

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

By Tia Politi, ROA President

Taking Over Existing Tenancies

As a rental owner, most of the properties hubby and I purchased were vacant or were our primary residence before being turned into rentals. We did have instances however, when we purchased a property with a renter in place. For most private investors this will happen at some point, and certainly for property managers it happens all the time. Either way it can be a challenge. Most residents handle the transition to a new owner or manager well; others not so much. Most sellers have good renters, professional documentation, and a habitable unit; others not so much.

Transition 101

Just like other areas of life, courtesy and kindness go a long way to drawing people to your way of thinking. Transitions can be particularly difficult for some people and a pleasant, calm, helpful demeanor is always a good idea. I have occasionally had renters who struggled with the transition at first, but then settled down, so don't assume that the first reaction you get will be how things go forever.

One lady I encountered burst into tears when I showed up with transition paperwork. She thought she was being evicted and as she sobbed her heart out, it was all I could do to get her to hear me and let her know that wasn't the case. Another tenant refused to accept the transition, refused to send us rent, and was evicted for non-payment despite my many attempts to get him to understand that we were his new managers.

You can't make the need for change go away, but in most cases your attitude will influence the response from your new renters, so be mindful of that and your chances of a successful transition will increase exponentially.

I start by writing a nice letter introducing myself and letting the renters know the effective date of the change, where they should pay rent in the future, and how to make maintenance requests. For month-to-month tenancies (or tenancies with only a verbal rental agreement), I also include a new rental agreement and addenda for them to initial, sign and return.

If the rental unit was built prior to 1978, it's especially important that you provide the EPA booklet, "Protect Your Family from Lead in your Home." If the renters won't sign the Lead Based Paint Disclosure form, at least you provided the required information. I would also recommend emailing the link so you have proof. The EPA takes this issue seriously and you could incur substantial fines for failing to provide the booklet.

I add a paragraph that says something like, "Enclosed you will find a new rental agreement and assorted rental forms. Please contact me to let me know if you have any questions or would like to meet; otherwise, I would appreciate it if you would have all adult household members initial, sign and date the forms where indicated, and return them to me within 30 days."

I also say some other nice things like, "As a valued customer your satisfaction is important to me. Please let me know if there's anything I can do to improve your experience in your home, or if you have any

questions or concerns about this change.” Yes, you may open yourself up to an avalanche of requests, but in my experience most reasonable folks don’t push it and you can always deny the unreasonable requests.

Curing Waiver & Changing Terms

I also want to address any issues of waiver that the prior owner may have created so in a month-to-month situation I include the following statement in the letter, “Please be advised that this letter shall also serve as your notice of change in terms. All of the conditions, rules and regulations contained therein will take effect 33 days from the date of this letter regardless of whether or not you sign and return the documents.” (Review ORS 90.262 regarding the implementation of rule changes by housing providers.)

This can be an effective way to reset a late fee type or amount, change your smoking policy, parking restrictions, or even require renter’s insurance (But, remember that if you are including this particular change you must include a statement as to when it is not legal to require: if the renters’ combined household income divided by household size is at or below 50% of the median for the county of residence, or if the dwelling unit of the tenant has been subsidized with public funds including federal or state tax credits, federal block grants authorized in the HOME Investment Partnerships Act under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, or the Community Development Block Grant program authorized in the Housing and Community Development Act of 1974, as amended, project-based federal rent subsidy payments under 42 U.S.C. 1437f and tax-exempt bonds. Visit https://www.huduser.gov/portal/datasets/il.html#2020_query to determine the median income of your county.).

There are many things you can’t change without the renter’s agreement. Those would be the due date for rent or maybe even a longer grace period if the prior owner had one. You also cannot implement any other “substantial modification” of the rules without the renter’s written consent. That would include other things like assessing a utility fee or other new requirement that requires the tenant to pay for something that they didn’t previously have to pay for like garbage service, or take over a task like yard care that was previously included.

In my experience, 95% of renters want to be cooperative and will go ahead and sign your forms, but if they don’t at least you’ve got some parameters for the tenancy established.

If I’m taking over a fixed-term lease, there’s nothing I can change until it expires, unless they are willing to sign a new agreement, but I still want to cure any waiver of the existing terms the prior landlord may have created, so I add a statement like: “This letter shall serve as your notice that all the terms and conditions of your current lease agreement are in full force and effect, regardless of whether or not your prior landlord enforced those rules.” I have been pleasantly surprised on many occasions though, when tenants in a lease will agree to sign new forms, so it doesn’t hurt to ask.

Certain types of waiver cannot be cured such as a pet by waiver or even a tenant by waiver, so you are advised to proceed with caution and not just assume that you can do or change whatever you want. (Read ORS 90.412 for the legal rendition of waiver.)

Property Condition

If the former owner or manager failed to document the condition on move in, security deposit reconciliation becomes more problematic. I need to document the current condition so there’s some

sort of baseline, so I include an invite to call me to set something up. If I don't hear back in a week, I send a notice for a time during normal business hours that works for me. If they're willing to meet in person, it can be a good time to get forms signed and questions answered.

When you do your initial inspection after taking over, even if you may be looking for lease violations as well as needed repairs, call it a maintenance inspection. Make sure they know you will need access to all closets, rooms, garage and even storage sheds. (If they deny access to any part of the home or grounds, remember that unreasonable denial of entry is a violation under ORS 90.322.)

I start by asking them how things are with the property and run through a rough list of habitability items: Do your doors and windows open, close and lock properly? Does your heating system work properly? Hot water? How about the electrical system, any issues with lights, plugs or switches? Any leaks, drips or plumbing issues you are aware of? Do your appliances work properly? Have you tested your smoke & CO alarms recently?

