

From Apartment Manager, March 2003

Q: One of our tenants—I'll call her Mabel—is elderly and complained several times about the noise coming from the apartment above hers. The five-year-old living there liked to jump. The upstairs apartment just turned over and we ended up with a young couple without any kids. Now Mabel is complaining about the television upstairs being on until midnight. I spoke to the new folks but I can barely hear the TV from out in the hall so it can't be too bad. Mabel has complained to the young couple and she's still complaining to me. I'm getting tired of it and am thinking of just giving her a 30-day notice. How else can I get her to stop complaining?

A: Life for property managers would be so much simpler and pleasanter but for tenants. Think of the problems we have to deal with—late rent, lies, parties, cars, damage, pets—just about every one is caused by a tenant or a tenant wannabe. It is so easy to lose sight of the fact that our tenants are our customers. We won't be successful in our business unless we are able to satisfy the needs of those customers. You can't please everybody all of the time and all that, but still you have to try.

Mabel, along with every other tenant, has a right to complain. Actually, the law doesn't say something like, "A tenant may, at reasonable times and in reasonable terms, complain to a landlord about..." Landlord Tenant law is quirky. It has a section titled "Landlord remedies" and another titled "Tenant remedies." There is one titled "Landlord rights and obligations"—but then one titled "Tenant obligations"; not "Tenant rights and obligations." That doesn't mean tenants don't have rights; they do. But mostly they are spelled out as landlord obligations or tenant remedies. Such is the case here.

Landlord Tenant law says at ORS 90.385 "A landlord may not retaliate... after... the tenant has made any complaint to the landlord..." That doesn't give the tenant the right to complain—it just prohibits the landlord from acting because the tenant complains. Well, that amounts to the same thing.

So Mabel has a right to complain. But the law restricts that right. It says the complaint must be "in good faith and related to the tenancy." Good faith is defined as "honesty in fact in the conduct of the transaction concerned." Its application to retaliation defenses is grist for another column but, in brief, the complaint must be honestly made. It also has to be related to the tenancy. So a tenant's complaint about the inability of the state legislature to face up to funding education and other state programs (or to find cost savings that would provide that funding) is not protected behavior. But Mabel's complaint about someone else's noise in the complex is.

There is a limit, however. The law doesn't protect a tenant whose complaint "was made... in an unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of unreasonably harassing the landlord." If Mabel is calling you at 3:00 am or every half hour, that behavior clearly is not protected. Definitions of unreasonable will differ from person to person, which the law anticipates, adding "A determination whether the manner, time or effect of a complaint was unreasonable shall include consideration of all related circumstances preceding or contemporaneous to the complaint."

Still, the ease and simplicity of a no-cause notice is beguiling. After all, Landlord Tenant law says "The landlord or the tenant may terminate a month-to-month tenancy by giving to the other... not less than thirty days notice..." The beauty of these is that you don't need to give a reason. However, it's well to have a reason, since some reasons are unlawful. For example, if you give the one Latino family or the one gay couple in your complex a no-cause notice, it could

be argued that you are discriminating: treating people differently because of their protected class status. You might counter-argue you gave them that notice because they have a junk car on the premises, or they're partying all the time late at night, if that's the case. I suggest—never avoiding an opportunity to urge using for-cause notices—if tenant behavior is the reason for wanting the tenant to move, use a for-cause notice. Still, the no-cause notice is legal as long as the reason—though unstated, it's just a no-cause notice—is legal.

But that's not the case with you and Mabel. You want her to move because she's complaining. That behavior is protected: tenants are allowed to complain. Still, you could do it. Let's be honest. Tenants rarely exercise their rights. I've learned that fewer than ten percent of tenants who are served a 24-hour notice (remember, this is for very serious matters, usually drug stuff) actually show up in court or find an attorney. Almost always, they're in the wrong and know it, so they don't pursue remedies.

So you could serve a 30-day notice, knowing that the cause would likely fail in court, but also knowing the tenant is unlikely to push the issue. If the tenant doesn't move, and doesn't show up in court, you win.

You could, but you shouldn't.

I—and I hope you—are professionals. There is a time, knowing you could well fail in court, to serve a termination notice and then file an eviction action. You have to evaluate the risk of losing and balance that against the likelihood the tenant will object to the point of finding a lawyer. I, as a professional, do that only when I know (or at least strongly believe) the tenant's behavior is grounds for termination. Sure, I might lose based on the level of proof, but still I'm morally right. Could I prove it, I would be legally right. I don't—and I encourage you not to—serve such notices and follow up with an eviction knowing the underlying reason is not a legal one.

You are in business. While none of us likes to listen to complaints, it comes with the job. While the complaints may be bothersome, annoying, and irksome, you're paid to listen to them. That doesn't mean you have to do anything about it. You're required to listen.

You might talk to your tenant. Mabel, you could say, I understand this noise is bothering you. I wish I could do something about it. But it isn't bad enough to force them to leave; it's just noise, the kind that comes with apartment living. If you'd like to move to an upstairs apartment, we might be able to arrange that (if this is an option at your complex). You might try earplugs. Otherwise, you're just going to have to get used to it if you're going to live here.

That may not make Mabel happy, but it's being honest.

My usual reminder: each circumstance is unique, so your case will be different. Before you act, be certain about what you do. Don't rely solely on this general advice; read the law and consult others as appropriate.