

Waitlists and Pre-Tenancy Fees for Rental Units in Ann Arbor

A Report Produced by The Waitlist Working Group of the Ann Arbor Renters Commission

Approved by the Renters Commission on April 20, 2023

Purpose

This report was commissioned by the Ann Arbor Renters Commission and written by a subgroup of its members in response to public input from city residents regarding waitlists for rental units. These waitlists were instituted in Fall 2021 by many landlords in the city and often include mandatory fees, raising concerns about their impact on tenants, particularly low-income tenants. Tenants' rights advocacy groups and local elected officials have requested the city to strengthen tenant protections by regulating these policies. In this report, we compile available information on Ann Arbor landlords' waitlist policies and discuss what we know about the impact of waitlist fees on tenants. We seek to provide these important facts to the Renters Commission and to City Council with the hope that this report can inform any future efforts to regulate waitlists and waitlist fees. We also provide two policy recommendations to City Council which we believe will address some of the problems with 8:530 of the Housing Code.

Background

In August 2021, the Ann Arbor City Council passed an [amendment](#) to the already existing Early Leasing Ordinance (ELO) ([8:530](#)) that prohibits landlords from showing apartments in person or signing new lease agreements with prospective tenants before 150 days are remaining on the current tenant's lease. For instance, for a lease that ends August 20th, 2023, the landlord cannot show or sign a lease with a prospective tenant until March 23rd, 2023. Before the ELO was amended in 2021, the older version of the ELO allowed landlords to start showing apartments, or signing subsequent leases after 70 days of the current leasing period had passed. Under the old ELO (no longer in effect) a lease that began on August 20th, would be available to lease to any tenant on October 29th of the previous year.

About one month after the new ordinance was passed, the [Washtenaw Area Apartment Association \(WA3\)](#), which represents rental property owners, [filed a lawsuit](#) against the city of Ann Arbor seeking to overturn the ordinance. The WA3 voluntarily [dismissed the lawsuit](#) in December 2021.

As the current ELO prohibits landlords with fall-to-fall leases from signing leases with new tenants until March of that same year (about 5 months before the lease would begin) many landlords began reaching out to existing tenants to request renewal commitments from them well in advance of the 150-day time point (before the end of the lease) required by the newly amended ELO. Some [landlords are offering](#) to cap the rental rate for the following year as an incentive to renew early. Other landlords began maintaining reservation lists or waitlists for prospective tenants interested in certain units. Several landlords charge a fee to be placed on the waitlist. Some landlords charge refundable fees, while others charge only nonrefundable fees. Other landlords instruct prospective tenants to sign leases before the 150-day point but wait to

countersign the lease until 150 days before the end of the current lease. All of these policies conflict with the intended effect and the spirit of the amended ELO.

Despite these loopholes, student tenants are generally supportive of the reform. When student tenants were asked in a 2023 survey from Central Student Government at the University of Michigan whether the ELO was a good step to help them as tenants 358 (56.3%) tenants answered yes, 138 (22.0%) were unsure, and 138 (21.7%) answered no. Unfortunately, we do not currently have any survey data for non-student tenants.

Waitlist Policies

Waitlist Agreements

Since September 2021, landlords have begun asking tenants to enter into verbal or written (Figures 1, 2) waitlist agreements to secure a spot on reservation lists or waitlists for occupied apartments. These agreements are also known as “holding” and “options” agreements. [Table 1](#) contains a non-exhaustive list of landlords who have been following this practice. Two sample waitlist agreement forms received by tenants since Fall 2021 are shown in [Figures 2](#) and [3](#). Tenants on the waitlist will be offered a lease in the order of when they joined; when a tenant refuses the offer, the offer goes to the next tenant(s) on the waitlist. The exact details of these waitlist agreements differ from landlord to landlord and it is not known what if any communication between landlords occurred before the adoption of these waitlist agreement systems.

Waitlist Fees

Some landlords charge current and prospective tenants a waitlist fee to join a list of prospective tenants who will be prioritized in an ordered manner to receive the opportunity to sign a lease. Landlords use different terms to describe these fees such as “no hassle fees,” “holding fees,” and “option fees.” According to our research, the dollar amount of these fees ranges from \$150 to approximately \$10,000 per rental unit (Table 1) although we do not have information on the practices of all landlords in the city.

