

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

By Tia Politi

Eugene Rental Housing Code Changes – Phases I & II: with city manager interpretation

The Eugene Rental Housing Code was first adopted in 2005 and implemented housing standards similar to Oregon habitability law (ORS 90.320) but with a few additions that clarify landlords are responsible to deal with rats in the unit and that each room have a dedicated heating source capable of bringing the temperature of each room up to a minimum of 68 degrees under normal weather conditions. The code also required landlords within the city limits (but not outside the urban growth boundary) to register their units with the city and pay an annual fee of \$10 to fund the services provided by the city to enforce the code. The fee was increased in 2022 to \$20 per unit to be used, “...for the purpose of offsetting the costs to the city associated with the enforcement of this code and costs associated with providing services to tenants and owners and managers of rental housing, including but not limited to: a rental housing navigator position, rental housing data collection, and tenant support services.”

Services provided to tenants of rental housing, as outlined by the code may include but are not limited to, “...tenant hotline; eviction diversion; support for ex-offenders and other individuals with similar challenges who are struggling to qualify for rental housing; and support for tenants seeking rental housing that is accessible to and usable by persons with disabilities.”

Security deposits and deposit accounting

- Prior to a new tenancy beginning, the landlord must provide the tenant with documentation of the condition of the rental home and receive written confirmation that the tenant has received and reviewed the documentation. The landlord must provide a receipt for the security deposit within 10 days. ***Providing a copy of the rental agreement with the deposit info listed on it should suffice.***
 - ✓ The documentation must include photos and a written report. The city is providing a condition report that has space for the tenant(s) to sign acknowledging receipt of the report along with the photos/videos. ***The photos and/or videos may be delivered personally or sent electronically.***
 - ✓ The documentation shall, “...show the condition of the rental housing, including the condition of any appliances provided for use by tenants, and a written statement describing the condition of the rental housing, including the condition of any appliances provided for use by tenants, and noting any damage.”
 - ✓ “The written statement shall describe each room of the dwelling noting the condition of floors, walls, windows, ceilings, fixtures, cabinets, locks, smoke detectors, and appliances inside and out. The written statement shall also include a description of any exterior components of the dwelling that the tenant is responsible for maintaining.”
- Within 31 days of move out, along with the deposit accounting the landlord must provide not only the written accounting of charges against the deposit, but also provide

documentation on the condition of the rental home and a written statement describing the condition or damage the landlord believes justifies the charges. This documentation must include:

- ✓ Photo documentation showing the condition of the rental home, including any appliances provided for use by the tenant.
- ✓ A written statement describing the condition of the rental home, including appliances, and noting any damage.

Maximum Security Deposits

Eugene rental owners may charge a security deposit equal to no more than two months' rent, with two exceptions. One exception is for those who choose to rent to an applicant they could have denied due to risk factors identified in **ORS 90.304**. If you do choose to rent to a riskier applicant, you may increase the security deposit to three months' rent. If you decide to take a chance on an unqualified applicant or if you agree to a material modification to their rental agreement, you may charge an additional security deposit equal to one months' rent to address that change and/or mitigate your risk. If you charge an additional amount for the reasons cited above, you must give the tenant up to three months to pay the increased deposit.

ORS 90.304 states that a landlord can deny an application based on:

- (a) Rental information, including:
 - (A) Negative or insufficient reports from references or other sources.
 - (B) An unacceptable or insufficient rental history, such as the lack of a reference from a prior landlord.
 - (C) A prior action for possession under ORS 105.105 to 105.168 that resulted in a general judgment for the plaintiff or an action for possession that has not yet resulted in dismissal or general judgment.
- (D) Inability to verify information regarding a rental history.
- (b) Criminal records, including:
 - (A) An unacceptable criminal history.
 - (B) Inability to verify information regarding criminal history.
- (c) Financial information, including:
 - (A) Insufficient income.
 - (B) Negative information provided by a consumer credit reporting agency.
 - (C) Inability to verify information regarding credit history.
 - (d) Failure to meet other written screening or admission criteria.
 - (e) The dwelling unit has already been rented.

