

MEMORANDUM OF LAW

To: Dimitri Hatzifotinos

From: Solomon Parini

Date: March 11, 2021

RE: **Best Practices for Recently Passed Legislation in Columbus Ohio (Retaliation, Rent Receipts, Security Deposits, and Source of Income) and IMPACT/Rental Assistance.**

DISCUSSION:

I. What legislation has been passed in the City of Columbus that affects Landlords?

The City of Columbus has recently passed 4 laws that affect landlords. These laws relate to security deposits, retaliation, rental receipts, and source of income. The Law relative to retaliation was passed in 2018 and is currently in effect. The laws relative to security deposits, rental receipts and source of income were passed in March 2021 and will take effect July 1, 2021. These laws are attached to this Memorandum. All of these laws, if violated, come with civil penalties and criminal penalties. These laws apply just to properties within the City of Columbus. As a result, it is important for all landlords to understand these laws and the best practices to comply with them.

A. Retaliatory Action: Section 4509.07

In 2018 the City of Columbus passed a retaliatory action law that criminal punishes a landlord if they take action in retaliation against a tenant exercising their rights. This law is very similar to Ohio's landlord tenant act section 5321.02. The law provides that:

1. If the tenant
 - a. complains or report of conditions in their unit to a governmental authority or the landlord, or
 - b. joins with other tenants for the purpose of negotiating or dealing collectively with the owner on any of the terms and conditions of a rental agreement.
2. A landlord may not:
 - a. institute or threaten to institute any action to recover possession of the premises or otherwise cause a tenant to quit a habitation involuntarily,
 - b. demand an increase in rent from a tenant,
 - c. decrease services to which a tenant has been entitled,
 - d. increase the obligations of a tenant, or
 - e. refuse to renew the tenant's lease agreement

This law has a trigger point:

1. Has a tenant complained to either code enforcement or the landlord about the condition of their unit
2. If the answer to question 1 is yes, then you need to be careful as a landlord about what you do next. Best practice is to:
 - a. Not evict for other than non-payment of rent.

- b. Not increase the tenant's rent unless all other tenants in similar properties are increased
- c. MAKE SURE THAT ANY NON-RENEWAL OF THE TENANT'S LEASE HAS A LEGITIMATE NON_DISCRIMINATORY REASON.

This law has been used by the city to file criminal charges against a property manager for a non-renewal. Willis Law Firm believes that this law is likely subject to challenge due to conflict with State Landlord and Tenant laws, constitutional problems with the way the law is written, and possibly other legal challenges based on why the law was written.

It is vitally important that any code violations, work orders or other evidence of complaints about maintenance are documented by property management staff as they happen. Ohio law indicates that Landlord have a duty to fix stuff within a reasonable period of time not to exceed 30 days unless there are special circumstances. As a result, make sure that you fix what is wrong in there before you terminate a tenant's lease.

WHAT HAPPENS IF A TENANT WHO WON'T COMPLY MAKES A CODE COMPLAINT:

- We all know that tenants will complain to code before they tell their landlord that anything is wrong and then refuse access to the landlord who wants to fix their unit.
- Make sure that you keep record of the date when you first get either an Escrow case filing with the Municipal Court or a Code Violation.
- Make sure to keep record of the date when these items are fixed.
- If you can't fix an item (for example roof leak in the winter), keep record of how the temporary fix was made (cover or tarp on roof), that an inspection (with pictures) was done to address the tenant's immediate concern, and that a permanent fix is coming.
- If a tenant won't allow access to your staff you MUST send them a letter telling them that they are subject to eviction for failing to let Maintenance in. That letter should be kept in the resident's file.
- That way when you non-renew the tenant you can do so for failure to cooperate or give access.

Laws and regulations like this one can be a problem if we fail to properly document what is really going on with our residents. Please call Solomon or Dimitri at Willis Law Firm if you have any questions about whether or not a non-renewal is proper. Relying on advice of counsel is going to be a defense to this too!!!!!!

B. Rental Receipts: Section 4551

In March of 2021 the City of Columbus passed a rental receipt law that criminally punishes a landlord if they fail to provide a rental receipt to the tenant when a tenant pays their deposit or rent. RECEIPTS HAVE TO BE GIVEN WITHIN 4 DAYS OF PAYMENT. THIS LAW DOES NOT APPLY TO ELECTRONIC PAYMENTS.

