

CHAPTER 53

AN ACT

HB 4143

Relating to housing; creating new provisions; amending ORS 90.220, 90.302 and 90.460; and declaring an emergency.

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

SECTION 1. Section 2 of this 2016 Act is added to and made a part of ORS chapter 90.

SECTION 2. (1) If a tenancy is a week-to-week tenancy, the landlord may not increase the rent without giving the tenant written notice at least seven days prior to the effective date of the rent increase.

(2) If a tenancy is a month-to-month tenancy, the landlord may not increase the rent:

(a) During the first year after the tenancy begins.

(b) At any time after the first year of the tenancy without giving the tenant written notice at least 90 days prior to the effective date of the rent increase.

(3) The notices required under this section must specify:

(a) The amount of the rent increase;

(b) The amount of the new rent; and

(c) The date on which the increase becomes effective.

(4) This section does not apply to tenancies governed by ORS 90.505 to 90.850.

SECTION 3. 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. *[Rent may not be increased without 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.]* **Rent increases must comply with the provisions of section 2 of this 2016 Act.**

(b) 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), 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 4. ORS 90.302 is amended to read:

90.302. (1) A landlord may not charge a fee at the beginning of the tenancy for an anticipated landlord expense and may not require the payment of any fee except as provided in this section. A fee must be described in a written rental agreement.

(2) A landlord may charge a tenant a fee for each occurrence of the following:

(a) A late rent payment, pursuant to ORS 90.260.

(b) A dishonored check, pursuant to ORS 30.701 (5). The amount of the fee may not exceed the amount described in ORS 30.701 (5) plus any amount that a bank has charged the landlord for processing the dishonored check.

(c) Removal or tampering with a properly functioning smoke alarm, smoke detector or carbon monoxide alarm, as provided in ORS 90.325 (2). The landlord may charge a fee of up to \$250 unless the State Fire Marshal assesses the tenant a civil penalty for the conduct under ORS 479.990 or under ORS 105.836 to 105.842 and 476.725.

(d) The violation of a written pet agreement or of a rule relating to pets in a facility, pursuant to ORS 90.530.

(e) The abandonment or relinquishment of a dwelling unit during a fixed term tenancy without cause. The fee may not exceed one and one-half times the monthly rent. A landlord may not assess a fee under this paragraph if the abandonment or relinquishment is pursuant to ORS 90.453 (2), 90.472 or 90.475. If the landlord assesses a fee under this paragraph:

(A) The landlord may not recover unpaid rent for any period of the fixed term tenancy beyond the date that the landlord knew or reasonably should have known of the abandonment or relinquishment;

(B) The landlord may not recover damages related to the cost of renting the dwelling unit to a new tenant; and

(C) ORS 90.410 (3) does not apply to the abandonment or relinquishment.

(3)(a) A landlord may charge a tenant a fee under this subsection for a second noncompliance or for a subsequent noncompliance with written rules or policies that describe the prohibited conduct and the fee for a second noncompliance, and for any third or subsequent noncompliance, that occurs within one year after a written warning notice described in subparagraph (A) of this paragraph. Except as provided in paragraph [(b)(H)] **(b)(G) or (H)** of this subsection, the fee may not exceed \$50 for the second noncompliance within one year after the warning notice for the same or a similar noncompliance or \$50 plus five percent of the rent payment for the current rental period for a third or subsequent noncompliance within one year after the warning notice for the same or a similar noncompliance. The landlord:

(A) Shall give a tenant a written warning notice that describes:

(i) A specific noncompliance before charging a fee for a second or subsequent noncompliance for the same or similar conduct; and

(ii) The amount of the fee for a second noncompliance, and for any subsequent noncompliance, that occurs within one year after the warning notice.

(B) Shall give a tenant a written notice describing the noncompliance when assessing a fee for a second or subsequent noncompliance that occurs within one year after the warning notice.

(C) Shall give a warning notice for a noncompliance or assess a fee for a second or subsequent

noncompliance within 30 days after the act constituting noncompliance.

(D) May terminate a tenancy for a noncompliance consistent with this chapter instead of assessing a fee under this subsection, but may not assess a fee and terminate a tenancy for the same noncompliance.

(E) May not deduct a fee assessed pursuant to this subsection from a rent payment for the current or a subsequent rental period.

(b) A landlord may charge a tenant a fee for occurrences of noncompliance with written rules or policies as provided in paragraph (a) of this subsection for the following types of noncompliance:

(A) The late payment of a utility or service charge that the tenant owes the landlord as described in ORS 90.315.

