



July 29, 2019

City of Minneapolis
350 S. 5th St.
Minneapolis, MN 55415

RE: Minneapolis Proposed Security Deposit Ordinance

Dear Mr. Mayor, President and Members of the City Council:

The Minneapolis Area REALTORS® (“MAR”) is a professional association representing more than 8,900 REALTORS® who live and work throughout the Twin Cities. Many of our members are residents of Minneapolis, and many more work with clients who buy and sell homes in the community. Our overall goal is to support the healthy growth of the Twin Cities’ real estate market and help consumers make informed real estate decisions.

Minneapolis Area REALTORS® recognizes current challenges in both the ‘For Sale’ and Rental housing markets. Both markets are being impacted by issues of Affordability, Availability, and Access. The ‘For Sale,’ housing market is well short of a balanced market in terms of supply of affordably priced homes. The rental housing market is experiencing very low vacancy rates, and this is extending upward price pressure on rents. Minneapolis Area REALTORS® therefore agrees that periodic reviews of housing policies are necessary but cautions that neither the intended nor unintended consequences of proposed ordinances should result in a worsening of current conditions.

Summary of Proposed Security Deposit Ordinance

Minneapolis Area REALTORS® has reviewed the proposed draft Security Deposit ordinance. The security deposit ordinance would amend Title 12, Chapter 244 of the Minneapolis Code of Ordinances by adding a new section 244.2040, titled “Security deposits and pet damage deposits.” Below is a summary of the key substantive provisions of the proposed Security Deposit Ordinance.

- **Maximum Amount of Security Deposit:** Under Section 244.2040(a) of the Security Deposit Ordinance, the maximum security deposit amount that a landlord could collect would depend on whether the landlord also requires prepayment of the last month’s rent. If a landlord does require prepayment of the last month’s rent, then the security deposit would be limited to a maximum of one-half of one month’s rent. In addition, the landlord would have to allow the tenant to pay the security deposit in installments over a three-month period. On the other hand, if a landlord does not require prepayment of the last month’s rent, then the security deposit would be limited to a maximum of one month’s rent.
- **Maximum Pet Damage Deposit Amount:** Section 244.2040(b) of the Security Deposit Ordinance would allow landlords to require prepayment of a pet damage deposit up to a maximum amount equal to 25% of

one month's rent, regardless of the time when the deposit is made. It would also prohibit landlords from charging the tenant any additional one-time fee for keeping a pet.

- **Payment of Security Deposit in Installments:** Section 244.2040(a) of the Security Deposit Ordinance would require landlords to permit tenants to pay the security deposit in installments over a period of three months in cases where the landlord also requires prepayment of the last month's rent.

After careful review and consideration, Minneapolis REALTORS® submits 1) State by State Comparison Data of Security Deposit Statutes 2) Uniform Law RURLTA updates 3) A Comparison to Seattle's Security Deposit ordinance.

State by State Comparisons of Security Deposit Statutes

Minneapolis REALTORS® notes the following about the proposed Security Deposit changes:

- **More Restrictive than MN Law:** Minneapolis proposed limits on security deposits, as written, are more restrictive than Minnesota State Law. Minnesota is 1 of 24 states with no statutory maximum on security deposits.
- **Positions Minneapolis as Outlier:** Proposed limits on security deposits, as written, positions Minneapolis as an outlier in-state and nationally. Of the remaining, 26 states and DC, with statutory limits none impose security deposit limits of less than one month's rent. This means in all 50 states and DC, none impose security deposit limits of less than one month's rent, as does the proposed changes.

Minneapolis Area REALTORS® notes the following about the proposed Installment Payments:

- **Virtually Unprecedented:** Requirements allowing tenants to pay security deposits in installments appears in only one state. Connecticut allows security deposits to be paid in installments only in public housing authorities and community development corporations and only in cases involving the public housing for senior citizens or disabled persons.
- **No Clear Remedy on Unpaid Installment Amounts:** Allowing tenants to pay security deposits in installment amounts leaves the owner landlord with no clear remedy on unpaid upfront amounts. It is conceivable a tenant could get to the fourth month have paid the initial third of the upfront amounts and be paid on time for each of the four months that follow but ultimately still be owning the last two-thirds of the upfront amounts. Depending on how those amounts are applied and MN Courts view of those amounts, as rent or as fees, the answers to which could either some, all, or both the situation would or would not be cause for eviction proceedings. The ordinance offers no remedy for unpaid upfront amounts. Without a remedy in the ordinance REALTORS® are concerned the likely outcome may be an increase in eviction activity.

