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Legislative Committee Services  
State Capitol Building  
Salem, Oregon 97301  
(503) 986-1813

Background Brief on ...

# Landlord-Tenant Rights

U.S. landlord-tenant law governs renting commercial and residential property. It is primarily composed of state statutory and English common law. State statutes and the courts normally govern landlord-tenant relationships. However, during national/regional emergencies and in preventing discrimination, federal law (the Civil Rights Act of 1968 and U.S. Code, Chapter 45, also known as the Federal Fair Housing Act) may be applicable.

The landlord-tenant relationship is founded on duties proscribed by statutory law, common law, or the individual lease. Provisions contained in a lease are normally regulated by statutory law. The primary basis to all leases is the implied covenant of quiet enjoyment. This covenant ensures that possessions will not be disturbed by someone with a superior legal title to the land, including the landlord. Unless the lease states otherwise, there is an assumption that the tenant has a duty to pay rent.

Oregon's Residential Landlord and Tenant Act (ORS chapter 90) governs landlord and tenant laws and applies to renting a home, apartment, or room to sleep in, or for renting space for a mobile home or floating home. Exceptions include transient occupancy in a hotel or motel, living in a place you are buying, living on land rented primarily for the purpose of farming, and living in certain institutions.

Oregon law covers any real property for sale, rent, or lease. Federal law covers any real property, and federally-owned or financed housing.

## **Rights and Responsibilities of the Landlord**

The Oregon Residential Landlord and Tenant Act requires that a rental unit be in a habitable condition. This includes plumbing facilities, hot and cold

running water, and adequate heat, working electric lights, working electrical equipment, clean building and grounds, and all other areas and facilities properly repaired and working. Weatherproofing and weather protection is required in the roof, walls, windows, and doors. The rental unit must include a working smoke detector, with working batteries at the beginning of tenancy, and working locks for all dwelling entrance doors. It is the tenant's responsibility to test the smoke detector every six months and to replace batteries as needed.

The landlord must provide heat, water, and electricity, although the tenant is usually asked to pay the utility bill. The landlord is required to provide trash cans and arrange for removal, but the tenant may be asked to pay for the service.

#### *Disclosures*

Before a landlord enters into a new written rental agreement with or accepts payment from an applicant, they must provide the applicant a written list of all deposits, fees, and rent that is charged.

The landlord must notify a tenant if the dwelling is located in a 100-year flood plain, and must include in the rental agreement the areas of the property in which smoking is allowed and prohibited.

#### *Security Deposits*

The landlord has 30 days after termination of the rental agreement to refund all deposits due. If the landlord needs to keep any portion of the deposit to cover damages, breakage, unpaid rent, etc., a statement must be forwarded to the tenant within 30 days showing the use of that money. Deposit money may not be claimed by the landlord to cover ordinary wear and tear by the tenant.

Labor costs on damages must be based on a reasonable hourly rate. Carpet cleaning can be subtracted from the security deposit under specified circumstances, including the cleaning being performed by a professional carpet cleaning machine, cleaned immediately prior to the tenant taking possession, and the written rental agreement includes a provision which

outlines the right to deduct the cost of carpet cleaning regardless of whether the tenant cleans the carpet prior to vacating the dwelling.

#### *Screening Fees*

A landlord can charge an applicant a screening fee to cover the cost of obtaining applicant information as the landlord processes the application for the rental agreement. The applicant screening fee may not be greater than the landlord's actual costs or than the customary amount charged by tenant screening services or consumer reporting agencies for a comparable level of screening. The landlord must provide receipts for the applicant screening fee, as well as notify the potential tenant in advance and in writing that there will be such a fee.

#### *Additional Fees*

A landlord has the right to charge a late fee as stipulated in the rental agreement. The agreement must describe how the late charge is calculated, the date on which the rent payment is due, and the date on which a late fee becomes due. The landlord must wait at least four days after rent is due to charge a late fee. While nonpayment of a late charge alone is not grounds for eviction for nonpayment of rent, nonpayment of a late charge may be grounds for a 30-day for-cause eviction. Interest charges on unpaid late fees can also be imposed.

The landlord can also add a small, additional monthly charge for some limited services such as utilities or television cable service as stated in a signed rental agreement. The landlord cannot charge a tenant a fee larger than the amount a service provider charges the landlord.

A lease break fee can be charged but cannot be more than one and a half times of the monthly stated rent. If the fee is assessed, the landlord cannot also recover any unpaid rent or recover damages related to the cost of renting the unit to a new tenant.

