

SUBJECT: Modifying criteria for allowable late fees for tenant's failure to pay rent

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Martinez Fischer, Darby, Landgraf, Parker, Patterson, Shine

3 nays — Beckley, Collier, Moody

SENATE VOTE: On final passage, April 17 — 26-5 (Miles, Watson, West, Whitmire, Zaffirini)

WITNESSES: No public hearing

BACKGROUND: Property Code sec. 92.019 prohibits a residential landlord from charging a tenant a late fee for failing to pay rent unless:

- notice of the fee is included in a written lease;
- the fee is a reasonable estimate of uncertain damages to the landlord that are incapable of precise calculation and result from late payment of rent; and
- the rent has remained unpaid one full day after the date the rent was originally due.

Concerns have been raised that current law governing how much a landlord may charge a tenant in late fees is ambiguous.

DIGEST: SB 1414 would establish criteria for determining whether a late fee collected from a tenant for failure to pay rent on time was reasonable and make other changes to Property Code sec. 92.019.

The bill would prohibit a landlord from collecting, rather than charging, a late fee from a tenant for failure to pay any portion of the tenant's rent unless the fee was reasonable and any portion of the tenant's rent had remained unpaid two full days after the date the rent was originally due.

A late fee would be considered reasonable if it was less than:

- 12 percent of the amount of rent due for the rental period under the lease for a dwelling located in a structure with no more than four dwelling units; or
- 10 percent of the amount of rent due for the rental period under the lease for a dwelling in structure with more than four units.

A late fee also would be considered reasonable if it was more than the applicable amount described above but not more than uncertain damages to the landlord related to the late payment of rent, including direct or indirect expenses, direct or indirect costs, or overhead associated with the collection of the late payment.

A landlord who violated the bill's provisions would be liable to the tenant for an amount equal to the sum of \$100, three times the amount of the late fee collected, rather than charged, and the tenant's reasonable attorney's fees.

SB 1414 would authorize a tenant to request that the landlord provide a written statement of whether the tenant owed a late fee and, if so, the amount of the fee. The landlord could provide the statement by any established means regularly used for written communication with the tenant. The landlord's failure to respond would not affect the tenant's liability for any late fee owed to the landlord.

The bill would take effect September 1, 2019, and would apply only to a late fee under a lease entered into or renewed on or after that date.