

# Mind Your Business – Tia’s tips for successful rental management

By Tia Politi, ROA President

## Timing is Everything

*How timing impacts your bottom line*

### The Vacancy Factor

#### **Timing your vacancies**

Most of you know that it’s best to have a vacancy during the summer months when more people are moving or trying to get settled before school starts. But some of you lose focus when it comes to advertising, showing and screening. As soon as your tenant gives notice to vacate, you should begin advertising and showing your property to reduce your potential vacancy factor. Just like any business, rental owners and management companies are in competition with each other to get the best tenants to fill their vacancies. You need to be ready to jump when a prospective applicant calls to see your unit, or you may lose them to someone else who is ready. Every day vacant is a day of lost rent.

This doesn’t mean, however, that you should rush someone into a property that isn’t ready. That can cost you more in the long run than an extra day or two of no rent. You need to balance both the desire for immediate rent and pressure from tenants to hurry up, with the potential legal ramifications of placing tenants in an un-habitable home with the promise to get to it right away. Those things usually come back to bite you in the end.

### Common Errors in Timing

#### **Timing of notices**

Serve legal notice at the earliest opportunity, don’t wait. If your tenant follows through as they promise, your notice is cured. If not, you have no delay in going to court to have them removed. Also, failing to serve notice promptly creates an impression that you can be manipulated, that you aren’t treating your rental property as a business, and that they can tell you a story and you will let it go. These are not good messages to send. Remember, time equals money.

#### **Timing of Service**

Some of you are under the impression that you can’t serve a legal notice on a weekend or holiday. Not true. There is no such provision in the law. As a licensed manager, the 8<sup>th</sup> day of every month is set in my schedule – no matter the day of the week – for me to post late rent notices. The only time I may consider waiting is if the 8<sup>th</sup> is on a Tuesday, Wednesday or Thursday and I’m posting-and-mailing my notices. If I serve a 72-hour notice on a Tuesday, the tenant will get through midnight of that Friday to pay, but I can’t file an eviction until the following Monday anyway, so there’s nothing to lose if I wait a day or two. The same would be true of a Wednesday or Thursday. Any other day of the week, however, failing to act is giving your tenant more time in the property. And time equals what? Money!

#### **Timing of Late Rent Notices – 72/144**

I occasionally see landlords improperly serving a 72-hour notice on the 5<sup>th</sup> of the month. A 72-hour notice may only be served on the 8<sup>th</sup> day after rent is due. If your rental agreement specifies that rent is

late if not received by midnight of the 4<sup>th</sup> day, the law does allow you to serve a non-payment of rent notice on the 5<sup>th</sup> day, but it must be a 144-hour notice, not a 72-hour notice.

### **Timing of cure periods and notices of termination**

Always calculate cure periods and termination dates based on the method of service (personal delivery, mail only, or post-and-mail). If you aren't sure and want to be super safe, add more time. Better yet, call the Helpline or take a Service of Notice class from the ROA and learn how to move as quickly as the law allows. Because time equals what? Money!

A notice of termination (With-Cause or No-Cause) can be served at any time during a month, but some of you make the mistake of accepting full rent for a month in which a tenancy has been terminated part way through the month, or you make a mathematical error in the calculation of prorated rent, potentially creating waiver. If you have any concerns about the math in this situation, just make the termination date the end of a calendar month. Or call the Helpline for assistance. As long as you're getting paid, it's okay to allow extra time. Also, remember that a tenancy in its original form of more than one year requires a 60-day notice period if the termination is without cause.

## Timing in the Courtroom

### **Timing your eviction filing**

At a first appearance on an FED (Forcible Entry and Detainer) case, if your tenant concedes or doesn't show up, you get a default judgment. But before you can get your property back, you must serve a Notice of Restitution giving them four additional days to turn over legal possession. If they don't move voluntarily you can hire the Sheriff to do a forcible removal, called a Writ of Execution. A Restitution served on a Monday, expires Friday at midnight. Since the Sheriff doesn't work weekends, you can't get them out until the following Monday anyway, so if it's more convenient for you to go to court for a first appearance on a Tuesday or Wednesday, you really aren't losing time and therefore, not losing money.

