

# Top Ten Classic Landlord Mistakes

By Tia Politi

As a property management consultant, I guide landlords through the processes of dealing with tenant noncompliance, termination, deposit reconciliation, eviction and small claims. Through the years, common themes have emerged regarding lack of knowledge in the following 10 areas:

## 1. Fair Housing violations in advertising & first contact

To stay out of trouble, follow the rule: Describe the property not the people. Don’t say things like, perfect for older married couple, ideal for single man who works nights, Buddhist vegans only need apply. And especially don’t say things like, no Section 8, no animals, and - no criminal history. The HUD Memo of 2016, along with Oregon landlord-tenant law require landlords to consider an applicant’s criminal history in context. You need to look at whether the history presents an actual danger to yourself, the property, or the neighbors, by considering such things as the type of crime(s), how many convictions, how long ago the crime(s) occurred, the age of the individual at the time the crime(s) occurred, and the rehabilitative measures they have taken since. Residents can also request a reasonable accommodation for a waiver of poor history related to domestic violence, untreated mental illness, or criminal history related to a prior addiction when the applicant has received treatment and stayed clean.

Don’t prescreen potential applicants when they call, or ask potentially illegal questions such as number of children, source of income, marital status, ethnicity, religious preference, etc. Everything you need to know will be on the application. Some landlords say they do a bit of prescreening so people won’t waste their time applying if they won’t qualify. Unfortunately, this opens the door to saying or doing something that results in a Fair Housing violation against an applicant in a protected class. Offer an application to anyone who indicates an interest in applying, even if at first contact it appears they might not qualify. All of the information regarding that person will be on the application, and that’s when the job of screening begins.

Landlords also get into trouble when they answer questions by disabled applicants related to Reasonable Accommodation of the lease terms, or Reasonable Modification of the premises. The best way to avoid trouble in this regard is to create an auto-response, such as, “I do not discriminate based on any protected class. Would you like an application?” Don’t put the cart before the horse, it will only lead to trouble. If the applicant is approved, the landlord can then move through the request, verification, registration, modification process.

## 2. Screening poorly or not at all

If you have a decent rental property and good people in that property, there’s no easier job in the world than being a landlord. And that’s the trick: identifying people who will take care of the property, pay their rent in full and on time, and keep to the terms of the rental agreement. The best chance of achieving that is to actually screen potential residents. Require each adult applicant to fill out an application. Check all disclosure boxes for requirements like renter’s insurance, utilities or services that benefit the landlord or another tenant, or yard care. Require applicants to answer every question and fully complete the application before it is accepted, then verify the information. There are many fine screening companies that can help. Apply rental criteria fairly, without regard to race, color, national origin, religion, sex, familial status (families with children), disability, marital status, source of income (including housing subsidies), sexual orientation, gender identity, type of occupation, or domestic

partnership. If applicants meet the criteria they are approved or conditionally approved; if not, they are denied.

If a landlord charges a screening fee, there are extra requirements. The applicant must be provided with the landlord's written screening criteria prior to applying, the landlord must have an available property or one that will be available soon, the applicant must be told where they are in line for an advertised property, the landlord must provide a receipt for the fee, and they must actually screen the applicant, or are required to refund the fee. The landlord must also issue any denials in writing separately to each applicant, within 14 days and must reconsider the applicant if they provide evidence showing that the reason for denial is wrong in some fashion. Landlords who do not collect a screening fee must also deny applicants in writing, and for both, they will need to provide an explanation as why any supplemental information regarding criminal history provided by an applicant is not sufficient to overcome a negative screening outcome.

### 3. Rushing the move-in process

Don't be pressured by applicants (or finances) into rushing the move in. When move in is rushed, it results in three fatal errors: 1) Failure to fully screen, resulting in poor quality tenants; 2) Failure to document the condition of the property, resulting in disputes over damages at the end of the tenancy; 3) Failure to ensure the property meets habitability standards, resulting in aggrieved tenants with a basis for complaint, and even counterclaim in a legal action. Diligence at the beginning of the relationship is rewarded at the end.

It's a big red flag when an applicant holds a handful of cash and pressures the landlord to move quickly. Haste makes waste. Prepare the property completely before handing over possession. Verify the transfer of utilities, and make sure the rental agreement and all addenda are completely filled out, initialed and signed by all parties.

