Habitability: A basic requirement in law

By BROMLEIGH LAMB
OSEA Legal Research

The first article in this series delt with some of the general provisions of the Oregon Residential Landlord Tenant Law. This article will discuss the obligations the law places on the landlord and the remedies available to the tenant.

Once again, readers are reminded that space does not permit a detailed discussion of all applications of the law and specific questions should be addressed to an attorney.

The first obligation imposed by the law relates to security deposits. A security deposit is the amount which the tenant is required to deposit with the landlord to cover damage to the property, this is what we know as the "cleanup deposit." The landlord is required to give the tenant an accounting of any use of the deposit and return the unused portion of the deposit within 30 days of the end of tenancy. Failure to do so entitles the tenant to recover double the amount wrongfully withheld. The landlord may withhold from the deposit only amounts necessary to remedy defaults by the tenant in his performance of the rental agreement and to repair damages to the property caused by the tenant EXCLUSIVE of ordinary wear and tear. The landlord is specifically prohibited from requiring the tenant to forfeit the deposit for breaking his lease; the tenant, however, may be liable in a suit for damages for breaking the lease.

All outside doors of the rented dwelling must be equipped with working locks and the landlord must furnish the tenant with keys for all such locks.

The most important duties or restrictions placed on landlords by the law are the requirement that the dwelling unit be kept in a habitable condition and the prohibition of retaliatory action against tenants. A detailed list would be too lengthy to recite here but the significant features are the requirement for working plumbing features installed in conformance with building codes, approved hot and cold water supply, connection with an approved sewage disposal system, adequate heating facilities and an electrical system installed in conformance with building codes. In short, the dwelling must be kept in good repair.

A landlord is prohibited from retaliating against a tenant by raising rent or threatening eviction if the tenant complains to a governmental agency for the violation of a building or housing code which materially affects health or safety, if the tenant complains to the landlord of a violation of the statutory provisions for maintaining habitability or if the tenant organizes or becomes part of a tenant's

Consumer Notes

union. In any event, however, the landlord may bring court action for eviction if the violation of code provisions was caused by lack of reasonable care by the tenant or other person in his household or on the premises with his permission, if the tenant is in default in the payment of rent or if compliance with code provisions requires alteration, remodelling or demolition which would require the tenant to vacate the premises. The Oregon Court of Appeals with the approval of the Supreme Court, has said that the landlord may not evict you simply because he claims he intends to demolish the building without also showing that demolition is required in order to comply with codes.

A variety of remedies are available to a tenant if the landlord fails to comply with the law. In a case of a breach by the landlord of the rental agreement or his failure to maintain habitability, the tenant may, upon notifying the landlord in writing, terminate the lease in 30 days if the breach is not remedied. If the breach is a failure to provide essential services such as heat, water and electricity, the breach must be remedied within seven days. If the breach occurs again within six months, the lease may be terminated by the tenant upon 14 days' written notice. In addition, the tenant may go to court to recover money damages or to seek an injunction against the landlord.

If the landlord deliberately refuses to provide essential services or is grossly negligent in doing so, several other remedies are available to the tenant. He may obtain reasonable amounts of the essential services on his own and deduct their cost from his rental payments. He may sue for damages in the amount of the decrease of the fair rental value of his dwelling. He may obtain substitute housing until the landlord restores essential services, be excused from paying rent during that period and recover the reasonable actual cost of obtaining substitute housing. Upon written notice to the landlord, the tenant may have necessary repairs made and, upon submitting to the landlord the receipts for such work, deduct the cost from his rent up to $300.

None of the above remedies, however, is available to the tenant if the condition was caused by deliberate or negligent act of the tenant, a member of his family or other person on the premises with the tenant's permission.

If the landlord brings a court action against the tenant because of failure to pay rent, the tenant may counterclaim for damages due him. The court may then order the tenant to pay the rent to the court which will decide how to divide the money between tenant and landlord.

If the landlord unlawfully excludes the tenant from the premises, wilfully cuts essential services or engages in prohibited retalitory action, the tenant may either recover possession or terminate the rental agreement. In either case, the tenant may recover two months' rent or twice his actual damages, whichever is greater.

NEXT: Tenant obligations and landlord remedies.

