



# TENANT SCREENING FEES

Hawaii Revised Statutes § 521-46  
FAQs Regarding Application Screening Fees



# GENERAL QUESTIONS

## What is the purpose of this law?

In 2023, the Legislature considered a bill to impose a cap on the costs of a tenant screening fee. During the session, the Legislature removed the cap on costs. The law addresses the problem of landlords charging applicants more than the actual cost of a tenant screening fee to obtain information about the applicant. Under the new law, charges that exceed the costs of obtaining information about the applicant must be returned to the applicant.

## When does the new law take effect?

The provision authorizing landlords and their agents to charge a tenant screening fee to cover the costs of obtaining information about an applicant takes effect on May 1, 2024.

## What is a landlord?

“Landlord” means the owner, lessor, sublessor, assigns or successors in interest of the dwelling unit or the building of which it is a part and in addition means any agent of the landlord.” HRS § 521-8.

## Is the landlord or landlord’s agent required to charge a tenant screening fee?

No, the new law does not require a landlord to charge a tenant screening fee to any person who is applying to rent their residential property. Many landlords consider the costs of tenant screening to be costs that will be paid for out of the rent collected on the property. If you are a landlord and are considering renting out your property, you may wish to review the rental application forms used by your real estate licensee. If any provision of a contract between you and your real estate licensee requires you to charge a tenant screening fee, that provision may be unenforceable or void as a matter of public policy.

## Who can be charged a tenant screening fee?

The new law allows tenant screening fees to be charged to an applicant who is eighteen years of age or older or an emancipated minor.

## What is an applicant?

The law does not define who is, and who is not, an applicant. One commonly cited legal reference defines an applicant as “someone who requests something; a petitioner, such as a person who applies for letters of administration.” Applicant, Black’s Law Dictionary (11th ed. 2019). Relying on that definition, an applicant for rental housing may be an individual who submits an application for rental housing.

## What is an emancipated minor?

State law provides two different definitions for the term emancipated minor. The first is “a person under eighteen years of age who is totally self-supporting.” HRS § 327E-2. The second is “an individual less than eighteen years of age who is deemed to be emancipated pursuant to section 577-25,” which provides that a minor who has been lawfully married “shall be deemed to be emancipated.” HRS § 327G-2. One commonly cited legal reference defines an emancipated minor as “a minor who is self-supporting and independent of parental control, usu. as a result of a court order.” Minor, -emancipated, Black’s Law Dictionary (11th ed. 2019).

# FOR PERSONS APPLYING TO RENT

**I've applied to rent multiple housing units, and different landlords have charged me different amounts for a tenant screening fee. How much does it cost landlords to screen prospective tenants? Under the new law, will there be a set amount that landlords can charge to screen an applicant? Under the new law, is there a cap on the amount a landlord can charge? If not, why isn't there a cap?**

The costs of commercially available criminal background checks, credit reports, and tenant screening services vary depending on the provider. The law authorizes the landlord or landlord's agent to charge tenant screening fees to cover the costs of obtaining information about the applicant. Although the new law does not set a fixed amount (or a maximum dollar amount) that a landlord or their agent can charge an applicant as a tenant screening fee, the landlord or their agent must return to the applicant any amounts collected from the applicant that exceed the costs to cover obtaining information about the applicant. Imposing a cap could be addressed by future legislation. Arguably if there was a cap, landlords would be more inclined to find a cheaper screener, so to remain competitive, all screeners may lower their prices.

**Who can be charged a tenant screening fee? I'm looking for a place to live for me, my partner, and two children ages 14 and 16. Last year, I was charged four separate fees at each place I applied to rent. Will this be allowed under the new law?**

Only an applicant who is eighteen years of age or older, or an emancipated minor, may be charged a tenant screening fee. Since your children ages 14 and 16 are not eighteen years of age or older, and it is unlikely that they are emancipated minors, a landlord or their agent cannot charge a tenant screening fee for them.

Since the new law does not define who is, and who is not, an applicant, it is unclear whether a landlord or landlord's agent will be allowed to charge two separate fees, one for you and one for your partner. If your partner is an "applicant," the tenant screening fee may be charged. If, on the other hand, your partner is not an "applicant," and a landlord or landlord's agent charges a tenant screening fee to your partner, they may be acting in violation of the new law. The question who is, and who is not, an applicant could be addressed by future legislation.

