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CS/HB 133, Engrossed 1

2023 Legislature

1  
2 An act relating to fees in lieu of security deposits;  
3 creating s. 83.491, F.S.; authorizing a landlord to  
4 offer a tenant the option to pay a fee in lieu of a  
5 security deposit; authorizing a landlord to offer a  
6 tenant the option to pay the security deposit in a  
7 specified manner; requiring the landlord to notify the  
8 tenant of certain unpaid fees and costs within a  
9 specified time after the conclusion of the tenancy;  
10 prohibiting the landlord from filing an insurance  
11 claim within a specified period of time; providing  
12 requirements for the landlord and insurer if an  
13 insurance claim to recover certain losses is filed;  
14 prohibiting the landlord from accepting certain  
15 payments; requiring the landlord to provide certain  
16 written notice to the tenant; requiring a written  
17 agreement signed by the landlord, or the landlord's  
18 agent, and the tenant if the tenant decides to pay a  
19 fee in lieu of the security deposit; prohibiting the  
20 written agreement from contradicting specified laws;  
21 requiring that the written agreement contain certain  
22 information; requiring a specified disclosure in the  
23 written agreement; providing options for paying the  
24 fee; specifying that certain fees, insurance products,  
25 and surety bonds are not security deposits; specifying

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26 that landlords have exclusive discretion as to whether  
 27 to offer tenants the option to pay a fee in lieu of a  
 28 security deposit; prohibiting a landlord from  
 29 approving or denying an application for occupancy  
 30 based on a prospective tenant's choice to pay a fee in  
 31 lieu of a security deposit; requiring that landlords  
 32 who offer a tenant the fee option offer such option to  
 33 all new tenants renting a dwelling unit on the same  
 34 premises; providing an exception; providing  
 35 construction; providing applicability; providing an  
 36 effective date.

37

38 Be It Enacted by the Legislature of the State of Florida:

39

40 Section 1. Section 83.491, Florida Statutes, is created to  
 41 read:

42 83.491 Fee in lieu of security deposit.-

43 (1) (a) If a rental agreement requires a security deposit,  
 44 a landlord may offer a tenant the option to pay a fee in lieu of  
 45 a security deposit.

46 (b) A landlord may provide a tenant the option of paying a  
 47 security deposit in monthly installments in an amount that is  
 48 agreed upon between the tenant and the landlord while  
 49 participating in the fee program.

50 (2) (a) If a tenant agrees to pay a fee in lieu of a

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51 security deposit, the landlord must notify the tenant within 30  
 52 days after the conclusion of the tenancy if there are any costs  
 53 or fees due resulting from unpaid rent, fees, or other  
 54 obligations under the rental agreement, including, but not  
 55 limited to, costs required for repairing damage to the premises  
 56 beyond normal wear and tear.

57 (b) A landlord may not submit a claim to an insurer to  
 58 recover the landlord's losses associated with unpaid rent, fees,  
 59 or other obligations under the rental agreement, including, but  
 60 not limited to, costs required for repairing damage to the  
 61 premises beyond normal wear and tear until at least 15 days  
 62 after providing the tenant with the required notice under  
 63 paragraph (a).

64 1. The landlord must include an itemized list of any  
 65 unpaid amounts and the dates such amounts were due,  
 66 documentation supporting any itemized damages and costs of  
 67 repairs, and a copy of any written objection or report of any  
 68 communication of objection by the tenant when the landlord  
 69 submits a claim to an insurer.

70 2. If an insurer pays a claim that was submitted under  
 71 this subsection to a landlord and the insurer has subrogation  
 72 rights, the insurer may, within 1 year after the tenancy that  
 73 was the subject of the claim ends, seek reimbursement from the  
 74 tenant for the amounts paid to the landlord. If the insurer  
 75 seeks reimbursement from the tenant, the following apply:

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76 a. The insurer must provide the tenant with all  
 77 documentation for losses which the landlord provided to the  
 78 insurer in support of the landlord's claim and a copy of the  
 79 settlement statement documenting the insurer's payment of the  
 80 landlord's claim.

81 b. The tenant retains any defenses against the insurer  
 82 which the tenant would otherwise have against the landlord.

83 3. A landlord may not accept payment from both a tenant  
 84 and an insurer for amounts associated with the same rent, fees,  
 85 or damages.

86 (3) If a landlord offers a tenant the option to pay a fee  
 87 in lieu of a security deposit, the landlord must notify the  
 88 tenant in writing of all of the following:

89 (a) That the tenant has the option to pay a security  
 90 deposit instead of the fee at any time.

91 (b) That the tenant may, at any time, terminate the  
 92 agreement to pay the fee in lieu of the security deposit and  
 93 instead pay a security deposit as listed in a rental agreement  
 94 between the landlord and tenant or, if a security deposit was  
 95 not agreed upon in a rental agreement between the landlord and  
 96 tenant, in the amount that is otherwise offered to new tenants  
 97 for a substantially similar dwelling unit on the date that the  
 98 tenant terminates the agreement.

99 (c) That the tenant may choose to pay the security deposit  
 100 in monthly installments in an amount that is agreed upon between

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101 the landlord and tenant while participating in the fee program.

102 (d) Whether any additional charges apply for the options  
103 provided in paragraphs (a) and (b).

104 (e) The amount of the payments required for each option  
105 the landlord offers.

106 (f) That the fee is nonrefundable, if applicable.

107 (g) That the fee is only for securing occupancy without  
108 paying a required security deposit.

