduct a screening of the applicant.
- *What if the landlord does not follow the law?* If the landlord fails to comply with the law regarding screening fees and also does not, within a reasonable time, accept the applicant's application for a rental agreement, the applicant may recover from the landlord twice the amount of the screen charge plus \$100 (increases to \$150 on January 1, 2012). The tenant is also entitled to these damages if the landlord does not conduct a screening for any reason and does not refund the money within a reasonable time.

Late rent fees (ORS 90.260): A late rent fee can be charged any of three ways. Look at your rental agreement to see how your landlord is charging late fees. Regardless of how the landlord decides to charge a late rent fee, the fee amount must be specifically stated in the lease.

1. Per-rental period late fee: a reasonable flat amount charged one time for the month the rent is late. (“reasonable” means typical for the rental market). The fee amount must be specifically stated in the lease.
2. Per-day late fee: a daily fee that cannot be more than 6% of the reasonable flat monthly rate fee described in #1 above. The fee amount must be specifically stated in the lease.
3. A five-day period late fee: a fee that is 5% of the rent, charged once for each five- day period the rent is late. The fee amount must be specifically stated in the lease.

Lease break fees: For leases signed on or later than January 1, 2010, a lease break fee may be charged in fixed term tenancies **if written in the lease agreement** but is limited to **1½ times** the monthly stated rent. If a lease break fee is assessed, a landlord **cannot** additionally recover any unpaid rent or recover damages relating to the cost of renting the dwelling unit to a new tenant ORS 90.302(2). If there is no lease braking fee in the written lease agreement, a tenant may be responsible for the remainder of the lease.

Landlord must provide the applicant with a written list of all deposits, fees, and rent that are charged before landlord enters into new written rental agreement with an applicant or accepts any payment from an applicant. The landlord and applicant may agree to amend the written list before entering into the rental agreement.

For the list to be incorporated into the written rental agreement, it must describe all of the fees that the landlord may charge (ORS 90.220(4)).

A landlord must supply a receipt for any security deposit paid by the tenant ORS 90.300(2).

Remember, a *fee* is a payment from a tenant to a landlord that is not refundable.

Landlords must give you a receipt for the fee.