



City of Portland Rental Housing Advisory Committee

City Hall Room 24, Monday January 27, 2020, 5:30-7:30 p.m.

Co-Chairs: Meredith Cook, Tenant Representative and Regan Sweeney, Landlord Representative

1. Review and Approval of the Minutes of the December 16, 2019 meeting.
 - a. Draft Minutes of the December 16, 2019 Meeting.
2. Announcements:
 - a. Update from City Staff re: nominations to fill committee vacancies; and
 - b. Rental housing-related community meetings and/or events past and upcoming.
3. Rental Housing Application Fee Recommendation Memo
 - a. Discussion of rationale behind 12/16/19 recommendation re: fees;
 - b. Draft memorandum transmitting recommendations to Housing Committee; and
 - c. If applicable, voting on approval of memorandum to Housing Committee.
4. 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, if applicable, organization represented, and restrict comments to three (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.

5. Discussion of Committee Work Plan / Agenda
 - a. Topics / issues for upcoming meetings; and
 - b. Scheduling / planning for educational event(s).
6. Other Business.
 - a. Next Meeting Date: Monday, February 24, 2020, City Hall Room 24.

Rental Housing Advisory Committee

Minutes of December 16, 2019 Meeting

A meeting of the Portland Rental Housing Advisory Committee (RHAC) was held on Monday, December 16, 2019 at 5:30 P.M. in room 24 of Portland's City Hall. Committee members present at the meeting included Meredith Cook, Regan Sweeney, Aaron Berger, Nora Graves, Wendy Harmon, Travis Heynen, Katherine McGovern, and Crow Norlander. City staff present included Victoria Volent of Housing and Community Development Division.

Item 1: Review and approval of the Minutes of previous meeting held on November 25, 2019

Motion by Aaron to move for adoption of the minutes from November 25, 2019. Motion was seconded by Travis and minutes were approved 8-0.

Item 2: Announcements

Victoria read the Announcement regarding the City Clerk's advertisement for membership on the Rental Housing Advisory Committee for three Committee members whose terms will expire in March 2020.

Meredith asked if anyone attended any rental housing-related community meetings and/or events. Wendy and Aaron reported back to the Committee.

Item 3: Public Comment

Meredith opened the meeting to public comment. Seeing none, the public comment period was closed.

Item 4: Rules

Regan provided an overview regarding rules for the RHAC. Aaron made a motion recommending five affirmative votes for passage of an item. The Committee discussed the number of votes needed for passage of an item. On a motion made by Regan and seconded by Wendy, the motion passed unanimously (8-0).

Item 5: Continued Discussion of Rental Application Fees:

The Committee discussed research and findings regarding rental application fees. A cap of \$20 based on research from other states was proposed, as was a cap of \$35 and a recommendation

to remain silent on the amount of the application fee. The Committee also discussed banning rental application fees. Nora does not wish to lock into an amount as a recommendation. Regan feels it is important to forward an amount in any recommendation to the Housing Committee; otherwise, the Housing Committee may increase the application fee not realizing it is based on Committee research. Meredith noted the fee amount is not random, but rather based on research. Meredith views rental application fees as a barrier, but feels the Housing Committee would not accept a full ban. Katherine believes a ban is easier to enforce, also landlords have not indicated not collecting the fee is a burden. Aaron noted the ban on fees is not a ban on background checks. He also agrees a ban is easier to enforce. Wendy asked what is considered a background check. Per Aaron a background check include a criminal and credit check. Katherine added eviction history is also included. Regan pointed out application fees are separate from other fees (such as pet, moving, cleaning, turning on the electricity fee, etc.) that are included in the security deposit. Nora asked if paying for a background check is not more cumbersome for smaller landlords. Crow indicated the cost is not a burden. Regan said landlords can recoup any losses with added fees or a rent increase. A motion was made by Aaron to recommend a ban on rental application fees to the Housing Committee. Crow seconded the motion and the motion passed (5-3).

Meredith asked the Committee if they wished to submit a resolution to the Housing Committee. The Committee agreed a resolution would communicate to the Housing Committee the existing problem regarding application fee abuse. Katherine suggested the Committee wordsmith the document during the current meeting. The Committee discussed the resolution document. Aaron motioned to submit the resolution to the Housing Committee. Crow seconded the motion. The motion passed (6-2). Aaron and Katherine indicated they would attend the Housing Committee meeting in which the resolution is discussed.

