

Office of Commissioner Eudaly
Security Deposit and Screening Criteria Draft
(Updated 9/20/18)
Working Draft – For Discussion Purposes Only

30.01.087 Security Deposits.

A. In addition to the protections set forth in the Act and Section 30.01.085, the following additional protections regarding security deposits apply to Tenants that have a Rental Agreement or a Dwelling Unit covered by the Act.

B. If a Landlord requires, as a condition of tenancy, last month's Rent, a Landlord may not collect more than an amount equal to one-half of a month's Rent as a security deposit. If a Landlord does not require last month's Rent, a Landlord may not collect more than an amount equal to one month's Rent as a security deposit. If an Applicant receives a Conditional Approval as defined in Section 30.01.088, a Landlord may require an amount equal to one-half of a month's Rent as a security deposit in addition to the other amounts previously listed in this subsection. A Landlord must allow a Tenant to pay such additional security deposit in installments over a 2-6 month period and in amounts as requested by the Tenant.

C. To the extent that a Landlord withholds an amount from a security deposit to repair damages to the premises beyond ordinary wear and tear, "ordinary wear and tear" shall mean, for purposes of this Section, deterioration that occurs without deliberate or negligent destruction, damage, or removal of any part of the premises, equipment, furnishings or appliances by the Tenant, a member of the Tenant household or other persons on the premises with the Tenant's consent.

To charge for carpets, a Landlord must take into consideration the cost only of the contiguous area where the carpet is required to be replaced due to damage, and may not take into consideration the original expense of the carpet for the entire Dwelling Unit. A Landlord may not charge for interior painting of a residence, except what is necessary to repair specific damage made to a wall beyond ordinary wear and tear and to repaint walls that were painted by the Tenant without permission. Basic cleaning is presumed to be ordinary wear and tear and nothing in this Subsection shall be construed to mean that a Landlord may charge for cleaning costs that do not address damage or filth beyond ordinary wear and tear.

For purposes of determining the amount reasonably necessary to repair damaged, movable property in the Dwelling Unit, such movable property is presumed to depreciate at a rate of 3.6% per annum over a period of 27 years. A Landlord may provide documentation demonstrating why a different calculation is justified for determining a reasonable amount necessary to repair an item of damaged, movable property. Before executing the Rental Agreement, a Landlord must provide the Tenant with a list of movable property in the Dwelling Unit along with the depreciated value of each item at the time of move-in (the "Commencement Date").

D. Within one week of the Commencement Date, a Tenant may complete and submit to the Landlord, a condition report (on a form provided by the Landlord) noting any and all damage in the Dwelling Unit (the "Condition Report"). If the Tenant submits a Condition Report to the Landlord within one week of the Commencement Date, such Condition Report shall be the proof of the condition of the Dwelling Unit on the Commencement Date in order to assess damage beyond reasonable wear and tear at move out (the "Termination Date"). If, after the first week, the Tenant has not completed a Condition Report, a Landlord must complete a Condition Report and provide a copy to the Tenant. Any damages noted in the Condition Report completed by the Landlord upon move-in must also be documented in photographs and provided to the Tenant. If any damage noted in the Condition Report, is subsequently repaired, the Landlord must revise the Condition Report to reflect such repair, have it initialed by the Tenant, and provide a copy of the revised Condition Report. If either party disagrees with any damage noted on the Condition Report, they must write the nature of their disagreement on the Condition Report, initial, and provide a copy to the other party.

Within one week of the Termination Date of which the Landlord had notice, the Landlord shall conduct a walk-through of the Dwelling Unit to document any damage beyond ordinary wear and tear not noted on the Condition Report (the "Final Inspection"). A Tenant, and/or the Tenant's representative, has the right to be present for the Final Inspection, but may choose not to participate. The Landlord must give notice of the date and time of the Final Inspection at least 24 hours in advance to the Tenant.

Any damage for which a Landlord intends to withhold a portion of a Tenant's security deposit must be documented in writing and include proof of depreciated value for movable property in the Dwelling Unit including, but not limited to, original receipts or demonstration of a similar make and model, and visual damage must be documented in photographs and provided to the Tenant at the same time as the written accounting required under ORS 90.300 (12). To the extent that a Landlord seeks to charge labor costs greater than \$200 to a Tenant, the Landlord must provide documentation demonstrating that the labor costs are reasonable and consistent with the typical hourly rates in the metropolitan region. A Landlord may not charge for damage noted on the Condition Report.