(B) Failure to clean up pet waste from a part of the premises other than the dwelling unit.

(C) Failure to clean up the waste of a service animal or a companion animal from a part of the premises other than the dwelling unit.

(D) Failure to clean up garbage, rubbish and other waste from a part of the premises other than the dwelling unit.

(E) Parking violations.

(F) The improper use of vehicles within the premises.

(G) Smoking in a clearly designated nonsmoking unit or area of the premises. **The fee for a second or any subsequent noncompliance under this subparagraph may not exceed \$250. A landlord may not assess this fee before 24 hours after the required warning notice to the tenant.**

(H) Keeping on the premises an unauthorized pet capable of causing damage to persons or property, as described in ORS 90.405. The fee for a second or any subsequent noncompliance under this subparagraph may not exceed \$250. A landlord may not assess this fee before 48 hours after the required warning notice to the tenant.

(4) A landlord may not be required to account for or return to the tenant any fee.

(5) Except as provided in subsection (2)(e) of this section, a landlord may not charge a tenant any form of liquidated damages, however designated.

(6) Nonpayment of a fee is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394, but is grounds for termination of a rental agreement for cause under ORS 90.392 or 90.630 (1).

(7) This section does not apply to:

(a) Attorney fees awarded pursuant to ORS 90.255;

(b) Applicant screening charges paid pursuant to ORS 90.295;

(c) Charges for improvements or other actions that are requested by the tenant and are not required of the landlord by the rental agreement or by law, including the cost to replace a key lost by a tenant;

(d) Processing fees charged to the landlord by a credit card company and passed through to the ten-

ant for the use of a credit card by the tenant to make a payment when:

(A) The credit card company allows processing fees to be passed through to the credit card holder; and

(B) The landlord allows the tenant to pay in cash or by check;

(e) A requirement by a landlord in a written rental agreement that a tenant obtain and maintain renter's liability insurance pursuant to ORS 90.222; or

(f) Assessments, as defined in ORS 94.550 and 100.005, for a dwelling unit that is within a homeowners association organized under ORS 94.625 or an association of unit owners organized under ORS 100.405, respectively, if:

(A) The assessments are imposed by the association on a landlord who owns a dwelling unit within the association and the landlord passes the assessments through to a tenant of the unit;

(B) The assessments are imposed by the association on any person for expenses related to moving into or out of a unit located within the association;

(C) The landlord sets forth the assessment requirement in the written rental agreement at the commencement of the tenancy; and

(D) The landlord gives a copy of the assessment the landlord receives from the association to the tenant before or at the time the landlord charges the tenant.

(8) If a landlord charges a tenant a fee in violation of this section, the tenant may recover twice the actual damages of the tenant or \$300, whichever is greater. This penalty does not apply to fees described in subsection (2) of this section.

SECTION 5. ORS 90.460 is amended to read:

90.460. (1) As used in this section[.]:

(a) "Bedroom" has the meaning given that term in ORS 90.262.

(b) "**Building**" means a dwelling unit or a structure containing a dwelling unit.

(2) A landlord shall provide at all times during the tenancy [*a route of exit from a bedroom, other than the main entrance to the bedroom, for use during an emergency. The secondary route of exit must conform to applicable law.*] **a route or routes of exit**

from each bedroom and, if required, a secondary route of exit from each bedroom, for use during an emergency. The routes of exit must conform to applicable law in effect at the time of occupancy of the building or in effect after a renovation or change of use of the building, whichever is later.

(3)(a) If the landlord fails to comply with the requirements of this section, the tenant may recover actual damages, and the tenant may terminate the tenancy by providing the landlord actual notice and a description of the noncompliance 72 hours prior to the date of termination.

(b) If the landlord cures the noncompliance within the 72-hour period:

(A) The tenancy does not terminate; and

(B) The tenant may recover the tenant's actual damages.

(c) If the landlord fails to cure the noncompliance within the 72-hour period:

(A) The tenancy terminates;

(B) The tenant may recover twice the tenant's actual damages or twice the periodic rent, whichever is greater; and

(C) The landlord must return all security deposits and prepaid rent owed to the tenant under ORS 90.300 within four days after the termination.

SECTION 6. Section 2 of this 2016 Act and the amendments to ORS 90.220 by section 3 of this 2016 Act apply to increases in rent occurring on or after the 30th day after the effective date of this 2016 Act.

SECTION 7. The amendments to ORS 90.302 by section 4 of this 2016 Act apply to fees for occurrences of noncompliance with written rules or policies charged on or after the effective date of this 2016 Act.

SECTION 8. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Approved by the Governor March 15, 2016

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