That usually puts people more at ease because the focus is on the unit and makes the walk-through less awkward for both. As you're inspecting, document any lease violations you may see but hold off on addressing them at that moment. Long ago, I was doing a walk through with a prospective client and it was clear the tenant was smoking cigarettes in the unit, and had an unauthorized cat. The owner confronted the tenant, the conversation got quite tense and things could have really escalated. Just document what you see and let your legal notice do the talking for you.

Illegal Provisions

Illegal provisions in a rental agreement are another potential hassle that you may inherit from the previous owner/manager. Remember that a tenant cannot waive their rights under landlord-tenant law (even with their agreement), so if you have inherited a defective agreement, just don't attempt to enforce those provisions. Some common illegal provisions that have crossed my desk include usurious late fees; premature grace periods, such as three days instead of the minimum four; allowance for entry without 24 hours' notice; and unreasonable restrictions such as, no overnight guests or no sleepovers for children. The renter has the right to use the home and property for any reasonable, legal uses and you may not unreasonably restrict their rights to do so.

Habitability

Habitability issues can rear their ugly head, so be careful in regards to the condition of a property you purchase or take over for management. If there are substantial problems, I would decline to purchase or manage until or unless the tenants were removed so that I don't inherit a legal claim for damages from the renter. Should you choose to take on that risk, deal promptly with all needed repairs, but especially habitability-related repairs such as lack of smoke or CO alarms, heat or hot water, doors and windows that don't lock, rot or pest issues, safety and security, waterproofing & weatherproofing, electrical, plumbing and waste systems.

Discrimination & Retaliation

Encountering a challenging transition with a contentious renter makes most landlords want to just terminate tenancy, but that has been rendered significantly more challenging since the passage of Senate Bill 608. Proceed carefully. Remember that even a termination without cause in the first year of occupancy has the legal defenses of discrimination or retaliation.

Discrimination means treating people who belong to a protected class differently than those who don't. Protected classes are: Federal – race, color, religion, national origin, sex, familial status and disability; State – marital status, source of income, sexual orientation and gender identity; Eugene adds protections based on – age, ethnicity, type of occupation and domestic partnership.

Retaliation is defined in landlord-tenant law as increasing rent, decreasing services, serving a notice of termination, or bringing or threatening to bring an action for possession after the tenant has:

- Complained to or expressed to the landlord in writing the intent to complain to a governmental agency charged with oversight for: building, health or safety codes; mail delivery laws and regulations; or discrimination in rental housing.
- Or, the tenant has: made a complaint to the landlord that is related to the tenancy; formed or joined a tenants' union; testified against the landlord in any judicial, administrative or legislative proceeding; successfully defended an FED (eviction) action brought by the landlord when the notice served by the landlord was defective or imperfect, or the timing of the notice was miscalculated; or indicative of their intent to assert or invoke the protection of any right secured to tenants under any federal, state or local law.

Exceptions to the use of the retaliation defense by a tenant include:

- Complaints by the tenant were unreasonable in their timing or manner
- The violation of housing codes was caused by the tenant
- The tenant has defaulted on rent (unless they deposit full rent into court)
- Compliance with building codes requires the tenant to vacate

So, maintain professional decorum with even the most cantankerous renter and terminate tenancy for cause if they violate the rental agreement. Some of our customers struggle with developmental disabilities, attention deficit disorder, mental illness, PTSD, health issues or family dysfunction. We don't all get the perfect renters who communicate well, obey every rule, are fully functional, and have healthy conflict resolution skills. It's up to you to deescalate or walk away. Deal with lease violations by serving notice, not by issuing threats or ultimatums, and if you can't do that hire someone who can.

Tenancy Termination

Sometimes you not only have to handle the transition, but termination of tenancy as well. That comes with its own set of challenges as to the reason and proper service of notice, but also due to the renter's reaction. Unless I was able to re-home a renter or they were ready to move out anyway, I never got a joyful reaction.

Think about how much of a disruption it would be for you to move out of your home. Things may get hostile, or at the least the renter will be understandably upset. Be as compassionate and helpful as you can be, and be prepared for some amount of anger or upset.

Keep in mind too, that about half the time the renter may experience some delay and not be able to vacate on the termination date. Yes, you can proceed to evict, but that takes time too. I always factor extra time into my plans, and depending on the situation, am okay with extending the move out date within reason as long as they will put their notice in writing to me and pay rent for the extra time. Don't accept payment of rent on an extension without notice from the tenant or you will create waiver on your notice.

The Takeaway

Take care with how you handle a transition with renters. Successful management is based on building relationships, and you set the tone at the first contact. Be gentle but firm and you're likely to have fewer hurdles to overcome as they get accustomed to a new way of doing things. Be prepared for some amount of obfuscation, anger or upset and always keep your cool – remember, it's about the situation, not you personally.

Address issues of paperwork right away and cure any waiver the former manager may have created. Get in and document the condition of the unit as soon as possible and take care of any habitability issues right away. If you're purchasing or taking over management of an occupied rental property, you may want to require the seller to correct any deficiencies in the paperwork, terminate tenancies of questionably habitable units, or remove a problem resident ahead of you assuming legal liability.

Buyers desperate for a deal and property managers hungry for clients sometimes don't think these things through. They disregard performing their due diligence, resulting in unanticipated liabilities, legal bills, and intense stress. Sometimes a bargain is a bargain for a reason, and is no bargain at all.

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