

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

Why FREE is DUMB: Don’t step over a dollar to pick up a nickel!

By Tia Politi

Like to save money? I sure do. As frugal as I am you’d think I was raised during the Great Depression. But I’m seeing a lot of landlords trying to save a buck and costing themselves big time.

Online Screening Company Nightmares

Zillow - Apartments.com - Furnished Finders

Don’t let these people screen for you! Why not?

- They do a poor job at screening. In at least two cases I looked up, Zillow reported to a member that the applicant had no criminal record when they did. Zillow, Furnished Finders, and others make it seem as though they are performing the same functions as any screening company, but are they? Not in my experience.
- Also, unless you’ve put your full screening criteria in your ad and let the tenant know where they are in line, you’ve just violated **ORS 90.295**. Didn’t charge the fee you say? Wrong. These companies have charged it on your behalf as your agent.
- You could get flooded with applications, requiring you to then deny multiple applicants. I got a call on the Lane Helpline from a member who had posted her ad on Zillow and checked the box allowing Zillow to screen for her. She woke up the next morning to 60 applications in her inbox. She asked if she had to send written denials to everyone she didn’t select. The answer is YES – read **ORS 90.304**. In Oregon, regardless of whether you charge a screening fee, and even if you’re denying someone’s application because you rented the unit to someone else, you must deny each applicant in writing within 14 days. If you used a screening service, you must let the applicant know the name and address of the screening company...better get Zillow’s address! And, because her ad didn’t list her screening criteria or indicate where the applicants were in line, technically, she was in default of the requirements for landlords to charge a screening fee. The penalty for that is a refund of twice the amount of the fee plus \$150. I recommended that she consider refunding the fees of everyone she did not choose to be on the safe side.
- If the denial is based on a credit report, you must inform the applicant of the name of the credit reporting company who provided the information. Do you know where Zillow, Apartments.com or Furnished Finders are pulling credit info? Better find out...

Instead, always use a reputable company that knows the laws in Oregon, such as Acranet or National Tenant Network.

Bad Rental Agreements

Don't use free rental agreements online, including Apartments.com, Furnished Finders or any other free thing you find. Why? While there's some standardized parts of these agreements that are okay, in every agreement I've seen, I find provisions that are illegal in Oregon. such as charging late fees if rent is not received by the 1st, 2nd, or 3rd of the month instead of the minimum of 4 days, incorrect fee charges for late rent that made it so the landlord could not charge a fee at all, NSF fees that are higher or lower than provided by law, and no disclosure regarding what noncompliance fees a landlord may charge (which is required for you to assess those).

While it's not against the law to have illegal provisions in your rental agreements, it's a huge problem if you attempt to enforce those provisions. A tenant attorney would be happy to educate you for an exorbitant fee.

90.245 Prohibited provisions in rental agreements; remedy. (1) A rental agreement may not provide that the tenant:

- Agrees to waive or forgo rights or remedies under this chapter;
- (b) Authorizes any person to confess judgment on a claim arising out of the rental agreement;
- (c) Agrees to the exculpation or limitation of any liability arising as a result of the other party's willful misconduct or negligence or to indemnify the other party for that liability or costs connected therewith; or
- (d) Agrees to pay liquidated damages, except as allowed under ORS 90.302 (2)(e).

(2) A provision prohibited by subsection (1) of this section included in a rental agreement is unenforceable. ***If a landlord deliberately uses a rental agreement containing provisions known by the landlord to be prohibited and attempts to enforce such provisions, the tenant may recover in addition to the actual damages of the tenant an amount up to three months' periodic rent.*** [emphasis added]

I've seen agreements that confuse deposits with fees and lead the unwary landlord to charge move in fees, pet fees, cleaning fees, etc., when those things are illegal under Oregon law. A fee is a nonrefundable payment of money, a deposit is a payment of money held by the landlord to secure against default or damage and is always potentially refundable. **ORS 90.302** restricts the charging of fees to specific defaults or violations, and any fee the landlord may charge must be described in the written rental agreement, or you can't charge any fees at all.