Additional fees that can be charged include a non-sufficient funds (NSF) check fee plus any charges imposed by a financial institution, and a smoke alarm tampering/removal fee. Non-compliance fees of no more than \$50 can be

imposed for late payment or a utility or service charge owed to the landlord; failure to clean up pet waste, garbage, rubbish, or other waste from premises other than the dwelling; and parking violations and improper use of vehicles within the premises.

#### *Rent Increases*

A lease usually establishes the rent for the lease specified period. However, the landlord can raise the rent to any level if the agreement provides for such an increase. In a month-to-month lease, the landlord can raise the rent after providing 30 days notice. For a mobile home space or floating homes, the landlord must give each tenant a minimum of 90 days written notice.

#### *Change of Landlords*

A new landlord cannot substantially change the rules without the tenant's consent. However, if a tenant is renting on a month-to-month basis, the landlord can give a 30-day notice to the tenant to vacate the dwelling. The tenant would then need to contact the new landlord and attempt to negotiate a new rental agreement.

#### *Entering a Unit*

The landlord or real estate representative must notify the tenant 24 hours in advance before entering the property. There are certain exceptions for the landlord, such as when a tenant has requested repairs, when there is an emergency, when it is "impracticable to contact the tenant," or if there is a written agreement to the contrary.

#### *Ending the Tenancy*

To end a month-to-month tenancy, the tenant must be given a 30-day written notice or a 60-day notice if they have lived in the dwelling for more than a year. A tenant can terminate a month-to-month tenancy with a 30-day written notice. A week-to-week rental period requires a ten-day notice.

A fixed-term tenancy automatically ends on the last day specified in the signed rental agreement and cannot be altered unless the landlord has cause to end it, such as a violation by the tenant. However, if the fixed term tenancy is entered

into on or after January 1, 2010, the landlord or tenant can terminate the tenancy without cause by giving the other a notice at least 30 days prior to the date designated in the notice or no less than 30 days prior to the specified ending date of the lease, whichever is later.

In the event of a property sale, a landlord can issue a 30-day notice on a month-to-month tenancy under specified circumstances, such as the buyer intending in good faith to occupy the unit as the person's primary residence, and the landlord has provided the notice and written evidence of the offer to purchase the dwelling unit, to the tenant no more than 120 days after accepting the offer to purchase.

#### *Notice for Eviction*

A landlord can give a tenant a 30-day notice or a 60-day notice, if all tenants have lived in the rental unit for more than a year, to vacate and not state a reason for eviction. If a tenant is five days late in paying rent, the landlord is allowed to issue a 144-hour notice to pay or vacate. If a tenant is seven days late in paying rent, the landlord is allowed to issue a 72-hour notice to pay or vacate. If the rent is paid within 72 hours, the tenant does not need to vacate.

A landlord can give a tenant a 24-hour notice to vacate if the tenant has committed an "outrageous in the extreme" act. This may include threatening other tenants, intentionally damaging property, or injuring someone. An act can be proven to be extremely outrageous even if it does not violate a criminal statute. However, no matter what the tenant has done to the rental unit or to the landlord, the tenant cannot be locked out of the unit nor have essential services stopped by the landlord. A 24-hour notice can also be given to a tenant whose dwelling is conditioned on employment, but whose employment has been terminated, unless a longer period is specified in the employment contract.

Landlords can also evict perpetrators of physical violence related to domestic violence, sexual assault, or stalking against a household member who is a tenant, but cannot terminate the agreement of the other tenants in such cases.

They cannot terminate a rental agreement or treat a tenant differently because they are a victim of domestic violence, sexual assault or stalking.

In the case of an eviction due to a rental unit being converted to a condominium, landlords are prohibited from evicting tenants without a stated cause or from imposing unscheduled rent increases over cost-of-living increases during the 120-day notice of conversion period.

#### *Temporary Occupancy*

A landlord can allow an individual to become a temporary occupant of the tenant's dwelling through a written agreement between the tenant, temporary occupant, and the landlord. The tenant can terminate the agreement without cause at any time, while the landlord can do so only for cause from a violation of the agreement. The landlord has the right to screen the temporary occupant for conduct or criminal records, but not for credit or income qualifications.

#### *Repairs*

The landlord must make repairs without cost to the tenant on items directly related to the unit's habitability conditions, unless the tenant is the cause of the problem.

If repairs are needed because the dwelling is negligently or deliberately damaged, the landlord has the right to end the rental agreement after proper notice or delivery of a 30-day eviction notice that allows the continuation of the rental agreement if damages are repaired within 14 days. The landlord can also make the repair and bill the tenant later for the cost.

