Mind Your Business – Tia's Tips for Better Rental Management
Top Ten Classic Landlord Mistakes
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As a property management consultant, I guide landlords through the processes of dealing with tenant noncompliance, termination, deposit reconciliation, eviction and small claims. Through the years, common themes have emerged regarding lack of knowledge in the following 10 areas:

1. Fair Housing violations in advertising & first contact
   To stay out of trouble, follow the rule: Describe the property not the people. Don't say things like, perfect for older married couple, ideal for single man who works nights, Buddhist vegans only need apply. And especially don't say things like, no Section 8, no animals, and now - no criminal history. The HUD Memo of 2016, requires landlords to consider an applicant's criminal history in context. Landlords need to look at whether the history presents an actual danger to themselves, the property or the neighbors, by considering such things as the type of crime(s), how many convictions, how long ago the crime(s) occurred, and the rehabilitative measures they have taken since. Residents can also request a reasonable accommodation for a waiver of poor history related to domestic violence, or criminal history related to a prior addiction when the applicant has received treatment and stayed clean.

   Don't prescreen potential applicants when they call, or ask potentially illegal questions such as number of children, source of income, marital status, ethnicity, religious preference, etc. Everything you need to know will be on the application. Some landlords say they do a bit of prescreening so people won't waste their time applying if they won't qualify. Unfortunately, this opens the door to saying or doing something that results in a Fair Housing violation against an applicant in a protected class. Offer an application to any who indicate an interest in applying, even if at first contact it appears they might not qualify. All of the information regarding that applicant will be on the application, and that's when the job of screening begins.

   Landlords also get into trouble when they answer questions by disabled applicants related to Reasonable Accommodation of the lease terms, or Reasonable Modification of the premises. The best way to avoid trouble in this regard is to create an auto-response, such as, "I do not discriminate based on any protected class. Would you like an application?" Don't put the cart before the horse, it will only lead to trouble. If the applicant is approved, the landlord can then move through the request, verification, registration, modification process.

2. Screening poorly or not at all
   If you have a decent rental property and good people in that property, there's no easier job in the world than being a landlord. And that's the trick: identifying people who will

take care of the property, pay their rent in full and on time, and keep to the terms of the rental agreement. The best chance of achieving that is to actually screen potential residents. Require each adult applicant to fill out an application. Check all disclosure boxes for requirements like renter's insurance, utilities or services that benefit the landlord or another tenant, or yard care. Require applicants to answer every question and fully complete the application before it is accepted, then verify the information. There are many fine screening companies that can help. Apply rental criteria fairly, without regard to race, color, national origin, religion, sex, familial status (families with children), disability, marital status, source of income (including housing subsidies), sexual orientation, gender identity, type of occupation, or domestic partnership. If applicants meet the criteria they are approved or conditionally approved; if not, they are denied.

If a landlord charges a screening fee, there are extra requirements. The applicant must be provided with the landlord's written screening criteria prior to applying, the landlord must have an available property or one that will be available soon, the applicant must be told where they are in line for an advertised property, the landlord must provide a receipt for the fee, and they must actually screen the applicant, or are required to refund the fee. The landlord must also issue any denials in writing separately to each applicant, and must reconsider the applicant if they provide evidence showing that the reason for denial is wrong in some fashion.

3. <u>Rushing the move-in process</u>
   Don't be pressured by applicants (or finances) into rushing the move in. When move in is rushed, it results in three fatal errors: 1) Failure to fully screen, resulting in poor quality tenants; 2) Failure to document the condition of the property, resulting in disputes over damages at the end of the tenancy; 3) Failure to ensure the property meets habitability standards, resulting in aggrieved tenants with a basis for complaint, and even counterclaim in a legal action. Diligence at the beginning of the relationship is rewarded at the end.

   It's a big red flag when an applicant holds a handful of cash and pressures the landlord to move quickly. Haste makes waste. Prepare the property completely before handing over possession. Verify the transfer of utilities, and make sure the rental agreement and all addenda are completely filled out, initialed and signed by all parties.

4. <u>Confusing pets with assistance animals</u>
   A pet is a pet; an assistance animal is a wheelchair. Too many landlords confuse the two, to their detriment. Landlords may restrict a tenant's right to keep a pet in the rental property by limiting the number, size, species, and breed of pets, and charging increased deposits and rent for the privilege of keeping a pet.

   An assistance animal is not a pet, but an assistive device that allows a disabled resident the ability to occupy and enjoy the unit the way a non-disabled resident could; therefore, landlords cannot require any additional deposits or rent for assistance

animals, restrict size or breed of assistance animals, and must be cautious in regards to restricting number or species. It's not unusual for tenants to have more than one animal, or even different animals for different family members.

Landlords may require a third-party verification of disability documenting the need for the animal. They may also require that the animal be vaccinated and licensed as required by law or code, and may request that the animal be spayed or neutered. Be prepared for pushback if the surgery would be contraindicated due to the age of the animal or other considerations.

5. Improper entry and abuse of access
   Prior to entering the rental property, the landlord or their agent must provide a minimum of 24-hours' notice to enter. That notice can be in the form of a written notice that is either posted to the main entrance of the dwelling unit, or mailed first class (mailed notices must provide an additional three days plus the 24 hours required by law, prior to entry). A notice to enter may legally be delivered by telephone or voice message, as well as text and email, if allowed by contract.

   What trips up many landlords is their belief that if they're not entering the dwelling unit itself, it's okay to drop by. Not so. A landlord has no right of entry to any portion of the premises under the exclusive control of the tenant, including the yard, lot, or land area itself, with specific exceptions. Common areas of a multiplex are exempt from notification requirements, as are entering to perform regular, ongoing exterior landscaping (if specified in a written rental agreement), to serve a notice to the tenant, or in an emergency. Abuse of access means what it says: Landlords cannot abuse their right of entry. There is no specific definition, so proceed with caution and respect.