Comparison with the Revised Uniform Residential and Landlord Tenant Act

In 2015, Uniform Law Commission, with extensive input from a wide range of stakeholders, published the Revised Uniform Residential and Landlord Tenant Act (the "RURLTA"). The RURLTA, which attempts to strike a balance between landlords and tenants, is the product of more than five years of development and has been approved by the American Bar Association for states to consider for enactment. Under Section 1201(b) of the RURLTA, a landlord cannot demand more than two times the periodic rent for a security deposit, prepaid rent, or combination of the two. This limit, however, does not include the first month's rent. The stated intent of

this limitation was to preserve the custom of asking tenants for the first and last month's rent, plus a security deposit equal to one month's rent.

In comparison with the RURLTA provision on security deposits, the proposal to limit security deposits to a maximum of one-half of one month's rent in cases where the landlord also collects the last month's rent is unreasonably low.

Comparison with Local Security Deposit Ordinances

Very few local governments have adopted an ordinance limiting the amount of security or pet deposits that a landlord can collect. In fact, very few local governments regulate security deposits at all. Chicago, for example, has a "Landlord and Tenants" ordinance that regulates some aspects of security deposits, but it does not impose a limit on the amount that landlords can collect.

Seattle's security deposit ordinance, which is located at Section 7.24.035 of the Seattle Municipal Code (SMC), provides that "the total amount of a security deposit *and* nonrefundable move-in fees may not exceed the amount of the first full month's rent for the tenant's dwelling unit." It also permits tenants to pay security deposits and nonrefundable move-in fees in monthly installments, depending on the term of the tenancy.

Seattle 1 Month Security Deposit Allowed—If the landlord charges no nonrefundable move-in fees, then the Seattle ordinance would allow the landlord to collect a security deposit equal in amount to one month's rent.

Seattle ½ Month Security Deposit Maximum—If the landlord charges nonrefundable move-in fees in an amount greater than one half of one month's rent, then the Seattle ordinance would limit the security deposit amount to less than one half of one month's rent.

Minneapolis Security Deposit proposed ordinance limits on security deposits and installments requirements is triggered and applied by whether last month's rent is required in advance. The Seattle ordinance is triggered and applied by whether non-refundable move in fees are charged or not. Seattle allows six-month installments on tenancies of six months or longer.

In May 2017, the Rental Housing Association of Washington challenged Seattle's limit on security deposits and nonrefundable move-in fees, arguing that it violated the state's ban on rent control. In September 2018, the King County Superior Court upheld the ordinance, ruling that it did not violate the rent control statute because such deposits and fees do not constitute rent.

Worsening of Challenging Rental Housing Market Conditions

Minneapolis Area REALTORS® in their discussion of this ordinance understands authors intent of trying to provide tenants with meaningful relief via rental housing policy changes. However, they expressed several concerns that when taken in total may actually further harm the rental housing market or the tenant directly.

- **Damages too Easily Exceed Deposit Amounts**--Lowering Security Deposits, helps the tenant, but when actual damages do occur it may quickly exceed deposit amounts. This may delay repair times. Extensive down time keeps units off the market and unavailable.

- **Pet Damage Deposits**—Limiting pet damage deposit amounts to 25% of one month’s rent seems helpful to tenants but if the natural unintended consequence is more owner landlords adopt ‘no pet’ policies then effect of the provision is limited.
- **Market Impact**—New ordinances, requirements and regulations may signal to owners to sell or disinvest in Minneapolis properties. Unintended consequences could include: the reduction of housing stock in terms of preservation and value, reduced total number of available units, and even increased rental prices.

Summary

Minneapolis Area REALTORS® has completed an extensive review of the proposed changes to draft Security Deposit Ordinance. All due care was exercised in reviewing the issue fairly. Minneapolis Area REALTORS® finds 1) Minnesota State law contains no statutory maximum on security deposits. 2) Changes would position Minneapolis as an Outlier when compared to all 50 states nationwide. 3) Installment Payments are virtually unprecedented (except Seattle). 4) Ordinance would be inconsistent Uniform Law Commission and RURLTA. 5) Seattle Ordinance while, arguably similar, contain different triggers and basing Minneapolis ordinance off one local government unit amounts to a relatively unprecedented and therefore untested ordinance.

Minneapolis Area REALTORS® is pleased to be meaningfully engaged in this public policy issue. We urge careful consideration of each of the preceding points listed above. Again, we understand current market challenges. We know that property owners have a significant interest in securing payment against the risk of damage to their property. We also know that today’s renter is tomorrow’s future buyer. We ask that a reasonable balance be struck between these two legitimate yet competing interests.

Thank you for your attention to this important housing issue. Please feel free to reach out to us regarding other Minneapolis real estate and housing issues.

Sincerely,



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