

D R A F T

SUMMARY

Lengthens required notice periods for certain rent increases and termination of certain periodic tenancies.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to housing; creating new provisions; amending ORS 90.100, 90.220, 90.230, 90.427 and 105.124; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 90.220 is amended to read:

90.220. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

(2) The terms of a fixed term tenancy, including the amount of rent, may not be unilaterally amended by the landlord or tenant.

(3) The landlord shall provide the tenant with a copy of any written rental agreement and all amendments and additions thereto.

(4) Except as provided in this subsection, the rental agreement must include a disclosure of the smoking policy for the premises that complies with ORS 479.305. A disclosure of smoking policy is not required in a rental agreement subject to ORS 90.505 to 90.850 for space in a facility as defined in ORS 90.100.

(5) Notwithstanding ORS 90.245 (1), the parties to a rental agreement to which ORS 90.100 to 90.465 apply may include in the rental agreement a

provision for informal dispute resolution.

(6) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(7) Except as otherwise provided by this chapter:

(a) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly or weekly installments at the beginning of each month or week, depending on whether the tenancy is month-to-month or week-to-week. Rent may not be considered to be due prior to the first day of each rental period.

(b)(A) Rent may not be increased without written notice to the tenant:

(i) For an increase in rent that is less than five percent, the landlord shall provide a 30-day written notice thereof in the case of a month-to-month tenancy or a seven-day written notice thereof in the case of a week-to-week tenancy.

(ii) For an increase in rent that is five percent or more, the landlord shall provide a 90-day written notice thereof in the case of a month-to-month tenancy or a 21-day written notice thereof in the case of a week-to-week tenancy.

(B) If a landlord fails to comply with the requirements of subparagraph (A) of this paragraph, the tenant may recover an amount up to three months' periodic rent.

~~[(b)]~~ **(c)** If a rental agreement does not create a week-to-week tenancy[, as defined in ORS 90.100,] or a fixed term tenancy, the tenancy shall be a month-to-month tenancy.

(8) Except as provided by ORS 90.427 ~~[(7)]~~ **(6)**, a tenant is responsible for payment of rent until the earlier of:

(a) The date that a notice terminating the tenancy expires;

(b) The date that the tenancy terminates by its own terms;

(c) The date that the tenancy terminates by surrender;

(d) The date that the tenancy terminates as a result of the landlord failing to use reasonable efforts to rent the dwelling unit to a new tenant as provided under ORS 90.410 (3);

(e) The date when a new tenancy with a new tenant begins;

(f) Thirty days after delivery of possession without prior notice of termination of a month-to-month tenancy; or

(g) Ten days after delivery of possession without prior notice of termination of a week-to-week tenancy.

(9)(a) Notwithstanding a provision in a rental agreement regarding the order of application of tenant payments, a landlord shall apply tenant payments in the following order:

(A) Outstanding rent from prior rental periods;

(B) Rent for the current rental period;

(C) Utility or service charges;

(D) Late rent payment charges; and

(E) Fees or charges owed by the tenant under ORS 90.302 or other fees or charges related to damage claims or other claims against the tenant.

(b) This subsection does not apply to rental agreements subject to ORS 90.505 to 90.850.

SECTION 2. ORS 90.427 is amended to read:

90.427. *[(1) As used in this section, "first year of occupancy" includes all periods in which any of the tenants has resided in the dwelling unit for one year or less.]*

[(2)] **(1)** If a tenancy is a week-to-week tenancy, the landlord or the tenant may terminate the tenancy by a written notice given to the other at least 10 days before the termination date specified in the notice.

[(3)] **(2)(a)** If a tenancy is a month-to-month tenancy:

[(a)] **(A)** At any time during the tenancy, the tenant may terminate the tenancy by giving the landlord notice in writing not less than 30 days prior to the date designated in the notice for the termination of the tenancy.

[(b)] **(B)** At any time during the *[first year of occupancy]* **tenancy**, the

landlord may terminate the tenancy by giving the tenant notice in writing not less than [30] **90** days prior to the date designated in the notice for the termination of the tenancy **or within the time period designated in the rental agreement, whichever is later.**

[(c) At any time after the first year of occupancy, the landlord may terminate the tenancy by giving the tenant notice in writing not less than 60 days prior to the date designated in the notice for the termination of the tenancy.]

