Tenant Rights

Credit Checks

Many landlords will check your credit history to see if you have paid your bills on time. Credit bureaus collect information about you from various sources. Such information may stay on file for up to 10 years and may include:

- your name, current and former addresses, Social Security Number, birth date, current and former employers, type of job, income, spouse information and whether you rent or own your home;
- dates that you opened your credit accounts, or took out a loan, and the terms of the accounts;
- attempts to get credit, car loans, insurance, mortgages, etc;
- account balances, past due amounts, how often you pay late;
- your biggest loan ever received and any limits on your credit card accounts;
- bankruptcies, lawsuits, court judgments, liens, or repossessions.

If you are refused housing because of information on the credit report, you may obtain a free copy of your report within 30 days by requesting it in writing from the credit bureau. You may then submit a personal letter of explanation, or "your story," to your file. If the landlord charged an initial screening fee, he should have already provided the name and address of the credit bureau under the federal Fair Credit Reporting Act.

Tenant Screening Fee

Some landlords use a tenant screening service to help them select tenants. These services not only have access to your credit history, but may also be linked to a database that can access the courts' records of evictions, divorces and small claims activities. To save money, you should ask the landlord if they have screening criteria for applicants. Be sure that you can pass the criteria before paying an application or screening fee. If you know you won't meet the criteria, ask if the landlord will consider your explanations. Many landlords will adjust the criteria for an honest explanation. The landlord might charge an additional deposit for the added risk. Tenants should be honest and fill out all applications completely, neatly and accurately. Landlords can reject an application that is incomplete, inaccurate or falsified.

A landlord who charges a screening fee is required to give written notice to the applicant of the amount of the fee and the landlord's screening criteria. The notice must be given prior to acceptance of the fee, but the notice does not have to include the name and address of the screening service or credit reporting agency until and unless the applicant is denied based on the credit or screening report. The screening fee disclosure must also explain the applicant's right to dispute the accuracy of the information retained.

Application Fees

A landlord may charge a fee to cover the cost of processing the application, including running background or credit checks on potential tenants. (90.295) The landlord may not charge a screening fee unless he gives a written notice of:

- what information will be obtained;
- the charge for the process;

- the applicant's right to dispute the information obtained;
- the name and address of the screening service or credit bureau.

An application fee cannot be charged if there is not a rental unit currently available. A fee or deposit cannot be charged to put you on a waiting list. Application fees should be no more than the average, actual costs for screening. If, for any reason, the landlord does not perform the screening, he/she must refund the fee within a reasonable time.

Reservation Deposit

If the landlord approves an application and an agreement to rent is reached, the landlord may require a deposit to ensure that the applicant will sign a rental agreement and move into the unit. (90.297(2)) The landlord must either refund the deposit when the tenant moves in, or apply it to the security deposit or first month's rent. The landlord must give the applicant a written statement of the terms of the agreement regarding the deposit, as well as how the deposit will be refunded or retained.

Security Deposits, Fees & Advance Rent

Oregon law clearly defines several terms in order to avoid confusion between landlords and tenants.

1. A fee is now always nonrefundable.
2. A deposit is always refundable.
3. Under the Advance Rent section, "last month's rent payment" is a deposit, not "prepaid rent." This means that a tenant must pay rent for the last month of occupancy, and then the landlord will reimburse the funds like a deposit. "Prepaid rent" cannot be used by the landlord for anything but unpaid rent.
4. Prepaid rent occurs in two distinct instances.
    (1) When a tenant voluntarily pays rent in advance (e.g. a tenant who has just won a lottery jackpot may want to pay the next three months' rent in advance, rather than spending the winnings); and
    (2) When a tenant has paid rent for a period extending beyond a termination date (e.g. a tenant who has paid the rent might be evicted in the middle of the month on a 10 day per violation).

All About Rent

The new definition of rent specifies that rent does not include security deposits, fees, or utility service charges. As a result of this change, a landlord could not use a 72-hour termination notice for non-payment of rent for failure of the tenant to pay such deposits, fees or charges. On the other hand, a landlord would not have to give a 30-day rent increase notice if utility or service charges increased. Oregon legislation also clarifies that rent will not be due before the first day of a rental period.