Remember that under SB 282, evictions or money owed to a prior Landlord from a tenancy that terminated during the COVID-19 Protected Period (April 1, 2020 – February 28, 2022) cannot be considered when evaluating an applicant until after January 2, 2028. Also, under SB 291, landlords must conduct individualized assessments of an applicant with criminal history taking into consideration any supplemental evidence the applicant provides to overcome a negative screening outcome. The assessment must consider the nature and severity of the

incidents that would lead to a denial; the number and type of incidents; the time that has elapsed since the date the incidents occurred; and the age of the individual at the time the incidents occurred.

Tenants' rights handout

- ✓ At the time of lease-up, the tenant must receive the **Tenant Education Information**. This form includes information regarding the rights and obligations of landlords and tenants regarding tenancy termination as well as information about the requirements of the code. ***The form is available on the city website.***

Rental references

- Up to twice per calendar year and within five (5) business days of receiving a written request by the tenant, the landlord shall provide a rental reference utilizing a form approved by the city manager. ***The form is available on the city website.***

Screening – First Come, First Served

If you publicly advertise a rental unit in Eugene, your ad must specify the date and time you will begin accepting applications and the dates of your open application period. **“Open application period”** is defined as “The period of time during which a landlord will accept rental housing applications for a publicly advertised dwelling unit.” You get to decide what period that is – 48 hours, 72 hours, one week? **“Advertised or rented to the general public”** is defined as, “...a notice posted or otherwise made available to the general public, whether online, in a hard copy publication, or on a posted sign.”

The advertisement must include information regarding an applicant's right to request more time to ensure that they have meaningful access to compete for the dwelling unit. **“Meaningful access”** is defined as, “The ability of a person with limited English language proficiency to use or obtain language assistance services or resources to understand and communicate effectively, including but not limited to translation or interpretation services.” If a limited-English proficiency applicant requests additional time and if they submit their completed application within 24 hours of their request, the date and time of the request will serve as the date and time of receipt of the application for determining the order in which applications are received.

Here's one possible statement to consider including: “Applications will be accepted between September 2 - 5, 2024. If you are an applicant with limited English proficiency, you are entitled to submit a request for an additional 24 hours to provide you with more time to seek language assistance services for the purpose of complying with the Landlord's screening and application requirements.” ***A landlord is not required to provide translation or interpretation services to an applicant.***

You must digitally or manually record the date and time of receipt of each application received (regardless of whether you assess an applicant screening charge) during the open application period and if a prospective renter applies prior to the open application period, their application is considered received eight hours after the start of that open application period. ***You are then***

required to screen applications in the order in which they are received, and must accept, conditionally accept, or deny applications in the order of receipt.

If requested, you must notify the applicant of their place in line within 48 hours of the request. Remember, under state law this is a requirement any time you charge a screening fee. A landlord may simultaneously process multiple rental housing applications, but must accept, conditionally accept, or deny rental housing applications in order of receipt. Let's say that you get three applications at approximately the same time. You record the order of receipt but may begin processing all three. If, for example, you get all the info needed from the third applicant prior to receiving the info for the first two, you may select the third applicant, but first would need to deny the first two.

If you offer to rent your unit to an applicant and they do not accept the offer to rent within 48 hours of the time the offer is made, you may provide more time or move on to the next applicant.

What does it mean to accept an offer to rent? The ordinance does not say, but to my mind, accepting an offer to rent would mean either the tenant pays all funds due and takes possession of the dwelling unit if it's move-in ready, or paying a deposit-to-hold and signing the ***Deposit-to-Hold Agreement – ORHA form #S7*** if it's not, thereby obligating themselves to rent at some point in the future. In any event, you must provide 48 hours for them to accept or decline your offer before moving on.

You may refuse to process applications under the following conditions:

1. The application is materially incomplete. If a landlord refuses to process an application because it is materially incomplete, the landlord must notify the applicant in writing within 48 hours of deeming the application incomplete. The notification to the applicant must inform them that their application will not be processed and must state what made the application materially incomplete.
2. The application has been submitted by an applicant who has violated a rental agreement with the same landlord reviewing the application three or more times during the 12-month period preceding the date of the application, the landlord must notify the applicant in writing within 48 hours that their application will not be processed and provide copies of the written documentation of the violations that were previously provided to the tenant.

