

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

by Tia Politi

Landlord Penalties

Think education is expensive and time consuming? Prepare to pay for your ignorance

“This has never happened to me before.” “I’ve always done it this way.” “But it’s a no-cause notice!” “I didn’t know that.” “I don’t have time to read what you send.” “I don’t have time for classes.”

I’ve heard it all over and over again - the reasons why one of my clients or members finds themselves in hot water with a renter. Some of you are your own worst enemy because you refuse to treat landlording as a business. Maybe the following information will inspire you to change your ways...

For every mistake a landlord makes, the law provides the tenant with remedies, including financial penalties. What are they? Let’s start with damages. Two of the first statutes in **ORS Chapter 90** provide for the payment of damages to an aggrieved party, require both parties to mitigate damages, and operate in good faith. Payment of damages means that if one party harms another party accidentally, intentionally, or negligently and the other party suffers financial loss from that harm, they owe the other party compensation equal to the harm. That goes both ways, but for the purposes of this article I’m focusing only on damages a tenant can extract from their landlord.

90.125 Administration of remedies; enforcement. (1) The remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect. [Formerly 91.725]

90.130 Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

Statutory penalties

90.150 Service or delivery of actual notice. 90.155 Service or delivery of written notice. 90.160 Calculation of notice periods. These three statutes outline how each party may serve legal notice upon the other. Different statutes call for different service methods. Different termination types provide for different notice periods. If a landlord improperly prepares or serves notice of termination, **the tenant has a defense against eviction.**

90.222 – Renters liability insurance. If a landlord requires a tenant to obtain renters insurance without providing the proper disclosures or knowingly requires it when the tenant is not legally obligated to obtain it, **the tenant may recover the actual damages of the tenant or \$250, whichever is greater.**

90.228 – Notice of location in 100-year flood plain. If a landlord fails to provide a notice required under this section, and the tenant of the dwelling unit suffers an uninsured loss due to flooding, **the tenant may recover from the landlord the lesser of the actual damages for the uninsured loss or two months' rent.**

90.245 – Prohibited provisions in rental agreements; remedy. If a landlord deliberately uses a rental agreement containing provisions known by the landlord to be prohibited and attempts to enforce such provisions, **the tenant may recover in addition to the actual damages of the tenant an amount up to three months' periodic rent.**

90.295 Applicant Screening Charges. A landlord may require the payment of an applicant screening charge only if prior to accepting the payment they provide written screening criteria to view, they have an available unit or one that will be available soon, tell the applicant approximately how many units of that type they have or will have available, notify the applicant of approximately how many applications they already have that remain under consideration, and provide a receipt for the fee. The landlord must perform screening of the application or must refund the fee. **Landlord penalty is double refund of the fee plus \$150.**

90.297 Prohibition on charging deposit or fee to enter rental agreement; exceptions; deposit allowed for securing execution of rental agreement; remedy. A landlord may not charge a move-in fee. A landlord may require payment of a deposit-to-hold from an approved applicant to secure the execution of a rental agreement in the future, but only if they provide a written statement describing the amount of rent, fees and deposits required, the terms of the agreement and the conditions for refunding or retaining the funds. Without providing this information, if a rental agreement is not executed due to the landlord's failure to comply with the agreement - i.e., make the unit available for move in on the promised date - they must return the funds collected within four days. **Failure to comply with this section makes the landlord liable for return of the deposit-to-hold or improperly charged move in fee plus \$150.**

90.300 Security deposits; prepaid rent. Failing to provide a written accounting that states specifically the basis or bases of the claim within 31 days by First Class Mail or personal delivery, withholding funds in bad faith, applying prepaid rent incorrectly, or failing to account for designated deposits properly, **makes the landlord liable for twice the amount withheld without a written accounting or withheld in bad faith.**

90.302 Fees allowed for certain landlord expenses; accounting not required; fees for noncompliance with written rules; tenant remedies. Landlords may only charge fees as allowed by this section. A fee is a nonrefundable payment of money for specific violations of the rental agreement, including late fees, dishonored check fees, alarm tampering fees, lease-break fees, and noncompliance fees. Any legal fees that a landlord may charge in accordance with this section must be listed in the written rental agreement. If not listed, you can't charge. **If a landlord charges a tenant a fee in violation of this section, the tenant may recover twice the actual damages of the tenant or \$300, whichever is greater.**

