

## Changes affecting landlords adopted by the 2009 Legislature

By J. Norton Cabell

The 2009 legislature adjourned on June 29. Here are the approved bills that affect landlord tenant law. This covers the changes, not all aspects of the subject. I have indicated in *italics* the status of the bill, since the Governor could (though is unlikely to) veto some of these. This is a best-efforts basis. All errors here are mine. But I am not responsible for the consequences of any such.

SB 771 (*enacted: effective Jan. 1. 2010*)

### GENERAL LANDLORD TENANT COALITION OMNIBUS BILL

#### **No-cause notices**

- A landlord's no-cause notice during the first year of occupancy must be a minimum of 30 days, but after the first year of the occupancy must be at least 60 days. "First year of occupancy" means that all of the current tenants have been there for at least a year.
- For a fixed-term tenancy of at least one year that by its terms converts to a month-to-month tenancy, the landlord may use a 30-day notice during the 30 days prior to the conversion date, but must a 60-day notice after that date.
- A no-cause notice may give an explanation of the reason for the termination without making it a for-cause notice as long as the notice contains certain wording.

#### **Temporary occupant agreement**

- A landlord and tenant can agree to let the tenant have someone live in the rental unit as a temporary occupant without that person becoming a tenant.
- This arrangement must be in writing signed by the three parties. The agreement must contain certain language.
- The landlord may screen the temporary occupant for behavior-related issues, such as getting criminal records and checking with prior landlords about behavior, but may not screen for credit or income or rent payment history.
- The agreement can have an ending date.
- The arrangement can be terminated at any time without cause by the tenant; it can only be terminated for cause by the landlord. If it is a month-to-month tenancy, the landlord can terminate the tenancy (which would effectively terminate the temporary occupant agreement) without cause.
- The temporary occupant is not a tenant, stays there only at the sufferance of the tenant, and if the tenant vacates becomes a squatter and can be removed without using the eviction process.
- The definition of tenant specifically excludes a guest or temporary occupant.

#### **Dead tenant**

- If a tenant living alone dies, the following persons have the same rights as a tenant: [1] personal representative, [2] heir or devisee, or [3] person designated in writing by the tenant to be contacted by the landlord if the tenant dies.
- That person must provide reasonable evidence of their status.
- The abandoned property notice must contain certain language.
- Another copy of the abandoned property notice must be sent to the Department of State Lands (DSL) plus any personal representative, heir or devisee, or designated person the landlord actually knows of.

- A landlord cannot release the property to a “designated person” until DSL signs off.
- A landlord who complies with this process is not liable to other who have a claim to the property.

### **Fees**

- All one-time fees, such as cleaning fees, pet fees, carpet cleaning fees, and move-in fees, are prohibited. Fees for service or companion animals are prohibited.
- A landlord must provide a written disclosure of rent, deposits, and fees when entering into a rental agreement or, if accepting a deposit under an agreement to rent the property at a future date, when accepting a deposit under that agreement. The parties can agree to amend that list before entering into a rental agreement.
- Only certain noncompliance fees are allowed. They are:
  - [1] late charges;
  - [2] for a bounced check, plus any amount the landlord was charged by the bank;
  - [3] in a manufactured home, for pet violations;
  - [4] unless the landlord chooses to charge for damages, breaking a lease, though limited to one and a half times rent;
  - [5] late payment of utilities paid to the landlord (not to exceed \$50);
  - [6] failure to clean up pet waste (not to exceed \$50);
  - [7] failure to clean up garbage from outside the dwelling unit (not to exceed \$50);
  - [8] parking violations (not to exceed \$50); and
  - [9] improper use of vehicles, such as speeding, on the premises (not to exceed \$50).
- Charges for services requested by the tenant and not required by lease or law, such as key replacement and lock-out fees, are not prohibited.

### **Security deposits**

- Landlords may not charge a security or pet deposit for a companion or service animal.
- Landlords can charge for their own labor when making repairs or cleaning.
- Rent for the time a rental unit is unavailable for renting because of cleaning or repairs caused by the tenant can be charged to a security deposit.
- If agreed to in the rental agreement and if the carpet was cleaned before the tenant moved in, the landlord can charge from the deposit carpet cleaning regardless of the condition of the carpet and even if the tenant had the carpet cleaned.
- If a tenant terminates a fixed-term tenancy prior to its expiration, a landlord may charge actual damages, including rent and cost of re-renting.

*SB 772 (enacted; effective Jan. 1, 2010)*

### MANUFACTURED HOUSING LANDLORD TENANT COALITION OMNIBUS BILL

#### **Garbage collection in parks**

- A park can unilaterally amend a rental agreement to change from providing garbage service and including the cost in the rent to an arrangement where the hauler provides the cans and collects the garbage and the tenant pays either [1] the hauler directly, or [2] the landlord who bases the charge on the number and size of cans and only passes through the cost without mark-up.
- To convert, a landlord must give at least 180 days notice.
- Where the cost of garbage service was included in the rent, the landlord must reduce the rent by the average cost of the garbage service over the prior year. The landlord must provide tenants with proof of the cost during the prior year.