(b) If a landlord fails to comply with paragraph (a)(B) of this subsection, the tenant may recover an amount up to three months' periodic rent.

[(4)] **(3)** If the tenancy is for a fixed term of at least one year and by its terms becomes a month-to-month tenancy after the fixed term:

(a) At any time during the fixed term, notwithstanding subsection *[(3)]* **(2)** of this section, the landlord or the tenant may terminate the tenancy without cause by giving the other notice in writing not less than 30 days prior to the specified ending date for the fixed term or not less than 30 days prior to the date designated in the notice for the termination of the tenancy, whichever is later.

(b) After the specified ending date for the fixed term, at any time during the month-to-month tenancy, the landlord may terminate the tenancy without cause only by giving the tenant notice in writing not less than [60] **90** days prior to the date designated in the notice for the termination of the tenancy.

[(5)] **(4)** Notwithstanding subsections *[(3)(c) and (4)(b)]* **(2)(a)(B) and (3)(b)** of this section, the landlord may terminate a month-to-month tenancy at any time by giving the tenant notice in writing not less than 30 days prior to the date designated in the notice for the termination of the tenancy if:

(a) The dwelling unit is purchased separately from any other dwelling unit;

(b) The landlord has accepted an offer to purchase the dwelling unit from a person who intends in good faith to occupy the dwelling unit as the person's primary residence; and

(c) The landlord has provided the notice, and written evidence of the offer to purchase the dwelling unit, to the tenant not more than 120 days after accepting the offer to purchase.

~~[(6)]~~ **(5)** The tenancy shall terminate on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

~~[(7)]~~ **(6)** If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. In addition, the landlord may recover from the tenant any actual damages resulting from the tenant holding over, including the value of any rent accruing from the expiration or termination of the rental agreement until the landlord knows or should know that the tenant has relinquished possession to the landlord. If the landlord consents to the tenant's continued occupancy, ORS 90.220 (7) applies.

~~[(8)(a)]~~ **(7)(a)** A notice given to terminate a tenancy under subsection ~~[(2) or (3)]~~ **(1) or (2)** of this section need not state a reason for the termination.

(b) Notwithstanding paragraph (a) of this subsection, a landlord or tenant may include in a notice of termination given under subsection ~~[(2) or (3)]~~ **(1) or (2)** of this section an explanation of the reason for the termination without having to prove the reason. An explanation does not give the person receiving the notice of termination a right to cure the reason if the notice states that:

(A) The notice is given without stated cause;

(B) The recipient of the notice does not have a right to cure the reason for the termination; and

(C) The person giving the notice need not prove the reason for the termination in a court action.

~~[(9)]~~ **(8)** Subsections ~~[(2) to (5)]~~ **(1) to (4)** of this section do not apply to a month-to-month tenancy subject to ORS 90.429 or other tenancy created by a rental agreement subject to ORS 90.505 to 90.850.

SECTION 3. ORS 90.230 is amended to read:

90.230. (1) If a tenancy is for the occupancy of a recreational vehicle in a manufactured dwelling park, mobile home park or recreational vehicle park, all as defined in ORS 197.492, the landlord shall provide a written rental agreement for a month-to-month, week-to-week or *[fixed-term]* **fixed term** tenancy. The rental agreement must state:

(a)(A) If applicable, **and notwithstanding ORS 90.427**, that the tenancy may be terminated by the landlord *[under ORS 90.427]* without cause upon **30 days' written notice at any time during the first year of occupancy** or 60 days' written notice **at any time after the first year of occupancy** for a month-to-month tenancy, or upon 10 days' written notice for a week-to-week tenancy.

(B) As used in this paragraph, "first year of occupancy" includes all periods in which any of the tenants has resided in the recreational vehicle for one year or less.

(b) That any accessory building or structure paid for or provided by the tenant belongs to the tenant and is subject to a demand by the landlord that the tenant remove the building or structure upon termination of the tenancy.

(c) That the tenancy is subject to the requirements of ORS 197.493 (1) for exemption from placement and occupancy restrictions.