Victoria inquired if the Committee intended to submit any supporting material along with the resolution as background information for the Housing Committee. The Committee discussed and agreed upon which material to submit. The Chair of the Housing Committee will be notified of the request by the Rental Housing Advisory Committee's to submit the application fee ban resolution to the Housing Committee.

Item 6: Discussion of Committee Work Plan/ Agenda

Regan would like to add education programs (literature, events) for the rental community onto the Work Plan. Travis would like to use the January 27, 2020 meeting to discuss this item further. Katherine would like to review the Section 8 Housing Choice Voucher program. For the next meeting, Committee members should bring in materials they wish to review.

Item 7: Other Business

Wendy indicated that if the resolution is passed by the City Council, notification of the change should be broadly noticed. Travis noted Avesta Housing provides education sessions and could assist the Committee with notification.

Meredith requested a motion to adjourn. Aaron moved and Wendy seconded. The meeting was adjourned at 7:15.

Respectively submitted,

Victoria Volent



CITY OF PORTLAND
Planning & Urban Development Department
Housing and Community Development Division

TO: Members of the Rental Housing Advisory Committee

FROM: Mary Davis, Division Director
Housing and Community Development Division

DATE: January 22, 2020

SUBJECT: Update from City Staff
Rental Housing Advisory Committee (RHAC) Membership

The City Council's Nominating Committee met on Tuesday, January 21 and will be recommending four appointments to the Rental Housing Advisory Committee. The recommendation includes current committee members with expiring terms who will be recommended for new three year terms along with a recommendation to fill the remaining term of Thaddeus St. John who resigned from the RHAC.

Nora Graves (neither tenant nor a landlord)
Aaron Berger (Tenant)
Crow Norlander (Landlord)
Amy Carole (Tenant)

Nominating Committee recommendations will appear on the February 3, 2020 City Council agenda.

Resolution

WHEREAS, application fees are a significant barrier to low and moderate income people in finding housing in the City of Portland; and

WHEREAS, tenants are likely to pay multiple fees before finally securing housing, and

WHEREAS, there are no laws in Maine regulating application fees.

THEREFORE BE IT RESOLVED, the Rental Housing Advisory Committee sees application fees as a significant burden on tenants when securing housing; and

THEREFORE BE IT FURTHER RESOLVED, the Rental Housing Advisory Committee recommends to the City Council Housing Committee to address this concern through the recommended policy change in City ordinance, below.

Application Fee Ban:

At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

- (i) Rent for the first full month of occupancy, and
- (ii) A security deposit as defined in 14 MRS 6032

Renters say application fees a barrier to living in Portland's pricey housing market

<https://bangordailynews.com/2019/12/02/news/portland/renters-say-application-fees-a-barrier-to-living-in-portlands-pricy-housing-market/>

By Nick Schroeder, BDN Staff • December 2, 2019 2:00 am

Updated: December 2, 2019 6:28 am

PORTLAND, Maine — A newly formed rental-housing committee is discussing how and whether to regulate application fees landlords charge tenants.

In a city with a rental-housing market as competitive as Portland, the push to regulate application fees, otherwise known as screening fees, has sparked debate in a new committee comprised of landlords and renters. Social service officials say some landlords have abused the practice of charging tenants for fees for background checks, which can be as high as \$75 an application.

“Moving is a very expensive process for low-income people generally and the situation is worse when people have to spend their limited income on these fees,” said Katherine McGovern, an attorney with Pine Tree Legal Assistance who sits on the city’s Rental Housing Advisory Committee.

The abuse of application fees was the first item on the agenda for the committee on Nov. 25.

Because there aren’t limits on application fees at the state or local level, there is no requirement that any fee be tied to expenses a landlord actually incurs when running a background or credit check, McGovern said. Tenants may suspect but not be able to prove that some landlords are pocketing fees without seriously considering tenants for apartments.

“We know from talking with our clients that it has been getting harder and harder to find affordable housing, especially in the greater

Portland area, and low-income tenants can end up spending a lot of money on application fees before finding a unit,” McGovern said.

