

**Date:** September 11, 2019

**To:** Councilmember Greg Landsman  
**From:** Paula Boggs Muething, City Solicitor *PBM/ANL*  
**Subject: Ordinance – Modifying Section 871-9, “Obligations of Landlords and Tenants”**

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Transmitted herewith is an ordinance captioned as follows:

**MODIFYING** the provisions of Chapter 871, “Landlord-Tenant Relationships,” of Title VIII, “Business Regulations,” of the Cincinnati Municipal Code, by **AMENDING** Section 871-9, “Obligations of Landlords and Tenants,” to regulate late fees charged to residential tenants for the late payment of rent.

PBM/VT/(jlk)  
Attachment  
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# City of Cincinnati

VT PBM/RLB

## An Ordinance No. \_\_\_\_\_ - 2019

**MODIFYING** the provisions of Chapter 871, "Landlord-Tenant Relationships," of Title VIII, "Business Regulations," of the Cincinnati Municipal Code, by **AMENDING** Section 871-9, "Obligations of Landlords and Tenants," to regulate late fees charged to residential tenants for the late payment of rent.

WHEREAS, excessive late fees substantially burden residential tenants, especially tenants with limited and fixed incomes; do not protect the legitimate financial interest of landlords; and lead to unnecessary evictions; and

WHEREAS, the Ohio Revised Code does not regulate fees charged by landlords to residential tenants for late payment of rent; and

WHEREAS, charging excessive late fees that go beyond the administrative cost of a landlord's acceptance of late rent is an unconscionable penalty on residential tenants; now, therefore;

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 871-9, "Obligations of Landlords and Tenants," of Chapter 871, "Landlord-Tenant Relationships," of Title VIII, "Business Regulations," of the Cincinnati Municipal Code is hereby amended to read as follows:

### **Sec. 871-9. – Obligations of Landlords and Tenants.**

- (a) In every rental agreement there shall be imposed upon the landlord the following obligations to the tenant:
- (1) The landlord shall conform to the "Obligations of Landlords" as set out in Section 5321.04 of the Ohio Revised Code.
  - (2) The landlord shall maintain the rental unit in substantial compliance with the provisions applicable to landlords in the Cincinnati - Ohio Basic Building Code, the Cincinnati Fire Prevention Code, and the regulations of the board of health;
  - (3) So long as the tenant continues to meet ~~his~~ their obligation under paragraph 871-9(b)(2), no landlord shall raise the agreed rent for the rental unit above the rent charged for comparable rental units, or otherwise increase the obligations

of the tenant in any way, or terminate the tenancy, or bring an action for forcible entry and detainer, in retaliation for the tenant's availing ~~himself~~ themselves of any right or remedy under this chapter or because:

- (A) The tenant has complained in good faith to the landlord or ~~his~~ their agent or employees of conditions in or affecting the tenant's rental unit which ~~he~~ the tenant believes may constitute a violation of the Cincinnati - Ohio Basic Building Code, the Fire Prevention Code, the regulations of the board of health or any other law.
  - (B) The tenant has complained in good faith to a body charged with the enforcement of the Cincinnati - Ohio Basic Building Code, the Fire Prevention Code, or the regulations of the board of health, or any other law of a condition in or affecting the rental unit which the tenant believes may constitute a violation of such codes, regulations or other laws; or
  - (C) In response to a complaint of the tenant, the body charged with enforcement of the Cincinnati - Ohio Basic Building Code, the Fire Prevention Code, the regulations of the board of health or any other law has served a notice or complaint of a violation on the landlord, agents, or employees of the landlord.
- (4) Within six months after the occurrence of any event referred to in this paragraph 871-9(a)(3), an action for forcible entry and detainer shall be presumed to be in retaliation for that event and the landlord shall not be entitled to recover possession unless landlord proves by a preponderance of the evidence that:
- (A) The tenant is committing waste, creating a nuisance, using the rental unit for an illegal purpose or for other than living or dwelling purposes, or substantially impairing the quiet enjoyment of the property by the other occupants of the property; or
  - (B) The landlord desires possession of the rental unit for immediate use as landlord's own abode; or
  - (C) The rental unit must be vacated in order to make necessary repairs; or
  - (D) The landlord plans permanently and immediately to remove the rental unit from the rental market.
- (5) The obligations of a tenant under any agreement or under this chapter shall not be modified by this section, but failure of the tenant to perform any obligations other than those specified in paragraphs 871-9(b)(2) and 871-9(a)(4) shall not be grounds for eviction.