109 (h) That the fee payment does not limit or change the  
110 tenant's obligation to pay rent and fees, if any, under the  
111 rental agreement or limit or change the tenant's obligation to  
112 pay the costs of repairing damage to the premises beyond normal  
113 wear and tear.

114 (i) That if the landlord uses any portion of the fee to  
115 purchase insurance, the tenant is not insured and is not a  
116 beneficiary of the landlord's insurance coverage, and that the  
117 insurance does not limit or change the tenant's obligations to  
118 pay rent and fees under the rental agreement or change the  
119 tenant's obligation to pay the costs of repairing damage to the  
120 premises beyond normal wear and tear.

121 (4) (a) If a tenant decides to pay a fee in lieu of a  
122 security deposit, a written agreement to collect the fee must be  
123 signed by the landlord, or the landlord's agent, and the tenant.  
124 The written agreement may not contain any clause that  
125 contradicts s. 83.45 or s. 83.47. The written agreement must, at

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126 a minimum, specify all of the following:

127 1. The amount of the fee, which may not be increased  
 128 during the term of the rental agreement.

129 2. How and when the fee is to be collected.

130 3. The process and timeframe during which a tenant must  
 131 pay the security deposit specified in the rental agreement if  
 132 the tenant defaults on paying the fee, and that such default  
 133 will not adversely affect the tenant's credit rating if the  
 134 security deposit is timely paid.

135 4. That the written agreement may be terminated at any  
 136 time as long as the tenant pays the amount of the security  
 137 deposit specified in the rental agreement.

138 5. If the tenant pays the amount of the security deposit  
 139 specified in the rental agreement, then the tenant's default on  
 140 paying the fee or termination of the written agreement may not  
 141 adversely impact the tenant's credit report.

142 (b) The written agreement specified under paragraph (a)  
 143 must also include a disclosure in substantially the following  
 144 form:

145  
 146 FEE IN LIEU OF SECURITY DEPOSIT

147  
 148 THIS FEE IS NOT A SECURITY DEPOSIT AND PAYMENT OF THE  
 149 FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS  
 150 UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION

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151 TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND  
 152 DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT  
 153 OR HIS OR HER GUESTS MAY CAUSE.

154  
 155 THE TENANT MAY TERMINATE THIS AGREEMENT AT ANY TIME  
 156 AND STOP PAYING THE FEE AND INSTEAD PAY THE SECURITY  
 157 DEPOSIT AS PROVIDED IN SECTION 83.491, FLORIDA  
 158 STATUTES.

159  
 160 THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY  
 161 BOTH PARTIES AND THE TENANT AGREES TO PAY THE LANDLORD  
 162 A FEE IN LIEU OF A SECURITY DEPOSIT AS AUTHORIZED  
 163 UNDER SECTION 83.491, FLORIDA STATUTES. IF THE  
 164 LANDLORD USES ANY PORTION OF THE TENANT'S FEE TO  
 165 PURCHASE INSURANCE, THE TENANT IS NOT INSURED AND IS  
 166 NOT A BENEFICIARY OF SUCH COVERAGE, AND THE INSURANCE  
 167 DOES NOT CHANGE THE TENANT'S FINANCIAL OBLIGATIONS  
 168 UNDER THE RENTAL AGREEMENT.

169  
 170 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF  
 171 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL  
 172 RIGHTS AND OBLIGATIONS.

- 173  
 174 (5) A fee in lieu of a security deposit may be:  
 175 (a) A recurring monthly fee, payable on the same date that

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176 the rent payment is due under the rental agreement; or  
 177 (b) Payable upon a schedule that the landlord and tenant  
 178 choose and as specified in the written agreement.

179 (6) A fee collected under this section, or an insurance  
 180 product or a surety bond accepted, by a landlord in lieu of a  
 181 security deposit is not a security deposit as defined in s.  
 182 83.43(12).

183 (7) A landlord has exclusive discretion as to whether to  
 184 offer tenants the option to pay a fee in lieu of a security  
 185 deposit and is not required to offer such fee option to tenants.  
 186 However, if a landlord offers a tenant an option to pay a fee in  
 187 lieu of a security deposit, the landlord may not use a  
 188 prospective tenant's choice to pay, or offer to pay, a fee in  
 189 lieu of a security deposit as criteria in the determination to  
 190 approve or deny an application for occupancy, and the landlord  
 191 must also offer all new tenants renting a dwelling unit on the  
 192 same premises the option to pay a fee in lieu of a security  
 193 deposit, unless the landlord chooses to prospectively terminate  
 194 the fee option for all new rental agreements.

195 (8) (a) This section does not:

196 1. Require a fee collected in lieu of a security deposit  
 197 to be used to purchase an insurance product or a surety bond; or

198 2. Prohibit a tenant from being offered or sold an  
 199 insurance product or a surety bond to present to the landlord in  
 200 lieu of a security deposit if the offer or sale of such

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201 insurance product or surety bond complies with the laws of this  
202 state.

203 (b) Acceptance by a landlord of an insurance product or a  
204 surety bond that is purchased or procured by a tenant, a  
205 landlord, or an agent of the landlord may not be considered an  
206 offer on the part of the landlord to allow a tenant to pay a fee  
207 in lieu of a security deposit for the purposes of subsection  
208 (7).

209 (9) This section applies to rental agreements entered into  
210 or renewed on or after July 1, 2023.

211 Section 2. This act shall take effect July 1, 2023.