**The landlord's screening charges include fees for the applicant's credit report. I'm looking for a place to live for me, my partner, and two children ages 14 and 16. My partner and two children do not work, and I have sufficient income to pay the entire rent. I can understand why co-applicants who intend to pay rent may be subject to screening, but can the landlord assess a fee for credit reports for individuals who are not contributing to the payment of rent?**

The current law makes no distinction among applicants based upon whether or not they are working or expecting to contribute toward the monthly rent payment. Defining the term "applicant," and making clear distinctions between those who do and do not pay rent, could be addressed by future legislation, and thereby spare non-paying applicants from fees charged for their credit reports.

**I've applied to multiple landlords or property management companies for rental housing, and I've paid a tenant screening fee to each one. Can I request a receipt and/or information on how the fee was used?**

Landlords or their agents are required to provide a receipt for the payment of the tenant screening fee and a breakdown of the costs that were covered by the tenant screening fee, if you make a request. If the receipt indicates that the cost of the tenant screening fee was used to obtain information other than the information authorized by law, then the landlord and their agent risk violating the new law.

## **I paid \$50 for a tenant screening fee and the receipt I received from the landlord shows that the landlord's costs of obtaining information were only \$35. Can I get any portion of my tenant screening fee back?**

Yes. The landlord or the landlord's agent must return any amount of the tenant screening fee that is not used for the purposes authorized by this section to the applicant within thirty days after the landlord has submitted the screening request. Landlords or their agents who fail to make required refunds risk violating the law. A person who has not received a required refund may sue the landlord for the return of the refund. In your case, since you paid \$50 and the landlord used only \$35 to obtain information about you, the landlord or their agent must return \$15 to you within thirty days after the landlord or their agent submitted the screening request.

## **I'm an applicant or a current tenant, and I believe that the landlord or the landlord's agent violated the law. What can I do about it?**

You may have a legal claim against the landlord and the landlord's agent. You may wish to consult an attorney about your legal rights or contact the Judiciary's Self-Help Center for assistance in protecting your own legal rights. A list of resources is available [here](#), including the contact information for the Office of Consumer Protection's Residential Landlord-Tenant Code Information Center. You may also file a complaint with OCP [here](#) or with the State Attorney General [here](#). If you meet certain eligibility requirements, you may qualify for assistance from the Legal Aid Society of Hawaii. See [here](#) for more information.

## **I'm currently looking for a place to live. I paid for a copy of my credit report from a credit reporting agency so that I would have it on hand to submit to landlords and their agents when they asked about my credit report. I offered it to the property management company and the employee refused to accept it. They told me I still need to pay the tenant screening fee, even though the screening fee is going to be used to pay for another credit report. I already have a current credit report! What can I do?**

Landlords and their agents are not required by law to accept your current credit report in lieu of acquiring their own credit report about you. Your prospective landlord may charge you a tenant screening fee to obtain information about you, including a credit report from a credit reporting agency.

## **I have submitted applications to multiple different landlords within the last 30 days, why can't the landlords use the same screening report? I've applied to multiple landlords or property management companies for rental housing, and I've paid a tenant screening fee to each one. Why is a screening report not good for 30 or 60 days if I can confirm my information has not changed?**

In California, Maryland, and Washington, landlords may choose to accept a reusable tenant screening report, sometimes referred to as a "portable" tenant screening report. The reusable tenant screening report is paid for by the prospective tenant and transmitted directly from the tenant screening company to the landlord or their agent. Some reusable screening reports allow reports to be transmitted to an unlimited number of landlords for up to thirty days from the completion date. Portable tenant screening reports could be addressed by future legislation.

## **I applied for a rental unit and paid a tenant screening fee. I found out that the fee was used to purchase a background check about me. I asked the property management agency for a copy of the background check, but they refused. Is there anything that I can do?**

A landlord or their agent may, but does not have to, provide you a copy of your credit report that you paid for with your tenant screening fee. In California, landlords are required to provide applicants with a copy of the applicant's background check, if the applicant asks for it. Providing applicants with background checks could be addressed by future legislation.

## **What do landlords do with all the screening reports they collect? Are they required to destroy them in the event I am rejected as a tenant?**

Existing state and federal laws require that any business that possesses personal information of a resident of Hawaii, or uses a consumer report for a business purpose, must protect against unauthorized access to or use of the information. Businesses who violate state laws requiring the protection against unauthorized access may be liable for a penalty of not more than \$2,500 for each violation in an action brought by the State Attorney General or the Executive Director of the Office of Consumer Protection. See HRS §§ 487N-3(a), 487R-3(a). The Federal Trade Commission enforces the Disposal Rule, which similarly provides for penalties against businesses who violate rules on safeguarding and disposing of protected information. More information on the Disposal Rule is available [here](#).

