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Inside this Brief

- **Rights and Responsibilities of the Landlord**
- **Rights and Responsibilities of the Tenant**
- **Rights and Responsibilities - Condominium Conversion**
- **Rights of Tenants of Foreclosed Properties**
- **Resources**
- **Staff and Agency Contacts**

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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, federal law (the Civil Rights Act of 1968 and the Federal Fair Housing Act) may be applicable during national/regional emergencies and in preventing discrimination.

The landlord-tenant relationship is founded on duties prescribed 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, residence in certain institutions, and occupancy by a landlord's employee.

Rights and Responsibilities of the Landlord

The Oregon Residential Landlord and Tenant Act requires that a rental unit be in a habitable condition at all times during the tenancy. This includes plumbing facilities, water supply, adequate heating facilities, electrical lights, clean building and grounds, and all other areas and facilities properly repaired and working. Waterproofing and weather protection is

required in the roof, walls, windows, and doors. The rental unit must include a working smoke detector and, if the unit contains a source of carbon monoxide, a working carbon monoxide detector. The unit must have working locks for all dwelling entrance doors.

Disclosures

The rental agreement must include notification if the dwelling is located in a 100-year flood plain. The agreement must also disclose the smoking policy for the premises.

Security Deposits

The landlord has 31 days after termination of the rental agreement to refund all deposits and prepaid rent due to the renter. If the landlord needs to keep any portion of the deposit to cover damages, breakage, unpaid rent, etc., a statement showing the use of that money must be forwarded to the tenant within 31 days. Deposit money may not be claimed by the landlord to cover ordinary wear and tear by the tenant.

A landlord is not required to repair damages in order to make a claim against a deposit. Labor cost for cleaning and repairs must be based on a reasonable hourly rate. The landlord can perform the work and charge a reasonable hourly rate. Carpet cleaning can be subtracted from the security deposit under specified circumstances, including the cleaning was done with a professional carpet cleaning machine, the carpet was cleaned immediately prior to the tenant taking possession, and the rental agreement includes a provision outlining the right to deduct the cost of carpet cleaning regardless of whether the tenant cleans the carpet prior to vacating the dwelling.

Screening Charge

A landlord can charge an applicant a screening charge to cover the cost of obtaining applicant information as the landlord processes the rental agreement application. The charge may not be greater than the landlord's average actual costs or the customary amount charged by tenant screening services or consumer credit reporting agencies for a comparable level of screening. The landlord must provide receipts for the

applicant screening fee. The landlord cannot require payment unless a written notice is provided to the applicant that describes the screening process and criteria, amount of the charge, the rights of applicant to dispute the accuracy of the information provided to the landlord, and the rent charged and deposits required. The written notice must also include an estimate of the number of rental units of the type sought by the applicant that are available or will be available in a reasonable future time, as well as the approximate number of applications under consideration for those units. The screening charge must be refunded if a vacancy is filled before the screening is conducted or if the screening is not conducted for any reason.

Additional Fees

A landlord has the right to charge a late fee as stipulated in the written 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.

If a utility or service provider bills the landlord for a utility or service provided directly to the tenant, the landlord can require the tenant to pay a utility or service charge to the landlord. A small, additional charge can be added for cable television, direct satellite or other video subscription services or for Internet access or usage. The fee cannot be more than as stated in the written rental agreement. The additional charge must not be more than 10 percent of the utility or service charge billed to the tenant. The utility or service charge plus the additional amount must be less than the typical cost the tenant would incur if the tenant contracted directly with the provider.

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 can be charged for a late rent payment, dishonored check, violation of a written pet agreement, or for tampering or removing a smoke detector or carbon monoxide detector. A fee up to \$50 can be charged for late payment of a utility or service charge owed to the landlord; failure to clean up pet waste, garbage or other waste from premises other than the dwelling unit; 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. The landlord can raise the rent after providing 30 days written notice for month-to-month tenancy, and seven days for week-to-week tenancy. For month-to-month rented space for a manufactured dwelling or floating home, the landlord must provide 90 days written notice.

Entering a Unit

The landlord or landlord's agent must notify the tenant at least 24 hours in advance before entering the property. There are certain exceptions, such as when a tenant has requested repairs, when there is an emergency, when tenant is absent for more than seven days, 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, if the tenant has lived in the unit for more than a year, a 60-day written notice. 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 or tenant has cause to end it. Cause includes violation of the rental agreement, failure of

landlord to maintain habitable conditions, failure of tenant to pay rent.

Notice 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 eight 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 the notice period, the tenant does not need to vacate.

A landlord can give a tenant a 24-hour notice to vacate if the tenant has committed specified acts or acts considered "outrageous in the extreme." This may include threatening other tenants, intentionally damaging property, injuring someone, prostitution, or possession of a controlled substance. 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 landlord 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. A landlord cannot terminate a rental agreement, evict a tenant, or treat a tenant differently because they are a victim of domestic violence, sexual assault or stalking.

Temporary Occupancy

A landlord may 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 that is a violation of the temporary occupancy 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 habitable condition, 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 notice that allows the continuation of the rental agreement if damages are repaired within 14 days.

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. 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 ordinary wear and tear. It is the tenant's responsibility to test the smoke detector and carbon monoxide detector every six months and to replace batteries as needed.

Repairs

Tenants have the right to cause the repair of some minor habitability defects of up to \$300 and deduct the cost from the rent if the landlord doesn't make the repair within seven days of receiving a written notice. The landlord can designate who can make the repair if it is reasonable and does not diminish the tenant's rights. Tenants may not have mold, radon, asbestos, or lead-based paint defects repaired.

The tenant can give a written 30-day notice for terminating the tenancy if the landlord is not in compliance with the rental agreement or is not maintaining the unit in a habitable condition. In a week-to-week tenancy, the rental agreement can terminate in as little as seven days if the breach is not remedied. In a month-to-month tenancy, the landlord has seven days to remedy a breach involving essential services and 30 days for all other cases. The timeframe can be shortened to 48-hours if the lack of essential service poses an imminent and serious threat to the tenant's health, safety or property.

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, addressing repair requests without designated times or dates, or conditions 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 notice 120 days before the conversion is completed. The notice is to provide specified information regarding the tenant's rights as well as the anticipated acquisition cost and monthly expenses. 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 on the unit cannot occur without the tenant's permission. Construction on the general common elements can only take place between 8:00 a.m. to 7:00 p.m. and tenants are required to be allowed safe and ready access to their unit. 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

Tenants are to be notified if the property they are living in is in foreclosure. The trustee must send a notice to any individual who occupies the property and who is or might be a residential tenant. The notice must specify the tenant's rights and provide information regarding legal resources available at no cost to the tenant. If the purchaser wants to move in and use the property as a primary residence, the purchaser can give written notice and require the tenant to move after 90 days, even in cases in which there is a fixed lease with more than 90 days remaining. In other cases, the purchaser can have a tenant evicted after the fixed term lease ends or 90 days after the notice for other tenancies. Once the tenant receives this notice, they can apply security deposits or pre-paid rent toward their current rent obligations.

The purchaser becomes the new landlord if they accept rent from the tenant, enter into a new rental agreement, or fail to give written notice within 30 days of the foreclosure sale that the tenant must vacate.

Many of the notice periods will shorten on January 1, 2015.

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.

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

[Community Alliance of Tenants](#)
Renters' Rights Hotline
503-288-0130

[Manufactured Communities Resource Center](#)
800-453-5511

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