(2) If a tenant described in subsection (1) of this section moves following termination of the tenancy by the landlord *[under ORS 90.427]*, and the landlord failed to provide the required written rental agreement before the beginning of the tenancy, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater.

(3) If the occupancy fails at any time to comply with the requirements of ORS 197.493 (1) for exemption from placement and occupancy restrictions, and a state agency or local government requires the tenant to move as a result of the noncompliance, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater. This subsection does not apply if the noncompliance was caused by the tenant.

(4) This section does not apply to a vacation occupancy.

SECTION 4. ORS 90.100 is amended to read:

90.100. As used in this chapter, unless the context otherwise requires:

(1) "Accessory building or structure" means any portable, demountable or permanent structure, including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks, steps, ramps, piers and pilings, that is:

(a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or

(b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a tenant of a manufactured dwelling or floating home.

(2) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(3) "Applicant screening charge" means any payment of money required by a landlord of an applicant prior to entering into a rental agreement with that applicant for a residential dwelling unit, the purpose of which is to pay the cost of processing an application for a rental agreement for a residential dwelling unit.

(4) "Building and housing codes" includes any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(5) "Carbon monoxide alarm" has the meaning given that term in ORS 105.836.

(6) "Carbon monoxide source" has the meaning given that term in ORS 105.836.

(7) "Conduct" means the commission of an act or the failure to act.

(8) "DBH" means the diameter at breast height, which is measured as the width of a standing tree at four and one-half feet above the ground on the uphill side.

(9) “Dealer” means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.

(10) “Domestic violence” means:

(a) Abuse between family or household members, as those terms are defined in ORS 107.705; or

(b) Abuse, as defined in ORS 107.705, between partners in a dating relationship.

(11) “Drug and alcohol free housing” means a dwelling unit described in ORS 90.243.

(12) “Dwelling unit” means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. “Dwelling unit,” regarding a person who rents a space for a manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for a floating home, as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, recreational vehicle or floating home itself.

(13) “Essential service” means:

(a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.850:

(A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320, the lack or violation of which creates a serious threat to the tenant’s health, safety or property or makes the dwelling unit unfit for occupancy.

(b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.850:

(A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the rented space unfit for occupancy.

(14) "Facility" means a manufactured dwelling park or a marina.

(15) "Fee" means a nonrefundable payment of money.

(16) "First class mail" does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.

(17) "Fixed term tenancy" means a tenancy that has a fixed term of existence, continuing to a specific ending date and terminating on that date without requiring further notice to effect the termination.

(18) "Floating home" has the meaning given that term in ORS 830.700. "Floating home" includes an accessory building or structure.

(19) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(20) "Hazard tree" means a tree that:

(a) Is located on a rented space in a manufactured dwelling park;

(b) Measures at least eight inches DBH; and

(c) Is considered, by an arborist licensed as a landscape construction professional pursuant to ORS 671.560 and certified by the International Society of Arboriculture, to pose an unreasonable risk of causing serious physical harm or damage to individuals or property in the near future.

(21) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.

(22) "Informal dispute resolution" means, but is not limited to, consulta-

tion between the landlord or landlord's agent and one or more tenants, or mediation utilizing the services of a third party.

(23) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.

(24) "Landlord's agent" means a person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

(25) "Last month's rent deposit" means a type of security deposit, however designated, the primary function of which is to secure the payment of rent for the last month of the tenancy.

(26) "Manufactured dwelling" means a residential trailer, a mobile home or a manufactured home as those terms are defined in ORS 446.003. "Manufactured dwelling" includes an accessory building or structure. "Manufactured dwelling" does not include a recreational vehicle.

(27) "Manufactured dwelling park" means a place where four or more manufactured dwellings are located, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee.

(28) "Marina" means a moorage of contiguous dwelling units that may be legally transferred as a single unit and are owned by one person where four or more floating homes are secured, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee.

(29) "Marina purchase association" means a group of three or more tenants who reside in a marina and have organized for the purpose of eventual purchase of the marina.

(30) "Month-to-month tenancy" means a tenancy that automatically renews and continues for successive monthly periods on the same terms and conditions originally agreed to, or as revised by the parties, until terminated by one or both of the parties.

(31) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or associ-

1 ation, two or more persons having a joint or common interest, and any other
2 legal or commercial entity.

