

Housing law explained

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One of the most important pieces of consumer legislation to be enacted by the Oregon Legislature is the Residential Landlord Tenant Act of 1973.

Since this legislation, together with subsequent amendments and additions including one in 1977 relating to mobile home parks, may affect many OSEA members, either as tenants or landlords, we will outline its provisions in a series of columns beginning in this issue of The OSEA News. Readers are warned, however, that space does not permit a comprehensive treatment of this law and its application to all situations. Questions about particular situations should be addressed to your own attorney.

This time we will look at some general provision of the Act. Future columns will deal with landlord responsibilities and tenant remedies and with the special provisions dealing with mobile home parks.

While landlords and tenants are free to bargain for rental agreements, which may be either written or oral, the Act specifically prohibits certain provisions from being included in the rental agreement: A tenant, in a rental agreement, may not give up any of his or her rights protected under the law, and such a waiver, if included in the agreement, is of no effect and cannot be enforced by

the landlord. Likewise, a tenant may not "confess judgment" in a rental agreement, that is, he may not give the landlord a right to a judgment against him without the matter being tried in court. For example, an admission of fault in advance.

Likewise, the tenant may not agree to limit the landlord's liability arising from the landlord's wilful misconduct or negligence. To put teeth into

Consumer Notes

these requirements, the law provides that if the landlord deliberately includes such provisions in the rental agreement and attempts to enforce them, the tenant may recover from the landlord, in addition to his actual money damages, up to three months' rent.

Additionally, if a court finds a rental agreement or any of its provisions to be "unconscionable," the court may refuse to enforce the agreement or it may modify it. "Unconscionability," while difficult even for lawyers to define, refers to an agreement which is so outrageously unfair that the court will not enforce it. One way to look at it is to apply what law students call the "puke" test; if the terms of the agreement as are such as to make you want to throw up, they are unconscionable.

The law also provides that the court may award the prevailing side (either the landlord or the tenant) reasonable attorney fees and costs, even though the two parties had previously agreed to some other arrangement. This applies in the case of any legal action with regard to a rental agreement or other action which occurs under the law. The state Supreme Court has said that, barring unusual circumstances, the prevailing party normally would recover attorney fees.

Another section of the law says that the aggrieved party who is seeking to recover money damages under the law has a duty to "mitigate" damages. This means that the party cannot sit idly by and let the amount of damages increase if it is within his power to prevent it. For example, if a tenant breaks a lease, the landlord has the duty to make a good faith effort to find another tenant so that the amount of the landlord's damages (the rent he has lost for the remainder of the lease) will be minimized.

Finally, with regard to the general provisions, the law imposes on all parties the obligation to act in good faith in carrying out their responsibilities. This means that the spirit, not just the letter of the law must be observed.

NEXT: Landlord responsibilities and tenant remedies

Highway grievances proliferate in Portland

PORTLAND -- Three group grievances involving members from the Highway Division have been filed in behalf of 21 members by OSEA Employee Representative Paula Chinn.

A group of 10 employees is involved in a grievance because they are not getting the 60 consecutive hours off that they are entitled to between work weeks, according to Article 28,

Section Seven of the Highway contract.

Unfortunately, notes Chinn, Highway management has taken the small-minded threatening approach to the resolution of this grievance. For example, a toll bridge supervisor in Astoria said in a May 25 memo to toll collectors, "remember, when we go to a steady schedule, you are on it

for ever and ever and ever!" The "steady schedule" is this man's only solution to a simple matter of decency, not to mention contractual rights, that will allow these workers an adequate interval of time off before they have to return to work.

A group of five employees has grieved because the agency contract has been violated with regard to pay days. When the pay checks for this bridge crew was not ready at the end of their shift on the first day of the month, as required by Highway contract, they stayed on the job for six hours of overtime until the pay checks were prepared and delivered. Chinn has filed

on their behalf for overtime and a meal allowance under the state central agreement.

This grievance now is in the hands of George Sanders, grievance specialist in the Personnel Division, because of the unsatisfactory response received from Gene Huntley of the Highway Division.

A group of six has grieved under Article 28, Section 9a, of the Highway contract which says that the 40-hour work week must be contained within a span of 108 hours. (For example, 8 a.m. Monday to 5 p.m. Friday is 108 hours.) The employees in this grievance have had the beginning and ending of their work week separated by 112

hours and 116 hours. The effect of this, in addition to it being a violation of the contract is that it cuts into the employees' weekends.

Again, because of a totally unacceptable response from the Highway Division's Gene Huntley which raised irrelevant issues, the grievance has been appealed to the Executive Department and George Sanders.

Two other grievances filed by OSEA Employee Representative Roger Yockey on behalf of 12 Highway Division employees have at this point only reached the regional maintenance engineer.

Five employees have grieved because of violations of the overtime article and seven have grieved because of violations of articles in both the agency and the central contract involving uniforms and protective clothing.

These employees want gloves to protect their hands from the wire rope, cable, bridge structures and creosote-treated lumber they are required to handle on the job.

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