The Rental Housing Advisory Committee wants to crack down on landlords collecting fees with no intention of renting to the applicant and those who don’t run background checks; commercial property owners charging multiple screening fees per applicant or for units in the same building; and landlords charging screening fees to immigrants and “new Mainers” for background checks when they have not yet been given Social Security numbers — in other words, they have no credit report to check.

Social services agencies and city officials have so far called instances of the abuses “anecdotal” and not necessarily widespread. Tenants have no recourse besides showing proof of abuse through the legal system, an option which many renters won’t pursue because it can be costly and consumer protection laws make such evidence hard to obtain.

Citizens say that onerous fees serve as a barrier in Portland’s increasingly pricey rental market. Jenna Dorr said she saw firsthand how rental fees limited her apartment search when she paid more than \$500 on them during a two-week period in May.

“We paid all this money and then never heard from all these landlords who did these checks on us,” Dorr said during the committee’s public comment period last month. “We really have no way to know if these checks have been done.”

Dorr said she contacted more than 40 landlords, treating each application process like a job interview. She would pay the nonrefundable application fee, and then send an immediate follow-up, thanking the landlord or lessor for their time and that she looked forward to hearing back from them either way.

Dorr’s family eventually found housing. But the process was hard enough that it gave her reason to speak up.

“We felt desperate. We have a 2-year-old daughter. We were also lucky compared to a lot of people, [because we] had considerable savings to cover those fees.

Crow Jonah Norlander, a landlord representative on the Rental Housing Advisory Committee, said that landlords are essentially business owners, and that running a background check on a potential tenant should be considered part of the cost of doing business.

“It’s a customer acquisition cost,” Norlander said. “If I want someone to live in my home, it’s my responsibility to vet them.”

That’s not a universally shared view among property owners. Rents might be even higher if the cost of application fees is absorbed by the landlords, said Travis Heynan, director of property management for Avesta Housing, and a landlord representative on the committee.

Landlords, however, can also write off most screening fees on their taxes.

Another potential solution proposed by the committee would force landlords to accept a copy of a background check run on a prospective tenant in the previous 30 days, limiting the number of times a tenant’s credit would be run.

A survey conducted by the Southern Maine Landlord Association found that 57 percent of apartments in the Portland area come tied to application fees of some kind.

Among the respondents, 59 landlords and property owners said they did not charge rental application fees for the 644 units they owned.

The committee meets again on Dec. 16, and hopes to submit a recommendation to the Portland City Council’s Housing Committee soon after.

“I don’t understand how a city [of] this size with this kind of competition doesn’t have guidelines of this sort,” advisory committee member Nora Givens said.

Office of the Revisor of Statutes

2019 Minnesota Statutes

Authenticate  PDF

504B.173 APPLICANT SCREENING FEE.

Subdivision 1. **Limitations.** A landlord may not:

- (1) charge an applicant a screening fee when the landlord knows or should have known that no rental unit is available at that time or will be available within a reasonable future time;
- (2) collect or hold an applicant screening fee without giving the applicant a written receipt for the fee, which may be incorporated into the application form, upon request of the applicant; or
- (3) use, cash, or deposit an applicant screening fee until all prior applicants have either been screened and rejected, or offered the unit and declined to enter into a rental agreement.

Subd. 2. **Return of applicant screening fee.** (a) The landlord must return the applicant screening fee if:

- (1) the applicant is rejected for any reason not listed in the disclosure required under subdivision 3; or
 - (2) a prior applicant is offered the unit and agrees to enter into a rental agreement.
- (b) If the landlord does not perform a personal reference check or does not obtain a consumer credit report or tenant screening report, the landlord must return any amount of the applicant screening fee that is not used for those purposes.
- (c) The applicant screening fee may be returned by mail, may be destroyed upon the applicant's request if paid by check, or may be made available for the applicant to retrieve.

Subd. 3. **Disclosures to applicant.** If a landlord accepts an applicant screening fee from a prospective tenant, the landlord must:

- (1) disclose in writing prior to accepting the applicant screening fee:
 - (i) the name, address, and telephone number of the tenant screening service the landlord will use, unless the landlord does not use a tenant screening service; and
 - (ii) the criteria on which the decision to rent to the prospective tenant will be based; and
- (2) notify the applicant within 14 days of rejecting a rental application, identifying the criteria the applicant failed to meet.

