

Mind Your Business - Tia's Tips for Better Rental Management

By Tia Politi, ROA President

Squatters - How can I get them out of my house?

I received a call from a family member a while back who wanted to see what he could do about some squatters who were refusing to leave a property he had purchased. The property has two mobile homes on it and while the seller had vacated the main dwelling after the sale and my family member moved in, the people living in the hardship trailer remained. He wasn't happy to hear that the people who have lived in the hardship for the past 15 years - and who have exchanged their labor and payment of the annual property taxes for rent - were not squatters, but tenants. He said the realtor was headed over to serve a 30-day notice to vacate.

I told him that due to the length of their tenancy, he needed to serve a 60-day notice and that if they didn't leave after the notice expired, the eviction process would take two to three weeks past that. Not the news he wanted to hear. Since the property was on the same tax lot as the unit he and his family were living in, and only has the two units, he did still have the right to terminate the tenancy with 60-days' written notice for no-cause after the first year, but if that was not the case, then he would only have been able to terminate for cause or for a Qualifying Landlord Reason.

In another case, a client wanted to hire me to evict his squatters as his lawful tenant had moved out and left some people behind. He had spoken to the people who told him the tenant had sublet the dwelling to them. They paid my client rent, which he accepted. He then provided them with rental applications. Despite the fact that the rental agreement prohibited subletting, it was pretty clear that's what the original tenant had done. So, were these people squatters?

ORS 90.100 defines squatters and tenants as follows:

- ✓ "Squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. "Squatter" does not include a tenant who holds over as described in ORS 90.427 (11).
- ✓ "Tenant": (a) Except as provided in paragraph (b) of this subsection:
 - (A) Means a person, including a roomer entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority.
 - (B) Means a minor, as defined and provided for in ORS 109.697...
 - (c) Does not mean a guest or temporary occupant.

So, by definition, a squatter is a person who is occupying a property with no one's lawful permission, neither owner, manager nor tenant, but is not a lawful tenant who is holding over. Examples:

- ✓ Someone who breaks into a vacant home and takes up residency
- ✓ A registered Temporary Occupant or caregiver, whose right to remain on the premises has been revoked by a 24-hour notice from the landlord for cause, or the tenant for no cause
- ✓ Invited guests (including non-resident family members) who will not leave the premises after being asked to do so; however, in situations where the guest or family member was not a tenant, it can get tricky and you may need to consult an attorney for advice on their removal

If it's a case of a break in or unlawful/unauthorized occupants living in the unit after tenancy has terminated, the landlord can proceed by serving a **24-Hour Notice for Unlawful Occupant – ORHA form #39**, and proceeding to eviction court if they don't move out by the termination date. If you do end up with unlawful occupants, but don't know their name(s), just write in John or Jane Doe and serve the notice legally like you would any other notice that could end up in court.

What can turn an unauthorized or unlawful occupant into a tenant? 1) Knowingly accept rent from an unauthorized or unlawful occupant after the tenant has vacated; 2) Failing to act upon knowledge of the occupancy of an unauthorized occupant while accepting rent from the tenant for three separate rental periods – waiver.

Let's look at some more statutes:

90.403 Taking possession of premises from unauthorized possessor. (1) If an unauthorized person is in possession of the premises, after at least 24 hours' written notice specifying the cause and the date and time by which the person must vacate, a landlord may take possession as provided in ORS 105.105 to 105.168 if:

- (a) The tenant has vacated the premises;
 - (b) The rental agreement with the tenant prohibited subleasing or allowing another person to occupy the premises without the written permission of the landlord; and
 - (c) The landlord has not knowingly accepted rent from the person in possession of the premises.
- (2) Service of notice under this section does not create a right of tenancy for the person in possession of the premises.

Take note of the requirement to have a written rental agreement that prohibits subleasing. If you have no written rental agreement and your lawful tenant sublets, you've got a problem that can't be solved with this method.

90.412 Waiver of termination of tenancy

- (2) Except as otherwise provided in this section, a landlord waives the right to terminate a rental agreement for a particular violation of the rental agreement or of law if the landlord:
- (a) During three or more separate rental periods, accepts rent with knowledge of the violation by the tenant; or
 - (b) Accepts performance by a tenant that varies from the terms of the rental agreement.