The following are exempt from the screening rules under the code:

1. Affordable landlords (Typically, agencies who provide HUD-financed housing such as Homes for Good, ShelterCare, or St. Vinnie's.).
2. A dwelling unit occupied by the landlord as their principal residence.
3. A unit of middle housing when the landlord's principal residence is another unit of middle housing on the same lot or parcel (for example, duplex, triplex, quadplex, townhouse, or a cottage).
4. An accessory dwelling unit located on the same lot or parcel as the landlord's principal residence.

5. A dwelling unit that will be shared with an existing tenant who has a separate rental agreement for the dwelling unit (i.e., renting individual rooms).
6. A dwelling unit not advertised to the general public.

Eugene Code Relocation Assistance

Landlords must provide a minimum of 90 days' written notice to terminate tenancy for no cause in a month-to-month tenancy in the first year. The termination notice must include information about the amount of relocation assistance for which the tenant is eligible with a description of their rights and obligations. ***The Tenants' Rights & Obligations for Relocation Assistance form is available on the city's website.***

Unless exempt, you must pay the tenant two month's periodic rent if you terminate the tenancy for no cause in the first year, or for a **Qualifying Landlord Reason**, and the relocation assistance must be paid within 45 days of delivery of the termination notice. If the tenant remains in the dwelling unit after the date of termination without the landlord's permission, the Tenant must immediately repay the relocation assistance.

The city manager's interpretive rules require that the payment shall be paid directly to a tenant(s) listed on the rental agreement using one of the following payment methods:

- 1) A cashier's check that is delivered by first-class mail or in person.
- 2) A traceable electronic payment method such as a cash app or an electronic bank transfer if allowed under the written rental agreement. (Under state law, landlords may only pay tenants any amount owed by first-class mail or personal delivery unless the parties have agreed to electronic payments in writing. The tenant may only consent to this delivery method after the tenancy has begun and they have taken possession of the unit – use **ORHA form #O16 – Agreement to Accept Electronically Transferred Funds.**)
- 3) A cash payment with a receipt. (So, if you're paying the tenant(s) with cash, get a receipt!)

If using ORHA forms for termination, you must add some info:

- The amount of state relocation assistance the tenant is eligible to receive if the landlord is obligated to pay the state fee, along with a statement that the state assistance will be deducted from the city-required assistance.

State relocation assistance

You may also be required to pay a relocation assistance under state law if you hold an ownership interest in more than four residential rental units in Oregon and are serving notice of termination for a Qualifying Landlord Reason. If you are required to pay the state assistance of one month's rent, those funds must be provided with the notice, but you can reduce the amount of the city fee from the amount of the state assistance you paid with your notice. This results in two separate payments delivered at different times, with a right to recover only one of these (the city fee) if the Tenant does not vacate.

Relocation assistance exemptions

1. Week-to-week tenancies.

2. Occupancy in the same dwelling unit where the landlord has occupied the unit as their primary residence for at least six months prior to service of notice to terminate.
3. Tenants that occupy one unit of middle housing where the landlord's primary residence is another unit of middle housing on the same lot or parcel and the landlord has occupied the unit as their primary residence for at least six months prior to service of notice to terminate.
4. Tenants that occupy an accessory dwelling unit (ADU) and the landlord's primary residence is on the same lot or parcel and the landlord has occupied the unit as their primary residence for at least six months prior to service of notice to terminate.
5. Landlords who temporarily rent out their primary residence during their absence of not more than three (3) years and the landlord returns and reoccupies the unit as their primary residence within that time.
6. Landlords who temporarily rent out their primary residence due to deployment in the armed forces and the landlord returns and reoccupies the unit as their primary residence.
7. Units of affordable housing.
8. A dwelling unit that is subject to and in compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
9. A dwelling unit rendered immediately uninhabitable not due to the action or inaction of a landlord or tenant.
10. A dwelling unit rented for less than six (6) months where the landlord will be demolishing the unit and has provided the tenant with verification of submission of a demolition permit prior to the execution of the rental agreement.
11. A unit rented under a fixed-term lease where the landlord's intent is to sell or permanently convert the dwelling unit to a use other than as a dwelling unit and is a term of the executed rental agreement.