Housing Discrimination

Federal law provides that it is illegal to discriminate in any housing transaction on the basis of race, color, sex, family status, religion, national origin or mental or physical disability. It is also illegal in Oregon to discriminate because of your marital status or your source of income (provided the source is not illegal or criminal). (659A.421(1))

Note: Landlords may, however, reject a couple who are unmarried, unrelated, and of the opposite sex if the rental requires the use of a common bath or bedroom. (659A.421(6)) In Eugene, it is also illegal to discriminate because of your sexual orientation or age.

Tenants with Disabilities

A “disability” is a physical or mental impairment which substantially limits one or more of a person’s functions, such as caring for oneself, doing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and/or working. It is illegal to discriminate based on mental or physical disabilities. It is also illegal to discriminate against disabled people because they have a hearing-ear dog or seeing-eye dog or other assistance animal, or to charge an additional non-refundable fee or excessive deposit for the animal. (346.610-346.660) These protections also make it illegal to discriminate because a person is afflicted with AIDS or the HIV virus.

Note: Landlords may not disclose if an occupant or former occupant is infected with or has died from AIDS or the HIV virus.

Other state and federal laws expand the rights of disabled tenants so that landlords must make “reasonable” accommodations in rules, policies, practices and services as necessary to allow a disabled person equal opportunity to use and enjoy a dwelling. (Civil Rights of Disabled People, (659A.145) and the Federal Fair Housing Act, (42 U.S.C. 3601 et. Seq.))

Landlords must also permit reasonable modifications to the premises, at the tenant’s expense, to make the dwelling usable for the tenant. The tenant may be required to restore the premises to their original condition at the end of the tenancy only if it is reasonable to do so. For example, a wheelchair ramp may have to be removed, but widened doors would not have to be narrowed.

Although federal regulations forbid requiring a deposit because of these changes, they permit the landlord to require the tenant to open an “escrow” account, with interest going to the tenant, to ensure that there are funds to pay for any modification that the tenant can be required to remove at the end of the tenancy.

Tenants do not have to disclose their type of disability unless they are trying to get into specific housing intended for disabled people. Landlords are not entitled to ask for specific details of the health condition of an applicant or tenant.

Familial Status

The same state and federal laws prohibit discrimination against families with children (i.e., because the tenant has a child, has or is securing legal custody of a child, or is pregnant). A child is a person under 18 years of age.

Identifying Discrimination

Most discrimination happens without the victim having the slightest suspicion that discrimination has occurred. Examples of illegal discrimination may include:

- saying that there is no vacancy when there is one;
- requiring a credit check or charging a higher rent or deposit only for members of a protected class (minorities, families, disabled, etc.);
- trying to discourage a member of a protected class in any way (i.e., “There are no other people of color here. You may feel more comfortable somewhere else;” or

- any other distinction in the terms of conditions of the rental.

What to do

If you feel you have been discriminated against, the supposed violation should be reported. Depending on the type of discrimination there are several ways to seek help. You can also seek legal assistance and file complaints in federal or state courts. Even if you don't have proof, file a complaint especially if you feel you have been discriminated against during the application process. Quick action may result in preventing the landlord from renting the unit to someone else until your case is resolved. Below are resources for claims of discrimination:

- ASUO Legal Services
- Oregon Fair Housing Council
- Fair Housing Enforcement division of the U.S. Department of Housing and Urban Development (1-800-669-9777)
- Civil Rights Division of the Oregon Bureau of Labor and Industries (503-731-4075)

Rights and Responsibilities

Right to Respect

Tenants have the right to be treated with respect and dignity, no matter what their income level. Although the property belongs to the owner, on the day the tenant moves in, the property becomes the landlord's financial investment and liability, and the tenant's home. Both the landlord and tenant should treat each other with respect.

Notice of Tenant's Absence

The rental agreement may require the tenant to give actual notice to the landlord of any expected absence of more than 7 days. Notice should be given no later than the first day of the absence. The purpose of this requirement is to insure the maintenance of any systems that need regular attention (i.e. heat), to protect against theft, and to guarantee that the landlord will not think the unit has been abandoned. (90.340)
Penalty: The landlord may recover actual damages if the tenant deliberately fails to notify the landlord of an extended absence. The landlord can also enter the dwelling after seven days for if "reasonably necessary". (90.410)

Unauthorized Roommates

If the original tenant has an unauthorized roommate, the landlord may give a month-to-month renter a 30-day "no cause" eviction notice within 14 days, which states the violations and the opportunity to correct the problem. The landlord may simply demand that the unauthorized roommate go through the normal application process.