Waitlist Fees vs. Application Fees

Waitlist and application fees can both be classified as pre-tenancy fees as they are payments required before the start of a tenancy. Landlords often charge waitlist and application fees well before the ELO’s lease signing date of 150 days before the end of the lease. Like waitlist fees, there is no limit to the number of application fees that can be accepted for a particular rental unit.

In Michigan, there is no uniform legal definition of waitlists, waitlist fees, or application fees. The city of Grand Rapids, MI, defines a rental application fee as a “fee paid by the applicant

(prospective tenant) to a rental property owner or his or her representative (hereinafter “rental property owner”), in order that the owner can screen the background of the applicant before signing the lease and before any contractual relationship is created.”

Distinguishing between application fees and waitlist fees can be difficult because they are both fees before the start of a tenancy in exchange for the opportunity to potentially sign a lease. In some instances, waitlist fees are distinct from application fees, in other instances, the two have nearly identical terms and functions. Sometimes, application fees are nonrefundable and pay for specific services like credit checks or the administrative time spent processing applications. However, in other instances, application fees are not as straightforward. Application fees sometimes cost much more than any services routinely undertaken during the application screening process. Additionally, some landlords charge partially refundable application fees. Due to the diversity of rules for application fees, we have observed that some application fees are in effect a fee to be placed on a waitlist.

Some landlords require significant deposits separately from security deposits before they begin processing tenant applications; these deposits are not traditional application fees and have similarities with waitlist fees. Campus Management, for example, requires a deposit equal to [one-third of the security deposit](#) to begin processing the application. For one of Campus Management’s 2-bedroom apartments, such a deposit would cost \$910. According to the website, this deposit is partially refundable. Because the deposit is required before application processing, tenants must pay it regardless of whether their applications are eventually accepted. This partially refundable fee is similar to an application fee in that it is required before an application is processed. It is also similar to a waitlist fee in that it is partially refundable and does not clearly pay for particular screening-related services.

First Notification to Tenants

Many landlords begin advertising apartments for the next leasing cycle less than three months after the current leasing period begins. Tenants whose leases began in August 2021 were notified that landlords would open waitlists for their apartments by November 2021. This practice continued in 2022 and many tenants who started their leases in August 2022 were also contacted to apply to join a waitlist by November 2022 for the next leasing cycle.

Rationale Provided by Landlords

In their communication to tenants, landlords have provided the following reasons for early advertising, early notification to current tenants, and for maintaining waitlists:

- Landlords claim to receive phone calls from hundreds of tenants who prefer to look for rental housing 10 months ahead of time.

- If they comply with ELO timelines, the landlord claims their operations would be negatively affected because their leasing staff would have limited work in the fall and winter months.
- Following ELO timelines would “flood the housing market causing a wave of demand and inflation.”

Refund Policies

Landlords have not adopted uniform refund policies. Many landlords state that their waitlist fee is entirely non-refundable if the applicant decides not to proceed with the preferred unit. A sample email between a local landlord and tenant in Oct 2022 on the subject of waitlist fees is shown in [Figure 4](#). Some tenants have expressed to members of the commission that landlords communicated to them that waitlist fees are refundable, but the tenants were unable to recover their waitlist fees. We have collected documentation of such instances.

Non-Waitlist Rental Policies

Some landlords choose to not maintain waitlists. Wessinger Properties is an Ann Arbor landlord that does not maintain waitlists for its rental units. Wessinger Properties does not sign prospective residents to waitlists or require holding deposits. Wessinger Properties states that it believes that the practice of requiring waitlists or holding fees, “is a violation of the spirit of the Early Lease Signing ordinance, speeds up the timeline, and initiates the pressure on students.” Wessinger Properties Policies can be found [here](#).

