

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

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## Tenancy Fees – ORS 90.302

In Oregon, a **fee** is a *non-refundable* payment from a tenant to a landlord, often triggered by a violation of the rental agreement or specific landlord-incurred expenses. Unlike deposits, fees do not need to be accounted for or returned. However, to be enforceable, **all fees must be disclosed in the written rental agreement.**

There are two primary types of fees:

### 1. Contractual Fees

These fees are tied directly to specific actions or conditions agreed upon in the lease. Common examples include:

- **Late payment of rent**
- **Dishonored checks (NSF)**
- **Tampering with smoke or carbon monoxide alarms**
- **Breaking a fixed-term lease early**
- **HOA/COA move-in or move-out fees**
- **Pass-through municipal or utility charges**

**No warning notice is required** before a contractual fee can be assessed as long as it’s properly disclosed in the rental agreement. Once the violation occurs, the landlord simply issues the fee.

#### **Late Rent:**

A landlord may charge a late fee if the rent is not paid after the allowable grace period. If stated in the lease, the landlord may assess a late fee for rent received after **11:59 p.m. on the 4th day** of the rental period. Without this clause, the grace period extends to the **7th day**. The fee must be *reasonable* and in line with customary local practices (ORS 90.260). Changes to the type or amount of this fee in a month-to-month agreement require **30-day written notice**. Use ***Late Fee/Renters Insurance Notice of Change in Terms – ORHA form O15***. In some cases, landlords may be required to extend their grace period to accommodate a disabled tenant’s payment schedule.

#### **Insufficient Funds (NSF):**

For a dishonored check, a landlord may charge **up to \$35**, plus any bank charges incurred—regardless of whether the lease lists a higher fee. If an agreement includes illegal fee terms, enforcing them can expose the landlord to triple the monthly rent in damages under **ORS 90.245**.

The Oregon Rental Housing Association (ORHA) allows landlords to require certified funds for all future payments after an NSF incident. Landlords are advised to notify tenants of this change after the first violation and enforce it consistently.

### **Lease-Break Fee:**

A landlord may charge a lease-break fee up to **1.5 times the monthly rent** when a tenant terminates a fixed-term lease without cause. This fee is subject to important limitations:

1. Landlords can't collect rent beyond the point they knew or should have known the unit was vacated.
2. They can't charge for costs related to finding a new tenant.
3. This fee does not apply if the lease ends due to **domestic violence, sexual assault, stalking, or military service** (ORS 90.453(2), ORS 90.472, ORS 90.475).

### **Tampering with Smoke/CO Alarms:**

A landlord can charge **up to \$250 per occurrence** for tampering with a working smoke or carbon monoxide alarm (ORS 90.325). However, if the Fire Marshal has already issued a citation, the landlord cannot charge an additional fee.

### **HOA/COA Move-In/Out Fees:**

If a homeowners' or condo association charges a move-in/out fee, a landlord may pass it along to the tenant. This must be disclosed in writing *before* collecting any money, including application fees. The landlord must:

- Bill the tenant within 30 days of receiving the HOA/COA invoice,
- Include a copy of that invoice, and
- Allow **30 days** for the tenant to pay.

### **Municipal and Utility Pass-Throughs:**

Landlords can pass on charges such as public safety or street maintenance fees if:

- The fee is imposed by a government agency or service provider,
- It is disclosed in the rental agreement, and
- The tenant is billed with a copy of the original invoice within **30 days**, with **at least 30 days to pay**.

To begin charging these fees to existing month-to-month tenants, landlords must provide a **60-day written notice** if the fee was newly adopted within the last six months.

## **2. Non-Compliance Fees**

These fees address specific tenant behavior and require a **Written Warning Notice** before any fee is assessed. The landlord must:

- Provide a warning describing the violation and the fee schedule – ***use Notice of Noncompliance – ORHA form V1***,
- Wait for a repeat offense within **one year** of that notice before charging the fee,
- Issue any fee notice within **30 days of the repeat violation**.

Here are the violations that qualify:

#### **a) Late Payment of Utility or Service Charges:**

If a tenant fails to pay utility/service charges on time (ORS 90.315), a fee can be assessed if the payment is late by the terms stated in the bill (at least 30 days from delivery unless otherwise specified).

b) **Animal Waste, Garbage, and Trash Violations:**

Failure to clean up waste—whether from pets, assistance animals, or garbage outside the unit—may result in a fee. Landlords must clearly connect the behavior to a specific tenant and ensure the "waste" is actually waste.

c) **Parking and Vehicle Use Violations:**

Landlords may charge a fee if the tenant violates clearly established parking rules or misuses vehicles. Examples include unauthorized parking, vehicle repair on premises, or expired registration.

For these types of non-compliance violations (utilities, trash, parking), the fee is:

- **\$50 for the second violation**, and
- **\$50 plus 5% of monthly rent** for each subsequent violation within one year.

d) **Smoking in a Non-Smoking Area:**

A fee of **\$250** may be charged **24 hours** after the effective date of the written warning, and additional fees may be assessed **every 24 hours** the behavior continues.

e) **Unauthorized Pet Capable of Causing Damage:**

A landlord may assess a **\$250 fee 48 hours** after a written warning if a tenant fails to remove an unauthorized animal that meets the criteria in **ORS 90.405**. If the tenant claims the animal is an assistance animal, the landlord must pause the fee and process the reasonable accommodation request.

Regardless of the type of fee, the landlord must always provide an invoice when billing the tenant.

### **Important Rules**

- A landlord may **terminate a tenancy instead of charging a fee** but **cannot do both** for the same violation.
- If a tenant refuses to pay a properly assessed fee, the landlord can terminate the tenancy with a **for-cause notice**.
- Non-compliance fees **cannot be preemptively warned against**—a violation must occur first.
- In a month-to-month rental, a landlord may add the right to charge these fees with **30 days' written notice**.

### **Getting Paid**

Once a violation occurs:

1. Send a **written bill** explaining the violation, the fee, and how much time the tenant has to pay (30 days if not otherwise specified).
2. If the tenant doesn't pay, issue a **Notice of Termination with Cause – ORHA form VT5**.
3. If they still don't comply, you may proceed with eviction.

### **Penalties for Illegal Fees**

Under **ORS 90.302(8)**, landlords are prohibited from charging fees not specifically authorized. Doing so can result in a penalty of **twice the tenant's actual damages or \$300**, whichever is higher. However, this penalty does *not* apply to:

- **Late rent fees** (ORS 90.260)
- **Dishonored checks** (ORS 30.701)
- **Smoke/CO alarm tampering** (ORS 90.325)
- **Facility pet rule violations** (ORS 90.530)
- **Lease-breaks under certain conditions** (ORS 90.453(2), 90.472, 90.475)

#### **Final Note on Documentation**

To protect yourself legally, always collect and preserve documentation before issuing a Warning Notice or fee. If a dispute goes to court, evidence is essential.

***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.***

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