Subd. 4. **Remedies.** (a) In addition to any other remedies, a landlord who violates this section is liable to the applicant for the applicant screening fee plus a civil penalty of up to \$100, civil court filing costs, and reasonable attorney fees incurred to enforce this remedy.

(b) A prospective tenant who provides materially false information on the application or omits material information requested is liable to the landlord for damages, plus a civil penalty of up to \$500, civil court filing costs, and reasonable attorney fees.

History: 1999 c 150 s 1; 1999 c 199 art 1 s 174; 2010 c 315 s 4

2017 ORS 90.295¹

Applicant screening charge

- **limitations**
- **notice upon denial of tenancy**
- **refund**
- **remedy**

- (1) A landlord may require payment of an applicant screening charge solely to cover the costs of obtaining information about an applicant as the landlord processes the application for a rental agreement. This activity is known as screening, and includes but is not limited to checking references and obtaining a consumer credit report or tenant screening report. The landlord must provide the applicant with a receipt for any applicant screening charge.
- (2) The amount of any applicant screening charge shall not be greater than the landlord's average actual cost of screening applicants. Actual costs may include the cost of using a tenant screening company or a consumer credit reporting agency, and may include the reasonable value of any time spent by the landlord or the landlord's agents in otherwise obtaining information on applicants. In any case, the applicant screening charge may not be greater than the customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening.
- (3) A landlord may not require payment of an applicant screening charge unless prior to accepting the payment the landlord:
 - (a) Adopts written screening or admission criteria;
 - (b) Gives written notice to the applicant of:
 - (A) The amount of the applicant screening charge;
 - (B) The landlord's screening or admission criteria;
 - (C) The process that the landlord typically will follow in screening the applicant, including whether the landlord uses a tenant screening company, credit reports, public records or criminal records or contacts employers, landlords or other references; **and**
 - (D) The applicant's rights to dispute the accuracy of any information provided to the landlord by a screening company or credit reporting agency;

- (c) Gives actual notice to the applicant of an estimate, made to the best of the landlord's ability at that time, of the approximate number of rental units of the type, and in the area, sought by the applicant that are, or within a reasonable future time will be, available to rent from that landlord. The estimate shall include the approximate number of applications previously accepted and remaining under consideration for those units. A good faith error by a landlord in making an estimate under this paragraph does not provide grounds for a claim under subsection (8) of this section;
 - (d) Gives written notice to the applicant of the amount of rent the landlord will charge and the deposits the landlord will require, subject to change in the rent or deposits by agreement of the landlord and the tenant before entering into a rental agreement; **and**
 - (e) Gives written notice to the applicant whether the landlord requires tenants to obtain and maintain renter's liability insurance and, if so, the amount of insurance required.
- (4) Regardless of whether a landlord requires payment of an applicant screening charge, if a landlord denies an application for a rental agreement by an applicant and that denial is based in whole or in part on a tenant screening company or consumer credit reporting agency report on that applicant, the landlord shall give the applicant actual notice of that fact at the same time that the landlord notifies the applicant of the denial. Unless written notice of the name and address of the screening company or credit reporting agency has previously been given, the landlord shall promptly give written notice to the applicant of the name and address of the company or agency that provided the report upon which the denial is based.
- (5) Except as provided in subsection (4) of this section, a landlord need not disclose the results of an applicant screening or report to an applicant, with respect to information that is not required to be disclosed under the federal Fair Credit Reporting Act. A landlord may give to an applicant a copy of that applicant's consumer report, as defined in the Fair Credit Reporting Act.
- (6) Unless the applicant agrees otherwise in writing, a landlord may not require payment of an applicant screening charge when the landlord knows or should know that no rental units are available at that time or will be available within a reasonable future time.
- (7) If a landlord requires payment of an applicant screening charge but fills the vacant rental unit before screening the applicant or does not conduct a screening of the applicant for any reason, the landlord must refund the applicant screening charge to the applicant within a reasonable time.
- (8) The applicant may recover from the landlord twice the amount of any applicant screening charge paid, plus \$150, if:
- (a) The landlord fails to comply with this section and does not within a reasonable time accept the applicant's application for a rental agreement; **or**