You must act on your knowledge regarding an unauthorized occupant or eventually they become a tenant, with all the rights accorded by law.

A tenant once came to me to ask for my help getting her mother out of her unit. She had a long, troubled history with her mom, and knew better than to let her mom stay there, but her soft heart was her undoing. Mom stayed beyond the allowable timeframe for guests outlined in the rental agreement and wouldn't leave when she had agreed to. I told the tenant that my only option as a property manager would be to terminate the entire tenancy for cause for her allowing an unauthorized occupant to reside in the dwelling unit, but she would also lose her housing. We brainstormed ideas such as her possibly getting a restraining order, or having us change the locks when her mom was out as she had no right to occupy. Not sure how, but she figured out a solution on her own and got mom out, then had us change the locks.

So, if you have a situation with a tenant who has allowed an unauthorized occupant to live in the unit, and your rental agreement prohibits sub-leasing it is a lease violation and the entire tenancy can be terminated based on a **Notice of Termination with Cause – ORHA form #38**. The violation is clear and the cure is to get them out. Problem is, it can be hard to prove whether or not someone is really living in the unit and whether or not they have actually vacated the unit after the cure period, so if you determine that they haven't cured the notice and they don't move, you have to go to eviction court and prove your case. The Plaintiff bears the burden of proof by a preponderance of the evidence. What's your evidence? Can you convince a judge if the tenant says you're wrong?

Many times, tenants don't know what they don't know and sometimes get themselves into bad situations with friends or family members who take advantage. It's important to remind them of the risks they face with invited guests who won't leave when asked, and why it's essential for them to get a signed **Guest Registration – ORHA form #30** or create a temporary occupancy by having everyone sign a **Temporary Occupant Agreement – ORHA form #57**. That way, if the guest or temporary occupant won't leave after 24-hours' notice from the tenant or landlord, they become a squatter in the eyes of the law and can be legally evicted after service of a **24-Hour Notice for Unlawful Occupant – ORHA form #39**, if they don't move out by the termination date. Without documentation of the person's status, it's not so simple.

In some cases, when a guest becomes threatening, the tenant can go to court and if the judge sees things their way, they might be successful obtaining a restraining order which effectively removes the person from the property. Some guests know this as well, and I've had to help landlords with situations where their tenant had been excluded from the property after inviting a guest in who was successful in obtaining a restraining order against the lawful tenant. It can create quite a mess.

Some tenants create a squatter situation by conning someone else. They act as though they have the right to rent the unit, collect a deposit and rent, and may even have an unsuspecting person sign a rental agreement, then head out of town with the money leaving the person with no money and no right to occupy the unit. It's a terrible situation for the victim, but you as a property owner need to protect your own interests.

One landlord gave me an interesting suggestion that he's used when he has encountered unlawful occupants after the lawful tenant had vacated. He talks to whoever is there letting them know that he might be willing to consider allowing them to stay, but first they need to fill out applications, which he provides. He then has all the information he needs to fill out his notices. If you would consider allowing an unlawful occupant to stay, you can go ahead and screen the application and move forward with a tenancy, but then you create a problem regarding the old tenancy which triggered a security deposit reconciliation within 31 days of termination.

If there are people left in the unit who were allowed in by the vacated tenant, the tenancy may have terminated, but you don't have legal possession, which does delay the 31 day deadline until you do, but then what happens with the vacated tenant's deposit, damages to the unit, etc.? The lawful tenant who vacated is liable for the costs of dealing with the people they left behind so you can assess charges for your efforts to get them out, but if you choose to let the unlawful occupants stay it gets messy legally, so I don't recommend it. If you choose to ignore my advice, you should certainly screen the people and if they are acceptable, one solution might be to have the unlawful occupants pay a new deposit and enter into a new rental agreement. Then you could repair any damages, reconcile the old tenant's deposit and

send an accounting within the 31 days required by law, along with any refund. At least you would have a fresh start.