### **Timing of trials**

At an FED first appearance, your tenant has the right to a hearing to challenge your right to evict. Unless the court already has a full docket for a specific day, the hearing will be scheduled two court days later, except for Mondays, because small claims hearings are held on Mondays. Generally speaking, if your tenant asks for a trial on a Monday, the trial will be that Wednesday; if Tuesday it will be that Thursday; if Wednesday, that Friday; if Thursday, the following Tuesday; and if Friday, the following Wednesday.

As the plaintiff, you can always ask for more time and it will usually be granted; if your defendant asks for more time, it may or may not be granted depending on the reason and how strongly you object. (If you are in court for non-payment of rent, and your tenant requests more time for trial, be sure to request to the judge that in exchange for that additional time, the tenant pay rent into court to show their good faith. That way, either they are unable to perform and you get the earlier hearing date, or if you prevail in the end, the money will be released to you. The judge may or may not grant your request, but it's good to ask.)

### **Timing of your Service of Process (Court Complaint and Summons, or Restitution)**

If you have the Sheriff serve your court papers, remember that in the Restitution process, they will always wait a full day before serving, whereas a private server will not. This will give your tenant one extra day in your property if you submit your Restitution service to the Sheriff on a Wednesday, Thursday or Friday. Sometimes having an officer in a uniform with a gun serve your court papers is

advisable, but there are other options that won't cost you an extra day. (Check the advertisers section in the ROA Bulletin for private servers.) Remember, time equals what? Money!

### **Timing of Execution of Judgment**

When your restitution has expired and your tenant hasn't moved, timing is essential to avoid giving your tenant an extra day in the property. The courthouse opens at 8 a.m., but the Sheriff's office doesn't open until 9 a.m. You must file your Writ of Execution with the court first, then get it filed with the Sheriff by 9:30 a.m. for guaranteed same-day service. Sometimes the line for the court clerks is long, so make sure you leave yourself plenty of time to get your Writ filed with the clerks and down to the Sheriff to avoid giving your tenant more time. After all, time equals what? Money!

By law, once the court has issued a judgment in your favor, you have up to 60 days to execute on it. Depending on the circumstances, it may be in your best interest to get a judgment in court, but allow your tenant to buy more time to move (Pay attention to the word "buy"; they shouldn't get more time unless they pay for it.). If you choose to do this, calendar the date ahead for the expiration of your right to execute so you don't miss it. If you do, you would have to go back to court and start all over again, costing you time and what? Money!

### **Timing in relation to Statute of Limitations**

A landlord and tenant have up to 365 days to take legal action against each other, or assert a legal claim in relation to the rental property, from the day the landlord regains possession of the dwelling unit from the tenant. Once that time has elapsed, if your tenant owes a debt, but you have no signed Promissory Note, you may not take any legal action to collect on it. The trigger for legal action would be the date of initiation of a court filing, either in small claims or circuit court. Miss that deadline by even one day and you're done. Losing track of time costs you what? Money!

### **Timing a small claims filing – either as Plaintiff or Defendant**

After a small claims action has been filed with the court, and the papers have been served, the Defendant will have 14 days from the date of service to respond to the filing, by admitting the claim, denying the claim, or counterclaiming. Once service from the Defendant has been perfected with the court through a response to the complaint, a court date will be set approximately 4-5 weeks later, on a Monday. If this date conflicts with the schedule of either party, they or you may petition the court for a postponement by submitting a motion to both the court and the opposing party. The judge will then rule on your motion and you will be notified if it has been accepted or not.

If you are the Plaintiff and have been unsuccessful getting your Defendant served, you have up to 91 days from the date of filing to perfect service before the case will be dismissed by the court. You may need time (at least 30 days) to accomplish "alternate service" by posting a notice in the newspaper in accordance with a judge's allowance or instructions. You must petition the court for alternate service, so leave yourself enough time to get it done. In other words, don't keep trying to serve a party beyond a month or so, to leave yourself enough time to perfect your service. If your case is dismissed and the Statute of Limitations has expired, you've just lost both time and money.

In all facets of the rental business, close attention to timing will improve your bottom line.

***Disclaimer: While state landlord-tenant laws are standardized, rules among jurisdictions differ in their application of the Rules of Civil Procedure. This article was geared specifically to rental owners in Lane County. Each county court operates a little differently, so what is common procedure for Lane County is not necessarily common for other Oregon counties.***

*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.*