

2017 HOUSE POLITICAL SUBDIVISION

HB 1220

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee Prairie Room, State Capitol

HB 1220
1/26/2017
Job # 27469

- Subcommittee
 Conference Committee

Carmen Hichler

Explanation or reason for introduction of bill/resolution:

Relating to lessor security deposit limitations

Minutes:

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Chairman Klemin: Opened hearing on HB 1220

Rep. Kading: Introduced HB 1220. Security deposits specifically relating to felons. This increases the amount of security deposit a landlord can take from a felon by double. Security deposit is when you rent an apartment, you give the landlord a deposit that is used to cover damages or liabilities or whatever might happen. A rent is the ongoing monthly expense. This bill changes the current law. The current law a landlord and take a ratio of one times the rent for the security deposit. If rent is \$1000 per month then the security deposit is \$1000. This bill will change it to a two times ratio. If rent is \$1000 a month then a landlord can take \$2000 security deposit. One of the issues we have in North Dakota is a lot of people don't rent to felons especially those with a felony less than 7 years old. The point of the bill is not to discourage renting to felons it's rather to encourage landlords to rent to felons and to provide ample opportunity for felons to have housing. It essentially decreases the risk the landlord takes. One of the reason property management companies denies felons is they are statistically more issues with a criminal background and more commonly lose their job, they more commonly miss rent, they more commonly damage the property. Increasing the security deposit lessens that risk for landlords and lessens the chance the landlord is going to get stuck.

Rep. Ertelt: The seven-year period you spoke about is that from the time of conviction or does it start at the time of sentence or fines were paid?

Rep. Kading: It's a private policy, so each property management might have a different policy, we did it from time of conviction.

Vice Chairman Hatlestad: Are you required now to put a security deposit in a savings account and pay interest?

Rep: Kading: Yes.

Rep. R. S. Becker: I have been a landlord myself, by trying to making it more safe and or more secure for lessor by requiring 2-months rent for felons, felons in particular coming up with 2-months rent is more difficult for them as a whole than for many people. So I am wondering if by your bill if it won't make it even harder for a felon to be able to rent?

Rep. Kading: This bill does not require a landlord to take 2-months security deposit. It's at the discretion of the landlord. Reality now people are not renting to felons because they don't want to take that risk.

Rep K. Koppelman: Once people have paid their debt to society they are coming back and how do we facilitate that? Have you talked with people in the industry and are there more people who are more apt to rent to felons that had a policy against it in the past if they are allowed to collect a greater deposit?

Rep. Kading: Absolutely. From personal experience I would be much more inclined to rent to a that individual if I could take more security deposit. Property Management companies work for property owners so they have a duty to the owner to mitigate all the risk they can.

Chairman Klemin: How do you determine if someone had a felony conviction?

Rep. Kading: It is common to get a criminal background check. There are many options to get the background checks.

Chairman Klemin: Does that tell you what kind of felony it was?

Rep. Kading: Absolutely. You don't always get the full detail.

Chairman Klemin: When you have the security deposit the statue requires you to deposit that money in an interest bearing savings or checking account. That money can be used for damages when they move out, is that part of it?

Rep. Kading: Yes, that money can be used for any liabilities that were not paid to the land lord by the tenant.

Chairman Klemin: As I understand this law, the landlord must account to the tenant within 30 days concerning the disposition of that security deposit and refund any money that is appropriate?

Rep. Kading: Yes, that is correct. If they do not provide exactly what they spent the money on there is damages possibly for the tenant against the landlord. And they must actually spend that money, they can't say they replaced the floor and they didn't.

Chairman Klemin: This can be used for unpaid rent also?

Rep. Kading: Yes.

Rep. Ertelt: The risk that you said when the property manager does not own the property directly is there liability to the property manager if he were to rent to arguable a higher risk tenant and there was damage? Is the property manager liable for the damage to the property owner?

Rep. Kading: Theoretically yes, the property management could be liable. Generally, when it comes to rental properties the property management has a strict policy when it comes to accepting tenants that is because you want to be fair to everyone. So if you say you are not accepting felons with a felony in the past 7 years, you cannot skew from that at all unless you change your policy. Under these circumstances with the increased security deposit we will accept felons.

Rep. R. S. Becker: If you have dozens and dozens of rental units does your law allow you to co-mingle all of these deposits or do you have to have an individual account for every renter?

Rep. Kading: In ND what generally happens is you have security deposit account with all security deposits from all of your tenants. The records are kept very precise then you have an account for rent that comes in. The security deposit account is technically owned by the renter.