90.304 Statement of reasons for denial; remedy for noncompliance. Landlords must deny applications in writing outlining the reasons for the denial, regardless of whether they charge a fee for screening. They must also screen within the guidelines of the law. **If a landlord fails to comply with this section, the applicant may recover from the landlord \$100.**

90.310 Disclosure of legal proceedings; tenant remedies for failure to disclose; liability of manager. If the landlord fails to disclose the foreclosure status of a rental property with four units or less and the tenant moves out as a result, **the tenant may recover twice their actual damages or twice the monthly rent, whichever is greater, and all prepaid rent, in addition to any other remedy that the law may provide.**

90.315 Utility or service payments; additional charges; responsibility for utility or service; remedies. Failure to disclose utilities or services that benefits the landlord or another tenant, or failure to properly follow each of the very specific requirements to assess utility or service charges to the tenant in accordance with this section **incurs a landlord penalty of twice the tenant's actual damages or one month's rent, whichever is greater.** This section of law also addresses issues where a past tenant's bill is required to be paid prior to utility services being established. If the tenant has not moved in, the remedies available to the tenant in this circumstance are to **1) pay the outstanding amount and deduct it from the rent; 2) enter into an agreement with the landlord to resolve the issue; or, 3) immediately terminate the rental agreement by giving the landlord actual notice and the reason for the termination. If the tenancy terminates, the landlord shall return all moneys paid by the tenant as deposits, rent or fees within four days after termination.**

If the tenant has already taken possession of the unit, the tenant may, **1) pay the outstanding amount and deduct it from the rent; or, 2) terminate the rental agreement by giving the landlord actual notice 72 hours prior to the date of the termination. The tenancy does not terminate if the landlord restores service or the availability of service during the 72 hours. If the tenancy terminates, the tenant may recover actual damages from the landlord resulting from the shutoff and the landlord shall return within four days after termination, all rent prepaid for the month in which the termination occurs prorated from the date of termination or the date the tenant vacates the premises, whichever is later, and all of the security deposit owed to the tenant under ORS 90.300. If a landlord fails to return to the tenant the moneys owed as provided in...this section, the tenant shall be entitled to twice the amount wrongfully withheld...(and)...this section does not preclude the tenant from pursuing any other remedies under this chapter.**

90.320 Landlord to maintain premises in habitable condition; agreement with tenant to maintain premises. This section of law outlines the duties of a landlord to maintain the unit in a habitable condition, but **the penalties for failing to do so, are iterated in ORS 90.360.**

90.322 Landlord or agent access to premises; remedies. The landlord or their agent has the right to enter the premises at reasonable times for many purposes with proper legal notice or without notice in case of an emergency. "Emergency" includes but is not limited to a repair problem that, unless remedied immediately is likely to cause serious damage to the premises. **If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful**

but that have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the reoccurrence of the conduct or may terminate the rental agreement pursuant to ORS 90.360(1). In addition, the tenant may recover actual damages not less than an amount equal to one week's rent in the case of a week-to-week tenancy or one month's rent in all other cases.

90.323 Maximum rent increase; exceptions; notice. Raising rent improperly by increasing rent within the first year of tenancy, increasing it beyond the rent cap when not exempt, or failing to provide a written 90-day notice incurs a **landlord penalty of three months' rent plus actual damages suffered by the tenant.**

90.360 Effect of landlord noncompliance with rental agreement or obligation to maintain premises; generally. This statute addresses a landlord's failure to supply habitable housing or make appropriate and necessary repairs. After appropriate notice, **the tenant may terminate the rental agreement, move out, and recover their actual damages. The landlord must also return all deposits and prepaid rent.** The tenant has no right to recover if they caused the damage or knew about the condition but failed to notify the landlord.

90.365 Failure of landlord to supply essential services; remedies. If the landlord intentionally or negligently fails to supply any essential service, the tenant may notify their landlord in writing and provide them a reasonable time to remedy the situation, after which **a tenant may 1) procure reasonable amounts of the service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; 2) recover damages based upon the diminution in the fair rental value of the dwelling unit; or 3) if the lack of essential service makes the dwelling unit unsafe or unfit to occupy, procure substitute housing and deduct it from the rent and seek damages for the difference.** The tenant can't claim if they caused the problem, the landlord substantially supplies the essential service, or if the landlord is making reasonable efforts to supply the essential service and the cause of the problem is beyond the landlord's control.