Impacts of Waitlist Fees

Tenants, tenant rights advocacy groups, and local elected officials have discussed the repercussions of waitlist fee policies since September 2021, when tenants first received notification of this from their landlords. The Michigan Daily also reported on this issue in [November 2021](#) and [February 2023](#). Below are some concerns that tenants, parents of tenants, and landlords have shared regarding waitlist fees:

- Waitlist fees can be much higher than other fees they are aware of such as traditional application fees that often range between \$50-100. Waitlist fees are in some cases over \$500 per tenant. In many instances the waitlist fees are in addition to other fees, making the overall renting experience very costly.
- High-income tenants have the money to join multiple waitlists at once, but many low-income tenants are unable to do so, giving high-income tenants an unfair advantage in finding a rental unit.
- Asking current tenants to join waitlists for their own apartments can be used to coerce tenants into committing to renewing their leases early.
- Tenants on a waitlist for a unit who did not sign the lease reported difficulties getting their waitlist deposits back (in the cases of refundable fees).

In addition to these concerns, the Commission has discussed the probable disproportionate effect of waitlist fees on low-income renters and renters of color. According to data in the national [2021 Zillow Consumer Housing Trends Report](#), Black and Latino renters on average submit more applications than white renters and pay fees that are 30% more expensive. While waitlist fees are distinct from application fees, waitlist fees would possibly follow this existing trend. Additionally, because renters of color submit more applications, they would have to pay more money to join more waitlists, potentially having a disproportionately negative impact on renters of color.

Furthermore, the Washington State Legislature stated in a 1991 bill banning certain kinds of rental application fees that "... tenant application fees often have the effect of excluding low-income people from applying for housing because many low-income people cannot afford these fees in addition to the rent and other deposits which may be required. The legislature further finds that application fees are frequently not returned to unsuccessful applicants for housing, which creates a hardship on low-income people."

The US Department of Housing and Urban Development (HUD) has also taken a stance against application fees and other kinds of rental fees in a recent memorandum from March 3rd, 2023: "...many renters today face fees that are hidden, duplicative, or unnecessary as part of the housing search and leasing process. These fees limit options for renters and strain household budgets, particularly for renters with low and modest incomes who already face high rental cost burdens." HUD discusses the disproportionate impact of rental application fees on low-income tenants and tenants of color and stresses the importance of limiting fees. HUD encourages landlords to "Eliminate rental application fees or limit application fees to only those necessary to cover actual and legitimate costs for services."

Relevant Policies in Other Jurisdictions

Many states and cities across the country have implemented laws that regulate rental fees including application fees. Like waitlist fees, application fees are pre-tenancy fees that don't guarantee a lease. Below are some examples of other jurisdictions that have regulated waitlists and other pre-tenancy rental fees:

- Massachusetts [MGL Ch 186 Section 15B](#) bans all fees except for the "purchase and installation cost for a key and lock."
- Vermont [9 V.S.A. § 4456a](#) bans all application fees.
- Washington [RCW 59.18.253](#) bans waitlist deposits/fees and regulates the amount that can be charged for rental deposits. Holding deposits are still permitted but the holding deposit amount is regulated and the apartment must be removed from the market while the application of the prospective tenant is processed. If the application is rejected, the holding deposit must be refunded.

- Alaska [AS 34.03-010 – 34.03.380](#) bans some kinds of waitlist fees: “it is NOT lawful to charge a fee that becomes the security deposit if the tenant moves in, but is forfeited if the tenant decides not to take the unit.” Furthermore, application fees need to be for reasonable costs for services performed during the screening process.
- California [1950.6](#) caps application fees at \$59.67 (as of 2022) and the fee cannot exceed the landlord’s cost for application fee services. Tenants have the right to request an explanation for why they were not accepted by a landlord.
- Delaware [Title 25 § 5514](#) caps application fees at \$50 and allows tenants to sue for twice the amount of the application fee if they are overcharged by their landlord.
- Grand Rapids, [Sec. 9.925](#) requires landlords to provide tenants with an itemized list of how application fees were used. Landlords must advertise the application fee and clearly state the criteria for applications. Application fees shall not exceed the cost of the screening process.