This law takes effect until July 1, 2021. HERE'S WHAT THIS MEANS:

1. A receipt has to be given when:
 - a. Payment made in person:
 - b. Payment made via drop box or mail: Receipt must be given within 4 business days of receipt of the payment.
2. THIS LAW APPLIES TO ALL FORMS OF PAYMENT EXCEPT FOR AUTOMATIC ELECTRONIC PAYMENTS. IF A TENANT PAYS BY CASH, CHECK, MONEY ORDER ETC. AND IT'S NOT ELECTRONICALLY PROCESSED, YOU HAVE TO GIVE A RECEIPT.
3. What constitutes a receipt or what does it need to look like?
 - a. SHORT ANSWER: We don't know.
 - b. LONGER ANSWER: Any document that shows that they paid or that they have a balance will suffice. We would recommend giving an automated account statement that either shows a payment when made or shows a balance.
 - c. Since the law does not define receipt, I think that you can email, I think that you can make it automated. Obviously these work arounds are subject to interpretation.

MAKE SURE A COPY IS KEPT OF EVERY RENTAL RECEIPT THAT IS MADE FOR PAYMENTS MADE!

C. Source of Income Discrimination: 4551.03

In March of 2021 the City of Columbus passed a source of income discrimination law that criminally punishes a landlord if the Landlord discriminates based on the tenant's source of income. *This law does not take effect until July 1, 2021.*

1. What is "Source of Income?"
 - a. income derived from wages, social security, supplemental security income, public or private sources, and all forms of federal, state or local assistance payments or subsidies, including rent vouchers, child support, spousal support, and public assistance (i.e. Section 8).
2. What does this mean from a practical standpoint for landlords?
 - a. A landlord can no longer state they do not accept Section 8.
 - b. A landlord cannot make a minimum income requirement that tries to get around Section 8. For example. If your rent is \$1,000.00 and the Section 8 voucher is \$800.00, the Landlord cannot require the tenant to make 3 times the monthly rent of \$1,000.00. The Landlord has to subtract the voucher first. So in this example, the tenant would need to make at least \$600.00 per month to qualify.
3. What may a landlord not do?

- a. If a tenant receives a source of income as stated above, a landlord cannot take the following actions against the tenant based solely on their source of income:
 - i. Refuse to rent a unit to this tenant/applicant.
 - ii. Make any distinction, discrimination, or restriction in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of the unit or in the furnishing of any facilities or services in connection with the rental, lease, or the unit.
 - iii. Attempt to discourage the rental of a unit.
4. How can a landlord comply with this law?
- a. **Do not** tell any applicant or person calling in that you do not accept Section 8.
 - b. Notify your screening company that your property has to consider Section 8 and other source of income when determining eligibility for applicants relative to income qualifications.
 - c. Do not nonrenew someone or refuse to rent to someone solely because they receive Section 8 or another source of income outlined above.

IF YOUR MONTHLY MINIMUM RENTS ARE ABOVE WHAT SOMEONE'S INCOME VOUCHER WILL SUPPORT, YOU DO NOT HAVE TO LOWER RENTS TO TAKE SECTION 8. PLEASE CONTACT US IF YOU NEED MORE INFORMATION ABOUT MONTHLY MINIMUM RENTS.

Please call Solomon or Dimitri at Willis Law Firm if you have any questions about whether or not a decision regarding source of income is being made properly. Relying on advice of counsel is going to be a defense to this too!!!!!!

D. Renter's Choice (Security Deposit) 4551.04

In March of 2021 the City of Columbus passed a law that allows a tenant to elect how they pay their security deposit. *This law does not take effect until July 1, 2021.* The law provides that:

1. EVERY TENANT HAS TO BE GIVEN A CHOICE ATTACHED TO THEIR LEASE THAT LET'S THEM PAY THEIR RENT IN ONE OF THREE WAYS
2. If Landlord requires that a tenant pay a security deposit, the tenant can
 - a. Pay the security deposit in full,
 - b. pay the security deposit over 3 monthly installment payments,
 - c. pay the security deposit over 6 monthly installment payments.
3. Does this law apply to you?
 - a. This law does not apply to you if you own 4 or less rental units. At this point the City has not indicated what "owning 4 or less rental units" means. In other words, if you own 4 units in Columbus and 4 units somewhere else. . .does this

apply? Similarly, if all units are in different entities we don't know if that means you own them or not.

b. It does not apply to any lease that is executed or renewed prior to July 1, 2021.

4. How do we comply with the law?

a. At the time of lease signing, provide the tenant an option on how they want to pay the security deposit. Attached is an addendum that can be used. The tenant must select what security deposit plan they would like and pay pursuant to it.

This law in no way prevents a landlord from pursuing damages against a tenant.