## **The landlord explained to me that the tenant screening fee is used to pay a tenant screening company. Is this allowed?**

Many landlords and landlords' agents use tenant screening services to screen rental applications. The law neither authorizes nor prohibits use of tenant screening fees for the purchase of services provided by a tenant screening company. If the landlord claims that they cannot provide you a breakdown of the costs because the services are being provided by a tenant screening company, however, the landlord may be violating the law. You may wish to consult an attorney or legal services organization about your rights. See [here](#) for a list of helpful resources, including a link to the [Legal Aid Society of Hawaii](#).

## **I think my landlord is dishonest after discovering I was charged \$35 when the screening report only cost \$25. When I raised the issue, my landlord gave me \$10 and said it was an honest mistake, but I think it was intentional. If a landlord only has to refund money when caught overcharging applicants, what deters dishonest landlords from overcharging everyone?**

The law currently does not impose a penalty on a landlord who refunds an applicant who was improperly overcharged. This is another issue that could be addressed by future legislation.

# FOR LANDLORDS

**I'm a landlord and my property management company subscribes to a tenant screening service to screen prospective tenants. Since the tenant screening service is paid for by the property management company, I don't know how much it costs and can't determine whether the tenant screening fees exceed the costs of the tenant screening service on a per person basis. Do I have any obligation to find out and provide that information to applicants?**

The landlord or the landlord's agent is required to give the applicant a breakdown of the costs covered by the tenant screening fee if the applicant requests one.

A landlord and their agent may agree on any arrangement not otherwise prohibited by law:

- For providing each applicant with a receipt and a breakdown of the costs of covering information about the applicant; and
- For the return of any amounts of the tenant screening fee not used for the purposes authorized by the new law within thirty days after a screening request is submitted.

If you are a landlord, you may wish to consult an attorney regarding your legal duties, obligations, and liabilities, particularly as it pertains to what you, or your agent, is responsible for. Resources for landlords are available [here](#).

**My property management company tells me that the tenant screening service won't provide a per person breakdown of costs covered by the tenant screening fee. What should I do?**

Tenant screening services that charge for screening reports on a per application basis are widely available. Other states, such as California, Minnesota, New York, Virginia, and Wisconsin, require refunds of the amount of fees that exceed the landlord's or their agents' actual costs for tenant screening. It is the landlord or the landlord's agent's obligation to provide each applicant a breakdown of the costs covered by the tenant screening fee if the applicant requests one. The landlord's obligation is not excused by the fact that the tenant screening service won't provide a breakdown. If the landlord wants to charge a fee, the landlord is legally required to provide a breakdown.

**I'm a landlord and I subscribe to a tenant screening service. The service that I subscribe to charges me on a basis other than the number of searches that I conduct. Is this allowed?**

State law does not specifically regulate tenant screening services contracts. The landlord or the landlord's agent must provide the breakdown of the costs covered by each tenant screening fee if the applicant requests one. If a landlord or their agent gives an applicant a cost breakdown that does not clearly provide this information, they may be violating the new law or even existing state laws. You should consult an attorney if you have any questions regarding your legal duties, obligations, and liabilities.

**I'm a landlord and my property management company collects fees from each applicant before an applicant is chosen to rent the unit. I don't know if my property management company screens each applicant or chooses some applicants to screen and doesn't screen others. If my property management company doesn't screen some of the applicants, what are my obligations?**

If the landlord or landlord's agent did not submit a screening request for a specific rental applicant, then the tenant screening fee must be returned to that applicant. Failure to return the tenant screening fee could be a violation of HRS § 521-46 and other state laws pertaining to junk fees. The law does not allow one applicant's application screening fee to be used to obtain a report about another applicant.

In the normal situation where the landlord or their agent submits a screening request about the applicant, the law requires the landlord or their agent to return to the applicant any portion of the tenant screening fee not used for authorized purposes within thirty days after the landlord has submitted screening requests. If a landlord or their agent never submits a screening request for an applicant, the new law does not state when the landlord or the landlord's agent is required to return to the applicant the unused amount of the tenant screening fee.

If you are a landlord or landlord's agent, and you choose to charge tenant screening fees to some applicants, but not others, you may wish to consult an attorney or other resources regarding your compliance with state and federal civil rights and fair housing laws prohibiting discrimination. Find information about the Hawaii Civil Rights Commission [here](#), and the U.S. Department of Housing and Urban Development [here](#). Keep in mind that there are no state laws that require you to charge tenant screening fees to all applicants.