Recommendations

After deliberation as a commission, the Renters Commission offers the following recommendations to the Ann Arbor City Council and the Administrator:

1. **City Council should prohibit landlords from charging any pre-tenancy fees besides the security deposit.** To eliminate “junk fees” as well as loopholes in the ELO, landlords should not be allowed to charge any fees at or prior to the commencement of the tenancy except for a refundable security deposit. From the perspective of the landlord, any attempt to exclusively regulate waitlist fees but not application fees or other kinds of fees could easily be circumvented by relying on application fees that are functionally very similar to waitlist fees.
2. **City Council should consider amending the ELO to more clearly provide that a landlord shall not offer a lease to a tenant before the appropriate date.** 8:530 currently prohibits the signing of leases with new tenants before the appropriate date by the landlord but does not clearly state that a landlord shall not offer a lease to a prospective tenant for signing. By amending the ELO in this way, Council would effectively make it illegal for landlords to ask tenants to sign leases but wait until 150 days before the end of a lease to countersign. While the countersigning practice may be already in violation of the ELO, clarification of the language through an amendment could strengthen attempts to eliminate this practice.

Sources of Information

We reviewed several sources while preparing this report:

1. The Ann Arbor Department of Rental Housing developed a [form](#) to address tenants' complaints of ELO violations. The Renters Commission received access to the log of complaints, copies of redacted leasing complaint forms, and attachments of emails exchanged between tenants and landlords in September 2022.
2. Since the Fall of 2021, tenants have informed the University of Michigan Graduate Employees' Organization (GEO) and the Ann Arbor Tenants Union (AATU) about what they considered violations of ELO. The authors of this report reviewed all complaints pertaining to waitlist agreements.
3. The University of Michigan Student Legal Services received complaints from tenants who were being asked to join waitlists in Fall 2021, and tenants who were having difficulty getting waitlist fees refunded in 2022.
4. Tenants submitted complaints directly to members of the Renters Commission.
5. Members of the Renters Commission contacted landlord companies directly to inquire about their waitlist policies.

Figure 1: Communication Regarding Verbal Waitlist Agreement with Hanna Realty LLC