Tenant Remedies for Lack of General Repair (90.360)

The statute separates general maintenance into two categories: general services and essential services. If the landlord fails to repair a problem, the tenant may fall back on the general remedies provided by 90.360. There are damages and relief through a

legal order (injunction) that can be asserted by suing the landlord or defending against an eviction. The tenant can also end the tenancy under this statute.

Note: The ORLTA's general provision for habitability remedies applies to all material violations of the rental agreement (90.360(2)) as well as to violations of the landlord's habitability obligations. However, the tenant must prove that the landlord knew or should have known of the problem(s) in the counterclaim. (90.370)

Tenants can choose to enforce either general remedies or essential remedies, but not both. Choose the one that seems best given the desired outcome, the risks being taken, and the strength of the case. In many cases, reaching an agreement with the landlord will best solve the problem.

The three options available to tenants are:

1. **"Fix or I Quit"- Tenant Termination for Cause**

This remedy is applicable for breaking a long-term rental agreement before the term is up. (90.360) Month-to-month tenants may terminate on 30-days' notice with or without a reason. If the landlord has failed to live up to his/her part of the rental agreement or has violated the landlord obligations in a way that substantially affects the value of the tenancy, to the tenancy, the tenant may:

- deliver a written notice listing any and all breaches of the rental agreement;
- the notice may state that if the breaches are not cured within 30 days (7 days in the case of essential services), then the rental agreement will terminate at the end of the 30 days. If the breach is fixed (by repair, payment of damages, etc.) before the date specified in the notice, the rental agreement is not terminated.

Recurring Problem

If the same general problem recurs within 6 months, the tenant may terminate the agreement upon 14 days' written notice. The notice must again specify the problem and the date of termination of the rental agreement.

Return of Deposits after Termination

If the rental agreement is terminated due to the landlord's breach, the tenant is entitled to the return of all prepaid rent and deposits except for the amount necessary to cover damages caused by the tenant. Additionally, the tenant may sue to recover any damages (i.e., the expense of moving, etc.).

2. **Suits Against the Landlord**

The tenant may recover damages and get a legal order (injunction) to fix the problem(s). *Warning: Court costs and attorney fees may be charged to the losing party, which could be the tenant initiating the claim.*

This remedy may be the best tactic if the tenant can find a lawyer and if the other remedies don't fit the case. Often, the landlord will negotiate a settlement rather than face an expensive court battle. Typically, the case would include a detailed statement of everything that is wrong with the rental situation (habitability, poor management, etc.) and would ask for:

- a court order requiring the landlord to make repairs and fix the problems according to a strict schedule;
- damages which could include part or all of the rent which has already been paid, the cost of repairs, any penalty provided by the ORLTA, as well as damages suffered by the tenant(s) for living under such conditions;
- a court order forbidding any evictions for any reason, unless the eviction is approved by the court where the case is pending.

3. **Defending Against An Eviction Action**

The tenant's right to damages under 90.360 can be used as a defense against an eviction action based upon nonpayment of rent. However, the tenant must prove that the landlord knew of the habitability violations before the eviction (i.e. a copy of a letter listing the violations that is certified by the post office to have been sent). (90.370(1)(a)) The tenant may then counter-claim in an eviction action for damages and injunctive relief repairs. If the tenant counterclaims, the court may require the tenant to pay rent into court. The amount of the counterclaim is limited to the jurisdictional limit of the court (i.e., $10,000 in District Court). Tenants should have access to an attorney before taking steps in this direction.

Tenant Remedies for Lack of Essential Services

The ORLTA has special rules and remedies for getting repairs done for essential services. However, the general remedies above may also be applied to get essential services repaired.

Warning: Use these remedies with extreme caution and preferably with the help of an attorney. Some attorneys say that the general remedies are almost always a better choice because of the complexity and limitations of the essential services remedies. You can't use both remedies! A tenant who adopts one of these essential service remedies cannot also end the rental agreement for that breach as under the General Remedies (fix or I quit). (90.365(6))

The Essential Services

Essential services are defined in 90.100(9) as:

- heat
- plumbing
- hot and cold running water
- gas
- electricity
- light fixtures
- locks for exterior doors
- latches for windows
- any cooking appliance or refrigerator supplies or required to be supplied by the landlord
- any service or habitability obligation the lack of violation of which creates a serious threat to the tenant's health, safety or property

A tenant may terminate the tenancy with a 48-hour notice if the landlord negligently fails to supply any essential service. The lack of the essential service must pose an imminent and serious health threat. The tenant must give written notice.

