

Mind Your Business: Tia's tips for better rental management

By Tia Politi, ROA President

BREAKING UP IS HARD TO DO

When I teach classes to tenants I always tell them: Who you choose to be roommates with is only slightly less important than who you choose to marry, because you become jointly and severally liable for everything to do with the tenancy. Romantic or platonic, relationships can fizzle, and what is normally a private matter between adults can become a landlord's problem when relationships between tenants go south. In both cases, the roommate relationship creates not only personal entanglements, but legal ones as well. You can avoid choosing sides, but when their break-up drama impacts their tenancy, your involvement may be required.

In situations involving domestic violence, sexual assault or stalking, when a perpetrator is clearly identified, separating people from a rental agreement – also called bifurcation – is clearly defined by statute. The victim if they want to remain in the unit, but have the perpetrator removed, is required to provide written verification of at least one incident of domestic violence, sexual assault or stalking within the preceding 90 days. That verification can take multiple forms that include a restraining order, a copy of a conviction or statement signed by police, a lawyer, a health professional or a victim's advocate. If the verification is provided by a victim's advocate, they must work at a legitimate victim service provider such as Womenspace, and whoever signs the form must have individual contact with the victim. The form of a third-party verification can be found at ORS 90.453(3). The perpetrator is then served with a 24-Hour Notice for Harm to terminate their tenancy, and if disinclined to leave the premises can be legally evicted.

The victim may instead wish to have themselves removed from the rental agreement and by providing that request along with the documentation above, is required to be released from the rental agreement (lease or month-to-month) within 14 days of submitting the required verification to the landlord. By doing so, the victim is to be released from the agreement with no penalty, such as a lease-break fee. If there are other residents who are party to the agreement, their tenancy continues, and any deposits or pre-paid rents held by the landlord remain with the property, so essentially in a case like this the victim gets released, but walks away with no right to those funds or to a deposit accounting once the entire tenancy ends.

Month-to-Month

Absent issues of domestic violence, tenants can remain obligated to a rental agreement even if they provide 30-days' written notice and move out. Historically, many (myself included) have believed that any tenant in a group who are renting a unit on a month-to-month basis could provide 30-days' written notice, move out and be relieved from any further obligation to the rental agreement, and by doing so automatically surrender their right to a security deposit accounting or refund. I was mistaken. While many continue to abide by this unwritten code, it's definitely not that simple as confirmed by legal counsel. Technically, a tenancy doesn't end just by the act of one person in a household giving 30 days' written notice, unless a fixed-term lease is coming to an end, in which case it does, but we'll talk about that later. Termination of one

party to a periodic rental agreement requires the written release of that person by all involved parties, and should address things like release from damages and deposit accountings or refunds.

This is a good topic for an adjustment to statute as a tenant who doesn't want to stay can be held liable on and on for years unless the other tenants release them, even if they provide 30-days' written notice. It also can create problems for the remaining residents if a roommate leaves without notice, but gets named on a refund check with no ability for the remaining resident(s) to contact them. They then can't cash the check, and are essentially denied their own money. What if one person leaves without notice or release and the remaining tenants need or want to add another resident? Most landlords require the written consent of all existing tenants for a new tenant to be added, so without the departing tenant's signature on the dotted line, that becomes impossible. While it's technically not a landlord's problem, it does create uncertainty around this whole issue - which serves to reinforce my message above about tenants being choosy in their selection of roommates.

When all the parties work together, however, the process is pretty straightforward. Have all authorized tenants sign off using the **Add or Delete Tenant Rental Agreement Addendum (ORHA Form #59)**, and the problem is solved. It still requires your involvement, and the departing tenant may prevail upon you to give back whatever portion of the deposit they paid at move in. Or, the remaining tenant(s) may insist that any damage in the home was caused by the other and is therefore not their responsibility. The good news for landlords in this situation is: It's not your problem. Inform your tenants politely yet firmly, that this is their problem to resolve. By law, with a month-to-month agreement, any deposit monies paid for the dwelling unit remain with the property until the last person on the agreement gives their notice and moves out - even if that person is not one of the original parties to the agreement. Likewise, any damages to the unit become the responsibility of the last tenants to hold possession at the time the tenancy ends, no matter who actually caused the damage as long as all prior tenants have been legally released. Usually, departing tenants can come to some sort of agreement with an incoming tenant.

Helping tenants find an equitable solution can include providing a copy of the move-in inspection report to the incoming tenant that they can compare to the current condition of the unit. This allows them to directly address any damages they see with the other tenants. You can also provide information on standard charges like carpet cleaning so that they can negotiate with the departing tenant a fair portion of their deposit to pay them, while you retain the original funds.

Fixed-Term Lease

In a fixed-term lease, all tenants remain financially and legally responsible through the full lease term, whether they stay in the unit or voluntarily surrender their right of possession to their landlord or the remaining tenant(s). In other words, if one tenant wants to move out, you can't force them to stay; however, you can continue to hold them liable in every way, unless you and the remaining tenant(s) agree, in writing, to release them from the contract. That right includes the right of possession as well as the right to be named on a deposit refund check when the lease ends and everyone else moves out. There can be good reasons for allowing it and good reasons to

decline. Once the lease ends, however, if one or more tenants does not want to renew the lease or remain on a month-to-month basis, it gets tricky.

I once had a group of three campus tenants, two of whom wished to renew their lease for another year and one of whom wished to move out at the end of the lease term. Even though she wasn't required to, the departing tenant agreed to sign a lease renewal with her remaining roomies for another year, but they identified another roommate who was screened and added to the tenancy, then they all signed off on allowing the departing tenant to be released. The departing tenant agreed to work out the return of her portion of the security deposit with the incoming tenant, so my job in this case was easy – add one tenant and remove another on the lease renewal. They dealt with the security deposit on their own, and we released her from any claim for or responsibility to the new lease.

In the event that a departing tenant to a fixed-term lease is not okay with this type of scenario, you and the other tenants who want to remain or renew will be faced with a few choices: 1) Refund the departing tenant's portion of the deposit paid on move in, and allow the remaining tenants to find a new qualified roommate who will repay that portion of the deposit to you when all parties sign a new lease; 2) Collect a new deposit from the tenants who wish to remain as well as the ones who will be moving in. Then, when the current lease expires, do a walk through with both the departing and remaining tenants. Account for any visible damages and charge those to the current tenants' deposit, refunding any remaining balance in the names of all the tenants within 31 days as the law requires. If you take this route, make sure that you receive a written acknowledgement from all parties to the new lease that there may have been items that were overlooked on the walk through but they are agreeing to be responsible for any hidden damage not discerned at that time, such as a carpet stain that was hidden by a couch; or, 3) Have all of the tenants actually move out, do the work to turn the property, and reconcile their deposit issuing any refund in all their names. The remaining tenants can then move back in on a new lease. This is the cleanest way, but is a huge hassle for all concerned. If the tenants can't agree, though, it may be the only option.

Remember that when a new tenant is added to a month-to-month agreement or a new fixed-term lease is signed with one or more new tenants added, the occupancy clock resets. Even though there are one or more original tenants continuing their tenancy, the tenancy is considered to be in its first year, and rental owners may terminate the tenancy, decline to renew a lease, or not allow the lease to convert to a month-to-month agreement by issuing a no-cause with 30 days' written notice prior to the end of that year in accordance with service of notice requirements.

Swapping tenants in and out of a rental agreement is a hassle, but with everyone on the same page, not a big one. Without an agreement, it can be a nightmare for all involved.

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