

NEW TENANT SCREENING AND CRIMINAL BACKGROUND PROTECTIONS FOR TENANTS

SENATE BILL 291 (2021 LEGISLATIVE SESSION)

Effective January 1, 2022

As of January 1, 2022, the provisions of SB 291 (2021) regarding tenant applicant screening procedures and protections against discrimination on the basis of criminal history are in effect and have been codified in ORS 90.295, 90.303 and 90.304. This new state law applies to residential tenancies statewide. The City of Portland has greater protections for tenants than are available under state law. Tenants in Portland should look to the [FAIR Ordinance](#) for information about their rights.

Below is a summary of the statewide screening law in effect as of 1/1/22:

Is there a limit to how much landlords can charge for screening tenants?

Yes, there is a limit.

An applicant screening charge must not be greater than:

- The landlord's average actual cost of screening applicants; or
- The customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening.

“Actual costs” may include the cost of using a tenant screening company or a consumer credit reporting agency and the reasonable value of any time spent by the landlord or the landlord's agents in otherwise obtaining information on applicants.

Do landlords have to explain their screening policies to tenants?

Yes. Landlords must give tenants notice of their policies if they want to charge tenants money for screening. A landlord may not require payment of an applicant screening charge unless prior to accepting payment, the landlord adopts written screening criteria and gives written notice to the applicant of:

- The screening criteria and the amount of the screening charge;
- The process that the landlord will follow in screening, including whether the landlord uses a screening company, credit reports, public records or criminal records or will contact employers, landlords or other references;
- The applicant's rights to dispute the accuracy of any information provided by a screening company or credit reporting agency;
- A right to appeal a negative determination, if any right to appeal exists;
- Any nondiscrimination policy as required by federal, state or local law plus any policy of the landlord, including that a landlord may not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income;
- The amount of rent the landlord will charge and the deposits the landlord will require;
- Whether the landlord requires tenants to maintain renter's liability insurance and, if so, the amount of insurance required;
- An estimate of the approximate number of rental units that are available to rent, along with the approximate number of applications already under consideration for those units.

Can tenants get their money back if landlord never screens?

Yes. A landlord must refund the screening charge within a reasonable time if the landlord:

- Fills the unit before screening the applicant; or
- Does not screen the applicant for any reason.

An applicant may not recover a screening charge if the applicant refuses an offer from the landlord to rent the dwelling unit.

Are there limits on what landlords can consider in tenant screening?

Yes. Some information about tenants is off-limits for landlords when considering whether to rent to them.

- Medical Marijuana Cards: A landlord may not consider the possession of a medical marijuana card or status as a medical marijuana patient.
- Prior Evictions: Prior eviction court filing records cannot be considered if:
 - The case was dismissed or resulted in a judgment for the tenant;
 - The judgment is 5 or more years old; or
 - The judgment is for an eviction where the basis of the eviction occurred between April 1, 2020, and February 28, 2022 (e.g., the lease violation took place in this time period, even if the judgment was entered outside the timeframe).
- Criminal History:
 - Prior Convictions: Criminal convictions or pending charges can only be considered for conduct that is presently illegal in this state and that is:
 - A person crime;
 - A sex offense;
 - A crime involving financial fraud, including identity theft and forgery; or
 - Any other crime if the conduct for which the applicant was convicted or charged is of a nature that would adversely affect property of the landlord or a tenant or the health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent.
 - Prior Arrests: Previous arrests may only be considered if the arrest resulted in criminal charges of a crime for which a conviction may be considered as described above, *and*:
 - The applicant was convicted of the charges; *or*
 - The charges are pending and the applicant is not presently participating in a diversion, conditional discharge or deferral of judgment program on the charges.

Can landlords automatically deny a tenant for something on their criminal record?

No. Landlords cannot automatically deny a tenant for something on their criminal record. Before denying an application on the basis of criminal history, a landlord must:

- Provide an opportunity for the applicant to submit supplemental evidence to explain, justify or negate the relevance of potentially negative information;
- Conduct an individualized assessment of the applicant, including any supplemental evidence, taking into consideration:
 - The nature and severity of the incidents that would lead to a denial;

- The number and type of incidents;
- The time that has elapsed since the date the incidents occurred; and
- The age of the individual at the time the incidents occurred.

Is there a deadline for landlords to get back to tenants about their rental application?

Yes. Landlords must provide applicants with a written statement of one or more reasons for the denial under the landlord's screening or admissions criteria within 14 days of the denial.

A statement of denial must include:

- The name and address of any screening or consumer credit reporting agencies that provided a report upon which the denial is based;
- A landlord doesn't need to disclose the results of an applicant screening report if that 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.
- Any supplemental evidence provided by the applicant that the landlord considered and an explanation of the reasons that the supplemental evidence did not adequately compensate for the factors that informed the landlord's decision to reject the application;
- A right of the applicant to appeal the determination, if any right to appeal exists.

Is there a penalty against landlords who don't follow these laws?

Yes. The penalties for landlord violations are as follows:

Screening Charges: The applicant may recover twice the amount of any screening charge paid, plus \$150, prevailing party fee and attorney fees and costs, if the landlord violates the screening provisions.

Individualized Assessment of Criminal History: The applicant may recover \$100, plus prevailing party fee, attorney fees and costs, if a landlord violates the individualized assessment protections or the denial process.