City of Portland
Rental Housing Advisory Committee
November 25, 2019
5:30 pm - 7:30 pm City Hall Room 24

1. Review and Approval of the Minutes of the October 28, 2019 meeting.
    a. Draft Minutes of October 28, 2019 meeting
2. Announcements:
    a. Information from City staff re: committee membership status update
    b. Rental housing-related community meetings and/or events past and upcoming
3. Rules:
    a. Update on and draft committee rules from Regan Sweeney (working draft will be available at the meeting); and
    b. Discussion and voting on draft rules
4. Continued Discussion of Rental Application Fees
    a. Reports from various Committee members on research and findings; and
    b. General discussion re: rental application fees and potential committee recommendations
5. Public Comment
    a. Members of the public will be given an opportunity to address the committee. Any person wishing to address the Committee shall give their name and address, and/or organization represented and restrict comments to 3 minutes.

        NOTE: The Rental Housing Advisory Committee is not a grievance committee or complaint forum for landlord-tenant issues or dispute resolution. The duties of the Committee are (1) To Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues; and (2) Identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.
6. Other Business

Rental Housing Advisory Committee
Minutes of October 28, 2019 Meeting

A meeting of the Rental Housing Advisory Committee (RHAC) was held on Monday, October 28, 2019 at 5:30 P.M. in City Hall Room 209. RHAC Committee Members present at the meeting included Aaron Berger, Meredith Cook, Nora Graves, Wendy Harmon, Travis Heynen, Katherine McGovern, Crow Norlander and Regan Sweeney. City staff present included Mary Davis, Housing and Community Development Division Director.

Item 1: Review and Approval of the Minutes of the September 24, 2019 meeting

On motion made and seconded, the Minutes of the September 24, 2019 meeting were unanimously approved.

Item 2: Committee Rules

Meredith Cook, Co-Chair introduced the topic.

Committee agreed that items to be voted on would not need two readings.

Committee agreed that the committee would not move forward with the quarterly voting meeting idea discussed at the last meeting.

Committee agreed on an attendance policy whereby 3 absences would be considered as not in good standing and communicated to the council's nominating committee.

Regan Sweeney volunteered to draft committee rules to be discussed and voted on at the next meeting.

Item 3: Committee Visibility and Public Involvement

Meredith Cook, Co-Chair introduced the topic.

Mary Davis mentioned that members should be clear when identifying themselves as members of the committee that they do not speak for or on behalf of the City when they attend events in the community.

Meredith notified members of the YIMBY event being held on Tuesday October 29.

Wendy Harmon notified members that the Southern Maine Landlord Association meets the 3rd Tuesday of every month at Elks Lodge on outer Congress Street.

Committee agreed that a public comment opportunity would be included on every agenda and would allow each speaker 3 minutes to address the committee

Aaron Berger would like the Public Comment agenda item to be clear that the RHAC is not a grievance board and cannot take on individual cases.

Meredith opened the meeting to public comment

Carol McCracken asked for more information about the YIMBY event.

Public comment period was closed

Item 4: Discussion on appropriate interaction and relationship with the Housing Committee

Meredith asks Mary for direction on how the Committee should provide recommendations, etc to the Housing Committee. Mary agreed to reach out to the Chair of the Housing Committee to determine how the committee should bring things forward to the Housing Committee.

Item 5: Application Fee Abuse

Meredith Cook, Co-Chair introduced the topic and asks Aaron Berger to discussion the issue as he drafted the proposed language included in the Committee packet.

Aaron Berger would like to understand what recourse do tenants have now or what options are available for tenants now. Aaron referred members to a New York Times article on application fees and indicated that he used NY state bill as guidance for the proposal being discussed.

Katherine McGovern indicates there is not state law that governs application fees; only recourse a tenant has is if they can show proof of abuse.

Several committee members ask for clarification on the issue being addressed in the proposal. Several members also indicated that topic presents an opportunity to provide education to/for landlords and tenants.

Issues of concern mentioned by committee members include:

- landlord collects an application fee with no intention of renting to the applicant
- landlord collects an application fee from multiple applicants and does not do background checks on all applicants
- landlords do not provide applicants with copies of reports if not selected as tenant

Potential issues to consider brought up by committee members during the discussion of this item:

Many landlords use Tenant Net, however, Tenant Net does not allow landlords to give out copies of reports and they don't provide receipts. Wendy agreed to contact Tenant Net to verify this policy.

