

2021 SENATE POLITICAL SUBDIVISIONS

SB 2194

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

SB 2194
1/28/2021

A BILL for an Act to amend and reenact subsection 3 of section 47-16-07.1 and section 47-16-07.2 of the North Dakota Century Code, relating to statements of rental property condition and the application of security deposit toward damages, cleaning, and unpaid rent upon termination of a rental agreement.

Chairman Burckhard opened the hearing on SB 2194 at 9:00 a.m.
Members present: Burckhard, Anderson, Lee, Larson, Oban, Heitkamp.
Senator Kannianen is present but introducing bills in another committee.

Discussion Topics:

- Tenant damages
- Time specific damage amounts
- Delivery of damages information

[9:01] Senator Howard Anderson, District 8. Introduced SB 2194.

[9:03] Jerry Saude, Rural Bismarck Citizen. Provided testimony #3944 in favor.

[9:20] Jeremy Petron, Lobbyist #209, ND Apartment Association. Provided testimony #4032 in opposition.

[9:44] Senator D. Larson moves to **ADOPT AMENDMENT** LC 21.0743.01001
Senator Heitkamp seconded.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 7-0-0

[9:46] Senator Anderson moves **DO PASS, AS AMENDED.**
Senator D. Larson seconded.

Senators	Vote
Senator Randy A. Burckhard	N
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	N
Senator Diane Larson	N
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 4-3-0

Senator Anderson will carry SB 2194.

Additional written testimony: (1)

Larry J. Richards, Attorney, Grand Forks Citizen. Provided neutral testimony #3309

Chairman Burckhard closed the hearing on SB 2194 at 9:38 a.m.
Patricia Lahr, Committee Clerk

January 28, 2021

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1128
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PROPOSED AMENDMENTS TO SENATE BILL NO. 2194

Page 1, line 21, remove "or"

Page 1, line 23, after "lessee" insert "; or

- (3) Itemized by the lessor and delivered or mailed to the lessee if the final walk through inspection uncovers substantial damage caused by the lessee, lessee's pet or animal, or the lessee's quest which would reasonably require a contractor's estimate"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2194: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2194 was placed on the Sixth order on the calendar.

Page 1, line 21, remove "or"

Page 1, line 23, after "lessee" insert "; or"

- (3) Itemized by the lessor and delivered or mailed to the lessee if the final walk through inspection uncovers substantial damage caused by the lessee, lessee's pet or animal, or the lessee's guest which would reasonably require a contractor's estimate"

Renumber accordingly

Testimony in support of SB 2194

Senate Committee on Political Subdivisions

January 28, 2021 9 AM Hearing Sakakawea Room

Good Morning Chairman Burckhard and members of this committee. My name is Jerry Saude of rural Bismarck. I am requesting a DO PASS endorsement from this committee. By doing so you will help bring even more transparency to the Landlord-Tenant relations in our state.

My youngest son is a student at NDSU and in the summer of 2019, rented an apartment with his cousin, my nephew, Aug 2019 to May 31, 2020. They vacated and cleaned the apartment and hired the preferred carpet cleaner in those last days of May 2020. Their appointment for a final walk-through was 11 AM on Sunday May 31st. My son returned to Bismarck on Thursday May 28th, after they completed the removal of all personal items and cleaning. The carpets were cleaned on Friday May 29th. My nephew's family lives in Fargo and he was moving home for the summer. He was elected to return the keys and be present for the required walk-through. Two employees of the property managers/landlords were present. They took pictures of each room in the 2-bedroom apartment, collected keys and garage door openers, and had my nephew initial on a tablet. They noted things such as: burnt out light bulbs, dead battery for a smoke detector, nail holes from pictures, mopboard with paint scratches, dent in fridge door, scratch on glass cooktop, air-void pinhole in acrylic tub. The agent thanked my nephew and told him, "you should be fine" and everyone left.

I called him that afternoon and asked how did it go and when could I expect my \$900 deposit back? He said it went well and they did not say anything about the deposit. About 3 weeks later I called the landlord office and inquired. I was refused as my name was not on the lease. I explained I had paid the initial \$1800 and ½ of each month's rent and pointed

out that I was advised, at the initial showing, to not put my name on the lease, as I was not living there.

The boys did get a notice within the statutory 30 days with a demand for \$1223 (\$900+\$323) for damages. There were letters back and forth about the “damages” up and through a small claims action in November 2020. With no tenant photos, but only the landlord’s and only a signature of acceptance on my nephews part, our case was weak. I was removed “with prejudice” at the beginning of the ZOOM case by the judicial referee in Cass County. Many lessons were learned by these first-time tenants and myself as a parent paying for college expenses.