I've seen things in these agreements that limit your rights as well. For example, a requirement that the security deposit accounting be returned within 15-20 days instead of the full 31 days provided by law. While a tenant cannot waive their rights per the statute above, nothing prevents a landlord from waiving theirs. So, using agreements that limit your rights are enforceable against you.

I've seen agreements that include lead-based paint information without the landlord perhaps not providing the required EPA pamphlet, "Protect Your Family from Lead in the Home," or getting the tenant's acknowledgement that they received it, and without the full legal disclosure required by the EPA. Remember, EPA penalties start at \$6,000.00.

I once had a client have to pay their tenants and the tenants attorney an \$11,000.00 settlement partly based on a bad rental agreement that did not disclose that the tenants were responsible for their own garbage service. Say, what? Yes, remember under the Habitability section of landlord-tenant law landlords must indicate the tenant is responsible for garbage removal in writing or must provide garbage service:

ORS 90.320(1)(g)

Except as otherwise provided by local ordinance or by written agreement between the landlord and the tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the rental agreement, and the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal.

This wasn't the only issue at hand in the case, but it was a habitability violation that gave the tenant's attorney ammunition to use in court.

Still think free agreements are a good idea? Allow me to continue to beat you over the head (figuratively) with my ORHA Law Book. I've seen the following issues with many of these "free" agreements:

- Required the tenant to get renter's insurance but did not state when it is illegal to require – a violation of **ORS 90.222**. It also did not require that they must name the landlord as an interested party.
- An indemnification section against damages caused by mold which could lead the unwary landlord to think they are protected – not so.
- A 60-day no-cause notice after the first year of tenancy, which is only allowed in a two-unit, owner-occupied property.
- A lease of the property on a year-to-year basis – terrible idea.
- Arbitration clauses that don't specify who will pay for the service. Does this mean you can't pursue legal remedies until this remedy is fully explored? Not sure.
- Non-waiver clause that says no matter what the landlord does they don't create waiver. Not enforceable.
- Late rent makes all rent due immediately.
- Prohibits the tenant from terminating the agreement at all.
- Allows the landlord to retake possession without due process if the tenant is gone for more than 7 days without notice.

One member let me know that Zillow routes phone calls through their system, not directly to your phone number. He said, "They say it's to reduce spam...They also record the entire conversation. For example, I can hear both my voicemail and the message the person left in this phone lead. It's creepy and I'm not sure it's legal...though I probably consented to it at some point. Anyway, might be worth noting in your article that their phone system is fully recorded."

The takeaway

- Use proper screening forms that disclose all the required information for the state of Oregon (**Screening Packet – ORHA form #S1**), and, if you're charging a screening fee, you must comply with **ORS 90.295(3)**:
 - A landlord may not require payment of an applicant screening charge unless prior to accepting the payment the landlord:
 - (a) Adopts written screening or admission criteria;
 - (b) Gives written notice to the applicant of:
 - (A) The amount of the applicant screening charge;
 - (B) The landlord's screening or admission criteria;
 - (C) The process that the landlord typically will follow in screening the applicant, including whether the landlord uses a tenant screening company, credit reports, public records or criminal records or contacts employers, landlords or other references;
 - (D) The applicant's rights to dispute the accuracy of any information provided to the landlord by a screening company or credit reporting agency;
 - (E) A right to appeal a negative determination, if any right to appeal exists;
 - (F) Any nondiscrimination policy as required by federal, state or local law plus any nondiscrimination policy of the landlord, including that a landlord may not discriminate against an applicant because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of the applicant;
 - (G) The amount of rent the landlord will charge and the deposits the landlord will require, subject to change in the rent or deposits by agreement of the landlord and the tenant before entering into a rental agreement; and
 - (H) Whether the landlord requires tenants to obtain and maintain renter's liability insurance and, if so, the amount of insurance required; and
 - (c) Gives actual notice to the applicant of an estimate, made to the best of the landlord's ability at that time, of the approximate number of rental units of the type, and in the area, sought by the applicant that are, or within a reasonable future time will be, available to rent from that landlord.

- Use proper rental forms from the Oregon Rental Housing Association or other reputable landlord association and use all the necessary forms – Don't step over a dollar to pick up a nickel it's never worth it!

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