If a tenant is denied based on a credit report, the Fair Credit Reporting Act requires that they receive a notice.

Problems with enforcement and requiring copies of receipt that credit checks or backgrounds checks have been completed; the only clean way to address the issue is to disallow application fees.

Perhaps landlords should have written policy available at each unit; if not allowed to collect application fees landlords may not do checks;

Most landlords won't tell why you didn't get an apartment; should focus on problem area and what can be done about it.

There are legitimate reasons for landlords to run checks; without checks could create liabilities;

Possibility to save money and time by allowing tenants to provide landlords with background checks done previously;

Issues with enforcement is a point in favor of not having application fees;

Ramifications or concerns with implications if application fees are not allowed;

Is there education that can be done on this topic?

Possible public service announcements regarding application fees, possibly through GA;

Did the city see any of this happening over the summer with the influx of refugees?

Problems with asking tenants to pay costs on reimbursement basis.

Possibility of landlords refunding fees to anyone not getting the apartment and issues with how its enforced, how long it takes.

Follow-up items:

Wendy Harmon agreed to ask the Southern Maine Landlord Association if they would survey members to see if they charge an application fee and if so how much, if any fees are returned? Also how many applications do they take per unit and how many background checks do the completer per unit.

Katherine McGovern agreed to research if there is a law that prohibits landlords from sharing reports.

Wendy Harmon agreed to ask Tenant Net for contract language regarding sharing reports.

Aaron Berger and Katherine McGovern agreed to see if what other communities are doing around this topic.

Mary Davis agreed to check in with the General Assistance office to see if the city had any issued this happening over the summer with influx with refugees.

Aaron Berger mentioned not losing track of the other work plan items mentioned at the September meeting.

Wendy Harmon suggested there may be an education opportunity for March or April.

On motion made and seconded the Committee voted unanimously to adjourn the meeting at 7:47 P.M.

Respectfully submitted,

Mary Davis

Opinion: (revised as of 10-31-19)(by Nora Graves):

Based on the discussion in the October 28, 2019 Rental Housing Advisory Committee on Application fees, it seems that the committee was left with three issues outstanding. Basically, they are:

1). Landlord "fraud" – taking application fees without any attempt to run the checks or lease the unit. What is the recourse here?

- Guidelines for the State of Maine suggest if a fee is collected by the landlord and the check is **not** run, the fee is to be returned.
- Report the landlord to the Maine State Attorney General
- Legal Aid

2). Application fees – Refund? Charge no fee? This seemed to be the grey area for the Committee.

- Maine law does not have a limit on the amount of fee that the landlord can charge, however guidelines indicate that a landlord cannot profit from the amount of fee charged.
- The average fee in the State of Maine is currently between $35-$75 as of 8/2019 according to RentPrep.com.
- Application fees are non-refundable even if the application is turned down but the check has been completed according to several sites including Landlordogy.com
- A possible recommendation here is for a landlord to charge a lower fee or offer to credit the fee back on the first month's rent if approved and leased to.

3). Low income tenants who cannot afford the application fee –

- Refer tenants to local agencies who can assist with this process or charge no fee for applying for housing such as Avesta, Portland Housing Authority.
- Refer to Social Worker or case worker to assist with the process
- Recommend landlords initiate a sliding scale for application fees based on the income of the applicant for the unit (however landlords must have knowledge of financial background of applicant to know how to apply sliding scale)

- Landlords charge no application fee. They pay the fee themselves or through their agencies. In some cases, perhaps they could recoup by building it into the rent. (This could be problematic)

It seems that in all three scenarios, education is a key factor. If ones is aware of the guidelines or has someone to assist who is knowledgeable of the system and the procedures, it would go a long way in a smooth rental process for both the tenant and the landlord.

As a committee, possible recommendations to the Housing Committee could be:

- Housing Fair where these issues could be addressed, educational materials could be disseminated and Housing staff and Social Service caseworkers could be on hand to respond to inquiries and make referrals.
- Time frame (possibly within 7 days) to refund applications fees if the check is not completed could be added to Portland Landlord guidelines
- A maximum amount for an application fee could be instituted across the board. Landlords could charge less (or nothing) but could not charge more than the ceiling amount agreed upon.
- Educational and informational materials could be assembled and made available through Portland agencies to assist with the rental process.