### **Rights and Responsibilities of the Tenant**

Although the landlord maintains legal title to the property, the tenant has use of the property and it is considered the tenant's home with regard to the right of privacy. As noted earlier, the landlord has the right to inspect the property. However, at least 24 hours notice must be given before entering the property, except in cases of

emergency, agreement to the contrary, or unless it is impracticable to do so. The rental property must be safe and sanitary and be maintained throughout the rental period. If repairs are necessary for safety or sanitation, the landlord must make such repairs without cost to the tenant. The condition for repair cannot be from tenant neglect or a deliberate act.

Duties of the tenant include using the property only as a dwelling; paying the rent, keeping the property reasonably clean and maintained, and, at the end of the rental term, to return the property to the landlord in the same condition in which the tenant received it, except for reasonable wear and tear.

#### *Repairs*

If repairs are needed for safety or sanitation, the landlord must make such repairs without charging the tenant, but can charge a fee if the tenant caused the problem that resulted in the repair.

Tenants have the right to repair some minor habitability defects of up to \$300 and seek reimbursement if the landlord doesn't make the repair within seven days of receiving a written request from the tenant. The landlord can designate who can make the repair if it is reasonable and does not diminish the tenant's rights. Repairs for mold, radon, asbestos, or lead-based paint must be made through the landlord.

If the landlord refuses to make required repairs within a reasonable amount of time, the tenant can give a written 30-day notice stating that they will vacate the unit unless the landlord makes the needed repairs within a certain time period, depending on the type of tenancy. In a month-to-month tenancy, the timeframe is seven days for essential services such as water, plumbing, and heat, and 30 days for other types of repairs; and seven days for all types of repairs for a week-to-week tenancy. The timeframe can be shortened to 48 hours only if the lack of an essential service seriously and immediately threatens the tenant's health or safety.

Depending on factors such as the tenant's specific repair situation and local government regulations, other remedies include filing a lawsuit against the landlord, filing a complaint with a building inspector or another health or safety code enforcement agency, and withholding rent payments.

#### *Right of Entry*

The tenant renting a house or an apartment from someone enters into a legal contract/relationship with that person and possesses certain rights and duties. The tenant has the right of peaceful possession and the right to a "habitable" home.

While the landlord must provide at least 24 hours notice before entering the property, exceptions are made for emergencies, following up on repair or maintenance requests without designating certain times and/or dates, or items stipulated in the rental agreement.

### **Rights and Responsibilities - Condominium Conversion**

If a rental unit is being converted to a condominium, tenants are required to receive a 120-day notice of eviction that must include the offer to sell to the tenant and resources for providing financial assistance in buying the unit. Tenants must be given the first opportunity to purchase the unit they reside in, and at least 60 days to either accept or reject the offer.

During the 120-day period, construction work can only take place between 8:00 a.m. to 7:00 p.m. and tenants are required to be allowed access to their dwelling. The landlord cannot issue a no-cause termination notice within the timeframe, and cannot show the unit to prospective buyers without the tenant's permission.

### **Rights of Tenants of Foreclosed Properties**

A landlord whose rental property has entered into a foreclosure proceeding must give the tenant advance notice of the foreclosure which includes specific information regarding the tenant's rights and resources for assistance. Tenants cannot be evicted by the purchaser until

they own the property. The amount of time a tenant can continue to occupy the property after the sale depends on whether the tenancy is for a fixed term (60 days or until the lease expires) or month-to-month or week-to-week (30 days). The maximum amount of time a tenant can occupy a foreclosed property after the sale is 90 days.

In these types of circumstances, the purchaser does not become the landlord unless they accept rent from the tenant, enter into a new rental agreement, or fail to terminate the tenancy as outlined under Oregon regulations.

Once the tenant receives this notice, they can apply security deposits or pre-paid rent toward their current rent obligations. The landlord still retains the right to evict the tenant for outrageous conduct.

### **Resources**

A compilation of Oregon statutes related to landlord and tenant rights is available from the [Office of Legislative Counsel](#). The publication includes select laws relating to the Residential Landlord and Tenant Act, hotels and motels, temporary and transitional housing, and farm labor housing.

The [Oregon State Bar](#) provides general legal information regarding landlord and tenant law.

### **Staff and Agency Contacts**

[U.S. Department of Housing and Urban Development](#)  
971-222-2600

[Oregon State Bar](#)  
(800) 452-8260

[Community Alliance of Tenants](#)  
503-288-0130

Theresa Van Winkle  
[Legislative Committee Services](#)  
503-986-1496