90.367 Application of security deposit or prepaid rent after notice of foreclosure; termination of fixed term tenancy after notice. If a tenant receives actual notice that their rental property is in foreclosure, they may require **the landlord to apply any security deposits or prepaid rent to their ongoing rent obligation** with written notice. If the property is retrieved from foreclosure, the landlord may require repayment of those funds, but must allow up to 90 days for the tenant to pay.

90.375 Effect of unlawful ouster or exclusion; willful diminution of services. If a landlord unlawfully removes or excludes the tenant from the premises, seriously attempts or seriously threatens unlawfully to remove or exclude the tenant from the premises or willfully diminishes or seriously attempts or seriously threatens unlawfully to diminish services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric or other essential service, **the tenant may obtain injunctive relief to recover possession or may terminate the rental agreement and recover an amount up to two months' periodic rent or twice the actual damages sustained by the tenant, whichever is greater. If the rental agreement is terminated the landlord shall return all security deposits and prepaid rent recoverable under ORS 90.300.** The tenant need not terminate the rental agreement, obtain injunctive relief, or recover possession to recover damages under this section.

90.380 Effect of rental of dwelling in violation of building or housing codes; remedy. This statute is long and extremely situational, dealing with condemned properties or those deemed uninhabitable by the government. In that case, **the penalties are varied.** The statute does provide a benefit to the landlord in the case of an act of God or another random destructive event that renders the unit unsafe to occupy. After the property is red-tagged the landlord may terminate the tenancy with 24 hours' notice.

90.385 Retaliatory conduct by landlord; tenant remedies and defenses; action for possession in certain cases. This is a statute that gets a lot of landlords in trouble. Retaliatory acts can include increasing rent, decreasing services, terminating tenancy, evicting, or even threatening to evict the tenant after they have performed a protected act. Retaliation may be claimed as a defense if the tenant complains or threatens to complain to a governmental agency about building, health or safety codes, mail delivery, discrimination, or the tenant organizes or joins a tenants' union, they testify against you in a proceeding, or beat you in eviction court within the past six months. Then there's a last catch-all phrase in the statute, "Or, the tenant has performed or expressed intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to tenants under any federal, state or local law." That covers a lot of ground. **If the landlord retaliates, the tenant is entitled to the remedies outlined in 90.375 and has a defense against eviction.**

There are some defenses to retaliation. The complaints by the tenant were unreasonable in their timing or manner and served only to harass the landlord, the violation of codes was caused by the tenant, the tenant was in default in rent (unless they pay rent into court), or compliance with codes requires the tenant to vacate.

90.390 Discrimination against tenant or applicant; tenant defense. If a landlord discriminates against a tenant or applicant in violation of local, state or federal law, **the tenant has a defense against eviction,** unless the tenant is in default in rent; however, the tenant may pay rent into court and may then proceed with a discrimination defense.

90.391 Information to veterans required in notice. In any notice of termination, the landlord is required to include information on where veterans may access housing assistance – regardless of whether the tenant is a veteran. The language must be in the notice, not attached to it. If not provided, **the tenant has a defense against eviction.**

90.394 Termination of tenancy for failure to pay rent. Landlords must now provide at least 10-days' written notice for nonpayment of rent and must include information on rent assistance with the notice. If landlord fails to include rent assistance information, or refuses to cooperate with an assisting agency, **the tenant has a defense against eviction.**

90.412 Waiver of termination of tenancy. If a landlord accepts behavior from a tenant in violation of the rental agreement for three separate rental periods or longer, they waive their rights to terminate based on that specific breach. **Waiver can be a tenant defense against eviction.**

90.414 Acts not constituting waiver of termination of tenancy; delivery of rent refund. A landlord may create a different kind of waiver if they accept payment from a tenant that exceeds the amount owing when a notice of termination is pending, or the landlord has initiated an eviction. The landlord has 10 days to return an overpayment by First Class Mail or personal delivery and avoid waiver. **Waiver can be a tenant defense against eviction.**