Notify the Landlord

Tenants must notify the landlord in writing. Notice can be delivered personally, sent by first class mail, sent by fax, or securely attached to the main entrance of the landlord's residence. If you send the notice by mail you must add three days to the 48-hour termination period. In an emergency such as no heat in the middle of winter, the statute would be satisfied by an attempted telephone notice followed by written notice as soon as possible. Always write a letter to notify the landlord, even if you have already phoned.

Under the essential services remedies, the tenant must give the landlord "reasonable notice" to enable the landlord to provide the essential service. What qualifies as "reasonable" depends on the circumstances.

For example, in the cause of a faulty cooking appliance or refrigerator supplied by the landlord, "reasonable notice" for one burner not working would be much greater than reasonable notice for the whole appliance not working.

Note: Under the essential services remedies, a tenant's rights do not take effect until the tenant has notified the landlord, or has made a serious attempt to do so in the case of an emergency.

The tenant loses his/her rights if he/she caused the damages. This could be tricky in a case like frozen pipes. However, it does not relieve the landlord from the responsibility of repairing the problem.

Prepare Some Proof

If you notify the landlord and he/she doesn't respond, call the housing, fire and/or health inspectors when in doubt: anything they report could be considered essential. However, not all code violations violates the ORLTA.

Write down everything that is wrong as it happens. You will need this information for your letter to the landlord. Get it verified by a friend, or better yet, by a housing or fire inspector. The inspector's report will be sent to the landlord, but you must ask for a copy for yourself. Other forms of evidence that you might use include photos, repair estimates, receipts and names of any repairperson involved.

If the landlord chooses to contest your claim that it was an essential service or that he/she was negligent, this proof will be important. If your problem is a real disaster and things happen too fast for you to establish proof from the beginning, write down everything that happened as soon as you can.

The Choices

The remedies vary depending on whether the landlord is negligent, grossly negligent or willingly refusing to provide essential services.

Negligence- Repair and Deduct

Negligence is the easiest to prove because the landlord has a duty to maintain the premises. If the landlord negligently fails to repair any appliances that have been

supplied; or fails to supply any other essential service, the tenant may give notice and then may have the necessary repairs made.

With the submission of receipts, the tenant may deduct the actual and reasonable cost of repairs from the rent up to the following maximums: 1) $1,000 if the lack of the essential service poses an imminent and serious threat to the tenant's health, safety or property AND the work is performed by a licensed or professional; or 2) $5,000 if the lack of essential service is significant or if the work is not performed by a licensed or registered professional.

The landlord may specify the party who is to do the work and the landlord and tenant may agree to a repair more costly than the amount set forth above, but this should be recorded in writing. (90.365(3)(d)(7))

Gross Negligence or Deliberate Refusal

These could be difficult to prove without witnesses or documents showing that the landlord knew of the problem but refused to do anything. If written notice has been given and the landlord has failed to fix the problem, the tenant has the follow options:

- obtain reasonable amounts of temporary alternative forms of heat, water, electricity, or other essential services and deduct the actual and reasonable cost from the rent;
- recover damages based on the reduced value of the rent;
- move into reasonable substitute housing and not pay rent on the original dwelling until the services are restored. A tenant may also sue for the cost of comparable substitute housing; or
- complete the work and submit receipts for the cost as set out in "Negligence-Repair and Deduct."

Willfully Refusing to Provide Essential Services and Unlawful Ouster

If the landlord unlawfully locks out the tenant or willfully cuts off any essential service, the tenant may recover up to two months' rent or twice the actual damages, whichever is greater. (90.375)

The tenant may also terminate the rental agreement at which time the landlord must return all deposits and prepaid rent.

Withholding rent- Things to Consider

If you withhold rent, you risk being taken to court and evicted. It is not recommended.

A landlord's violation of repair obligations may provide a tenant a defense to the payment of rent or to an eviction based on nonpayment of rent. (90.360(2), 90.370, 105.115(3)). This means that a tenant can legally withhold rent as a part of enforcing one of the above remedies (or enforcing a general provision).

Step back from your case for a moment and objectively (from the perspective of a property owner or a judge) decide if you look credible. Ask yourself the following questions:

- Have you acted in good faith, with honesty in fact in the conduct of the transaction?
- Would it be clear to an outsider that justice is on your side?

- What do you need to do to show that you are not simply trying to cheat the landlord?