Rep. Hanson: I have a question about landlord discretion and their ability to charge different amounts for security deposit. You mentioned landlords tend to adopt clear and consistency policies on their tenant selection process, under current law where they can charge up to one month's rent for a security deposit do they have discretion within that window?

Rep. Kading: It's always consistent within the same company. The dog issue is a whole other issue. It is statutory, you can take another deposit if someone wants to have a dog and you can have a refundable or non-refundable deposit if someone has a pet. That is different when it comes to a medical use pet.

Rocky Gordon, ND Apartment Association: We stand in support of this bill. A number of years ago the penitentiary asked me to come out and teach a class on renting an apartment property to inmates who were about ready to be released to a transitional center. We rented to 10 felon released felons and 9 of them failed within 6 months. It is a very high risk venture. The other thing I wanted to update the committee on, last year HUD came out with some new guidelines and you cannot have a blanket no felon policy. They see that as discriminatory. They listed some criteria you have to take a look at, such as how long ago did they offend, what was the offense, have they taken any remedial action. Then you make a decision on a case by case basis. We like to do things on a cut and dried basis because it limits our liability. HUD usually encourages us to do that except in this case. Now we are forced to make a decision, it's a difficult decision to make. If you are evaluating whether you are going to lease to someone and it's a close call, having the ability to get more security deposit may make the difference. People you just coming out of incarceration probably don't have the money, and that will remain a very high risk venture. Where we see this as being useful is close call and if can get another month to protect the owner than a little bit more we are going to do this rental I think we are more apt to do that.

Rep K. Koppelman: I seem to remember a time when we added limiting the amount of the deposit. Do you remember when that was? Before that time did you have the flexibility to do something like this?

Mr. Gordon: I started in 1978 and that law was in place to limit the security deposit.

Rep. Ertelt: You mentioned 9 out of 10 failed. I assume by failed you mean broke the rental agreement? Could you explain in what manner did they break that agreement?

Mr. Gordon: It was a number of different things but basically they failed to pay the rent and very evicted, they stayed a month or 2 and disappeared or reoffended and was incarcerated again.

Rep. Ertelt: In any of the case, was there actually damage to the property or just failure to pay?

Mr. Gordon: There was both financial and physical damage. Probably more so cleaning and getting it ready to re-rent.

Rep. Guggisberg: I also was on the interim committee for Reinvestment Justice and I am not surprised that 9 out of 10 failed. After the Dept. of Correction had you give some education are there any other programs they have for felons they are releasing for places to live?

Mr. Gordon: I am not aware of any, we were working with inmates who were going through the transition center. Which meant they were allowed to have a job, I believe they had to pay some kind of rent to try and get them used to that. That is the only program that I'm aware of.

Rep. Zubke: When HUD issued this directive were there any guidelines with that? Your example where they reoffended and have placed a 2-month security deposit what happens to the security deposit? Does it go as unclaimed property and then its turned over to the state or can a family member come in and get it?

Mr. Gordon: Yes, HUD has lots of guidelines and this came with lots of guidelines. Currently where you can charge one-month security deposit depending on what the situation was if they just disappeared owing rent or didn't give proper notice the security deposit was applied to rent, cleaning or damages. If that is not the case, we are required by law to send it to the last known address of the resident. If it comes back, you hold it and then once a year you are required to turn the money over to unclaimed property.

Chairman Klemin: No other testimony. Closed the hearing on HB 1220.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee
Prairie Room, State Capitol

HB 1220
1/26/2017
Job # 27495

- Subcommittee
 Conference Committee

Carman Hicks

Explanation or reason for introduction of bill/resolution:

Relating to lessor security deposit limitations

Minutes:

Chairman Klemin: Opened HB 1220 for committee work.

Rep K. Koppelman: I'm impressed with the bill; it offers an option that might be attractive with some landlords. Felons need an opportunity and some place to live.

Rep K. Koppelman: Moved a do pass motion.

Rep. Johnson: Second the motion.

Rep. Johnson: I contacted my former boss who has rental units and he thought it would assist felons.

Chairman Klemin: There are protections in here for security deposits. They have to be put into an interest bearing account. When the tenant leaves the landlord has 30 days to account for that security deposit and refund any money that is not used for repair or unpaid rent. If they don't they are subject to damages that's the law.

Do pass motion carried. 13 yes, 0 no, 2 absent.

Representative Koppelman will carry this bill.

Chairman Klemin: Closed HB 1220.

Date: 1-26-17
 Roll Call Vote: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1220**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg	/	
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons	/				
Rep. Toman	/				
Rep. Zubke	/				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1220: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1220 was placed on the Eleventh order on the calendar.