E. IMPACT/Rental Assistance

As many landlords are aware, there are millions of dollars in funding for rental assistance in Franklin County. Most of these funds are being distributed by IMPACT/HOPE Fund. You can get more information about these funds at www.impactca.org

The treasury department published guidelines on what can be covered by the latest rental assistance funding. The funding can cover:

- Past due rent up to 12 months, attorney's fees to file the eviction, utilities, internet fees, reasonable late fees, and other fees under the lease.

In order to get access to this funding, tenants must fill out/submit an application with the aid organization. Once an application is submitted, the aide organization will reach out to the landlord, usually via email, to determine if the landlord wants to accept the rental assistance. If so, the landlord will need to provide basic information like a lease, ledger, and W-9 to obtain this money.

In our experience over the past year of dealing with the pandemic and IMPACT, it is recommended that a landlord file an eviction against a resident in order to get them rental assistance. IMPACT has typically been slow when it comes to paying out rental assistance before an eviction is filed. We have found that the number 1 way and the quickest way to get assistance for a tenant is to actually file an eviction because the tenant can meet face-to-face with IMPACT at court. At court, the tenant can submit their application and usually receive approval/pre-approval for most of the past due balance.

As always, a landlord has no legal obligation to accept rental assistance from a tenant. Rather, they may elect to proceed with the eviction and refuse the money.

Willis Law Firm strives to continue to update landlords across the Greater Columbus Area and the State of Ohio on Landlord Tenant matters. Please reach out to us if you have any further questions.

/s/ Solomon J. Parini

Solomon J. Parini

SECURITY DEPOSIT ADDENDUM

Tenant shall deposit with the Landlord the sum of \$ _____ as security for Tenant's faithful performance under the Lease and by law. Tenant agrees the deposit is not an advance payment of rent and does not relieve the obligation to pay rent including rent for the last month of occupancy.

Tenant has elected to pay the total security deposit in the following manner:

Pay the security deposit in full at the time of lease signing

Pay the security deposit over 3 monthly installment payments

\$ _____ per month for 3 months

Pay the security deposit over 6 monthly installment payments

\$ _____ per month for 6 months

In the event Tenant elects to make installment payments for their security deposit, the installments shall be due on the same day as the monthly rent payment pursuant to the lease agreement, and which may be paid together with the monthly rent payment. In the event Tenant fails to pay one of their installment payments, it shall be considered a material breach of the lease agreement.

Landlord, at the expiration of the Lease or hold-over tenancy, may apply the security deposit for past due rent; fees; past due utilities; final payment of utilities; the cost of repairing damages beyond reasonable wear and tear to the Premises caused by the Tenant, Tenant's guests, family or invitees; and damages incurred if the Tenant abandons or vacates the Premises before the end of the Term.

Each of the aforementioned tenants shall be jointly and severally responsible for all losses incurred by the Landlord occasioned by the tenancy, including negligence. Tenant specifically acknowledges that a reasonable amount for carpet cleaning charging will be deducted from Tenant's security deposit.

The Landlord shall return the Tenant's security deposit, or whatever part has not been applied in payment of any tenant obligations under the Lease, within thirty (30) days after the expiration or any renewal of the Lease and delivery of possession of the Premises to the Landlord, whichever is last to occur. The Landlord shall itemize and identify, in writing, any deductions from the security deposit. The Tenant shall reimburse the Landlord for any rent, fees, utilities due, and damages exceeding the security deposit. This provision does not waive the rights of the Landlord to seek damages in excess of the security deposit.

Landlord/Agent:

Tenant's Signature

Date

Tenant's Signature

Date

Tenant's Signature

Date

4509.07 - Retaliatory Action.