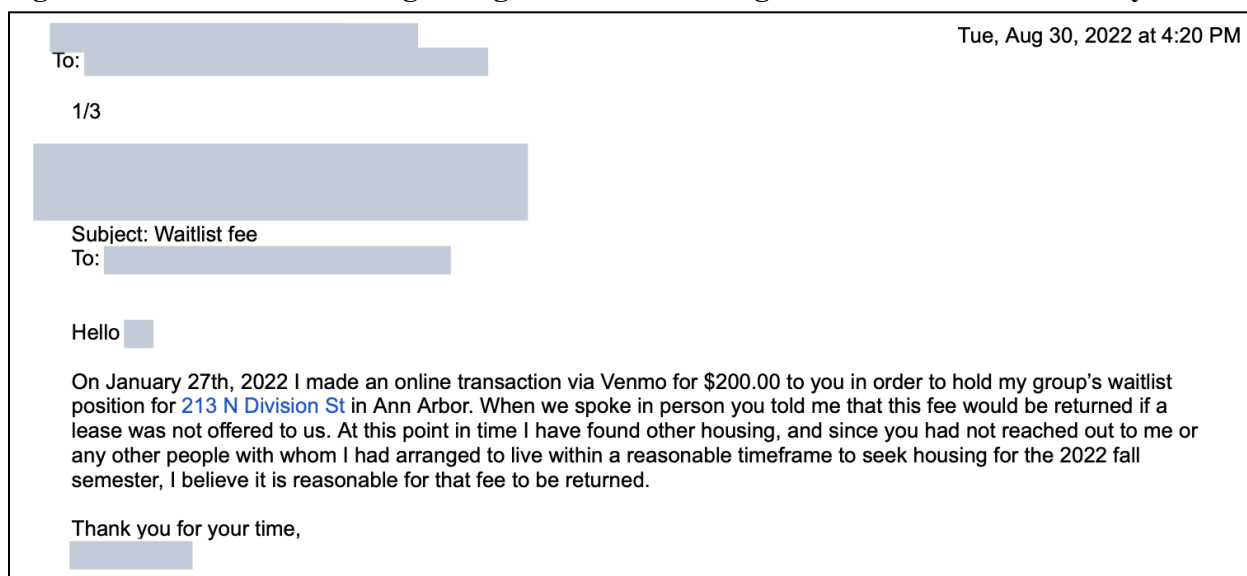


Figure 1. This email was sent by an Ann Arbor tenant to a member of the Renters Commission. It describes a verbal agreement waitlist agreement that involved a \$200 waitlist fee paid via Venmo. After five attempts to contact the landlord and reacquire the supposedly refundable waitlist fee from Hanna Realty LLC, the tenant communicated to the landlord that they were going to file a case in small claims court; the waitlist fee was returned within 30 minutes.

Figure 2: Prime Student Housing Priority Waitlist Form

Good afternoon,
Here is the main document that needs looking over:

Office Use: Date _____ Time _____ Available Date to Sign _____
 Transfer from bld _____, apt _____ Name of Resident Transferring: _____
 Parking: YES / NO # of Pass _____ \$ _____ per month

OPTION AGREEMENT
 Priority Wait List

I (We) _____ hereby agree to purchase an Option, as described
 below, from Prime Student Housing, Inc. (Prime), agent for Landlord, in the amount of **\$9,850.00**
 This Option is not binding until the Option Fee is paid in full and all monies paid towards this purchase are
 non-refundable. Below are our choices:

	Building	Apt/Style	Price Range
1 st Choice:	312 S Thayer	5b 2b - Apt 2	\$3,860.00
2 nd Choice:	_____	_____	_____
3 rd Choice:	_____	_____	_____
4 th Choice:	_____	_____	_____

I (We) acknowledge that by signing this Option Agreement I (We) are not signing nor obligated to sign a Lease Agreement of any apartment. Further, I (We) acknowledge the Option amount described above will be non-refundable if the apartment, or similar apartment in the building is available and I (We) decline to exercise the Option to sign a Lease Agreement for any reason.

I (We) understand the Option amount will be refundable only if the apartment or similar apartment in the building is unavailable, at Prime's sole discretion, and this will fulfill all of Prime's obligations under this Agreement.

I (We) further agree that within 72 hours after 12:01am on March 19, 2023, will choose whether or not to exercise this Option by executing a Residential Lease. Upon execution of a Residential Lease by me (us), the Option Fee shall be applied to the Residential Lease. If I (We) fail and/or refuse to execute a Residential Lease, the Option Fee shall be retained by Prime as liquidated damages.

1st Payment	\$3,860.00	Due at Signing	11/14/2022
2nd Payment	\$5,990.00	Due in 60 Days	1/13/2023

Agreement entered into this 14 day of November 2022 by _____

Figure 2. This waitlist agreement from Prime Student Housing includes a \$9,850 waitlist fee that is to be refunded only if “the apartment or similar apartment in the building is unavailable.” Prime Student Housing waits to offer the lease according to the timeline put forth by the amended Early Leasing Ordinance.

Figure 3: “Lease Option” Form from ISSA Properties

LEASE OPTION

I/We _____ (Prospects) hereby agree to pay \$ _____ (Option Fee), to ISSA Properties, agent for Landlord, for the right and option (Option) to execute a Residential Lease for the apartment below. This Option is not binding until the Option Fee is paid in full and all monies paid towards this purchase are non-refundable.

Landlord: _____
 Address: _____ Apt # _____

Option Payment Schedule	
Due Upon Option Signing: \$ _____	= First Month's Rental Installment
Due Date _____: \$ _____	= 1.5 x Rental Installment + \$150.00

Prospects further agree that within 72 hours after 12:01am on March 19, 2022, they will choose whether or not to exercise this Option by executing a Residential Lease. Upon execution of a Residential Lease by Prospects, the Option Fee shall be applied to the Residential Lease. If Prospects fail and/or refuse to execute a Residential Lease, the Option Fee shall be retained by ISSA Properties as liquidated damages.