Qualification exemption process

1. For exemptions claimed under 1, 5, 6, 7, 10 & 11 above, no later than the time of execution of the rental agreement, you must provide each tenant who is a party to the rental agreement with written notice that the tenancy is exempt from relocation assistance. ***The city has the required exemption form available on their website.***
2. For exemptions claimed under 2, 3 & 4 above, where the landlord is living in the dwelling unit or on the same lot or parcel of land at the time of execution of the rental agreement, no later than the time of execution of the rental agreement you must provide the Tenant(s) with written notice that the tenancy is exempt from relocation assistance.
3. For exemptions claimed under 2, 3 & 4, if you move into the dwelling unit or onto the lot or parcel during the term of the rental agreement, within 30 days of occupancy, you must provide the tenant(s) with written notice that the tenancy will be exempt from relocation assistance once you have occupied the unit as your principal residence for at least six months. The notice requirement applies to you if you move into the unit or onto the lot or parcel on or after September 1, 2023.
4. For rental agreements executed prior to the ordinance effective date, Section 7 of the ordinance provided 30 days for landlords to notify tenants and the City of exemptions 1, 5, 6, 10, and 11, landlords must have provided written notice to the Tenant and reported the exemption to the city by September 24, 2023.

5. Except for affordable landlords, who are not required to file exemptions, within 30 days of the date you provide the tenant with the notice of exemption you must submit to the City a notice of relocation assistance exemption. ***The form is available on the city website.***

Lease Renewal in the First Year

In a fixed-term lease with a specified ending date that falls within the first year of occupancy, unless exempt from payment of city relocation fees, you must follow this process:

1. **At least 90 days prior to the specified ending date** of the fixed term, provide the tenant with a written statement informing them of their right to receive relocation assistance and the means for eligibility. ***The city has a form on their website. I recommend that you provide the form at the time of lease up, so you don't forget.***
2. For the tenant to be eligible to receive relocation assistance, the Tenant must, **at least 60 days prior to the specified ending date** of the fixed term provide you with written notice of their desire to renew the fixed term agreement.
3. **Within 30 days of the written notice from the tenant**, you must either:
 - (1) Provide the tenant with written notice that you are declining to renew the lease and pay the tenant two month's rent as a relocation assistance or;
 - (2) Provide the tenant with written notice that you agree to renew the lease. There is no specified term stated for length of lease renewal, but the lease renewal terms may not be a "substantial change" from the existing terms.
- a. **Substantial change means** a change of terms from those included in a prior rental agreement between a landlord and tenant that substantially disadvantages the tenant, and the landlord does not provide for a commensurate decrease in rent. Examples of substantial changes to a rental agreement include but are not limited to: tenant responsibility for payment of utilities previously included in the monthly rent; tenant responsibility for payment for a parking spot previously included in the monthly rent; landlord no longer allowing pets to occupy the dwelling unit; reduction of space available for tenant use; reduction of amenities available for tenant use; and removal of furnishings from furnished units.
4. A tenant who has received relocation assistance and either agrees to the landlord's conditions of renewal or remains in the dwelling unit after you decline to renew and serve notice terminating their tenancy, must immediately repay the relocation assistance.

Rent increases

Unless exempt, you are subject to the city notice requirements and payment of relocation assistance if you increase the tenant's rent by the maximum allowable percentage or above in a specific year. When raising rent, the 90-day notice must state the amount of the new rent, the dollar amount by which the rent will increase, the percentage of the increase, and the date the increase will be effective. The notice must also specify the amount of relocation assistance for which the tenant is eligible and include a description of the tenant's rights and obligations. ***The city has a rent increase form on their website.***

A tenant who receives notice of rent increase for the maximum allowable amount may, within 30 days of the date of the notice, request in writing for the landlord to pay relocation assistance. If the tenant fails to request it within that timeframe, they are not eligible for assistance, may not request payment, and the rent increase amount will stand. If the tenant requests relocation assistance within the 30-day period, the landlord must pay the tenant the required assistance of two-month's rent at least 45 days prior to the date of the rent increase.