### 4. Confusing pets with assistance animals

A pet is a pet; an assistance animal is a wheelchair. Too many landlords confuse the two, to their detriment. Landlords may restrict a tenant's right to keep a pet in the rental property by limiting the number, size, species, and breed of pets, and charging increased deposits and rent for the privilege of keeping a pet.

An assistance animal is not a pet, but an assistive device that allows a disabled resident the ability to occupy and enjoy the unit the way a non-disabled resident could; therefore, landlords cannot require any additional deposits or rent for assistance animals, restrict size or breed of assistance animals, and must be cautious in regards to restricting number or species. It's not unusual for tenants to have more than one animal, or even different assistance animals for different family members.

You may require third-party documentation from a care provider verifying the need for the animal unless the disability is obvious. Landlords may also require that the tenant or applicant provide proof that their animal is vaccinated and licensed as required by law or code and may request that the animal be spayed or neutered. Be prepared for pushback if the surgery would be contraindicated due to the age of the animal or other considerations. Tenants with assistance animals are also obligated to fill out and sign the **Assistance Animal Agreement – ORHA form #MO3**. This form clarifies the responsibilities of the tenant in regard to the animal(s) and the landlord's right to charge noncompliance fees for failure to clean up its waste.

### 5. Improper entry and abuse of access

Prior to entering the rental property, the landlord or their agent must provide a minimum of 24-hours' notice to enter. That notice can be in the form of a written notice that is either posted to the main

entrance of the dwelling unit, or mailed first class (mailed notices must provide an additional three days plus the 24 hours required by law, prior to entry). A notice to enter may legally be delivered by telephone or voice message, as well as text or email, if allowed by contract.

What trips up many landlords is their belief that if they're not entering the dwelling unit itself, it's okay to drop by whenever they feel like it to "talk" to the tenants. Not so. First, a landlord has no right of entry to any portion of the premises under the exclusive control of the tenant, including the yard, lot, or land area itself, with exemptions allowed for entry to the common areas of a multiplex, entering the yard area to perform regular, ongoing exterior landscaping (if specified in a written rental agreement), to serve a notice to the tenant, or in an emergency. Second, would you want your tenants to just drop by your home whenever they felt like it? Probably not. Abuse of access means what it says: Landlords cannot abuse their right of entry. There is no specific definition, so proceed with caution and respect.

#### 6. Creating Waiver

Only landlords can waive their legal rights; tenants never can – even with their written consent. A landlord's failure to act upon knowledge of a breach of contract by the tenant for three separate rental periods or longer creates waiver. Whether that is an unauthorized occupant or pet; repeated late or partial payments of rent; accepting a payment of rent that extends beyond a pending notice of termination; or perpetuating any known breach, landlords must act or give up their rights. Waiver covers a lot of ground, and the further a landlord heads down the road of waiver, the harder it is to turn around, so act upon every breach, no matter how seemingly insignificant. Waiver can be cured in some cases with proper notice. Waiver starts with the letter W and so does the word wimp! Be a wimpy landlord and you will create waiver. The easiest way to prevent the creation of waiver for lease violations is to serve a written warning notice – use **Notice of Noncompliance – ORHA form #V1**.

#### 7. Not having a good grasp on preparation and service of legal notice

Selecting the correct notice for the situation is the first hurdle. The second hurdle is meeting the statutory requirements for its preparation and service. Proper calculation of time is essential, as well as specificity in regards to the breaches and cures in for-cause notices of termination. Perfecting service of notice is another minefield. Whether serving personally, by first class mail, or post and mail, each manner has specific requirements created by statute or case law. Notice to a tenant that could result in a filing of eviction must be perfect in every way, because the easiest win for a tenant in eviction court is a defective notice. The worst-case scenario results in landlords with valid claims paying for their tenant's attorney, or having their credit damaged by an adverse court judgment, and having to start the process over again. Learn how to serve notices legally and perfectly, or hire someone to do it.