E. Within 2 weeks of receipt of a security deposit, a Landlord must deposit the money in a separate checking, savings, money market, or client trust account and provide the bank institution name and account number in writing to the Tenant. If the account bears interest, the Landlord is required to pay such interest in full, minus an optional 5% deduction for administrative costs, to the Tenant unless it is used to cover any claims for damage. For interest bearing accounts, the Landlord must provide a receipt of the account and any interest earned at the Tenant's request, no more than once per year. A Landlord may pool multiple security deposits in a single account so long as the account is separate from the Landlord's personal funds, is not accessed except to deposit and withdraw Tenant deposits, and Landlord can provide an individual accounting of each Tenant deposit and the interest earned thereon. A landlord shall have six (6) months from the effective date of this Subsection to comply with the requirements of this Subsection.

F. Contemporaneously with the delivery of the written accounting required by ORS 90.300 (12), the Landlord must also deliver to the Tenant a written notice of rights regarding security deposits (“Notice of Rights”). Such Notice of Rights must specify all of Tenant’s right to damages under this Section. The requirement in this Section may be met by delivering a copy of this Section to the Tenant along with contact information for the nearest Legal Aid Services of Oregon office or the Oregon State Bar.

G. Within 5 business days of receiving or giving a notice of any kind that terminates a tenancy, a Landlord must provide a written accounting of the Tenant’s Rent payment history that covers the tenancy for the term or the prior two years, whichever is longer.

Within 5 business days of receiving or giving a notice of any kind that terminates a tenancy, a Landlord must provide a completed Rental History Form as provided by PHB.

H. A Landlord that fails to comply with any of the requirements set forth in Section 30.01.87 shall be liable to the Tenant for the security deposit, a penalty in the amount equal to two times the security deposit, as well as attorney fees and costs (collectively, “Damages”). Any Tenant claiming to be aggrieved by a Landlord’s noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and any such other remedies as may be appropriate.

30.01.088 Screening Criteria for Applicants for Dwelling Units.

A. In addition to the protections set forth in the Act and Sections 30.01.085 and 30.01.087, the following procedures and guidelines apply to Landlords when screening an Applicant for residential tenancy in a Dwelling Unit (as defined in the Act).

B. Definitions. For purposes of this chapter, unless otherwise defined herein, capitalized terms have the meaning set forth in the Act.

- a) Applicant: An applicant for a Dwelling Unit covered by the Act.
- b) Supplemental Evidence: Any information, whether written or oral, that the Applicant believes to be relevant to the Applicant’s predicted performance as a tenant.
- c) Head(s) of Household: the person or persons identified on a Rental Agreement responsible for paying the Rent.

C. Applications, Generally.

- a. First-come, First-served.
 - i. Completed applications must be received and processed on a first- come, first-served basis.
 - ii. All completed applications must be time stamped to indicate the date and time that an Applicant submitted the application (the “Submission Date”).
 - iii. A Landlord must provide an Applicant with a written or electronic receipt within one (1) business day of the Submission Date that accurately reflects the Submission Date and assigns the Applicant a queue number.

- iv. If a Landlord utilizes a lottery system administered by PHB, they are exempt from the requirements of this subsection.
 - b. A Landlord must include the following on every application:
 - i. Notice to Applicants of the right to request a reasonable accommodation at any point before, during or after the application process;
 - ii. Notice that a Landlord may not deny an application solely because of a reasonable accommodation request or because of the nature of the accommodation requested.
 - iii. Notice to Applicants of their rights under this Section 30.01.088 by including a link to PHB's website and a printed copy of the notice that PHB creates.
 - iv. A complete description of the screening criteria required by the Landlord.
 - c. A Landlord that owns less than fifty (50) Dwelling Units within the City of Portland, may refuse acceptance of a completed application only if the Applicant has a verifiable pattern of Rental Agreement violations with the Landlord and the most recent of such Rental Agreement violations occurred within the last 365 days.
- D. Advertisement of Dwelling Units.
 - a. When publicly advertising for specific vacant Dwelling Units, a Landlord must specify opening and closing dates when applications will be accepted and cannot accept applications for those specific units outside of the advertised period.
 - b. Except as otherwise prevented from complying due to the format requirements of an advertising service, screening criteria required by a Landlord, or a website address to the screening criteria, must be included in any public advertisement for available Dwelling Units as well as included on the application.
 - c. Except as otherwise prevented from complying due to the format requirements of an advertising service, all public advertisements must also include if the Dwelling Unit is accessible.
 - d. When advertising newly vacant Dwelling Units, the open application period must be published at least 3 days prior to the start of the open application period.
 - e. Any public advertisement must also include the average cost of required utilities, if paid by a Tenant in addition to the Rent, and if intended to be used in the calculation of income ratio.
- E. Identification.
 - a. A Landlord must accept any of the following as forms of identification:
 - i. Valid Social Security Number (SSN);
 - ii. Valid Permanent Resident Alien Registrations Receipt Card;
 - iii. Immigrant Visa;
 - iv. Individual Taxpayer Identification Number (ITIN);
 - v. Non-Immigrant Visa;
 - vi. Any other government-issued identification; or

