File #: 07615, **Version:** 3

Fiscal Note

No appropriation is required.

Title

SECOND SUBSTITUTE - Amending Sections 32.07(5), (7), (9) and (14) of the Madison General Ordinances to require landlords to obtain, maintain, and provide or make available, upon request, photographic evidence of damage, waste or neglect being charged against a tenant's security deposit.

Body

DRAFTER'S ANALYSIS: This proposal amends various Subsections of Section 32.07 of the Madison General Ordinances relating to Security Deposit Refund Procedures. This proposal creates a requirement under Subsection 32.07(14) that for a landlord to charge a tenant with damage, waste, or neglect from the security deposit, that the landlord must document this damage, waste or neglect with photographic evidence, which must be retained for a specified period of time and provided to the tenant upon a timely request being made. This proposal also creates a requirement that if the landlord makes a full or partial withholding of the security deposit that the landlord provide written notice to the tenant of the tenant's right to request of a copy of the photographs, and that upon receipt of a timely request the landlord has a specified period of time to provide the photographs to the tenant. This proposal also provides that the landlord forfeits all rights to any portion of the security deposit if the photographs timely requested by the tenant are not provided. Finally, this proposal also creates a requirement that before a landlord accepts a security deposit, as part of the check-in procedures the tenant be informed of the tenant's right to view the photographs documenting any damage, waste or neglect charged to the previous tenant. This proposal is designed to require landlords to obtain photographic evidence of damages charged to tenants from security deposits to ensure that any forfeiture of a security deposit is supported by evidence.

This is the form in which the ordinance was adopted. Please see the correct Drafter's Analysis for the Second Substitute in Attachments entitled "2nd Substitute Drafter's Analysis."

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The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (5) of Section 32.07 entitled "Security Deposit Refund Procedures" of the Madison General Ordinances hereby amended to read as follows:

"(5) The landlord and tenant shall use a written CHECK-IN AND CHECK-OUT procedure.

(a) The landlord shall furnish copies of check-in and check-out forms to tenants of each dwelling unit. The check-in form shall be provided to the tenant at the beginning of the tenancy and the check-out form shall be provided to the tenant prior to the termination of the tenancy.

(b) Before a landlord accepts a security deposit under Sec. 32.10(3)(b), or converts an earnest money deposit to a security deposit under Sec. 32.10(2)(b) the landlord shall notify the tenant in writing that the tenant may do any of the following by a specified date which is not less than seven (7) days after the start of tenancy:

1. Inspect the dwelling unit and notify the landlord of any pre-existing damages or defects by noting the conditions on the check-in form.

2. Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit<u>, and request the opportunity to view, within 30 days of the receipt of the notice, the photographs maintained by the landlord under Sec. 32.07(14)(a) documenting such physical damages or defects</u>. The landlord may require the tenant to make this request, if any, in writing.

(c) If a tenant makes a request under Paragraph (b)2., the landlord shall provide the tenant with a

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list of all physical damages or defects charged to the previous tenant's security deposit, regardless of whether those damages or defects have been repaired, as well as provide the opportunity to view, within 30 days of the receipt of the notice, the photographs maintained by the landlord under Sec. 32.07(14)(a) documenting such physical damages or defects. The landlord shall provide the list and make the photographs available for viewing by the tenant within 30 days after the landlord receives the request, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may explain that some or all of the listed damages or defects have been repaired, if that is the case. The landlord need not disclose the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit.

(d) All check-out forms shall be comparable to the check-in forms. All check-out forms shall provide an obvious place for the tenant's forwarding address. Check-out forms shall also provide a space for the rent credit due and a space for the landlord's explanation for any portion of the rent credit deemed not due.

(e) Acknowledgement, if any, of receipt of the check-in and check-out forms or combined check-in/check-out form shall be included in a written document entitled "NON-STANDARD RENTAL PROVISIONS", which the landlord provides to the tenant.

(f) The landlord has the burden of proving compliance with all provisions and procedures set forth in this subsection or forfeits all right to any portion of the security deposit."

2. Subsection (7) of Section 32.07 entitled "Security Deposit Refund Procedures" of the Madison General Ordinances is hereby amended to read as follows:

"(7) Every landlord who accepts a security deposit shall, within twenty-one (21) days after a tenant surrenders the rental premises, return, in person or by mail, to the tenant at the tenant's forwarding address or at the tenant's last known address if a forwarding address is not provided to the landlord, either:

(a) The full security deposit; or

(b) A written, itemized statement showing the specific reason or reasons for the withholding of the deposit or any portion of the deposit, applicable receipts and estimates including the necessary hours and the wage rate for the work done or to be done any rent credit due, and a notice that the tenant will be provided a copy of the photographs documenting any damage, waste or neglect of the premises being charged to the tenant if requested by the tenant in writing within 30 days of receipt of the notice. Upon receipt of a timely request, the landlord has 30 days to provide the tenant a copy of the photographs maintained by the landlord under Sec. 32.07(14)(a) documenting the damage, waste or neglect. The landlord shall not be held responsible for the inability of the Post Office to complete delivery of a first class letter."

3. Subsection (9) of Section 32.07 entitled "Security Deposit Refund Procedures" of the Madison General Ordinances is hereby amended to read as follows:

"(9) If the landlord fails to provide a written statement within the prescribed period in accordance with Sec. 32.07(8~~7~~)(b), or fails to provide the tenant a copy of the photographs requested under Sec. 32.07(7)(b), or fails to comply with the security deposit limits in Sec. 32.07(2)(b) or fails to comply with the rent credit provisions of Sec. 32.07(3), or fails to comply with or otherwise violates Sec. 32.07(14) and (15) concerning the reasons for which security deposits may be withheld, the landlord forfeits all rights to any portion of the deposit."

4. Subsection (14) of Section 32.07 entitled "Security Deposit Refund Procedures" is hereby amended to read as follows:

"(14) A landlord may withhold from a tenant's security deposit only for the following:

(a) Tenant damage, waste or neglect of the premises, provided that the landlord documents such damage, waste or neglect of the premises with photographic evidence (in any form, so long as such damage, waste or neglect can be photographed), a copy of which must be provided to the tenant upon a timely request being made under Section 32.07(7)(b) and which photographs must be retained by the landlord for either 90 days from providing the tenant notice under Sec. 32.07(7)(b) of partial or full withholding of the security deposit, or 90 days from the start of a

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new tenancy for the premises, whichever is later. The failure of a landlord to take, provide, or retain a photograph documenting a specific claim of damage, waste or neglect that was able to be photographed only precludes the landlord from withholding from the tenant's security deposit for the specific claim in question, and does not otherwise affect the landlord's ability to recover for such damage, waste or neglect. However, if the tenant accepts responsibility for a specific claim of damage, waste or neglect, in writing on the checkout form, no photograph will be required to be taken, provided, or retained of the specific item."