A tenant who receives relocation assistance for a maximum rent increase, must within 45 days of the date of receipt of the assistance, either: (1) provide you with written notice of termination of the rental agreement and vacate the unit; or (2) repay the relocation assistance and remain in the unit, subject to the increased rent. If you don't intend to raise rent to the maximum, you don't have to provide the information on relocation assistance. To avoid that payment, stay below the rent cap.

Please note that under state law, properties built within the past 15 years are exempt from the rent cap, but properties subject to the Eugene Code are not exempt for that reason.

Relocation assistance reporting

Unless you are exempt from payment of relocation assistance, you must report your relocation assistance payment to the city within 60 days of paying the Tenant. ***The city has the required form available on their website.***

What about the two-unit, owner-occupied exemptions listed in 90.427?

Good question! This part of state law clarifies the following:

(8) If the tenancy is for occupancy in a dwelling unit that is located in the same building or on the same property as the landlord's primary residence, and the building or the property contains not more than two dwelling units, the landlord may terminate the tenancy at any time after the first year of occupancy:

(a) For a month-to-month tenancy:

(A) For cause and with notice as described in ORS 86.782 (6)(c), 90.380 (5), 90.392, 90.394, 90.396, 90.398, 90.405, 90.440 or 90.445;

(B) Without cause by giving the tenant notice in writing not less than 60 days prior to the date designated in the notice for the termination of the tenancy; or

(C) Without cause by giving the tenant notice in writing not less than 30 days prior to the date designated in the notice for the termination of the tenancy if:

(i) The dwelling unit is purchased separately from any other dwelling unit;

(ii) The landlord has accepted an offer to purchase the dwelling unit from a person who intends in good faith to occupy the dwelling unit as the person's primary residence; and

(iii) The landlord has provided the notice, and written evidence of the offer to purchase the dwelling unit, to the tenant not more than 120 days after accepting the offer to purchase.

(b) For a fixed term tenancy:

(A) During the term of the tenancy, only for cause and with notice as described in ORS 86.782 (6)(c), 90.380 (5), 90.392, 90.394, 90.396, 90.398, 90.405, 90.440 or 90.445; or

(B) At any time during the fixed term, without cause by giving the tenant notice in writing not less than 30 days prior to the specified ending date for the fixed term, or 30 days prior to the date designated in the notice for the termination of the tenancy, whichever is later.

So, while the state statute provides certain exemptions regarding terminations in this situation, the Eugene code does not specifically address the allowable exemptions for what I call the “Duplex Rule” except for the landlord being allowed to claim an exemption at the time of move in or if the landlord move into an adjoining unit and then provides the exemption. However, just because state law allows a landlord to terminate a tenancy differently or on a shorter timeframe, doesn’t mean the city does! The city is aware of the absence of guidelines and may consider providing additional clarification during Phase III. In the meantime, use a 90-day notice just to be safe.

Tenancy termination and eviction reporting

You must report all termination notices to the city that result in a termination of tenancy within 30 days of the date the tenant vacates the dwelling unit, except for week-to-week tenancies if exempt. So, any landlord-initiated notice from you to them where the Tenant vacates the unit in response to the notice or by legal eviction. Your report to the city must include a copy of the termination notice served. **The city has created an online form.** If you are unable to access the form through the Rental Housing Program website, Housing Navigator Amy Cameron said to come in to the office during business hours and staff can assist. The code office is located at **99 W. 10th Avenue, Eugene, OR 97401 - 541-682-5383.**

A tenant who gives notice to vacate and moves out or otherwise abandons the unit when the landlord has not served a termination notice or evicted the tenant is not a reportable event.