(6) Prior to entry into the rental agreement and thereafter upon request by the tenant, the landlord shall provide to the tenant:

(A) A copy of all rules and regulations concerning the use, occupancy and maintenance of the rental unit, appurtenances thereto, and the property of which the rental unit is a part, and

(B) A copy of the "Notice to tenants" set out in paragraph 871-11(a) and shall obtain from the tenant a written acknowledgement by the tenant of receipt of the rules and regulations and the "Notice to tenants" set out in paragraph 871-11(a).

(C) A complete copy of the written rental agreement, if any.

(7) The landlord shall provide the tenant with a signed receipt for the security deposit and all rental payments except for payments made by personal check of the tenant, at the time the security deposit or rental payments are made.

(8) If the rental agreement includes a provision that authorizes the landlord to assess the tenant a fee for late payment of the monthly rent, the total amount of that late payment fee for any month may not exceed fifty dollars (\$50.00) or five percent (5%) of the monthly contract rent, whichever amount is greater.

(9) The landlord shall not:

(A) Charge interest on a late fee;

(B) Impose a late fee more than one time on a tenant's single late payment of rent; or

(C) Impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, rather than the tenant, is responsible for paying.

(b) In every rental agreement there shall be imposed upon the tenant the following obligations to the landlord:

(1) The tenant shall conform to the "Responsibilities of occupants" as set out in the Cincinnati - Ohio Basic Building Code and to the "Obligations of Tenant" as set out in Section 5321-05 of the Ohio Revised Code.

(2) The tenant shall tender the agreed rent at the agreed time and place, and in the agreed manner except:

(A) When the tenant has made any payment to a utility supplier for utility services to the rental unit which, by the rental agreement, is the obligation

of the landlord, the tenant may deduct the amount of such payments from the rent.

- (B) When the landlord has failed to comply with an order of state or local building, health, or fire officials within the time period specified in the initial order to the landlord, the tenant may make or cause to be made necessary repairs and deduct the reasonable cost thereof, including the cost of all necessary permits, from the rent due and owing in the next two consecutive 30 day rental periods. No tenant shall deduct more than two months' rent for the cost of repairs in any six-month period. No tenant shall undertake repairs without first obtaining the necessary permits from the Department of Buildings and Inspections. All repairs shall be made in compliance with the provisions of the Cincinnati - Ohio Basic Building Code.
  - (C) Whenever the building or a portion of the building of which the rental unit is a part is ordered vacated by governmental authority, the tenant shall vacate the rental unit and the duty of the tenant to pay rent shall be completely abated.
- (3) The tenant shall obey all rules and regulations established by the landlord concerning the use, occupation, and maintenance of the rental unit, appurtenances thereto, and the property of which the unit is a part, if:
- (A) The tenant has acknowledged receipt in writing of a copy of the rules and regulations prior to entry into the rental agreement, or has consented in writing to rules and regulations promulgated after commencement of the rental agreement, and
  - (B) The rules and regulations are reasonably related to the convenience, safety or welfare of the tenants of the property, or to the preservation of the property, or to the fair distribution of services and facilities held out for the tenants generally, and
  - (C) The rules and regulations are sufficiently explicit in their prohibition, direction, or limitation of the tenant's conduct to inform tenant of what must or must not be done to comply.
- (c) Except as specifically provided in Section 871-9 or any other section of this chapter, all obligations of landlords and tenants under this chapter shall be interpreted as independent obligations and the duty of a tenant or landlord to meet the obligations under this chapter shall not be conditioned upon the performance of obligations by the other party to the rental agreement.

Section 2. That existing Section 871-9, "Obligations of Landlords and Tenants" of Chapter 871, "Landlord-Tenant Relationships" of the Cincinnati Municipal Code is hereby repealed.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 and 2 hereof.

Section 4. That this ordinance shall take effect and be in force from and after 90 days from its passage.

Passed: \_\_\_\_\_, 2019

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
New language underscored. Deleted language indicated by strikethrough.