The current statute allows a landlord a broad definition of damages. That is OK. I am a staunch defender of property rights.

My issue is the surprise factor, when presented with the scope of the damages after the fact. Had my nephew been given an estimate of the intended charges, there would have been greater transparency to this event. I presume that Landlords know approximately what property repairs cost. I would also presume they are experienced enough to know which repairs they will allow as statutory “reasonable wear and tear” and which ones they will recoup from the deposit.

Section 1. Asks for the landlord/agent to estimate the cost of repairs when they note them on their checkout form. If they have a checkout form, they are requiring the tenant to sign it now, as was our experience. The only change is affixing an estimated dollar amount to the damage when both parties are present. If the tenant fails to show up, they still itemize their claim against the deposit and still have 30 days for a final accounting. And they still have 30 days to make the necessary repairs and deduct from the security deposit. That does not change.

Section 2. adds language to be consistent with check in and check out.

In closing, the intent is that this amendment to the current statute will further communications between lessors and lessees and put more transparency into this statute that fundamentally protects private property owners and their property.

Thank you, Mr Chairman, members of the committee and especially to you Senator Anderson for helping me bring this to the public forum today.

Does anyone have any questions for me?

January 28, 2021

Jeremy Petron
Lobbyist # 209
North Dakota Apartment Association

Re: Senate Bill 2194

We (North Dakota Apartment Association), are opposed to SB 2194.

We understand the well-intended premise to limit potential resident disputes in the move-out process, but there are unintended consequences in the details. On Page 1, Line 19, 'Estimated by the lessor and immediately provided to the lessee' works pretty smooth if there are limited and normal move-out items to address, such as minimal extra cleaning and carpet cleaning. However, if there is extensive damage that would require a contractor's estimate, it could be unreasonable for a property owner or property manager to give an accurate estimate immediately on-the-spot. And at times, there can be hidden damages that are masked by the vacating resident at the time of a move-out walk-through, such as odors of pet-urine damage that don't resurface until days later.

On Page 2, Line 17, the term 'must' instead of 'shall' could be used as a technicality by a vacating tenant who may have caused substantial damage and then refuses to sign the move out statement. Do they get a pass on any liability for damages simply by refusing to sign the move out condition statement because it 'must' be signed by the landlord and tenant?

We think the current statute is fine left alone, but if this Committee feels this Bill warrants consideration, we would urge an amendment to the Bill to clarify these scenarios.

Our recommendation would be to add the following language after Line 23 on Page 1: (3) or Itemized by the lessor and delivered or mailed to the lessee if the final walkthrough inspection uncovers substantial damage caused by the lessee, lessee's pet or animal, or the lessee's guest, that would reasonably require a contractor's estimate.

We also urge to strike the word 'must' from Page 2, Line 17, and reinstate the word 'shall', in both sentences.

LARRY J. RICHARDS

#3309

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January 25, 2021

To: Senator Randy Burckhard
Chairman, North Dakota Senate Committee on
Political Subdivisions

From: Larry Richards, Attorney at Law

RE: Testimony Regarding Senate Bill No. 2194—Security Deposits

I have reviewed this proposed bill and wanted to propose an idea.

Let me start by saying that as an attorney a great deal of my day-to-day work involves Landlord/Tenant Law, so I commonly deal with Security Deposit issues. This being said I will say that I really do not oppose the proposed legislation. However, if we are amending this statute, I would suggest we also deal with another problem with it...this being the requirement that the landlord need to give the itemized statement to the tenant 30 days after they vacate.

Unfortunately, any homeowner knows that getting out multiple carpenters, electricians, plumbers, or carpet layers out to give estimates within a one month period is now quite difficult. This same rule applies to landlords. Simply put, many cannot meet the thirty day requirement because of this. As a result, I have seen many tenants claim that because a landlord is one or two days late in getting them the itemized bill then they say this means that they should be entitled to their entire deposit back. I have even seen this claimed during the course of this Pandemic! I would suggest that the 30 day requirement be extended to 45 days or that the phrase "Except for good cause shown" be added to the front of the very first line of your new subpart 3(c) of NDCC 47-16-07.1

Finally, please note that, while I am an attorney, I present this testimony in my individual capacity. I do not present this testimony on behalf on any individual, corporation or other entity. I have not and will not receive any compensation for the presentation of this testimony.

Thank you for your time and consideration as well as your service to the State of North Dakota

Sincerely,



Larry J. Richards
Attorney at Law