The foregoing _____ 20____ by,

Signature _____
 Email _____
 Cell _____

Signature _____
 Email _____
 Cell _____

Signature _____
 Email _____
 Cell _____

Signature _____
 Email _____
 Cell _____

Authorized ISSA Properties Representative: _____

Office Use: Date _____ Time _____ Available Date to Sign _____
 Transfer from bld _____ apt _____ Name of Resident Transferring: _____
 per month _____

Figure 3. ISSA Properties sells “Lease Options” for the cost of one month’s rent. The price of one month’s rent at the ISSA Properties’ locations listed on their website ranges from \$985-1,695. Like some of the other options contracts, there is a window of time during which the contract can be executed, allowing the prospective tenant to sign a lease.

Figure 4: Correspondence Regarding Waitlist Policy of Landmark Apartments

<p>Subject: Re: Follow-Up for Landmark Apartments: To: <landmark5@emailrelay.com></p> <p>Hi,</p> <p>Is the application and service fee refundable if we do not get a space?</p> <p>Thank you,</p> <p>██████████</p> <p>On Tue, Oct 4, 2022 at 1:22 PM <landmark5@emailrelay.com> wrote:</p>	<p>Hi ██████████,</p> <p>We unfortunately do not refund the application fee and admin fee.</p> <p>Thank you,</p> <p>██████████ Leasing and Marketing Manager</p> <p>Our mailing address is:</p> <p>Landmark 1300 South University Ave Ann Arbor, MI 48104</p>
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Hello

I am writing with questions about the leasing practices of Landmark apartments, and what appears to be most of the high rise buildings for student housing in AA.

My ██████████ is a ██████████ living in a ██████████ and feeling the pressure to sign something now for next year.

Below please see her email thread with Landmark.

They are charging \$375 application fee and admin fee NOW to get on the waitlist.

They are not counter-signing leases until Mar 5, 2023, which I guess is good to abide by the new ordinance. But it does not even guarantee an apartment to lease until that time.

So... if accepted, the kids have paid \$375 fee which goes toward nothing. Just an additional fee in their pockets.

If NOT accepted, this fee is non-refundable, the kids are out \$375 - or more depending on how many buildings they applied to - and they also have nowhere to live, and need to restart their search on, or more likely after, March 5, which is quite late in the game. In the meantime, they may lose out on another housing opportunity.

Per Landmark's website, they have 608 occupants at \$375 each is \$228,000 for the kids who get accepted! How many kids do we think they are NOT accepting because of space limitations? I find this practice ridiculous and should be illegal.

I could perhaps understand a \$100 non-refundable application fee. Anything other than that is criminal honestly.

Figure 4. This email chain was received by the Renters Commission regarding the waitlist policy of Landmark Apartments. The application and admin fee of \$375 is paid to be considered for a waitlist. (Top Right) If an applicant is not accepted or does not receive a rental unit, the money is not refunded according to the Leasing and Marketing Manager. (Bottom) The parent of the tenant is complaining that this practice is unethical and should be illegal.

Table 1. List of Landlords Maintaining Waitlists

Landlord	Waitlist fee amount (per unit)	Refundable?
University Towers	\$0	N/A
Varsity Management	\$150	Nonrefundable
Varsity Apts	\$325	Partially refundable (\$75 refunded) if the landlord cannot provide the unit
Landmark	\$375	Nonrefundable
Issa Properties	\$500	Refundable if the landlord cannot provide a unit otherwise, nonrefundable
Cabrio Properties	NA	Refundable if the landlord cannot provide a unit otherwise, nonrefundable
Michigan Rental	\$2000	Refundable if the landlord cannot provide a unit otherwise, nonrefundable
McKinley	\$50	Nonrefundable
Campus Management	1/3 of Security Deposit	1/2 of the cost of one month's rent is not refundable if the tenant decides to withdraw from the waitlist.
Prime Student Housing	\$9,850	Refundable if the landlord cannot provide the unit or a similar unit. Otherwise, nonrefundable

Table 1. This is a non-exhaustive list of prominent landlords, reported by tenants to the city/GEO/U-M Student Legal Services for maintaining waitlist agreements. Much of this information was acquired by speaking directly with representatives from these landlords on the phone or by email.