

Mind Your Business – Tia’s Tips for Better Rental Management
The Pitfalls of Providing Rental References
By Tia Politi, ROA President

Lately, multiple ROA members have been asking the office staff what they should and should not say when providing a rental reference. While the reality is that anyone can sue anyone for anything, there is some additional peril in providing a negative rental reference – even when you are being honest.

My policy for rental references: Tell the truth, but don’t elaborate. Don’t volunteer information. Only report behavior related to their performance as tenants. Don’t share your feelings, opinions or prejudices. Require a signed release before providing any information at all.

Are you required to provide a reference? I don’t think so, and there are times I have chosen not to. There are a couple of management companies here locally, that refuse to provide references for tenants unless they have already submitted their notice to vacate. Many companies in California will only confirm rent amount and dates of residency, nothing more, ever.

Once I chose not to provide a reference for a former tenant who didn’t owe money, but had numerous problems during the tenancy. The relationship ended with a confrontation in my office where the police had to be called to have her removed from the property. I responded to the requesting company with rent amount and dates of residency along with the following statement: “We will decline the opportunity to provide a reference for this resident.” I didn’t want to get drawn into more drama or conflict, and didn’t have anything positive to say. I’m sure they got the message.

Another time I was asked to provide a reference for a tenant whose sons had done substantial damage to a rental property. After she moved out, we billed her for the damage and her attorney responded. Our owner retained her own counsel to negotiate a resolution, but during that time I got the reference request. My answer was to verify the rent amount and dates of residency and let the

requester know that because the account was in dispute I was unable to provide any other information.

How do you provide a reference for a tenant who scares you? This is a legitimate concern and many landlords give false-good references to get rid of a problem tenant, but that creates a problem for someone else. You can always ask to keep your reference confidential. Twice, I've gotten scary-bad references from landlords who swore me to secrecy because they were afraid of the tenant and the potential for violence or other retribution. In both cases, the tenants met our other criteria perfectly, which was problematic because I had no other basis for denial of their applications.

In the first instance, the co-applicant was easy to deny, which allowed me to deny the bad apple as well. In the second instance the scary reference was all I had, and the applicant belonged to two protected classes (in this case a person of Hispanic descent who also had a minor child). I was in a real pickle. The landlord told me that he had a temper problem and had significantly damaged her home. He and his ex-partner had a volatile relationship with aspects of domestic violence and the partner cycling in and out of the rental property. Neighbors complained multiple times to the landlord, but were afraid to call the police or testify after the fact due to his threats and explosive temper, so there were no police reports.

I felt obligated to protect the confidentiality of the person giving me the reference, so I denied him under the checkbox, "Negative or insufficient reports from references or other sources." He unleashed a vulgar tirade at me by email, but didn't ask me to reconsider. If he had filed a complaint with Fair Housing, their concern would have been the possibility of discrimination based on his race, national origin or familial status, and I could have privately disclosed the actual reason and shown them our notes. I tell you this story to encourage you to tell the truth to other rental owners, even if you have to ask for confidentiality.

Sometimes I have to provide references for residents who paid on time and didn't damage the property, but had difficult personalities. Providing references for people like that is exponentially more challenging when the tenant's behavioral issues are related to a disability.

Fair housing law mandates a policy of non-discrimination against members of protected classes in the sale or leasing of real estate. Federally, this includes race, color, national origin, religion, gender, familial status (families with children), and disability; statewide, it includes marital status, source of income, sexual orientation, and gender identity; and in Eugene includes type of occupation, ethnicity and domestic partnership. Victims of domestic violence and active-duty military also have housing protections under the law.

I once had a tenant who had been hit by a car while riding her bicycle and suffered a traumatic brain injury. She lived in a downstairs apartment and was an excellent tenant in almost every way, but she filed noise complaints about every single one of four different tenants who lived above her. No one could be quiet enough. On a few occasions, she had given vent to her anger toward her neighbors, yelling and cursing at them, which I put a stop to. If I could have found a separate unit for her everything would have been fine, and she did eventually move out when she found an upstairs apartment with another company. When I give references for her, I have to be careful to take into account her brain injury which made it difficult for her to control her anger.

In a month-to-month agreement, any one tenant can give 30 days' written notice and release themselves from financial responsibility for a rental. I took over management of a property where a couple had lived for eight years who decided to divorce. Hubby gave his notice and moved out just prior to Wifey, releasing himself from any financial responsibility for the property which was in atrocious condition. When I later gave Hubby a negative reference he tried to say he shouldn't be held responsible for Wifey's debt on a rental because he had given his notice and moved out before she did. I told him legally he didn't owe any money and I had said that in the reference, but it was obvious that the damage, filth and neglect had taken years to accumulate. He had lived in the property for all that time, so just because he left a month-and-a-half before she did and avoided financial responsibility, didn't mean he didn't share responsibility for many years of damage and neglect.

Current tenants who are leaving may try to pressure you to write them some sort of reference before they vacate. Generally speaking, that is not a good idea, especially if you haven't inspected in a while. The quality of a reference will be substantially impacted by how things go at the end, so wait until they're out before you decide. Recently, a former resident of a sorority I manage called asking if I would write a letter of reference to help her to obtain a new rental. I reviewed her group's history and there had been multiple issues with the tenancy including loud parties, failure to pick up trash, climbing on the roof, etc., but they didn't owe any money and had not damaged the house. I told her that I would have to tell the truth if she released me to do so, but that I would only answer the questions I was asked and would not volunteer any information. I suggested that maybe she should just show them her tenant ledger, which I emailed to her. She then emailed me a letter she wanted me to sign that stated she was an exemplary tenant. I told her that I would not feel comfortable signing a statement like that and she got the message.

For all of the examples I cite in this article, I have documentation. I have dates, times and reports; I have notes; I have ledgers; I have inspection reports; I have copies of rental agreements, notices and letters. The time to worry about being sued for libel or discrimination in regard to your rental references is when you can't back up what you're telling other people, when you go beyond relating the history of them as a tenant, or you make discriminatory statements.

Remember, any rental reference you provide could be used as evidence against you in a court of law, so remember what Sergeant Joe Friday used to say in the popular sitcom *Dragnet*, "Just the facts, ma'am." Good advice, Joe.

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.