Portland Maine | Yes. Google's good here.

Mary Davis <mpd@portlandmaine.gov>

Fwd: Responding from Rep. Matt Moonen's office

1 message

Nora Graves <ncgrhac@gmail.com> Thu, Nov 21, 2019 at 3:50 PM
To: "mpd@portlandmaine gov" <mpd@portlandmaine.gov>

Here are the responses from Rep, Moonan's office. I do not know if Regan or Meredith will want to use them but it is ok with me if you attach it to the agenda. Thanks for asking. See you Monday.

---------- Forwarded message ---------
From: **Nora Graves** <ncgrhac@gmail.com>
Date: Sat, Nov 2, 2019 at 12:15 PM
Subject: Fwd: Responding from Rep. Matt Moonen's office
To: Regan A. Sweeney <regansweeney@gmail.com>, Meredith Cook <meredithkaelan@gmail.com>

I went further after I sent you my opinion email and also after correspondence with Regan and asked a member of the Maine State House for our area about application fees for renteers. I am forwarding the two responses I got from Matt Moonen's office. Maybe the emails can be of some help to the Committee.

Have a nice weekend
Nora

---------- Forwarded message ---------
From: <nora1112@aol.com>
Date: Sat, Nov 2, 2019 at 9:54 AM
Subject: Fwd: Responding from Rep. Matt Moonen's office
To: <ncgrhac@gmail.com>

-----Original Message-----
From: Sylvester, Amy <Amy.Sylvester@legislature.maine.gov>
To: 'nora1112@aol.com' <nora1112@aol.com>
Sent: Fri, Nov 1, 2019 7:43 am
Subject: RE: Responding from Rep. Matt Moonen's office

Hi, Nora – No, there are no limits in state law at this time – no minimum, maximum or requirement that the fee match the background check cost. The fee can be refunded, but there is nothing in statute requiring that it be.

Best,
Amy

Amy Sylvester
Legislative Aide, Maine House Majority Office
2 State House Station
Augusta, ME 04333
(207) 287-1430

From: nora1112@aol.com [mailto:nora1112@aol.com]
Sent: Friday, November 1, 2019 6:12 AM
To: Sylvester, Amy
Subject: Re: Responding from Rep. Matt Moonen's office

Thank you for the information. I am wondering if there are any limits on what can be charged for application fees for renters (a minimum/maximum), if the fee can be refunded if the check is NOT run and can a landlord charge more for the application fee than the actual background check costs?

-----Original Message-----
From: Sylvester, Amy <Amy.Sylvester@legislature.maine.gov>
To: 'nora1112@aol.com' <nora1112@aol.com>
Sent: Thu, Oct 31, 2019 2:51 pm
Subject: Responding from Rep. Matt Moonen's office

Hi, Nora:

I work with Rep. Matt Moonen at the State House, and he asked me to reach out to you with information on state laws regarding rental application fees.

Currently, Maine law does not restrict landlords from charging application fees to prospective renters, and I'm not aware of any bills in recent years that sought to. However, Rep. Chris Kessler of South Portland has submitted a bill request on the subject, LR 2801, An Act To Prohibit Residential Rental Application Fees and Limit Security Deposits.

As we are headed into the second session of this particular Legislature, bills must be approved by the Legislative Council, which is made up of leadership from both parties in both the House and Senate. Legislative Council met last week to vote on bill requests and at that time voted to reject Rep. Kessler's request (Rep. Moonen did vote for it). Rep. Kessler has the opportunity to appeal this decision, and I understand that he intends to do so. If it is approved, it will be considered during the session that starts in January. If it is not approved, it would need to be resubmitted next year.

Rep. Kessler's bill won't be fully drafted and available to the public unless it is approved for consideration, but he may be able to share more information with you on what he is looking to do. His contact information is here: http://legislature.maine.gov/house/house/MemberProfiles/Details/1384

I hope this information is helpful. Please don't hesitate to let me know if you have any questions or if we can assist in any way. You are welcome to call me at 287-1430 or email me at this address.