6. Creating Waiver
   Only landlords can waive their legal rights; tenants never can – even with their consent. A landlord's failure to act upon knowledge of a breach of contract by the tenant for three separate rental periods or longer creates waiver. Whether that is an unauthorized occupant or pet; repeated late or partial payments of rent; accepting a payment of rent that extends beyond an outstanding no-cause notice of termination; or perpetuating any known breach, landlords must act or give up their rights. Waiver covers a lot of ground, and the further a landlord heads down the road of waiver, the harder it is to turn around, so act upon every breach, no matter how seemingly insignificant. Waiver can be cured with proper notice in a month-to-month agreement, but not in a fixed-term lease until it expires.

7. Not having a good grasp on preparation and service of legal notice
   Selecting the correct notice for the situation is the first hurdle. The second hurdle is meeting the statutory requirements for its preparation and service. Proper calculation of time is essential, as well as specificity in regards to the breaches and cures in for-cause notices of termination. Perfecting service of notice is another minefield. Whether serving personally, by first class mail, or post and mail, each manner has specific

requirements created by statute or case law. Notice to a tenant that could result in a filing of eviction must be perfect in every way, because the easiest win for a tenant in eviction court is a defective notice. The worst-case scenario results in landlords with valid claims paying for their tenant's attorney, or having their credit damaged by an adverse court judgment. Learn how to serve notices legally and perfectly, or hire someone to do it.

8. Maintenance, repair and failure to document

   Landlords must maintain rental properties within minimum habitability standards, respond reasonably to tenant maintenance requests, and maintain strict liability in terms of habitability issues – in some cases even when the tenant has deliberately or negligently contributed to the damage. A landlord's failure to maintain habitability standards and supply essential services is a common successful tenant defense in eviction cases. At a minimum, a residential unit must provide adequate heating facilities; hot and cold running water furnished to appropriate fixtures, and maintained so as to provide safe drinking water; a sewage disposal system approved under applicable law; windows and doors that open, close and lock properly; a unit and grounds free of rubbish, trash and vermin at the outset of the tenancy; effective waterproofing and weather protection; properly functioning utility systems; a secondary escape route for each designated sleeping place in case of fire or other emergency; and safety and security of all components, inside and out.

   Failure to document tenant maintenance requests and actions taken is another sticky wicket for landlords. If a tenant accuses their landlord of failing in their duty to provide essential services, and agitates for a diminution in value of the rental dwelling, either in or out of court, where's the evidence to contradict their claim? In many cases, it's nonexistent. Memories are fallible, and documentation is essential to proving the landlord's response and actions.

9. Being a pushover

   Excuses are the pavement that builds the road to failure. That's a really mean thing to say, I know, but it's based on experience. I'm the despicable character who has to put limits on tenant behavior, enforce compliance, and evict, if necessary. As a property manager, I operate as my clients' fiduciary, so I must act within reasonable standards. Private landlords can always choose to capitulate to sad tales of woe, but heading down that path rarely ends well. It starts with the tenant making excuses and the landlord making allowances, and ends with the landlord losing time, money and self-respect. Providing housing for other humans is a privilege, but it's a business, not a charity.

10. Messing up move out and deposit reconciliation

    The end of tenancy is where a landlord's shortcuts at the beginning of the relationship will come back to haunt them. Failure to document the condition of the property at the beginning, the end, or both, can lead to a losing lawsuit. The final arbiter of charges to a tenant's security deposit is a judge, so charge appropriately, but be fair. Landlords may

charge daily rent for loss-of-use, as long as repairs are performed in a timely fashion, as well as a reasonable hourly wage for their own performance of cleaning and repairs, but it can be best to hire out at least some of the work, to avoid accusations of "padding" and to provide a professional third-party who can testify to the condition of the unit, and the remediation required to correct the tenant's deficiencies.

When assessing charges to a tenant's deposit, landlords must account for depreciation for the replacement of certain damaged components, such as flooring or appliances. It requires a good faith effort to take into account the age and useful lifespan of the damaged item, versus the landlord's cost of replacement. Other common errors with deposit accountings include lumping charges together in a general way that deprives the tenant of the detailed accounting the law requires, failing to meet the 31-day deposit accounting deadline, withholding the deposit monies in bad faith, or failing to send the accounting by first class mail, with penalties of twice the amount wrongfully withheld.

Another common misconception is that if the tenant doesn't provide a forwarding address, landlords are not obligated to mail an accounting. Not true. If no forwarding address is given, the accounting should be mailed to the rental property address with the expectation that the tenant will have their mail forwarded, and copies mailed to any other addresses on file, such as an employer or emergency contact.

The Takeaway

Like any specialty business, there is a lot to know about the landlord-tenant relationship, and the burden is on landlords to know the law and abide by it, or face painful and costly consequences. There is an inherent imbalance of power in the landlord-tenant relationship, so the law tilts toward protection of the weaker party. While tenants can suffer the ultimate indignity of eviction, landlords are held to a very high standard of behavior and action with severe financial penalties for violating a tenant's rights.

This article and the brief description of each of the Top Ten Classic Mistakes, is in no way a comprehensive educational description of the legal and ethical requirements of each topic. The nuances of landlord-tenant law, Fair Housing law, contract law, as well as the obligation to be reasonable and act in good faith, require a broad base of knowledge and education, and are laced with multiple levels of statutory requirements. It is every landlord's responsibility to stay abreast of law changes, and operate at the highest ethical and legal standards.

Detailed articles addressing each of these topics in more detail can be found on the ROA website – www.laneroa.com – in the Members Only section.

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.