90.425 Disposition of personal property abandoned by tenant. Landlords must comply to the letter with a tenant's right to their abandoned property, by providing legal notice and follow all regulations based on the type of property that is abandoned. If the landlord fails to comply with statute, **the tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional, or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant.**

90.427 Termination of tenancy without tenant cause; effect of termination notice. This statute outlines all the ways a landlord can evict for no cause; although, it does include nonrenewal in a fixed-term lease for three strikes (which is to my mind, a termination for cause, but I digress). There are specific rules a landlord must follow in terminating tenancy for no cause or a qualifying landlord reason that are outlined and the timeframes required for each. If a landlord terminates a tenancy in violation of this section, **the landlord shall be liable to the tenant in an amount equal to three months' rent plus the tenant's actual damages, and the tenant has a defense against eviction.**

90.449 Landlord discrimination against victim; exception, tenant defenses and remedies. This statute addresses landlord discrimination against a victim of domestic violence, sexual assault, or stalking. If a landlord discriminates against a victim, **the tenant or applicant may recover up to two months' periodic rent or twice the actual damages sustained by the tenant or applicant, whichever is greater, the tenant has a defense against eviction, and the applicant may obtain injunctive relief to gain possession of the dwelling unit.**

90.460 Alternate exit from bedroom required; tenant right to recover for landlord. A landlord shall provide at all times during the tenancy a route or routes of exit from each bedroom and, if required, a secondary route of exit from each bedroom, for use during an emergency. The routes of exit must conform to applicable law in effect at the time of occupancy of the building or in effect after a renovation or change of use of the building, whichever is later. If the landlord fails to comply with this section, **the tenant may recover their actual damages and terminate the tenancy with 72 hours' actual notice. If the landlord cures the violation within the 72-hour period, the tenancy does not terminate; if they do not, then the tenant may terminate and recover twice their actual damages or twice the periodic rent, whichever is greater, and the landlord must return all security deposits and prepaid rent owed to the tenant under ORS 90.300 within four days after the termination.**

EPA Penalties

If the landlord fails to supply the pamphlet, "Protect your Family from Lead in the Home," to a tenant in a property built before 1978, and have them sign acknowledging receipt, **the base fine is \$6,000.**

Remember that rules for renovating homes built before 1978 have also changed and make a landlord, property owner or property manager liable for a third party who performs work on a pre-1978 built

structure. Everyone, even property owners, must be lead-paint certified and must comply with the applicable rules. Mishandling of lead-based paint or other hazardous materials like asbestos can bring **hefty fines along with remediation requirements.**

Fair Housing Violation Penalties

You may not discriminate against a tenant or applicant in a protected class and there are severe landlord penalties for doing so. **Protected classes are:**

Federal - Race, color, national origin, religion, sex, familial status, and disability.

State of Oregon - Marital status, source of income, sexual orientation, and gender identity.

Local - Some cities in Oregon have additional protected classes. Eugene, for example, has added protections for age, type of occupation, ethnicity, and domestic partnership.

If a Fair Housing investigator concludes that a landlord violated the Fair Housing Act, they can be ordered to:

- **Compensate the tenant for actual damages, including out-of-pocket expenses and emotional distress damages.**
- **Provide permanent injunctive relief.**
- **Provide appropriate equitable relief (for example, make the housing available to the tenant).**
- **Pay the tenant's reasonable attorney's fees.**
- **Pay a civil penalty to HUD to vindicate the public interest. The maximum civil penalties are:**
 - **\$16,000, for a first violation of the Act.**
 - **\$37,500 if a previous violation has occurred within the preceding five-year period.**
 - **\$65,000 if two or more previous violations have occurred within the preceding seven-year period.**

The takeaway

Remember the old saying: If you think education is expensive, try ignorance. You'll pay one way or the other, either through taking the time to get properly educated, or by paying tuition in the school of hard knocks. I've paid that tuition and I've found it more cost effective to learn how to do things the right way in the first place. All I hear is how expensive attorneys are, how much it costs to belong to ROA, how much time and expense is involved in taking classes because, "I'm just so busy."

How much attorney time could \$16,000 buy you? Just asking...

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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