Best,
Amy

Amy Sylvester
Senior Legislative Aide, Maine House Majority Office
2 State House Station
Augusta, ME 04333
(207) 287-1430

Note that legislative correspondence is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.

Portland Maine Yes. Google's good here.

Mary Davis <mpd@portlandmaine.gov>

Rental Housing Committee

1 message

Wendy Harmon <wendyharmon@kw.com> Tue, Oct 29, 2019 at 9:20 AM
To: mpd@portlandmaine.gov

Hi Mary, here is the response from Tenant Net:

Hi Wendy;

Yes, our agreement with Trans Union does not allow us to share reports with third parties, only with the requesting landlord. The Landlords are not supposed to share it with consumers. Consumers can get their own reports each year on line for free, and that is how the Fed Govt set up the process under the Fed Fair Credit Act to the best of my knowledge.

Tim Murphy

Wendy Harmon, Realtor
Keller Williams Realty
50 Sewall Street
Portland, Maine 04102
207-939-7523 (cell)
I love referrals!

Southern Maine Landlord Association Survey re: Application Fees

How many rental units do you own?	Do you currently charge an application fee?	If so, what amount do you charge?	On average, how many background and credit checks do you collect fees for before you find an appropriate tenant?
0	No	N/A	0
1	No	N/A	1
1	No	N/A	None will use airbnb for week long rentals on lake
1	No	N/A	0
1	No	N/A	1
1	No	N/A	0
1	No	N/A	2
2	No	N/A	0
2	No	N/A	I Air BNB my units
2	No	N/A	0
2	No	N/A	0
2	No	N/A	0
2	No	N/A	4
2	No	N/A	3
2	No	N/A	0
2	No	N/A	1
2	No	N/A	

How many rental units do you own?	Do you currently charge an application fee?	If so, what amount do you charge?	On average, how many background and credit checks do you collect fees for before you find an appropriate tenant?
2	No	N/A	
3	No	N/A	0
3	No	N/A	0
3	No	N/A	0
3	No	N/A	
3	No	N/A	1
3	No	N/A	2
3	No	N/A	0
3	No	N/A	
4	No	N/A	
4	No	N/A	
5	No	N/A	0
5	No	N/A	0
5	No	N/A	2-3
5	No	N/A	0
5	No	N/A	0
5	No	N/A	

How many rental units do you own?	Do you currently charge an application fee?	If so, what amount do you charge?	On average, how many background and credit checks do you collect fees for before you find an appropriate tenant?
6	No	N/A	0
6	No	N/A	0
6	No	N/A	
7	No	N/A	
8	No	N/A	0
8	No	N/A	1
8	No	N/A	0
8	No	N/A	0
8	No	N/A	0
9	No	N/A	0
10	No	N/A	0
10	No	N/A	0
10	No	N/A	0
11	No	N/A	2-3, we usually wait until we find a candidate that is likely to meet our standards, before we do reference checks.
13	No	N/A	0
14	No	N/A	0
14	No	N/A	0

How many rental units do you own?	Do you currently charge an application fee?	If so, what amount do you charge?	On average, how many background and credit checks do you collect fees for before you find an appropriate tenant?
15	No	N/A	3
16	No	N/A	0
21	No	N/A	
25	No	N/A	
30	No	N/A	0
31	No	N/A	1
60	No	N/A	0
70	No	N/A	0
130	No	N/A	3
1	No	We have used a tenant finder and have paid a fee!	When we have used a tenant finder service—it usually takes 2 to 3 credit credit and background checks time find someone
1	Yes	Cost of TenantNet	8
2	Yes	$25 - $35	1
3	Yes	$50	2
3	Yes	$50	1-2
3	Yes	$29	1 to 5 - but I reimburse the fees to the tenant who ultimately signs a lease.
4	Yes	$39.99 for one applicant. $49.98 for two.	1-2
4	Yes	$40	1

