

Mind Your Business – Tia’s Tips for Better Rental Management

Expiration of (some) Pandemic Restrictions Ahead!

By Tia Politi, ORHA President

Non-Tenant Guests

February 28, 2022, marks the end of some of our pandemic-related restrictions. Remember under the mandates of **SB 282**, housing providers were required to allow a “non-tenant guest” to reside in the dwelling unit as a temporary occupant (TO) if they passed screening (except for income and credit) and signed a temporary occupant agreement. By statute, the agreement could not end prior to **February 28, 2022**. So, if you are in this situation and have an agreement that is expiring, you have some decisions to make.

If the agreement has no end date, then you may only terminate the TO for a material violation of the rental agreement and the TO has no right to cure. If the agreement had an end date, then you may either terminate the TO’s occupancy rights as of the end date of the agreement, or you may extend it, or perhaps even offer an opportunity for the TO to pass the remainder of your screening criteria and be added to the rental agreement if you wish.

If you do require the TO to vacate the premises at the end date of the agreement (or for a material violation of the rental agreement) and they refuse to vacate, **ORS 90.275** allows you to serve a **Notice of Termination with Cause – ORHA form #38**, to the lawful tenant(s) requiring that they remove the now-unauthorized occupant within the minimum 14-day cure period or vacate the premises upon the expiration of the notice. If the tenant vacates, but the TO does not, the TO is considered a squatter and their right to occupy may be terminated using a **24-Hour Notice for an Unlawful Occupant – ORHA form #39**.

The provision in **SB 282** that allowed you to accept rent from the TO without creating a tenancy will also sunset on **February 28th**, so if you have been accepting rent from them you must stop doing that or you could create a tenancy with the TO.

Collecting on Emergency Period debt

The end of February marks the end of the **Protected Period (April 1, 2020 – February 28, 2022)** for **Emergency Period (April 1, 2020 – June 30, 2021)** debt. On or after **March 1, 2020**, you may pursue your current or former residents for this debt. If the debtor is a current resident, however, you may not pursue the debt (yet) if they have provided you with written documentation of application for rent assistance in accordance with **SB 891**.

Documentation verifying the submission of an application for emergency rental assistance can be provided by any reasonable method, including by sending a copy or photograph of the documentation to you by electronic mail or text message.

Residents who provide the required evidence are entitled to a **Safe Harbor** period through **September 30, 2022**, during which you may not take any action against them or serve any notices related to nonpayment. Nonpayment does not include payments owed by a tenant for damages to the premises.

If the resident has not provided you with documentation, you might opt to serve a for-cause termination notice to force the issue, but through **June 30, 2022**, you must include the **IMPORTANT NOTICE ABOUT YOUR RIGHTS TO PROTECTION FROM EVICTION** (available on the website). Just like with current rent or debt, if the resident provides you with written evidence of application for rent assistance, they are entitled to the full benefit of the **Safe Harbor** period. The resident has until the first appearance in eviction court to provide you with that written evidence.

Through **June 30, 2022**, the **IMPORTANT NOTICE** is required to be served with any termination notice for nonpayment of rent (which includes things like fees and utilities, but not damages to the rental unit). Just like with rent and moneys owing since **July 2021**, if the resident provides you with documentation of their application for rent assistance, they are protected from any eviction action for nonpayment (except for damage to the premises) until you are notified of application approval or denial or through **September 30, 2022**.

If you receive notice that the tenant's application has been approved, pop the champagne cork, you'll get reimbursed! If you receive notice that the tenant's application has been denied you may serve another notice to collect the debt without the obligation to include another **IMPORTANT NOTICE**.

Landlord Guarantee Program

You will also be able to seek compensation from the **Landlord Guarantee Program** administered by **Home Forward** (<http://www.homeforward.org/LGP>) but it will only cover the timeframe of the **Safe Harbor** period, not anything prior or later. I've talked to many folks on the helpline saying that their residents said they had applied, but that's not enough. They must provide you with written evidence or you won't be able to access the program for reimbursement. You may only be reimbursed beginning on the date the resident gave you the written documentation of the application for rent assistance (not the date they applied) through the earlier of:

1. The date that you regain possession of the dwelling unit.
2. The date that the court enters a judgment for possession of the dwelling unit.
3. The date that you are notified that the application has been approved – in which case you will likely be fully reimbursed and won't need to apply to the program.
4. The date that you are notified of application denial.
5. September 30, 2022.

Housing providers may seek compensation not only for rent, but also for any eligible non-payment charges that accrued during the **Safe Harbor** period. Eligible non-payment charges include rent, late charges, utility or service charges, or any other fee as described in the rental agreement or allowed by or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.

Collecting from past residents

You may recall that for residents whose tenancies terminated during the **Protected Period (April 1, 2020 – February 28, 2022)**, the statute of limitations was tolled. That means you have through **February 28, 2023**, to initiate legal action to recover any nonpayment balance (and they have that right as well). It

might not hurt to make one last effort to get them to sign a **Promissory Note – ORHA form #50**, and agree to reasonable payment arrangements, but you can also sue in Small Claims Court, or hire a collection agency to pursue the debt on your behalf. I'm often asked if it's worth it and like most things, it depends. One benefit of getting a civil judgment of more than \$3,000 (exclusive of costs) is that the judgment will create a lien on real property (land or buildings) owned by the defendant. It only applies in the county in which the judgment was rendered unless you file the lien in other counties in accordance with ORS 18.152.

A colleague in another county had a small claims judgment and real property lien against a former resident for around \$8,000 and the resident inherited property. They hadn't paid the property taxes for three years and the county was preparing to foreclose but found her lien. They contacted her and told her if she paid the back taxes, the property was hers. The home was a tear-down, but the land value well exceeded the debt. So yes, it can be very well worth it!

This column offers general suggestions only and is no substitute for professional legal counsel. Please consult a competent attorney for advice related to your specific situation.