

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

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The Problem of Waiver – ORS 90.412

Waiver is a problem rental owners create for themselves when they fail to act upon knowledge of a breach of contract for three separate rental periods or longer. From minor noncompliance such as failure to mow the lawn, to serious problems such as unauthorized occupants or pets, or simply allowing a tenant to make ongoing late or partial payments without an agreement, you must act on your knowledge or lose your enforcement rights. Waiver is also created by acceptance of payments from an unknown third party, creating a tenancy by waiver, or by failing to bill your tenant for monies owed in a timely fashion, creating waiver on your ability to enforce payment of the unbilled amounts.

How does this happen and what can be done to fix it? Most of the time, waiver is created by simple laziness or unwillingness to address a problem that the tenant is creating due to fear. Never bill your tenants for late fees when they pay late? You lose your right to charge or collect those fees.

One of the most problematic waivers concerns the acceptance of late or partial rent payments without an agreement. Once you have allowed this, you have potentially re-set the due date for rent and the amounts you will accept throughout the month. This then prevents you from being able to serve a notice for non-payment of rent at the earliest possible time and possibly not until the month is completely over. Do not allow your tenant to pay late or partial rent repeatedly without a signed agreement, or without initiating legal action. If you choose to allow it upon occasion, use either **One-Time Late Payment Agreement - ORHA form #28**, or **One Time Partial Payment Agreement – ORHA form #29**.

Always serve a non-payment of rent notice when your tenant pays beyond midnight of the 4th or midnight of the 7th day. Always bill your tenant promptly for late fees, and serve a 30/14 for failure to pay those or any other monies owing.

If you have created a waiver, you cannot cure the waiver problem in a fixed-term lease, without the agreement of the tenant. In a month-to-month agreement, waiver can be cured with a 30-day notice of change in terms. **Use Change of Terms Notification – ORHA form #56**.

Another way you can create waiver is by accepting payments beyond the date of a no-cause notice of termination. If you have served your tenant a no-cause notice of termination that ends during the middle of a rental period, you must only accept the prorated rent for that time period. If you accept full rent and don't return the difference within 10 days, by first class mail or personal delivery, your notice becomes null and void. The same goes for acceptance of rent after the expiration of a 72- or 144-hour notice. If you wish to accept it and continue the tenancy you may, but you may not then proceed to evict unless you return the funds in full.

There are exceptions to this in the eviction process, but it is complicated and you should consult an attorney or eviction specialist.

Waiver is not created by acceptance of a last month's rent deposit that exceeds the current date of termination. These monies are required to be accounted for along with the security deposit within 31 days after surrender of possession. It is also not created when a tenant's payment is returned for insufficient funds.