- vii. Any other non-government document or combination of documents that would allow verification of a person's picture and date of birth and comes from a credible source that requires proof of identity to be issued such as a Costco card or college id.
- b. A Landlord may not reject an application as incomplete due to the lack of a Social Security Number (SSN).
- c. A Landlord may not inquire about the immigration status of an Applicant or require that any Applicant prove citizenship.

F. Income.

- a. A Landlord may not require an income to rent ratio greater than two times the amount of Rent for the Dwelling Unit.
- b. Calculation of the income to rent ratio under this section:
 - i. Must include all sources of an Applicant's income, including, but not limited to, wages, rent assistance, verifiable family assistance for at least three months of tenancy, and monetary public benefits;
 - ii. May include the cost of any utilities required for that specific unit, averaged over one year;
 - iii. May include a guarantor (family member, friend, non-profit, or government agency as identified by the Applicant) when the Applicant's income falls at or below two and a half times the amount of the Rent;
 - iv. May not require family or friend guarantor to have income greater than three times the current Rent but can require verifiable employment, verifiable residence within the United States, and no active collections activity for delinquent property or utility debt
 - v. May apply as a household when more than one adult applies as a group,
 - vi. May only screen Head(s) of Household. Co-applicants that are not responsible for paying the Rent may be screened for criminal history pursuant to procedures and guidelines in this Section 30.01.088; and
 - vii. May require co-applicants not responsible for paying the Rent to sign an occupancy agreement.

G. Individualized Assessment.

- a. A Landlord may not deny an application unless the Landlord conducts an individualized assessment of the Applicant and provides in writing to the Applicant how, taking into account any Supplemental Evidence, the reason(s) for denial relate to a legitimate, non-discriminatory business interest of the Landlord.
- b. Taking into account any information a Landlord is required to consider as a part of an individualized assessment performed pursuant to this section, when an Applicant's criminal history shows any of the following alone, or in combination with any other factor listed below, it is presumed that the crime or conduct for which the Applicant was convicted or charged is not of a nature that would adversely affect the property of the Landlord or other Tenants, nor is it likely to adversely affect the health, safety or right to peaceful enjoyment of the property of other users, other Tenants, or the Landlord:

1. An arrest that did not result in conviction, unless the resulting charge is pending at the time that the Applicant submits the application;
2. Participation in or completion of a diversion or a deferral of judgment program;
3. A conviction that has been judicially dismissed, expunged, voided or invalidated;
4. A conviction for a crime that is no longer illegal;
5. A conviction or any other determination or adjudication in the juvenile justice system;
6. A conviction or pending charge for any of the following:
 - a. When the date of sentencing is 3 or more years or the date of release is greater than 1 year, whichever is latest, before the Applicant submits the application:
 - i. Misdemeanors;
 - ii. Felony offenses that resulted in 3 or less years of jail time.
 - b. When the date of sentencing is 1 or more years or the date of release is greater than 1 year, whichever is latest, before the Applicant submits the application, driving under the influence-related offenses, when the history shows two or more convictions within the timeframe in this section;
 - c. A criminal conviction older than 7 years for any conviction, the date of conviction being the date of sentencing, or more than 4 years from the date of release, whichever is latest;
 - d. A criminal conviction older than 10 years for any convictions, the date of conviction being the date of sentencing, when the history shows two or more misdemeanor or felony convictions within the timeframe in this section; or
 - e. A criminal conviction older than 20 years for any convictions, the date of conviction being the date of sentencing, when the history shows four or more misdemeanor or felony convictions within the timeframe in this section.
- f. Taking into account any information that a Landlord is required to consider as a part of an individualized assessment performed pursuant to this section, when an Applicant's history shows any of the following alone, or in combination with any other factor listed below, it is presumed that there is not a legitimate, non-discriminatory business interest of the Landlord that would justify a denial of the application:
 - i. Credit history that shows any of the following alone or in combination with 3 or fewer of the following:
 1. Insufficient credit score;