- The landlord may not make such a conversion if the landlord has sent a rent increase notice within the past year (with an exception for fixed-term tenancies with automatic rent escalators).

#### **Utility mark-ups in parks**

- A park landlord can add a mark-up (up to 10%) to certain utilities provided and charged to tenants: cable television, direct satellite, other video subscription services, and internet usage or connection.
- The total charged must be less than the typical cost the tenant would incur in contracting directly for the service.
- The rental agreement and the billing must describe the mark-up separately from the utility cost.
- A landlord must make copies of such utility bills for the prior year available to tenants for inspection.
- A landlord may not unilaterally amend rental agreements to include such mark-ups.

#### **Pro-rata billing for utilities in parks**

- A landlord can charge for garbage only by including it in the rent or by passing through the cost pro-rata based on the size and number of cans.
- For tenancies entered into or renegotiated after 2009, a landlord may not use or convert to the pro rata method of charging for water (or sewer, if based on water consumption) billed to the landlord by a utility.
- Methods of calculating the pro-rata share must be based on the number of occupied spaces or— if there is a correlation with usage of the utility—on the number of occupants or the square footage of the occupied homes.

#### **Disclosure of utilities billed to tenants**

- Upon request, a landlord must show copies of utility bills that are passed through to tenants.

#### **Sub-metering in parks**

- A landlord cannot convert to sub-metering if the landlord has given notice of a rent increase within the past year (with an exception for fixed-term tenancies with automatic rent escalators).

#### **Park manager training**

- Oregon Housing and Community Services Department (OHCS) will adopt rules and penalties to govern the manager education requirements.
- OHCS will create an advisory committee to help it implement and administer registration and education requirements.
- Parks are required to pay a \$25 annual registration fee, with the money dedicated to the park management program.
- Authorized courses must be offered by nonprofit trade associations with a statewide presence and approved by OHCS.
- Parks that don't comply with the education requirements can be fined up to \$1,000. In time, an unpaid fine can become a lien on the park.
- These education requirements sunset January, 2012.

#### **Political signs in parks**

- A resident may post a political sign not just on the home, but on the space, though the landlord can reasonably regulate the size of such signs and how long they are there.

**Temporary occupant agreement** — same as in SB 771.

SB 875 (*enacted; effective immediately*)

#### **Fees for companion animals**

- Clarifies a landlord may not charge a fee or deposit for a companion animal.

SB 929 (*enacted; effective 2012*)

**Submetering in parks**

- Landlord of park with 200 or more spaces that charges tenants for water must do so by submetering.
- Effective date of January 2, 2012.

SB 952 (*enacted; for most purposes, effective immediately*)

**Foreclosures**

- Tenant must receive 30 days (60 days if fixed-term lease) notice to vacate after foreclosure sale.
- Tenant must be notified of pending foreclosure.
- After receipt of notice of sale, tenant can apply security deposit to rent.

HB 2135 (*enacted; effective Jan. 1, 2010*)

**Smoking disclosure**

- A landlord must disclose smoking policies in a rental agreement: no restrictions on smoking, smoking allowed only in certain areas, smoking is prohibited.
- This statute does not apply to parks.

HB 2578 (*enacted; effective Jan. 1, 2010*)

**Towing**

- Tower must photograph car showing violation.
- Tower must have landlord's or manager's permission to tow a particular vehicle unless complex has fewer parking spots than rental units and lot is posted and landlord provided parking stickers to tenants.
- Tower does not need landlord or agent's permission for vehicles blocking access or other vehicles or parked in fire lanes or violating a "prominently posted parking prohibition."
- Tower must release car if owner arrives before car is actually towed.
- A vehicle can be towed from a spot assigned to a specific tenant only with that tenant's specific permission.

HB 2614 (*enacted; effective Jan. 1, 2010*)

**Flood zone disclosure**

- If a dwelling unit (including a space in a park) is located in a "100-year flood plain," as defined by FEMA, a landlord must so disclose.
- If a tenant suffers loss from a flood and a landlord failed to make the proper disclosure, the penalty is the lesser of actual damages or two month's rent.

HB 2962 (*enacted; effective immediately*)

**For evicting live-in employee of resident**

- Covers live-in employees (and their families) of resident, whether a renter or an owner.

HB 3085 (*enacted; effective xxxx*)

**Park closure ordinances**

- Allows local municipalities that already have park closure ordinances to amend them before Jan. 1, 2010.

HB 3127 (*enacted; effective immediately*)

**Regulating locksmithing**

- Establishes licensing and certification for locksmiths.
- Allows only licensed locksmiths to install, re-key, re-pin locks for pay.
- Exempts landlords and property managers.

HB 3450 (*enacted; complicated, but mostly effective July 1,2010*)

**Requiring carbon monoxide detectors**

- A landlord must install carbon monoxide detectors in dwelling units where there is a carbon monoxide source or an attached garage.
- State fire marshal shall adopt rules regarding installation, placement, testing, etc., of alarms.
- A landlord must provide a tenant written instructions for testing the alarm.
- A tenant may not tamper with or remove a detector.