

Landlords and tenants: A little knowledge is a dangerous thing

Both landlords and tenants should know that specific duties and rights are placed on them by the Residential Landlord-Tenant Act.

BY BRADLEY J. WOODWORTH, Esq.

NOTE: This column discusses general legal principles only. For specific advice to rely on, you should consult a qualified attorney.

A very common legal relationship is the one between a landlord and a tenant. In Oregon such relationships are controlled by the Residential Landlord-Tenant Act. The statute is contained in Oregon Revised Statutes, Chapters 91 and 105. Convenient summaries of the

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Landlord-Tenant law are available through Legal Aid offices, and the Multi-Family Housing Council, discussed below. Both landlords and tenants should know that specific rights and duties are placed upon them by this law. Failure to know or follow landlord-tenant law can result in a lawsuit against the landlord. Sometimes, relations between a landlord and a tenant will become emotionally charged. When this happens, one or the other may act improperly under the law, either because they don't know what the law permits and forbids, or they choose to ignore it. Oftentimes a landlord will have his own idea of what is permitted. This article discusses, in general terms, what a landlord and tenant must and may not do.

Rent and eviction

There is one thing that makes the relationship between landlords and tenants go smoothly: rent. The question for the tenant when he doesn't have the rent is where does he get it; the question for the landlord when he doesn't get the rent is what legal way can he reinstate his cash flow.

For non-payment of rent, the landlord could, of course, forgive and forget. But since the mortgage holder on the apartment building probably won't do the same, the landlord more likely wants his money or a new tenant. When rent is unpaid the landlord can give the tenant a written notice (forms are available at legal stationery stores) which tells the tenants they have 72 hours (3 days) to pay the rent or face eviction proceedings. Posting the so-called "72-hour notice" on the door is the quickest legal method of getting the tenant's attention and ultimately evicting him for non-payment of rent. Once the three days are up, the landlord usually can file eviction proceedings in the District Court. The "72-hour notice" can also be mailed to the tenant. If it is mailed, a special provision provides for an extra three days before eviction proceedings can be filed. Also, if the "72-hour notice" is served by mail, the tenant is permitted to pay the rent by placing it in the mail within three days of the date of the notice.

If the rent is not paid within 72 hours, the landlord is usually entitled to possession of the premises, but *must* use the courts to obtain an Order of Possession.

A landlord may also terminate a tenancy for no reason at all. In such a case, he sends the tenant, usually, a 30-day notice to terminate the tenancy. While a landlord has the right to evict a tenant for no reason, he cannot evict for a retaliatory reason. For example, if a tenant asserts his rights under the landlord-tenant law (such as the right to have notice before the landlord enters the premises) he cannot be evicted in retaliation for that. A retaliatory eviction can expose the landlord to a lawsuit for damages, and should be avoided.

Habitable premises

Perhaps the central commitment made to the tenant in exchange for rent is the one most often violated. That is the landlord's duty to provide "habitable" premises. The statute provides a long list of things that are required for "habitable premises" such as plumbing and electrical wiring "in good working order," and working locks and smoke detector.

When the premises are truly not habitable, the tenant is entitled to withhold up to one month's rent in order to effect repairs. If your tenant has withheld rent for habitability reasons, you should make sure that your premises comply with the statute before proceeding against the tenant. If the premises are not habitable, and you seek to evict the tenant for withholding rent (if the tenant does so properly under the statute), then you could be liable to the tenant for a "retaliatory eviction."

Landlord's entry rights; no lockout

An often misunderstood right of the landlord-tenant relationship is the landlord's right to enter the premises. The statute provides that, generally, at least 24 hours notice to the tenant, and the tenant's consent, are required before the landlord may enter. The landlord, generally, may only enter at reasonable hours, and the tenant may not unreasonably withhold consent. If there is an emergency, the landlord need not give 24 hours notice, nor receive consent. Thus, if pipes have burst in an upstairs apartment, and the tenant is not at home, the landlord can enter to make repairs. However, if the landlord's purpose is routine, he must give the appropriate notice and obtain consent. Failure to do so can result in a penalty equal to one month's rent for each illegal entry. Always give notice, but remember that the tenant may not unreasonably withhold his consent to allow entry.

Related to entry is a landlord attempt to "lock-out" the tenant. Though a frustrated landlord may be tempted to invent his own alternatives to the landlord-tenant law, a tenant lock-out is not permitted. There are substantial penalties for changing the locks on the tenant. It is also unlawful to shut off the tenant's electricity or any other utility.