2. Lack of credit history, unless the applicant in bad faith withholds credit history information that might otherwise form the basis for denial;
 3. Adverse accounts under \$1000, unless the account is related to debt from a prior tenancy;
 4. Property debt under \$500;
 5. Bankruptcy filed by the Applicant is closed;
 6. Bankruptcy for Chapter 13 filed by the Applicant is in an active repayment plan;
 7. Medical or secondary education debt.
- g. Taking into account any information that a Landlord is required to consider as a part of an individualized assessment performed pursuant to this section, when an Applicant's history shows any of the following alone, or in combination with any other factor listed below, it is presumed that there is not a legitimate, non-discriminatory business interest of the Landlord that would justify a denial of the application:
- i. Rental/Eviction history that shows any of the following alone or in combination with 2 or fewer of the following:
 1. An action to recover possession pursuant to ORS 105.105 to 105.168 if the action:
 - a. Was dismissed or resulted in a general judgment for the Applicant before the applicant submits the application;
 - b. Resulted in a general judgment against the Applicant that was entered five or more years before the Applicant submits the application;
 - c. Resulted in a general judgment against the Applicant that was entered fewer than five years before the Applicant submits the application if:
 - i. The termination of tenancy upon which the action was based was without cause (no-cause eviction) pursuant to ORS 90.427; or
 - ii. The judgment against the Applicant was a default judgment due to a failure to appear, if the Applicant presents credible evidence to the Landlord that the Applicant had already vacated the unit upon which the action was based at the time that notice of the action was served.
 2. Any information that the Landlord obtains from an oral or written rental reference, except defaults in rent, 3 or more lease violations that resulted in notices issued to tenant, outstanding balance due to the Landlord or behaviors as a tenant that resulted in a termination with cause. Any information provided from an oral or written rental reference that the Landlord intends to use as the basis for denial must be recorded in writing and attributed to the prior Landlord; or

3. Lack of rental history, unless the Applicant in bad faith withholds rental history information that might otherwise form the basis for denial.
- h. A Landlord must consider any Supplemental Evidence that an Applicant submits if the Supplemental Evidence is provided to the Landlord at the time the Applicant submits the application. A Landlord may consider Supplemental Evidence that an Applicant submits at any time before or after the Applicant submits the application.
 - i. Supplemental Evidence must have a tangible impact to the specific criteria of adverse information identified in an Applicant's history.
 - ii. If a Landlord cites the criminal record of an Applicant as the reason for denial, the Landlord must consider the following as part of the individualized assessment of the Applicant:
 1. The nature and severity of the conviction;
 2. The number and types of convictions;
 3. The time that has elapsed since the date of conviction;
 4. Age of the Applicant at the time of conviction;
 5. Evidence of good tenant history before and/or after the conviction occurred; and
 6. Any Supplemental Evidence acquired after the most recent conviction related to the Applicant's rehabilitation, good conduct, and additional facts or explanations provided by the Applicant, including verifiable documentation that demonstrates the following:
 - a. Six or more consecutive months of job or income stability;
 - b. Proof of rental payments to a previous Landlord;
 - c. Completion of drug or alcohol treatment;
 - d. Current enrollment in a drug or alcohol treatment program;
 - e. Completion of psychological counseling;
 - f. Current participation in psychological counseling;
 - g. Completion of secondary education or job training programs;
 - h. Current enrollment in secondary education or job training programs;
 - i. Current case management or peer support services;
 - j. Current probation or parole oversight; or
 - k. Certificate of Good Standing.
 - iii. If a Landlord cites the credit history of an Applicant as the reason for denial, the Landlord must consider the following as part of the individualized assessment of the Applicant:
 1. The nature and severity of the adverse accounts;
 2. The number and types of adverse accounts as they directly relate to property or utility debts;
 3. The time that has elapsed since the credit issues occurred;
 4. Evidence of good tenant history before and/or after the credit issues occurred; and