How many rental units do you own?	Do you currently charge an application fee?	If so, what amount do you charge?	On average, how many background and credit checks do you collect fees for before you find an appropriate tenant?
4	Yes	$35	2
5	Yes	$25	9
5	Yes	$30	1
5	Yes	$35	3
5	Yes	Whatever RentPrep charges	So far, 1
5	Yes	$30	2
6	Yes	$25 per adult applicant	Usually just one. If applicant is approved, the app. fee is credited to their sec. dep. If rejected, it is refunded, unless lies on the app. I use judgement experience to
6	Yes	$45	8
6	Yes	$40	2 max - I have a conversation before collecting $
6	Yes	$35	
7	Yes	$25	2
7	Yes	$30	5

How many rental units do you own?	Do you currently charge an application fee?	If so, what amount do you charge?	On average, how many background and credit checks do you collect fees for before you find an appropriate tenant?
8	Yes	$35	3
9	Yes	$30	2
10	Yes	Tenant net/$25	1-2
10	Yes	$30	1
12	Yes	$30	2
14	Yes	$35	1
16	Yes	$25	One or two
18	Yes	$30	4
36	Yes	$35	2 max
47	Yes	$35	3-4
50	Yes	$25	1
50	Yes	$40	Only the ones we want to rent to - so NO extra
62	Yes	$38	6
74	Yes	$30	4
83	Yes	$35	1-3
100	Yes	$30	1-2
180	Yes	$40	4

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 15. Commerce and Trade
Chapter 41. Consumer Credit Protection (Refs & Annos)
Subchapter III. Credit Reporting Agencies (Refs & Annos)

15 U.S.C.A. § 1681e

§ 1681e. Compliance procedures

Currentness

(a) Identity and purposes of credit users

Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 1681b of this title.

(b) Accuracy of report

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) Disclosure of consumer reports by users allowed

A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.

(d) Notice to users and furnishers of information

(1) Notice requirement.--A consumer reporting agency shall provide to any person--

(A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or

(B) to whom a consumer report is provided by the agency;

a notice of such person's responsibilities under this subchapter.

(2) Content of notice.--The Bureau shall prescribe the content of notices under paragraph (1), and a consumer reporting agency shall be in compliance with this subsection if it provides a notice under paragraph (1) that is substantially similar to the Bureau prescription under this paragraph.

(e) Procurement of consumer report for resale

(1) Disclosure.--A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the consumer reporting agency that originally furnishes the report--

(A) the identity of the end-user of the report (or information); and

(B) each permissible purpose under section 1681b of this title for which the report is furnished to the end-user of the report (or information).

(2) Responsibilities of procurers for resale.--A person who procures a consumer report for purposes of reselling the report (or any information in the report) shall--

(A) establish and comply with reasonable procedures designed to ensure that the report (or information) is resold by the person only for a purpose for which the report may be furnished under section 1681b of this title, including by requiring that each person to which the report (or information) is resold and that resells or provides the report (or information) to any other person--

(i) identifies each end user of the resold report (or information);

(ii) certifies each purpose for which the report (or information) will be used; and

(iii) certifies that the report (or information) will be used for no other purpose; and

(B) before reselling the report, make reasonable efforts to verify the identifications and certifications made under subparagraph (A).

(3) Resale of consumer report to a Federal agency or department.--Notwithstanding paragraph (1) or (2), a person who procures a consumer report for purposes of reselling the report (or any information in the report) shall not disclose the identity of the end-user of the report under paragraph (1) or (2) if--

(A) the end user is an agency or department of the United States Government which procures the report from the person for purposes of determining the eligibility of the consumer concerned to receive access or continued access to classified information (as defined in section 1681b(b)(4)(E)(i) of this title); and

(B) the agency or department certifies in writing to the person reselling the report that nondisclosure is necessary to protect classified information or the safety of persons employed by or contracting with, or undergoing investigation for work or contracting with the agency or department.

CREDIT(S)

(Pub.L. 90-321, Title VI, § 607, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1130; amended Pub.L. 104-208, Div. A, Title II, § 2407, Sept. 30, 1996, 110 Stat. 3009-435; Pub.L. 105-107, Title III, § 311(b), Nov. 20, 1997, 111 Stat. 2256; Pub.L. 111-203, Title X, § 1088(a)(2)(A), July 21, 2010, 124 Stat. 2087.)

Notes of Decisions (200)

15 U.S.C.A. § 1681e, 15 USCA § 1681e
Current through P.L. 116-68.

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