3 (32) "Owner" includes a mortgagee in possession and means one or more
4 persons, jointly or severally, in whom is vested:

5 (a) All or part of the legal title to property; or

6 (b) All or part of the beneficial ownership and a right to present use and
7 enjoyment of the premises.

8 (33) "Person" includes an individual or organization.

9 (34) "Premises" means:

10 (a) A dwelling unit and the structure of which it is a part and facilities
11 and appurtenances therein;

12 (b) Grounds, areas and facilities held out for the use of tenants generally
13 or the use of which is promised to the tenant; and

14 (c) A facility for manufactured dwellings or floating homes.

15 (35) "Prepaid rent" means any payment of money to the landlord for a
16 rent obligation not yet due. In addition, "prepaid rent" means rent paid for
17 a period extending beyond a termination date.

18 (36) "Recreational vehicle" has the meaning given that term in ORS
19 446.003.

20 (37) "Rent" means any payment to be made to the landlord under the
21 rental agreement, periodic or otherwise, in exchange for the right of a tenant
22 and any permitted pet to occupy a dwelling unit to the exclusion of others
23 and to use the premises. "Rent" does not include security deposits, fees or
24 utility or service charges as described in ORS 90.315 (4) and 90.532.

25 (38) "Rental agreement" means all agreements, written or oral, and valid
26 rules and regulations adopted under ORS 90.262 or 90.510 (6) embodying the
27 terms and conditions concerning the use and occupancy of a dwelling unit
28 and premises. "Rental agreement" includes a lease. A rental agreement shall
29 be either a week-to-week tenancy, month-to-month tenancy or fixed term
30 tenancy.

31 (39) "Roomer" means a person occupying a dwelling unit that does not

1 include a toilet and either a bathtub or a shower and a refrigerator, stove
2 and kitchen, all provided by the landlord, and where one or more of these
3 facilities are used in common by occupants in the structure.

4 (40) "Screening or admission criteria" means a written statement of any
5 factors a landlord considers in deciding whether to accept or reject an ap-
6 plicant and any qualifications required for acceptance. "Screening or admis-
7 sion criteria" includes, but is not limited to, the rental history, character
8 references, public records, criminal records, credit reports, credit references
9 and incomes or resources of the applicant.

10 (41) "Security deposit" means a refundable payment or deposit of money,
11 however designated, the primary function of which is to secure the perform-
12 ance of a rental agreement or any part of a rental agreement. "Security de-
13 posit" does not include a fee.

14 (42) "Sexual assault" has the meaning given that term in ORS 147.450.

15 (43) "Squatter" means a person occupying a dwelling unit who is not so
16 entitled under a rental agreement or who is not authorized by the tenant to
17 occupy that dwelling unit. "Squatter" does not include a tenant who holds
18 over as described in ORS 90.427 [(7)] **(6)**.

19 (44) "Stalking" means the behavior described in ORS 163.732.

20 (45) "Statement of policy" means the summary explanation of information
21 and facility policies to be provided to prospective and existing tenants under
22 ORS 90.510.

23 (46) "Surrender" means an agreement, express or implied, as described in
24 ORS 90.148 between a landlord and tenant to terminate a rental agreement
25 that gave the tenant the right to occupy a dwelling unit.

26 (47) "Tenant":

27 (a) Except as provided in paragraph (b) of this subsection:

28 (A) Means a person, including a roomer, entitled under a rental agree-
29 ment to occupy a dwelling unit to the exclusion of others, including a
30 dwelling unit owned, operated or controlled by a public housing authority.

31 (B) Means a minor, as defined and provided for in ORS 109.697.

(b) For purposes of ORS 90.505 to 90.850, means only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(c) Does not mean a guest or temporary occupant.

(48) “Transient lodging” means a room or a suite of rooms.

(49) “Transient occupancy” means occupancy in transient lodging that has all of the following characteristics:

(a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

(b) The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy; and

(c) The period of occupancy does not exceed 30 days.

(50) “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

(a) The occupant rents the unit for vacation purposes only, not as a principal residence;

(b) The occupant has a principal residence other than at the unit; and

(c) The period of authorized occupancy does not exceed 45 days.

