

Summary of 2007 changes to Oregon Residential Landlord Tenant Act

By J. Norton Cabell

These are the significant changes made by the 2007 legislature that affect landlord tenant law.

Senate Bill 561 was the Landlord Tenant Coalition's omnibus bill:

- **Tenant Repair** — A tenant may repair a minor habitability defect and deduct the cost of the repair from the rent if the landlord, after the tenant sends a 7-day written notice of tenant's intent to repair and deduct, doesn't make the repair. The repair cannot reasonably cost more than \$300. The tenant cannot perform the work himself. The current "repair and deduct" provision, ORS 90.365(3) is deleted, replaced by a new 90.368.
- **Social Security Number on Complaint** — The FED Complaint form—in 105.124—had a space where a landlord/plaintiff could put the tenant's social security number. The original purpose was for help in identifying the tenant. The space is eliminated over concerns of identification theft.
- **Court Costs and Legal Fees in FEDs** —The law has always been clear that when one party dismisses a case, the other side is the prevailing party and entitled to costs and legal fees. In FEDs, the practice had been when a landlord dismisses that no one "prevails" so neither party collects from the other. A recent Court of Appeals case (Oakleaf Mobile Home Park v. Mancilla) changed that. A landlord who files an FED could be required to pay the tenant's costs and legal fees up to and through the preliminary hearing even if the landlord dismisses before then. A new section in 105.137 will stop the clock on legal fees at the point where the landlord notifies the tenant the action is being dismissed.
- **Declarations** — An "affidavit" is a statement sworn to by a person in front of a notary. Oregon law allows an alternative: a "declaration." That is a statement signed by the person containing the following language: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." The eviction law will change to allow a Declaration instead of an Affidavit when the landlord seeks a Notice of Restitution in 105.148 following noncompliance by a tenant with a stipulated agreement and when the tenant asks for a hearing contesting that noncompliance.
- **Domestic Violence** — The federal government passed a new Violence Against Women Act in 2006 that, in federally subsidized rentals including those with Section 8 vouchers, prohibits terminations and evictions of victims of domestic violence but allows removing the perpetrator of the violence. Several other states have adopted the changes required by VAWA into their general landlord tenant laws. Our changes are:
 - "Dating violence" is included in 90.100(7) in what is covered.
 - Those who can provide verification of the existence of domestic violence in order to let a victim break a lease under 90.453 include—besides a law enforcement officer—an attorney, licensed health professional or victim services provider (the latter is specifically defined).
 - Proof of the existence of domestic violence for 90.453 can be a restraining order from any jurisdiction (other states, Indian tribes), a police report, or a conviction.
 - The time when the last incident of domestic violence must have occurred for 90.453 is extended, by allowing tolling for when the perpetrator is incarcerated or living more than 100 miles away and by allowing any valid restraining order as proof.

- Landlords are required in 90.453(6) not to disclose to others any information concerning the lease-break request, including restraining orders or verification statements.
- A landlord cannot terminate or evict a tenant because the tenant is a victim of domestic violence.
- A landlord cannot refuse to rent to someone because she is a victim of domestic violence.
- A landlord cannot use an incident of domestic violence, or a criminal act directly relating to domestic violence, or a police response to an incident of domestic violence as grounds to terminate or evict.
- A landlord cannot impose or enforce different terms or rules on a tenant because she is a victim of domestic violence.
- A landlord can, however, terminate and evict a victim of domestic violence if the landlord has given the tenant a written notice regarding the conduct of the perpetrator and the tenant allows him to move back in or she permits him on the premises and he is an actual or imminent threat to others on the premises. This and the prior four changes are in 90.449.
- If a tenant requests a landlord to lock out a perpetrator under 90.459 and provides the necessary proof—a restraining order—the tenancy rights of the perpetrator are terminated by operation of law once the order becomes final.
- Under 90.445, a landlord can terminate the tenancy of, and evict, the perpetrator of domestic violence—someone who “commits a criminal act of physical violence against a member of the household”—with a 24-hour notice without terminating and evicting other members of the household.

House Bill 2735, the Manufactured Housing Landlord Tenant Coalition’s omnibus bill, was so changed by the legislature that the coalition ended up opposing it. (The legislature dropped the tax credit from \$10,000 to \$5000, weakened the pre-emption agreement, and deleted a tax freeze for landlords.) Closures of marinas, now covered by 90.671, are not affected by these changes:

- **Park Closures** — Under ORS 90.645, a landlord closing a park must comply with the following:
 - A park landlord can close a park, but only with a 365-day notice and only by paying park residents \$5000 for a single-wide, \$7000 for a double-wide, and \$9000 for a larger home. The amount will be adjusted over time for inflation.
 - A landlord cannot charge the tenant for an abandoned home.
 - The closure notice, under ORS 90.655, must contain certain information and must be sent to homeowners, lienholders, and HCS. It must contain information about the state tax credit and about how to appeal property tax assessments.
 - To collect the \$5000 (etc.) the resident must give 30 to 60 days notice before moving and the landlord may require waiver of the abandoned property statute.
 - Rent must be paid during the closure period until the tenant moves; rent may not be increased during the closure period.
 - The \$5000 (etc.) payments are tax-exempt.
 - The capital gains tax break for landlords who sell to resident co-ops, etc., is extended.
 - A landlord must negotiate in good faith with any resident (or resident-sponsored) offer to purchase received within 60 days.
 - The \$10,000 state tax credit now available to a tenant is reduced to \$5,000, but is universally refundable (so, whether the tenant owes taxes or not) and not dependent on the tenant moving the home.
 - Under ORS 90.660, local ordinances regarding closures adopted before approximately the end of 2007 can stay in place. No local ordinances are allowed after that.