- (b) The landlord does not conduct a screening of the applicant for any reason and fails to refund an applicant screening charge to the applicant within a reasonable time. [1993 c.369 §26; 1995 c.559 §10; 1997 c.577 §11; 1999 c.603 §14; 2011 c.42 §2; 2013 c.294 §6]

¹ Legislative Counsel Committee, *CHAPTER 90—Residential Landlord and Tenant*, https://www.oregonlegislature.gov/bills_laws/ors/ors090.html (2017) (last accessed Mar. 30, 2018).

judgment has been duly stayed by such a court. This subsection shall become effective January 1, 2008.

(12) There is no active arrest warrant for a Minneapolis Housing Maintenance Code or Zoning Code violation pertaining to any property in which the licensee, applicant or property manager has a legal or equitable ownership interest or is involved in management or maintenance.

(13) a. Any person(s) who has had an interest in two (2) or more licenses revoked pursuant to this article or canceled pursuant to section 244.1925 or a combination of revocations or cancellations shall be ineligible to hold or have an interest in a rental dwelling license or provisional license for a period of five (5) years.

b. Any person(s) who has had an interest in a license revoked pursuant to this article or canceled pursuant to section 244.1925, shall be ineligible from obtaining any new rental dwelling licenses for a period of three (3) years.

(14) No new rental dwelling license shall be issued for the property during the pendency of adverse license action initiated pursuant to section 244.1940.

(15) The licensee or applicant must have a current, complete, and accurate rental dwelling application on file with the director of inspections in accord with the provisions of section 244.1840.

(16) a. Before taking a rental application fee, a rental property owner must disclose to the applicant, in writing, the criteria on which the application will be judged.

b. Application forms must allow the applicant to choose a method for return of the application fee as either 1) mailing it to an applicant's chosen address as stated on the application form, 2) destroying it 3) holding for retrieval by the tenant upon one (1) business-day's notice.

c. If the applicant was charged an application fee and the rental property owner rejects the applicant, then the owner must, within fourteen (14) days, notify the tenant in writing of the reasons for rejection, including any criteria that the applicant failed to meet, and the name, address, and phone number of any tenant screening agency or other credit reporting agency used in considering the application.

- d. The landlord must refund the application fee if a tenant is rejected for any reason not listed in the written criteria.
 - e. Nothing in this section shall prohibit a rental property owner from collecting and holding an application fee so long as the rental property owner provides a written receipt for the fee and the fee is not cashed, deposited, or negotiated in any way until all prior rental applicants either have been screened and rejected for the unit, or have been offered the unit and have declined to take it. If a prior rental applicant is offered the unit and accepts it, the rental property owner shall return all application fees in the manner selected by the applicant, pursuant to section (b).
 - f. Violation of this subsection, 244.1910(16), may result in an administrative citation, or may contribute to the denial or revocation of a rental license.
 - g. This subdivision shall become effective December 1, 2004.
- (17) An owner shall not have any violations of Minnesota Rule Chapter 1300.0120 subpart 1, related to required permits, at any rental dwelling which they own or have an ownership interest. A violation of Minnesota Rule Chapter 1300.0120 subpart 1 shall result in a director's determination of noncompliance notice being sent, pursuant to 244.1930 to the owner regarding the rental dwelling where the violation occurred. A second violation, at any rental dwelling in which the owner has an ownership interest, of Minnesota Rule Chapter 1300.0120 subpart 1, related to required permits, shall result in the issuance of a director's notice of denial, non-renewal, or suspension of the license or provisional license, pursuant to 244.1940 of the Code, for the rental dwelling where the second violation occurred.
- (18) The owner, where the owner pays the water bill for a rental dwelling, shall not allow the water to be shut off for non-payment. If water to a rental dwelling has been turned off, for lack of payment by the owner it shall be sufficient grounds to deny, revoke, suspend or refuse to renew a license or provisional license.
- (19) The provisions of this section are not exclusive. Adverse license action may be based upon good cause as authorized by Chapter 4, Section 16 of the Charter. This section shall not preclude the enforcement of any other provisions of this Code or state and federal laws and regulations.