Overtime pay right enforced

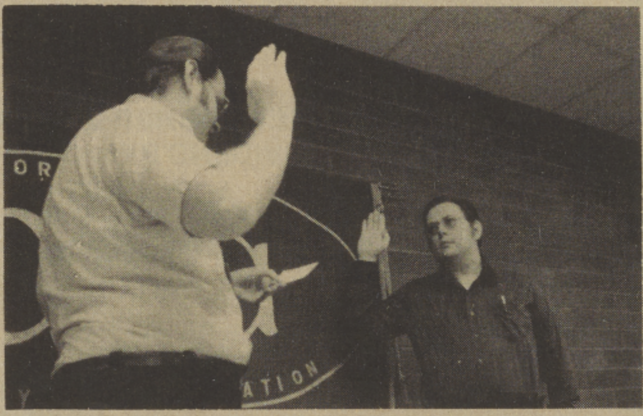
Employes in the Vocational Rehabilitation Division (VRD) have the **RIGHT** whether they wish cash or compensatory time off for overtime they have worked.

This is the settlement of a grievance initiated by OSEA Job Representative Lynn Della and concluded at the Executive Department level by Employe Representative June Wissmath.

The grievance resulted from an employe's request to take compensatory time off for the overtime worked. The request was denied. Management referred to Article 18 of the agency agreement and said that only gave the employe a right to state a "preference" of comp time over cash. OSEA asserts that it gives the employe the "right" to say which form of payment he or she will receive. Another article of the agency agreement speaks to the actual scheduling of the time off.

In his settlement, Personnel Division labor negotiations specialist Terry Plummer referred to a Jan. 10 memo of agency administrator Carl Haugerud which said that "Section 6 provides for an employe option regarding payment or comp time." Plummer went on to say "It is the analyst's determination that this language intends to give employes the right to choose the form of overtime compensation, either cash or compensatory time off, he / she desires."

assembly of governmental employees
AGE



Duly sworn

Former OSEA president Jim Kinns, right in top photo, swears in Jon Lucke as OSEA president. Lucke succeeds Marie Grant who resigned after she was promoted into an excluded position. Lucke gives the oath of office to former District 8 Director G. Louis Roberts who was elected vice president, middle photo. Bottom photo, Jan Beals moves up and is sworn in as District 8 director. Lucke and Roberts were elected by the Board of Directors to fill terms which will expire at the close of General Council in October.

Board briefs

The following is a summary of the main motions voted on by the OSEA Board of Directors at its June 24 meeting in Salem.

- By a 12 to one roll call vote a motion was passed placing the Board on record in active opposition to the Whittenberg amendment.
- By a 13 to zero roll call vote the Board authorized the Association to actively participate on a committee in opposition to the Whittenberg amendment.
- A motion was passed assigning to the Government Relations Committee the responsibility for membership education on the Whittenberg amendment.
- A motion was passed by the Board to RECEIVE the financial audit of OSEA made by the firm of Aldrich, Kilbride, Naas & Hutchison.
- A motion was passed that the Board ACCEPT the financial audit of OSEA.
- An amended motion was passed making the Board of Directors and the assistant district director or one other person a statewide BURC for central contract negotiations.
- An amended motion was passed which said that the report of the Investigation Committee remain in a safe deposit box, subject to orders of the court, for a period of two years and at the end of two years they be destroyed.
- Separate motions to dismiss the revocation of membership complaints against Mary Laski and Nancy Nelson were approved by the Board.
- A motion was passed to accept Larry Lord, Buck Coster, Jerry Lelack, Marty McCune and Jerry Arnold as members of the Internal Affairs Committee.
- A motion was passed extending the life of the Constitution and By-Laws Committee to the 1979 General Council and that late resolutions be submitted to the 1978 General Council to be submitted at that time.
- A motion was passed approving $3 per participant for lunches for day-long job representative or other workshops.
- A motion was passed to add to the Finance Section of the Association Policy and Procedures a policy regarding the printing of agency contracts.
- By a vote of eight yes, four no and one abstention, the Executive Director's salary was raised four per cent effective April 1, 1978, and a cost of living raise between five and nine per cent effective July 1, 1978.
- A motion was passed that an organization flow chart of district and statewide officers with photos, names and telephone numbers be placed in The OSEA News following General Council.
- A motion was passed endorsing the boycott of J.P. Stevens products.
- A motion was passed to reconsider an earlier vote that District 3 have a reelection of chapter and district officers. The reconsidered motion then failed, the effect being that District 3 will NOT have a reelection. An amended motion which passed would allow those who received a blank ballot be able to submit that to the Secretary-Treasurer for a printed ballot.
- A motion was passed accepting appointments to the Membership Relations Committee. New members are: Judy Creighton, replacing Victor Soto; Jeff Johnson, replacing Harry Marshall; Shirley Trimble, replacing Shirley Green; and Bobbie Barnhouse, replacing Noel DeHart.