- (a) No owner, or person having control, of any premises regulated by this code shall institute or threaten to institute any action to recover possession of the premises or otherwise cause a tenant to quit a habitation involuntarily, demand an increase in rent from a tenant, decrease services to which a tenant has been entitled, increase the obligations of a tenant, or refuse to renew the tenant's lease agreement in retaliation against:
- (1) A tenant's good faith complaint or report of conditions in, or affecting his dwelling unit, which might reasonably be believed to constitute a violation of a housing, building, health, or other code or ordinance made to a governmental authority or to the owner or person having control of the premises; or
 - (2) The tenant joining with other tenants for the purpose of negotiating or dealing collectively with the owner or person having control of the premises on any of the terms and conditions of a rental agreement.
- (b) The City of Columbus bears the initial burden of establishing a prima facie case of retaliatory action. In order to establish a prima facie case, the City must demonstrate the following:
- (1) The victim is a "tenant" as defined by C.C.C. Section 4501.405.
 - (2) The tenant has engaged in one of the protected activities in C.C.C. Section 4509.07(a).
 - (3) The owner or person having control of the premises has engaged in at least one of the following prohibited actions:
 - (i) Increasing rent or any other obligations of the tenant;
 - (ii) A reduction of any services to the tenant;
 - (iii) A warning or a threat of eviction, formal or informal;
 - (iv) Filing of an eviction proceeding in close temporal proximity to the occurrence of any event referred to in C.C.C. Section 4509.07(a);
 - (v) Termination or non-renewal of a lease agreement in close temporal proximity to the occurrence of any event referred to in C.C.C. Section 4509.07(a);
 - (vi) Landlord trespassing on the property or forcing entry;
 - (vii) Shutting off utilities or water services;
 - (vii) Not accepting rent payment;
 - (viii) Interfering with the tenant's quiet use and enjoyment of the property; or,
 - (ix) Prohibiting the right of access to any part of the premises that the tenant is lawfully entitled to use or occupy.
- (c) Once the City has established a prima facie case, a rebuttable presumption shifts the burden to the owner, or person having control of the premises, to articulate a legitimate, non-retaliatory reason for taking action against the tenant. To rebut the presumption to any prosecution brought under C.C.C. Section 4509.07(a) that the actions taken by the owner, or person having control of the premises were retaliatory, the accused must demonstrate by preponderance of the evidence either of the following:
- (1) A tenant's violation of the lease agreement between the tenant and the accused; or
 - (2) A reason not related to the tenant's good faith complaint or report to the accused or a governmental authority. If the accused articulates such a reason, the presumption ceases and the City bear the burden of proving the proffered reason is merely a pretext for unlawful retaliation.
- (d) Any provision of any lease that conflicts with this Section of the Code is void and unenforceable.
- (e) C.C.C. Section 4509.07 is not intended to serve as a basis for a civil claim, a counterclaim, or a defense in an eviction proceeding under R.C. Chapters 5321 or R.C. 1923.
- (f) Penalty. A person who violates 4509.07 is guilty of a misdemeanor of the first degree, punishable by \$1,000 fine or up to 180 days in jail.

(Ord. 356-75; Ord. No. 3316-2018, § 1, 12-10-2018)

RENTAL RECEIPTS

Explanation

Low-income tenants are at times unbanked and without access to electronic methods of making security deposit and rental payments, often utilizing cash or money order to meet obligations. In scenarios where these tenants are required to prove rent was paid on time, they are without proper documentation of their payment. An operator who provides a rental receipt helps protect both a tenant and landlord in the case of dispute.

Title

To amend Chapter 4551 of Columbus City Codes requiring operators to provide tenants with a written receipt for any security deposit and for all rental payments.

Body

WHEREAS, it is in the best interest of all parties that receipts be given to a tenant for any security deposit and for all rental payments; and

WHEREAS, current code does not require an operator to provide a receipt to the tenant for any security deposits or rental payments; and

WHEREAS, amending the city code to require operators to provide tenants with written receipts would benefit the City of Columbus by making sure there is proof of every transaction so that there are no disputes when it comes to potential late fees or eviction proceedings between the operator and the tenant; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Chapter 4551 of Columbus City Codes is hereby amended to read as follows:

4551.05 Rental Receipt

(a) Written rent receipt required. Except as otherwise provided in division (b), no operator shall fail to cause a tenant to be provided with a written receipt for any security deposit and for all rental payments at the time the deposit or payment is received. In the event of payment by cash or by any other means that does not provide an automatically generated written receipt, the receipt shall be provided within 4 business days of the security deposit or rental payment being received.

(b) The provisions of this section shall not apply to any operator of permanent supportive housing properties.

(c) Where an operator provides for payment of either a security deposit or rent through a third-party online portal or service, the ability of the tenant to obtain a written receipt through the portal or service accepting the payment shall constitute evidence of the provision of a receipt by the operator.

(d) Organizational criminal liability as provided for in Section 2301.23 is contemplated where an organization is an operator.

(e) The offense established under this section is a strict liability offense.

(f) Whoever violates this section is guilty of failure to provide a rent receipt, a misdemeanor of the fourth degree.

SECTION 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

SECURITY DEPOSITS

Explanation

The traditional security deposit is an upfront moving cost that presents a barrier to housing affordability. In Columbus, over \$480 million is locked up in cash security deposits, providing no immediate benefit to tenants or operators. Alternative choice and optionality in the payment of the security deposit is an affordable housing solution that provides tenants the opportunity to rapidly re-house and lower move-in costs.