A tenant once came to me seeking help to get his brother-in-law out of his rental unit. He and his wife had let him sleep on the couch for a few weeks after he lost his apartment, but then he started stealing money from his sister's purse and smoking pot in the unit right in front of their toddler. The brother-in-law then refused to leave when asked. The tenant had called the police to see if they would help, but they told him it was a civil matter and it is. How are the police supposed to know who's entitled to live there? I told him he could try changing the locks the next time the brother-in-law left, provide us with a copy of the key, and arrange for him to pick up his stuff, or I could help him legally evict his brother-in-law but he would have to pay for it. As the quasi-landlord, he could have tried serving a **Notice of Termination – ORHA form #5**, giving the brother-in-law 30 days to vacate and I could have helped him through the court process. He didn't want to instigate a confrontation or take him to court. Instead he concocted a ruse where he told the brother-in-law we had served them a notice of termination and started packing as though they were going to move. The brother-in-law fell for it and finally left.

My suggestion to lock him out was risky, of course, but life is full of risk. If you have the guts to confront the situation and take decisive action, you can sometimes get unlawful occupants out without legal action or deceptive ruses. I once had a tenant who was sharing his rental with a co-tenant. The co-tenant's PTSD acted up and he started behaving in a bizarre fashion, disturbing the peaceful enjoyment of the neighbors, hanging out with criminal friends, and inviting them to the shared home. Eventually, his behavior got so bad that his family was able to have him placed on a 72-hour psychiatric hold, but by then, three of the people had taken up residence in the garage and refused to leave.

The other tenant called me in a panic as he had to leave for work and didn't want to leave these people in the house unsupervised. I had also been receiving irate calls from the neighbors about the situation for a couple of days. The police had been called to the home on three separate occasions from neighbor complaints and one of the people the officers encountered had recently been evicted from a flop house and was, "very bad news" according to my conversation with the Eugene Police. So, before heading over to the property I called 911. I arrived before the police, but the neighbors and tenant were out and about and we discussed what had been going on. They were angry and upset, but very supportive and said they would back me up.

The tenant let me in, I confronted the people (with the neighbors and the tenant right behind me) and told them to pack their stuff and get out now, that the police were on their way. The two males were non-confrontational and started packing, but the female kept arguing and saying that they were sub-letters. I told them they were not, as the rental agreement prohibited subleasing, and that police were on their way so they had better leave. I opened the garage door allowing the light of day to penetrate their cozy garage home, and just hung out with the neighbors until the police arrived. When they did, I announced that the police had arrived and they had better hurry up and leave. I went to talk with the officers and let them know what was going on. One of the officers told me, "You know if they won't leave, there's nothing we can do, right?" I told him I was aware of that, but it appeared they were leaving and that I would appreciate it if they could stay for a few minutes and make their presence known. Pretty quickly after that the unauthorized occupants finished packing their shopping carts piled high with bicycle parts and rolled away.

That was a risky move on my part, but I felt obligated to protect my owner's home and my tenant. The risk in a situation like that is not only personal danger, but the possibility of being sued afterwards for

unlawful ouster. I determined that in this specific situation, the chances of that were slim to none, but don't think that this approach will work in all situations. Calculated risks are just that, so I'm not advising you to take this kind of action. My tenant and I were both lucky that it worked out; it just as easily could have failed and we could have been assaulted, or been forced to back off, serve a notice and go to court.

Another time, I was successful in getting police help to remove a squatter who had taken up residence in the storage room of a tri-plex I was managing. The contractor who was working on the property entered the room only to find a bed had been set up and that the tenants in one of the units had run an extension cord from their unit through the ceiling to the storage room. He claimed he was subletting, but because the unit was not a habitable unit, the police did help in that situation.

On that subject, when your rental property is vacant, you need to take special precautions and maybe even extreme measures to avoid break-ins and the resulting problems of damage and squatters. At the very least, post the property with No Trespassing signs and file a Trespass Letter of Consent with the police so that they have the authority to act as your agent for removal of trespassers without prior contact. In some cases, you might even need someone to stay at the property during the renovation to ensure security and avoid theft or damage.

Having squatters in your rental property or having your tenant illegally sublet is a very aggravating situation, but the law has stiff civil penalties for unlawful ouster – twice the monthly rent or twice the tenant's actual damages, so you need to proceed with caution. Remember that unlawful ouster includes turning off the utilities or physically forcing a person out. Similar penalties can also be levied for simply threatening or attempting to unlawfully remove a person from the premises. You must proceed lawfully through the termination and eviction process, up to and including forcible removal by the Sheriff if unlawful occupants refuse to leave. If you are in this kind of situation and aren't sure which way to go, back off, stay calm and seek the advice of a competent professional.

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.