

Mind Your Business – Tia’s Tips for Better Rental Management **Breaking up is hard to do...**

by Tia Politi

When I give classes to tenants, I warn them: Who you choose to be roommates with is only slightly less important than who you choose to marry. Platonic or romantic, 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.

Terminate MTM

Throughout most of my career in private property management, I always thought that in a month-to-month agreement, one or both tenants could simply give their 30-day notice and move out and be released from liability at that time – I was wrong. To remove themselves from a periodic rental agreement requires that all parties agree, including the landlord and the other tenants. If everyone agrees to the release of a party or a tenant swap as often happens in college rentals, we have a great form – ***Add or Release Tenant Rental Agreement Addendum – ORHA form #08*** – that can help you accomplish the removal and/or addition.

The form makes it clear that the person leaving is not entitled to a deposit refund and anyone signing on accepts responsibility for the current condition of the property. Typically, in a swap situation, the incoming roommate will pay the departing roommate some amount of the deposit they paid on moving in and they work it out everyone signs and moves on - but not always. The departing tenant may want all or part of their portion of the deposit returned and may balk at signing an agreement that waives their rights. The remaining tenant may insist that any damage was caused by the other and is therefore not their responsibility or they may not want to release the departing tenant for other reasons.

But both parties have incentives to cooperate. For the departing tenant they don’t have to give up their right to a deposit accounting and potential refund, but they stay on the hook for money owed at the end for damage, rent or whatever. For the remaining tenant, they don’t have to sign a release, but the departed tenant retains the right to reoccupy the unit and can veto adding anyone else to the agreement.

Depending on the terms of your rental agreement, you may have the right to have everyone move out based on notice given by one tenant. Sometimes the revolving door gets old, and you just want to start over, or maybe it’s your opportunity to do something different with the property. Whatever the reason, if your agreement states that notice given by one is binding on all, you can make the decision to require everyone to vacate. If you are in this situation where one person provides their notice and you want everyone to move, you might consider sending a ***Confirmation of Tenant’s Notice to Terminate – ORHA form #T12***. This form gives move out instructions and the date of move out which is sure to initiate a conversation with the other tenants who have not given notice. The others may be unhappy with the decision so be ready for some push back.

Terminate FTL

When a fixed-term lease expires, however, any single tenant can terminate their tenancy and not be held liable on and on. They have the right to leave at the end with proper notice. In this case, there’s no requirement for the landlord or other tenants to release them, they may demand their portion of the deposit back, and you may have to provide it. Just like with a MTM agreement, if your contract has the

proper language, you can require that everyone move out and start over, or work with the remaining tenants to add a new household member.

Back in the day when I was managing private property, I had a group of tenants in a lease where one wanted out at the end and insisted on the full return of her deposit. Because the others wanted to stay, they elected to refund her portion of the deposit, and the remaining three never replaced her and just took responsibility for the extra rent. The remaining tenants accepted that she wasn't being charged for carpet cleaning, etc., but it did save us all a lot of hassle, so in that situation it worked for all concerned.

In another situation, I had a group of three campus tenants, two of whom wished to renew their lease for another year and one of whom wanted to move out at the end of the lease term. Even though she wasn't required to, the departing tenant signed a lease renewal with her remaining roomies for another year, but they had another applicant who we approved and who took the departing tenant's place. The departing tenant also 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. This scenario only worked because everyone agreed in writing.

In the event that a departing tenant to a fixed-term lease is not okay with this scenario, and you can't or don't want to force everyone out, you and the tenants will be faced with a few choices: 1) Refund the departing tenant's portion (best have confirmation that everyone agrees to the amount) 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, provide a written accounting and refund any remaining balance in the names of all the tenants within 31 days as the law requires. 3) Have all of the tenants 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 pay a new deposit and move back in on a new lease. This is the cleanest option but is a huge hassle for all concerned.

And you don't have to agree to release or add anyone if you don't want to unless a lease is being broken for other reasons. Victims of domestic violence, sexual assault, or stalking (and effective January 1, 2024, victims of bias crimes as well), have special termination rights under landlord-tenant law, and so do active-duty military servicemembers who are being deployed. Otherwise, a tenant can choose to leave the property and not live there but they remain liable until the lease ends.

I dealt with a situation where two men rented a two-bedroom campus apartment, but apparently did not know each other very well. One of the tenants started smoking pot in the unit and inviting his friends over for marathon video game sessions. The other tenant wanted to sleep and study and had done everything he could to get his roommate to get along, but in the end, he chose to move out rather than try to keep working on the situation. With multiple complaints from neighbors about pot smoking and loud music, we issued a Warning Notice followed by a 30/14 – a Notice of Termination with Cause. The behavior of the remaining tenant improved for a while, but in the end, we evicted for failure to pay rent and his continuing to smoke pot in the unit. Because all an eviction decides is possession, the eviction papers only named the remaining tenant who remained in the unit; however, because we declined the opportunity to release him from the lease, the departing tenant and his co-signer remained liable for the unpaid balance and damage to the unit, including eviction costs for his pathetic roommate. It was a harsh lesson.

Abandonment

I've also had situations where one roommate just moved out and moved on without a word to their roommates or me, their manager. What I've always wondered about is whether at some point they could be considered to have abandoned the rental unit. **ORS 90.147 Delivery of Possession** talks about a landlord receiving possession of their property by abandonment if they "reasonably believe under all the circumstances that the tenant has abandoned the unit and no longer intends to assert a right of possession." This statute deals with the landlord recovering possession of the unit, but can it apply to one tenant only when the landlord does not get possession of the unit and the tenancy continues? Sometimes reaching out to let the departed tenant know they're still on the hook can get a response, but sometimes not. Can you just remove them? Allow the remaining tenant to add another? I don't know. This may be a good time to seek some legal advice.

Adding Tenants

If you are amenable to adding others to an existing agreement, in addition to signing the Add or Release form, I recommend that any addition to the household also sign the existing rental docs, or if your agreement is older, it can be a great opportunity to update your docs and you can have everyone sign an updated agreement and addendums.

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

Rev 10/2023