#### 8. Maintenance, repair and failure to document

Landlords must maintain rental properties within minimum habitability standards, respond reasonably to tenant maintenance requests, and maintain strict liability in terms of habitability issues – in some cases even when the tenant has deliberately or negligently contributed to the damage. A landlord's failure to maintain habitability standards and supply essential services is a common successful tenant defense in eviction cases. At a minimum, a residential unit must provide adequate heating facilities; hot and cold running water furnished to appropriate fixtures, and maintained so as to provide safe drinking water; a sewage disposal system approved under applicable law; windows and doors that open, close and lock properly; a unit and grounds free of rubbish, trash and vermin at the outset of the tenancy; effective waterproofing and weather protection; properly functioning utility systems; a secondary escape route for each designated sleeping place in case of fire or other emergency; and safety and security of all components, inside and out.

Failure to document tenant maintenance requests and actions taken is another sticky wicket for landlords. If a tenant accuses their landlord of failing in their duty to provide essential services, and agitates for a diminution in value of the rental dwelling, either in or out of court, where's the evidence to contradict their claim? In many cases, it's nonexistent. Memories are fallible, and documentation is essential to proving the landlord's response and actions.

#### 9. Being a pushover

Excuses are the pavement that builds the road to failure. That's a really mean thing to say, I know, but it's based on experience. Property owners can always choose to capitulate to sad tales of woe, but heading down that path rarely ends well. It starts with the tenant making excuses and the landlord making allowances, and ends with the landlord losing time, money and self-respect. Providing housing for other humans is a privilege, but it's a business, not a charity.

#### 10. Messing up move out and deposit reconciliation

The end of tenancy is where a landlord's shortcuts at the beginning of the relationship will come back to haunt them. Failure to document the condition of the property at the beginning, the end, or both, can lead to a losing lawsuit. And now, in the city of Eugene, you must have taken photos and created a written report documenting the condition of the rental property. Those pics and the written report must be provided to the tenant before or at the time of move in, and you must get a signed acknowledgement that they have been received. At the time of deposit reconciliation, you must provide photos of anything you want to charge against the tenant's deposit.

And it's important to remember that the final arbiter of charges to a tenant's security deposit is a judge, so charge appropriately, but be fair. Landlords may charge daily rent for loss-of-use, as long as repairs are performed in a timely fashion, as well as a reasonable hourly wage for their own performance of cleaning and repairs, but it can be best to hire out at least some of the work, to avoid accusations of "padding" and to provide a professional third-party who can testify to the condition of the unit, and the remediation required to correct the tenant's deficiencies.

When assessing charges to a tenant's deposit, landlords must account for depreciation for the replacement of certain damaged components, such as flooring or appliances. It requires a good faith effort to take into account the age and useful lifespan of the damaged item, versus the landlord's cost of replacement. Other common errors with deposit accountings include lumping charges together in a general way that deprives the tenant of the detailed accounting the law requires, failing to meet the 31-day deposit accounting deadline, withholding the deposit monies in bad faith, or failing to send the accounting by personal delivery or first class mail, with penalties of twice the amount wrongfully withheld.

Another common misconception is that if the tenant doesn't provide a forwarding address, landlords are not obligated to mail an accounting. Not true. If no forwarding address is given, the accounting should be mailed to the rental property address with the expectation that the tenant will have their mail forwarded, and copies mailed to any other addresses on file, such as an employer or emergency contact.

#### The Takeaway

Like any specialty business, there is a lot to know, and the burden is on landlords to know the law and abide by it, or face painful and costly consequences. There is an inherent imbalance of power in the landlord-tenant relationship, so the law tilts toward protection of the weaker party. While tenants can

suffer the ultimate indignity of eviction, landlords are held to a very high standard of behavior and action with severe financial penalties for violating a tenant's rights.

This article and the brief description of each of the Top Ten Classic Mistakes, is in no way a comprehensive educational description of the legal and ethical requirements of each topic. The nuances of landlord-tenant law, Fair Housing law, contract law, as well as the obligation to be reasonable and act in good faith, require a broad base of knowledge and education, and are laced with multiple levels of statutory requirements. It is every landlord's responsibility to stay abreast of law changes, and operate at the highest ethical and legal standards.

Detailed articles addressing each of these topics in more detail can be found on the ROA website – [www.laneroa.com](http://www.laneroa.com) – in the Members Only section.

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