5. Any Supplemental Evidence acquired after the most recent credit issues related to the Applicant's good conduct, and additional facts or explanations provided by the Applicant, including verifiable documentation that demonstrates the following:
 - a. Six or more consecutive months of job or income stability;
 - b. Proof of rental payments to a previous Landlord;
 - c. Current payment plan towards credit debt;
 - d. Completion of Rent Well or another tenant education program;
 - e. Six or more consecutive months of positive rental payments within the last year;
 - f. Completion of credit counseling;
 - g. Current participation in credit counseling;
 - h. Current participation with a legal or non-profit advocate to clear past collections; or
 - i. Legitimate explanation of no social security number or lack of credit history based on national origin or other protected class.
- iv. If a Landlord cites the rental history of an Applicant as the reason for denial, the Landlord must consider the following as part of the individualized assessment of the Applicant:
 1. The nature and severity of the eviction or violations;
 2. The number and types of evictions or violations;
 3. The time that has elapsed since the evictions or violations occurred;
 4. Evidence of good tenant history before and/or after the eviction or violations occurred; and
 5. Any Supplemental Evidence acquired after the most recent rental issues related to the Applicant's good conduct, and additional facts or explanations provided by the Applicant, including verifiable documentation that demonstrates the following:
 - a. Six or more consecutive months of job or income stability;
 - b. Proof of rental payments to a previous Landlord;
 - c. Completion of Rent Well or another tenant education program;
 - d. The presence of domestic violence as contributing factor to rental issues of concern;
 - e. Six or more consecutive months of positive rental payments within the last year; or
 - f. Current payment plan toward outstanding debts owed previous landlord.

H. Notice of Denial

- a. An application can be denied without a Landlord first conducting an individualized assessment when an Applicant does not meet basic criteria requirements such as incomplete application, identification, income, or an Applicant has purposefully withheld required information.

- b. If an Applicant applies as part of a family or group, a Dwelling Unit can be denied to that Applicant individually but not the family or group as a whole unless it changes the income ratio.
 - c. When denying an application after performing an individualized assessment, a Landlord must provide a written “Notice of Denial” to the Applicant within 2 weeks of the denial that includes:
 - i. The specific adverse information that matches the screening criteria information as provided with the application;
 - ii. The Supplemental Evidence, if any, that the Landlord considered and whether it influenced the decision of the Landlord to deny the application;
 - iii. An explanation of the legitimate, non-discriminatory business interest of the Landlord that justify denial of the application; and
 - iv. An explanation of Supplemental Evidence the Applicant could have provided that would have led the Landlord to offer housing to the Applicant.
 - d. A Notice of Denial can only be issued to the Applicant by the Landlord.
- I. Additional Deposit.
- a. A Landlord may charge an additional amount as a security deposit as set forth in Section 30.01.087 after they conduct an individualized assessment and intend to issue a Notice of Denial.
 - b. To request an additional security deposit, a Landlord must provide a written notice of “Conditional Approval” to the Applicant as described in Section H to inform the Applicant of the specific circumstances surrounding the reasons for the request.
- J. Screening Fees
- a. If a Notice of Denial is not provided to the Applicant within 2 weeks, a Landlord must refund the Applicant’s entire application fee within the same 2 week period.
 - b. If using a professional screening company exclusively, the screening fee charged by the Landlord cannot be more than what is charged by the screening company.
 - c. If using a professional screening company in addition to screening work by the Landlord, fees cannot exceed 50% above what is charged by the screening company.
 - d. If a Landlord screens independently without the use of a professional screening company, the screening fee charged to an Applicant cannot exceed 10% of the average professional screening company fee rate in the Portland-Metro area.
- K. Modification Requests
- a. An Applicant that experiences disabilities cannot be denied housing based on a denial of reasonable modification alone.
 - b. If an Applicant’s modification request is denied, the Applicant must be allowed 24 hours to request an alternative modification that meets their needs.
 - c. If the second modification request is denied, the Applicant must be allowed another 24 hours to request an alternative modification that meets their needs.
 - d. If no reasonable modification can be made in the Dwelling Unit the Applicant applied for, then the Applicant may still accept the Dwelling Unit if they meet the eligibility criteria.

L. Exemptions.

- a. Any housing provider that enters into a partnership or referral agreement with a non-profit service provider working to place low income or vulnerable clients into housing is exempted from this Section for the Dwelling Units covered by the agreement.
- b. Any Landlord who does not rent or advertise to the general public to fill vacant Dwelling Units.
- c. Any Landlord who is otherwise complying with local, state or federal loan or funding requirements.

M. Damages.

- a. Any Applicant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and any such other remedies as may be appropriate.