- **Waiver** — The waiver statute was re-written in its entirety; in part to simplify it (making it easier to understand) and in part to reduce the risk of unfair application of the law. Those are probably contradictory goals. The statute is now three sections: waiver of violations (90.412), waiver of notices (90.414), and partial rent (90.417). These changes affect all tenancies, not just those in facilities. The substantive changes are:
 - An increase from two to three of the number of months during which a landlord can accept rent knowing of a violation without waiving the right to enforce lease terms regarding that violation.
 - An explicit statement clarifies that a bounced check doesn't create waiver. Landlords sometimes refuse to accept multiple checks for fear one will bounce and then the landlord has unwillingly accepted partial rent.
 - The definition of "rent" in 90.100 states that, for the purpose of 90.412 and 90.414 (waiver) and 105.120 (which doesn't allow an eviction action during a period for which rent has been paid), payments by a housing authority are not rent.
 - Warning notices are allowed (as they have been in Park tenancies). Previously, a warning notice could be used as proof that the landlord knew and with the passage of time therefore waived. Now, as in parks, a landlord can issue a warning notice without that notice causing waiver. Further, if the violation is ongoing (a non-operating vehicle, a couch on the front yard), the notice remains effective for a year and can be renewed.
 - The time period during which to refund rent for beyond a termination date increased from 6 (7 in a facility) to 10 days.
 - In a park, being a predatory sex offender is a non-waivable violation.
- **Mandatory Training** — Minor changes to the education requirements for park managers: new parks must register within 60 days of opening; a manager may satisfy the requirement for more than one park if there is no site manager; what information regarding attendees that must be supplied to HCS is simplified; the content of the training must cover some required subject, not all of them.
- **Maintenance of Vacant Spaces** — Under 90.730, parks must maintain vacant spaces substantially free "from hazards of fire or injury."

Senate Bill 583 dealt with identity theft:

- **ID Theft** — This bill, drafted by the Department of Consumer and Business Services, will help protect people from identity theft. Part of the act will allow one to freeze access to one's credit reports, but require one to notify the big three credit reporting agencies, with a PIN, to unfreeze the report, which may take up to three days. The Coalition negotiated an exemption for landlords. The logic is that rental decisions based on credit are made quickly and that tenants who, for whatever reason, chose to freeze their reports would not benefit by the delays. As before, a landlord cannot obtain a credit report without written permission of a tenant/applicant.

Senate Bill 116 dealt with towing:

- This bill amended Chapter 98. Under 98.805 properties with parking for 3 (not the previous 10) vehicles have to be posted. Under 98.854, tow companies have to post hours when they 'patrol tow.' The requirement in 98.830 that landlords notify law enforcement before having a vehicle towed was dropped.

Senate Bill 431 also dealt with towing:

- Towing — Landlords will continue to be able to have vehicles towed without notice in certain cases, but the legislature is concerned about abuses—about towing residents’ cars for trivial violations—and says it will review the issue in the 2009 session. The elements of the new law, 90.485, are:
 - Where a landlord has a parking lot properly posted, towing of cars blocking entry or emergency access, or parked in a handicapped spot or where cars don’t belong (like on landscaping), or where prominent signs prohibit parking can be allowed without notice.
 - Towing abandoned vehicles continues to be governed by Chapter 98.
 - A landlord may tow a resident’s car that is properly parked but inoperable only after giving 72 hours notice and only if the landlord and tenant have executed a separate parking/towing agreement that specifies such and gives identifying information about the tow company.
 - A landlord may tow a vehicle that is not marked as agreed (sticker, mirror hanger) without notice only if the landlord and tenant have executed a separate parking/towing agreement that specifies such (and provides the device) and gives identifying information about the tow company.
 - If the tenant has a specifically reserved space, the landlord cannot tow unless the tenant agrees.
 - A landlord cannot tow a resident’s vehicle solely because it has an expired registration or tags.
 - This section does not apply to parks.

Senate Bill 2 dealt with discrimination:

- Sexual Orientation — Oregon’s discrimination statute—both 90.390 and 659A.421 now include sexual orientation along with race, color, religion, sex, national origin, marital status, familial status, source of income, and disability. Included in the definition of *sexual orientation* is *gender identity*.

House Bill 3186 dealt with condo conversions:

- Condo conversions — Owners of buildings being converted from apartments to condominiums face additional requirements, found in 90.490 and 90.493. Those are:
 - The 120-day conversion notice must contain additional information, including a statement about limitations on rent increases and that financial assistance may be available from certain agencies.
 - The mayor (or county commission, if not a city) must be sent notice of the pending conversion.
 - During the conversion period, if construction is undertaken, the work may only be between 8:00 and 7:00 and the landlord must provide safe and ready access to the tenant’s unit.
 - A landlord may not terminate a tenancy without cause during the conversion period.
 - A landlord may not increase rent by more than the CPI.
 - A tenant who received a no-cause termination notice or a rent increase greater than the CPI in the six months before the conversion notice and who can prove the landlord issued the notice or raised the rent was for the purpose of avoiding the conversion requirements is entitled to damages.

These summaries are not intended to include every detail of new law; they are just my understanding of the impact of the bills. You can read the actual bills and new law at: www.leg.state.or.us/