Title

To amend Chapter 4551 of Columbus City Codes providing operators and tenants with rental security deposit payment alternatives.

Body

WHEREAS, it is in the best interest of all parties that operators and tenants have rental security deposit payment alternatives; and

WHEREAS, current code does not require that tenants have the ability to work with an operator and choose an alternative to a rental security deposit; and

WHEREAS, amending the city code to provide operators and tenants with rental security deposit payment alternatives would benefit the City of Columbus by allowing tenants to find safe and sanitary housing with lower upfront costs; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Chapter 4551 of Columbus City Codes is hereby amended to read as follows:

4551.04 Renter's Choice

(a) Renter's Choice. If an operator requires that a tenant pay a security deposit, no operator shall fail to provide written notice of the security deposit payment alternatives as described in this division. Prior to entering into a rental agreement, a tenant required to pay a security deposit shall either pay the required security deposit in full or select and subsequently fulfill one of the following rental security deposit payment alternatives:

(1) payment of the security deposit over a series of no fewer than 3 monthly installment payments, which installments shall be due on the same day as the monthly rent payment and which may be paid together with the monthly rent payment in a single transaction.

(2) payment of the security deposit over a series of no fewer than 6 monthly installment payments, which installments shall be due on the same day as the monthly rent payment and which may be paid together with the monthly rent payment in a single transaction.

(b) This section shall not apply to any operator with fewer than 5 rental units.

(c) The provisions of this section shall apply to any residential lease that is executed or renewed after the effective date of this ordinance.

(d) Organizational criminal liability as provided for in Section 2301.23 is contemplated where an organization is an operator.

(e) The offense established under division (a) of this section is a strict liability offense.

(f) An operator who violates division (a) is guilty of failure to provide notice of renter's choice, a misdemeanor of the fourth degree.

(g) Nothing in this section shall be construed so as to mandate that an operator require a tenant to pay a security deposit and nothing in this section shall be construed to prohibit the use of alternative lawful means of

providing assurances as to the performance of the rental agreement and/or compensation for possible loss or damage to the rental property.

SECTION 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

SOURCE OF INCOME

Explanation

Source of income discrimination occurs when landlords refuse to rent a unit to a prospective tenant based on their source of income. In Columbus, over half of Housing Choice Voucher recipients are Black households, causing source of income discrimination to be a proxy for race discrimination. Establishing protections for source of income will help provide opportunity for more affordable housing options in diverse neighborhoods across the city.

Title

To amend Chapter 4501 and Chapter 4551 of Columbus City Codes protecting a tenant from discrimination based on their source of income.

Body

WHEREAS, it is in the best interest of all parties to protect tenants from being discriminated against based on their source of income; and

WHEREAS, current code allows discrimination against tenants based on their source of income; and

WHEREAS, amending the city code to protect tenants from being discriminated against based on their source of income would benefit the City of Columbus because tenants will have additional housing opportunities within the city; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Chapter 4501 of Columbus City Codes is hereby amended to read as follows:

4501.378 Source of Income

“Source of income” means any lawful source of income which can be verified and substantiated, including but not limited to, income derived from wages, social security, supplemental security income, public or private sources, and all forms of federal, state or local assistance payments or subsidies, including rent vouchers, child support, spousal support, and public assistance.

SECTION 2. That Chapter 4551 of The Columbus City Codes is hereby amended to read as follows:

4551.03 Source of Income Discrimination

(a) No operator shall knowingly, based on the source of income of a prospective tenant or current tenant:

(1) Refuse to lease or rent any real property to a prospective tenant or current tenant;

(2) Make any distinction, discrimination, or restriction against a prospective tenant or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of real property or in the furnishing of any facilities or services in connection with the rental, lease, or occupancy of real property;

(3) Attempt to discourage the rental or lease of any real property to a prospective tenant or current tenant;

(4) Assist, induce, incite, or coerce another person to commit an act or engage in a practice that violates this section;

(5) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected under this section;

(6) Represent to a person that a dwelling unit is not available for inspection or rental when the dwelling unit in fact is available for inspection or rental; or

(7) Otherwise make unavailable or deny a dwelling unit to a prospective tenant or current tenant that, but for his or her source of income, would be eligible to rent real property.

(b) If an operator requires that a prospective tenant or current tenant have a certain threshold level of income, any source of income in the form of a rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating if the income criteria have been met.

(c) Organizational criminal liability as provided for in Section 2301.23 is contemplated where an organization is an operator.

(d) Whoever violates this section is guilty of Source of Income Discrimination, a misdemeanor of the first degree.

SECTION 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.