2017 SENATE POLITICAL SUBDIVISIONS

HB 1220

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1220
3/3/2017
Job # 28678

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to lessor security deposit limitations

Minutes:

Written testimony #1 Rep. Tom Kading

Chairman Burckhard opened the hearing on HB1220. All senators are present.

:23-4:09 Rep. Tom Kading: District 45, Fargo, introduced and explained the bill. Written testimony #1.

Sen. Anderson: Have you heard from any actual felons that they might perceive this as discrimination? The second question I have you know many times we hear these people they get out and look for a place to live and one of their problems is they don't have capital or money or jobs or a place to live. So is this an additional barrier for them to rent a place, can you answer those 2 questions?

Rep. Kading: I put this out to a couple of felons to see if they like it, and I got overwhelming positive review of this idea from felons. They said I screwed up, and now no one will rent to me. I really like this idea and I want to see this go forward. I haven't had any felons say no I don't like this. When someone gets out of prison with a felony, yes there is usually a cash issue and they can't afford it. There are a lot of groups out there who help with security deposits and that could be a solution to whether it's a one-time security or two-time security deposit. Generally, though, I think that the group that would really be helped by this is those who have gotten a little more established and can pay.

Sen. Kannianen: Have you gotten reviews back from property owners as far as how many would be willing to use this incentive?

Rep. Kading: Yes, I have gotten some good reviews from landlords saying yes I would be open to doing this. I've had some landlords say, I like to rent to felons because they are grateful but the reality is that sometimes the risk is higher. In the property business, it's all about risk or reward. If you rent to one group of people for who make more than make 3 times the rent, or people who have vandalized past properties, you can kind of categorize groups and do due diligence, and if one person is a higher risk for whatever reason, you can take a

higher security deposit as it lowers your risk as a landlord and therefore you're more likely to rent to them.

Sen. Dotzenrod: To get that information about that criminal record and whether that person has a felony or not, is that voluntarily provided by the prospected renter or do you contact law enforcement and get that information. Is that open records to the public? I am curious about how you know this information as a landlord.

Rep. Kading: Yes, felonies are public record and there is a variety of ways a landlord goes about getting that information. I used on-line services to check all 50 states.

Sen. Judy Lee: A couple of us in here have spent a lot of time working on the Behavioral Health and Incarceration issues. Also the challenges that there is for somebody who is coming out. I don't see this as a benefit to the felon, I see it as heck of a big deal to the property managers and owner and I been a rental property owner so I get that part. There aren't very many felons who come out of incarceration with enough money for one security deposit, much less two, and in addition to all the other deposits they have to have in order to put utilities on and everything. So, if I were going to look at some way in which the business community and the property owner could be a part of this restructuring and moving people back into society again, as work force members and recoverees in addition to the peer supports we need, it would be that property managers might look at what they could do to enable folks to come, two month's rent as a security deposit which you cannot use necessarily to apply back rent if that is what it is intended to be used for damage deposit. So where is the risk for the property owner here in trying to move these people back into society in a civil way?

Rep. Kading: But first off, landlords tend not to rent to felons. Yes, it might be a little bit tougher for some felons to come with the secure deposit, but the reality is that's what is happening out there. Landlords aren't renting to felons and there is a problem there. The security deposit can be used for back rent, it can be used for any payment that hasn't been paid to the landlord. But, it is a problem out there, and it is a higher risk of renting to felons. This is strictly speaking renting to a felon is a higher risk. You're more likely to have miss-payments, more likely to have damage done.

Sen. Judy Lee: Can you tell us a little bit about the programs or entities that help people with security deposits?

Rep. Kading: Each town generally it is a local thing. There are some state wide groups that help.

Sen. Judy Lee: I would be interested in having the names of some of those so we could talk about it then? **Rep. Kading** replied that he could provide that.

Chairman Burckhard: So, let's say you are landlord and you have an 8 plex and say 4 of them are rented to felons, and one of the felons commits a crime against one or the other apartments dwellers, is there some liability for the landlord there or no?

Rep. Kading: That is a complicated question. But whether it's under this law or another law, you could impute some liability in that situation. It would be a little bit of a legal battle though. It depends on a lot of different facts.