Another landlord temptation is to keep some or all of the tenant's security deposit because the tenant did not give proper notice or moved out early. This is not permitted. A landlord may claim from the security deposit such sums reasonably necessary to repair damages caused by the tenant (over and above reasonable wear and tear), and appropriate sums to remedy the tenant's default in payment of rent. When a landlord claims from the security deposit, he must account in writing for the amounts claimed and pay the balance to the tenant within 30 days. Failure to do so renders the landlord liable for twice the amount wrongly withheld, plus the possibility of the tenant's attorney fees.

Tenant's property

One of the haziest of all the rights of the landlord-tenant relation is what the landlord can and cannot do with the tenant's property left behind in the apartment. If the lease period has ended, or the premises have been abandoned (as defined in the statute) or surrendered by the tenant, and the landlord reasonably believes the tenant isn't coming back for the personal property left behind (or in some other limited circumstances), the landlord may dispose of the property, but must do so according to the rules

of the statute.

These rules include the certified or registered mailing of a written notice in an envelope marked "please forward," addressed to the tenant's last known address and to any of the tenant's alternative addresses known to the landlord. The notice must say very specific things, such as: the property is considered abandoned and must be removed within 15 days of the delivery of the notice or the property will be sold or otherwise disposed of. After mailing the notice, the landlord must store the property in a place of safe-keeping, and is entitled to reasonable storage costs. If the tenant responds in writing to the landlord within the 15 days, the tenant has another 15 days to remove the property before the landlord can do anything further with it. If the tenant doesn't respond, or doesn't retrieve the property after responding to the written notice, then the landlord can sell or otherwise dispose of the property, or any part thereof.

In general, a landlord may not seize or lock up tenant property because of unpaid rent.

Doing so actually creates liability to the tenant for conversion of the tenant's property, and could result in punitive damages being assessed against the landlord.

Where to go for help

This article only touches on some of the issues in the landlord-tenant relationship. Anyone who operates even one rental unit should be thoroughly familiar with the landlord-tenant law. In addition to the helpful booklets mentioned in the introduction, landlords, in particular, can obtain assistance and forms to use from the Multi-Family Housing Council of Oregon, an association of apartment owners and property managers. They are listed in the phone book, and are an excellent resource for all landlords.

The author is an attorney in private practice and maintains offices in the Oregon Trail Building in downtown Portland.

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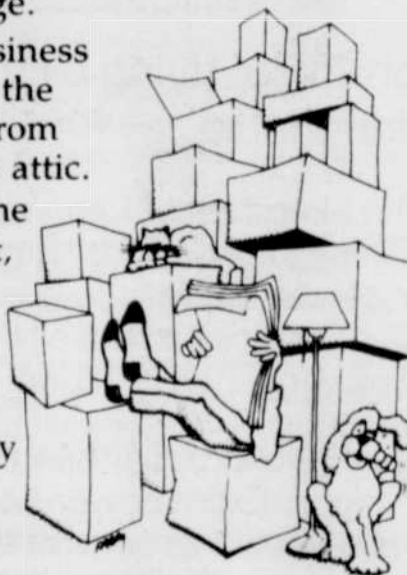
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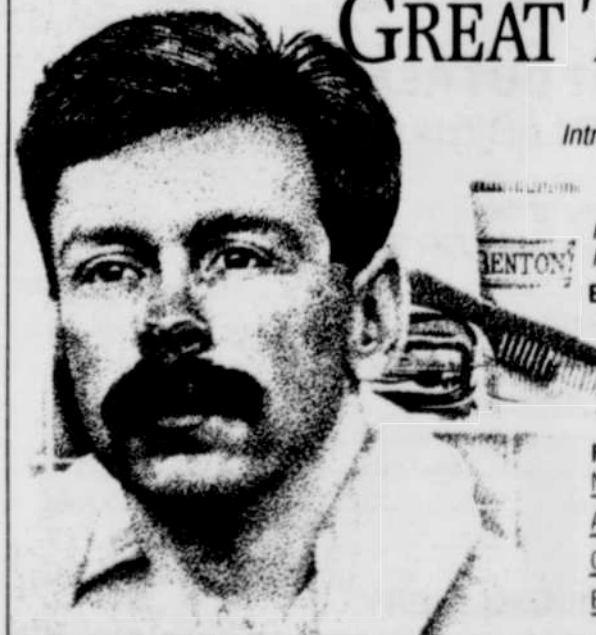
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