(51) “Victim” means:

(a) The person against whom an incident related to domestic violence, sexual assault or stalking is perpetrated; or

(b) The parent or guardian of a minor household member against whom an incident related to domestic violence, sexual assault or stalking is perpetrated, unless the parent or guardian is the perpetrator.

(52) “Week-to-week tenancy” means a tenancy that has all of the following characteristics:

(a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days;

(b) There is a written rental agreement that defines the landlord’s and the

tenant's rights and responsibilities under this chapter; and

(c) There are no fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in ORS 90.295.

SECTION 5. ORS 105.124 is amended to read:

105.124. For a complaint described in ORS 105.123, if ORS chapter 90 applies to the dwelling unit:

(1) The complaint must be in substantially the following form and be available from the clerk of the court:

IN THE CIRCUIT COURT
FOR THE COUNTY OF

No. _____

RESIDENTIAL EVICTION COMPLAINT

PLAINTIFF (Landlord or agent):

Address: _____

City: _____

State: _____ Zip: _____

Telephone: _____

vs.

DEFENDANT (Tenants/Occupants):

MAILING ADDRESS: _____

1 City: _____
2 State: _____ Zip: _____
3 Telephone: _____
4

5 1.

6 Tenants are in possession of the dwelling unit, premises or rental prop-
7 erty described above or located at:
8

9 _____
10

11 2.

12 Landlord is entitled to possession of the property because of:
13

- 14 _____ 24-hour notice for personal
15 injury, substantial damage, extremely
16 outrageous act or unlawful occupant.
17 ORS 90.396 or 90.403.
18 _____ 24-hour or 48-hour notice for
19 violation of a drug or alcohol
20 program. ORS 90.398.
21 _____ 24-hour notice for perpetrating
22 domestic violence, sexual assault or
23 stalking. ORS 90.445.
24 _____ 72-hour or 144-hour notice for
25 nonpayment of rent. ORS 90.394.
26 _____ 7-day notice with stated cause in
27 a week-to-week tenancy. ORS 90.392 (6).
28 _____ 10-day notice for a pet violation,
29 a repeat violation in a month-to-month
30 tenancy or without stated cause in a
31 week-to-week tenancy. ORS 90.392 (5),

90.405 or 90.427 [(2)] (1).

____ 20-day notice for a repeat violation.

ORS 90.630 (4).

____ 30-day, [60-day] **90-day** or 180-day

notice without stated cause in a

month-to-month tenancy. ORS 90.427

[(3) or (4)] (2) **or** (3) or 90.429.

____ 30-day notice with stated cause.

ORS 90.392, 90.630 or 90.632.

____ Notice to bona fide tenants after

foreclosure sale or termination of

fixed term tenancy after foreclosure

sale. ORS 86.782 (6)(c).

____ Other notice _____

____ No notice (explain) _____

A COPY OF THE NOTICE RELIED UPON, IF ANY, IS ATTACHED

3.

If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3).

Landlord requests judgment for possession of the premises, court costs, disbursements and attorney fees.

I certify that the allegations and factual assertions in this complaint are true to the best of my knowledge.

Signature of landlord or agent.

(2) The complaint must be signed by the plaintiff or an attorney repre-

1 sending the plaintiff as provided by ORCP 17, or verified by an agent or
2 employee of the plaintiff or an agent or employee of an agent of the plaintiff.

3 (3) A copy of the notice relied upon, if any, must be attached to the
4 complaint.

5 **SECTION 6. The amendments to ORS 90.220 by section 1 of this 2016**
6 **Act apply to:**

7 (1) **Rental agreements for fixed term tenancies entered into or re-**
8 **newed on or after the effective date of this 2016 Act; and**

9 (2) **Rental agreements for month-to-month tenancies and week-to-**
10 **week tenancies in effect on or after the effective date of this 2016 Act.**

11 **SECTION 7. The amendments to ORS 90.427 by section 2 of this 2016**
12 **Act apply to notices in writing given to tenants on or after the effec-**
13 **tive date of this 2016 Act.**

14 **SECTION 8. This 2016 Act being necessary for the immediate pres-**
15 **ervation of the public peace, health and safety, an emergency is de-**
16 **clared to exist, and this 2016 Act takes effect on its passage.**