

2006 Legislative Action

Major Changes to Residential Landlord-Tenant Law for 2006
(not including manufactured housing)

CHANGES MOST LANDLORDS PROBABLY DON'T CARE TO KNOW ABOUT:

1. Garnishment of deposits: A creditor of your tenant in theory could garnish the security deposit you're holding; after all, it's an asset belonging to your tenant. New law makes clear that residential tenancy security deposits are not garnishable.
2. Writ of execution. The writ form used to require superfluous information that made the form difficult to complete. No longer.

CHANGES SOME LANDLORDS MIGHT RUN INTO:

3. Ex parte review of stipulated agreement hearing requests: After a landlord and tenant enter into a stipulated agreement at an eviction hearing—such agreements most commonly include a payment plan—if the tenant doesn't comply with that agreement, the landlord can file an affidavit of noncompliance and get a Notice of Restitution. The tenant can contest the affidavit of noncompliance, but only for certain reasons (such as the tenant did comply or the landlord hindered compliance). Most requests for hearings don't comply with law. Multnomah County has adopted a practice of having a judge review these requests and reject those that don't comply. New law now allows Multnomah County (and the others) to do what it's already doing.
4. Denial based on eviction. The law now more clearly states that a landlord may not deny an applicant who was the defendant in an eviction action that was dismissed or that resulted in a judgment for the tenant. A landlord may deny an applicant who lost an eviction, or who is party to an eviction that hasn't yet resulted in a judgment. And, as before, a landlord can use the reference from the landlord who failed to win an eviction as grounds for denial, assuming that landlord gives an unsatisfactory reference.
5. Meth lab and abandoned property. No one is allowed access the portion of a property posted as a meth lab until it is cleaned up by a company certified by the Department of Human Services. The clean-up can take months, resulting in a landlord not being able to comply with the abandoned property statute, which requires a landlord to allow a former tenant to reclaim property. A new subsection requires the landlord to tell the tenant about the meth lab posting and, in essence, postpones retrieval of personal property until allowed by the clean-up company.

CHANGES AFFECTING MANY LANDLORDS:

6. Disclosing why an application is denied. A landlord who charges an application fee or who screens an application and then turns the applicant down must now explain why. It will no longer be lawful to say, "Sorry, you don't meet our screening criteria." The explanation can be fairly

general, such as “negative information from rental references” or negative information from other references” or “unacceptable criminal history.” Checking off items on a list on a pre-printed form is specifically allowed.

7. Remedy period for certain cause notices shortened. For-cause termination notices (as opposed to no-cause notices) currently require a remedy period of at least fourteen days for any curable violation. New law will allow a remedy period of any length of time (consistent with how the notice is delivered) for a violation that is a separate and distinct act rather than ongoing conduct. So, for a loud party or inappropriate behavior that occurred yesterday, the notice could state that the tenant can cure the violation by not repeating the behavior after receipt of the notice. If the landlord is uncertain if the behavior is ongoing or not, the landlord may give the 14-day remedy period. This is part of ORS 90.400, which was rewritten in its entirety and divided into several sections. The re-write includes some other minor but substantive changes:[1] cause notices must include a possible remedy, not the remedy, since there can be more than one; [2] all material violations of 90.325, the tenant duties section, not just those affecting health and safety, are grounds for termination;[3] failure to pay rent is specifically listed as a violation subject to a 30-day cause notice;[4] nonpayment of rent notices must state how much rent is due (this wasn't the case heretofore); [5] the remedy date must be at least 14 days off; current law requires exactly 14 days;[6] for a violation to be subject to a 10-day repeat violation noncurable notice, it must recur within six months of the date of the original notice, not of the remedy date. The rewritten sections also are more user-friendly: breach and noncompliance and remediable are gone; violation and cure and remedy are in. The law should now be more accessible to landlords and tenants both.

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