13.36-18.09 Rocky Gordon, Lobbyist for the ND Apartment Association. We stand before you in favor of HB1220. I don't have written testimony as this was not our bill. But maybe I could help answer a couple of questions. Senator Lee asked agencies that help with deposits. I can only speak for Bismarck, but AID Incorporated, Community Action, are all agencies that do this and they have for many years. A couple things I just wanted to mention very briefly. A number of years ago the state penitentiary asked me if I would come out and teach a course to people who were about to be released back into society. I said I would do it, and I did go out and do it, and enjoyed it very much. This is an attempt to maybe answer Sen. Lee's question about what happens. Bismarck has a transition living center where before they are released they live in this center and over a period of about 6 months we lease to 10 people who are coming out of the transition center. Within 6 months 9 of them had failed. When I say failed, they failed to meet the terms of their initial lease which was 6 months. They either didn't pay, or did something that re-offended or they just simply just took off and didn't fulfill their lease. So it is risky for the landlord. The other thing that has happened that I did want to talk about just briefly is in the last year HUD came out with some new guidelines which says you can't just say I am not renting to felons anymore. They say you can't do that. What they said is you have to look at things on an individual basis where that particular person and you have to weigh factors such as the age of the crime, age of the person he was at the time the crime was committed, how long ago it was, the work since their crime, the conduct since their crime, and the rehabilitation after it also needs to be considered. So, we see this as kind of tool in the toolbox kind of thing. It's not going to make a huge, huge impact but as we weigh these things out, which is what we are required to do, on an individual basis, if it's a close call, it may well be an additional month's security might be helpful in renting to that individual. Particularly knowing what my experience was, unfortunately they fail more often than they succeed. So we are in favor of this bill, we don't think it's going to have a dramatic impact but we think it's a tool in the box that may help us make the decision to rent to somebody who is just recently been released. Or the other factor that also happens is they may not be their first rental. If they make their payments and treat their landlords with respect that may help them get a better rental apartment and feel better about themselves in their situation and that is something to consider here.

Sen. Anderson: When you accept this security deposit each landlord needs to set that aside in a fund for the benefit of the client. So whether there is any interest or not, that would accrue and he needs to keep track of that somehow right?

Mr. Rocky Gordon: That's correct.

Sen. Anderson: Should there be a provision that after 6 months or 1 year, that additional security deposit could come back or do you think that is too much pickiness for now, and just get started with it?

Mr. Rocky Gordon: The concern about that is you don't really know until the transactions concluded. So, I am not if we would go ahead and do a condition inspection before we did that, and I am not sure how that would exactly work, so I would not be in favor of that.

Sen. Judy Lee: The reason that people fail in large part is because there are no community supports in the community when they come out the door, fall off the cliff. That's is really what we are trying to do with the legislation that is going through the session right now because if we had the community and peer supports in place, to help those folks when they come out, they're not only going to be able to thrive at remaining clean, sober, but they are also much more likely to be able to get a job and keep a job and be good at their landlord relationships as well. So, it's all connected. So you will see other bills coming through the Legislature that are talking about exactly this. WE have to recognize that there is a role for all of us to play in getting these people back into the community as workforce and contributing members and family members also and that includes housing. So, I appreciate the fact that you are paying attention to all of this and your aware of the other options for people as far as the security deposit is concerned. I don't think a lot of them are coming out with a couple of thousand bucks to pay it.

Mr. Rocky Gordon: I would agree with you. I think this is not going to solve that problem. What it's going to help is the felon whose probably been out for a little bit, and wanting to move up in their housing situation, that's where I see this as being helpful. We do recognize our role.

Chairman Burckhard closed the hearing on HB1220.

Senator Anderson moved a do pass on HB1220.

Senator Diane Larson 2nd

Committee discussion followed (23.45-24.54)

Roll call vote: 6-0-0

Carrier: Senator Anderson

REPORT OF STANDING COMMITTEE

HB 1220: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1220 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1220

Representative Tom Kading
District 45
1/26/17

*H.B. 1220
3.3.2017
Written Testimony #1*

House Standing Committee on Political Subdivisions- Prairie Room

Chairman Klemin and members of the committee. For the record I am Representative Tom Kading from district 45 in north Fargo. I bring to you today house bill 1220 which is in regards to security deposits which can be taken for residential rental property in regards to convicted felons.

- This is a pretty simple bill
- Difference between
 - Security deposit
 - Rent
- Current law - 1x rent
- New law - 2x rent
- Incentive to rent to felons. It decreases the risk taken on by landlords
- I owned a property management company
 - Tenant selection - criminal background
 - 7 years of felon gets denied
 - Policy is fairly common among landlords
- Department of corrections
 - Told me many felons live in the same locations as they find out who is accepting felons.

In summary this bill is an attempt to find a solution that helps felons find good housing. It is not an attempt to discourage renting to felons.

Thank you and I will try to answer any questions.