Complaint process and qualifications

- If a tenant or applicant believes a landlord has violated the code they may file a complaint. A person who files a complaint must be a party to the current rental agreement, or an agent of the party:
 - ✓ To file a complaint, the tenant must first send a notice in writing of the alleged violation to the owner/agent and provide a copy of that written notice at the time the complaint is filed. “In writing” according to the code, means “...a written communication of any type, including emails and text messages.” The city manager is then authorized to investigate the complaint.
 - i. For complaints related to lack of essential services, application processing in order received, or maximum security deposits the complaint may be filed no sooner than 48 hours after providing written notice to the owner/agent.
 - ii. For complaints not related to the lack of essential services, application processing in order received, or maximum security deposits the complaint may be filed no sooner than 10 days after providing the written notice to the landlord.

City process for substantiated complaints

- If the city manager determines that a complaint is valid, they will issue a notice to the owner/agent providing a timeline for compliance:

- ✓ For non-habitability and non-essential maintenance issues, 10 days to remedy the violation, including any needed repairs, unless the repairs cannot be completed within 10 days. If that is the case, the landlord must submit a compliance schedule acceptable to the city within 10 days.
- ✓ For habitability complaints regarding a lack of essential services, applications processed in order received, maximum security deposits, 48 hours, unless the repairs cannot be completed within 48 hours. If that is the case, the landlord must submit a compliance schedule acceptable to the city within 48 hours.

Complaint process outline requires that the city confirm the following:

- 1) Confirm that the complainant has standing to file a complaint.
- 2) Confirm that the subject of the complaint could be a violation of the code.
- 3) Except for complaints related to applications not processed in order received, security deposit overcharge or lack of essential services, confirm that the landlord has had 10 days since mailing of the written notice by the tenant to respond to the complaint.
- 4) For complaints regarding violations of the screening charge limit, applications processed in order received, maximum security deposits, or lack of essential services, confirm that the landlord has had 48 hours from the time the tenant provided written notice to respond to the complaint, and
- 5) Provide notice to the landlord of the complaint per written procedures.

Landlord noncompliance with city order to correct

- If the city manager finds that a complaint was valid and the landlord did not respond timely as required, the manager may issue an administrative civil penalty, initiate a prosecution in municipal court, and initiate action to recover all city costs associated with the processing of the complaint, investigation, and resolution of the issue.
 - ✓ This information will be sent to the landlord along with deadline for repair and reinspection of the dwelling unit, and a statement that they may appeal the notice and order.

Penalties

The code has also been expanded to include the changes listed above in the processing of complaints and created a painful financial penalty for landlords who fail to comply.

A landlord that violates the relocation assistance provisions for rent increases and terminations is liable to an individual eligible for relocation assistance in an amount equal to three months' rent as well as actual damages, relocation assistance, and reasonable attorney assistance and costs. That means that any Tenant (not just household of tenants as a group) claiming to be aggrieved by a landlord's violation has an individual cause for action in any court of competent jurisdiction for damages and any other remedies as may be appropriate under law.

Take Away: There's a lot of steps to do just right and big-time monetary penalties if you don't. Get professional advice so you don't stumble...

Phase Three Recommendations include:

- Prohibit denial of applicants for credit defaults related to medical or education debt, and limit screening for minimum credit score.
- Loosen minimum monthly gross income screening standards to no greater than twice the monthly rent.
- Local moratorium on no-cause evictions

The good news

None of these restrictions apply to for-cause notices.

I've been saying for years, we're all going to have to get good at holding tenants accountable for their misbehavior because the easy route of no-cause notices will likely continue to become more restrictive. That means no more lazy-landlording. You must inspect; you must act on breach of contract; you must avoid waiver; you must learn how to prepare and serve legal notices; and you must stop renting to people because you feel sorry for them or are trying to be nice. Remember, *no good deed goes unpunished*. This is a business, tighten up your standards people and remember: even with all the increasing regulatory load we're experiencing, if you have a good property and good people in that property, rental property ownership is still one of the best ways to build financial stability and generational wealth over time. So, stop whining and start learning!

The Takeaway

Laws and rules, taxes and fees for most businesses are usually a moving target based on government interference. Rental property management is no exception. As these ordinances take shape make sure you stay plugged in to the nuances and new limitations on how you are allowed to operate, and remember every business has its downsides. Keep your eye on the prize and focus on the positive: rental ownership is still a tried-and-true way to build generational wealth and financial stability over time, and if you have a good renter and a good property there's no easier job in the world 😊

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.

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