

Mind Your Business – Tia’s Tips for Better Rental Management By Tia Politi, ROA President

Mind Your Inspections: No news is BAD news

Inspecting your rental properties – especially the inside – can be an uncomfortable experience for all involved. Depending on the relationship and the attitude of both parties, checking out the living space of another person can range from fast, easy and casual, to time-consuming, difficult and even hostile. All endeavors large or small have their parts that are the least fun, so stop procrastinating and go inspect your property – your investment is at stake.

With rental property the old saying, “No news is good news,” becomes, “No news is bad news.” A resident’s failure to report issues with the unit can indicate that they don’t want you there because they’re doing something they shouldn’t, or not doing something they should. Also, you can’t rely on tenants to always report maintenance issues that can lead to property damage. Sometimes, they don’t know that something is awry.

Getting started

When I don’t have any red flags regarding a tenancy and just need to check the property out, I always like to call or email the resident, let them know it’s time for an inspection and ask what time would work for them in the next week or two. That gives them a sense of control, respect for their time, and breathing room to prepare. But, if I suspect something nefarious is going on, I may just offer the minimum 24-hours’ notice. When would that be the better option? Maybe you’ve received notification from police about a problem at the unit; maybe you’ve done a drive-by inspection and saw cars parked on the lawn, the blinds askew, and trash in the yard; maybe you’ve received a report from a neighbor that there are multiple animals on the premises. Whatever your reasonable suspicions, remember that it can be a Fair Housing violation to treat one tenant differently than another, so take care to apply the same rules to how much time you provide prior to entry, and base your decision on considerations other than membership in a protected class.

Prepare the tenant for what the inspection will entail. Let them know you will need to see inside cabinets, closets and all rooms and outbuildings to check for leaks or potential maintenance issues. If you’ll need to look in the attic or under the house, let them know that too. Bring a flashlight, a ladder or step stool to see things up high, some smoke-in-a-can or a long stick to check smoke and CO alarms, and maybe a few tools in case you find a minor repair that can be addressed at that time.

Imagine how you would feel having someone inspect your home. Would you feel like you were being judged? Maybe a bit defensive? Worried about being called on the carpet for something? Maybe grumpy about having to take the time? One way to help put your tenant at ease is to keep your focus on maintenance. The way I do that is by indicating on my notice to enter or in conversation with them that I need to do a **maintenance** inspection. Once at the property I thank them for taking the time, and before starting the inspection ask the tenant how things are with the property.

I go through all the areas of habitability and ask things like, “Is your heat system working properly?” “Do all of your doors and windows open, close and lock properly?” “Are your appliances working properly?” “Are there any leaks or drips you are aware of?” “Is your hot water system working properly?” “Are there any safety issues on the property?” “Do you have any other concerns you want to let me know about?” Starting with these types of questions sends the message that you care about their living conditions, and that your main purpose for being there is to ensure a decent, safe and habitable property, not to judge them for having dirty dishes in the sink.

This is their home, so treat them and their property with respect. One way to do that is by asking permission throughout the inspection. “Is it okay if I look under the sink?” “Sometimes leaks show up in closets, is it okay if I look in the closet?” If you encounter a closed door, don’t just walk in, ask if it’s okay. If they say no to something, just document it and go on. You can always ask tenants to lead the way. One of my colleagues asks the tenants to open doors, cabinets, etc., which can help keep them involved and distracted from any possible negative emotions.

What should you inspect for?

Look for leaks at faucets and water supply lines, drain lines, and exterior spigots. Check your caulking, and look for discoloration in the vinyl around the toilets which could indicate a seeping leak at your toilet flange. Check for soft spots in bathroom floors adjacent to the toilet and tub/shower. Look for cracks in sheetrock around the chimney which could indicate a seeping leak at your flashing. Look for gaps between your gutters and the fascia which could rot not only the fascia itself, but your roof underlayment. Make sure the gutters are clear and the downspouts are draining properly. Look around exterior doors for daylight indicating that your weather stripping needs to be repaired or replaced. Look behind the washer/dryer hookups to ensure they are properly connected. Look for discoloration of the ceiling indicating a possible roof leak. Check the operation of fans in the kitchen and bathrooms. Are they clean and drawing properly? Check the heating systems and filters. Is the home being kept in a sanitary condition? Check for issues of health, safety and ingress/egress, and of course, you will be looking for violations.

Can you take photographs of the property during an inspection? Yes, but, (and there’s always a “but”) tenants have a reasonable expectation of privacy, so no snapping photos of private things. Also, tenants might not be thrilled at the prospect and get grumpy with you about it. On the other hand, how else are you supposed to document maintenance issues or lease violations? One way to be discreet about it is to use a tablet so while you are taking inspection notes on the tablet, you can also be taking pictures. You may come across some interesting personal items left in the open during inspections, but if it isn’t a lease violation, it isn’t any of your business, don’t photograph it and don’t mention it. And, no looking in personal cupboards, drawers, boxes, containers or chests.

One of my past clients had his home up for sale and after a showing to a prospective buyer, the realtor called the owner to report some concerns, including a camera set up in the bedroom, a large mirror hung on the ceiling above the bed, and a variety of “toys” that were not for children being openly displayed. Despite the fact that it weirded everyone out, it was none of their business and not a lease violation, so prepare to see things you may have wished you didn’t, ignore it and walk on.

Outside, make sure your foundation vents are secure, that residents haven't piled up trash, firewood or personal property against the siding or attached things to the siding. Are they taking care of the yard? Cleaning up animal waste? Disposing of yard debris? Neglecting or causing damage to trees or shrubs? Keeping vegetation off the structures? Remember, even if you don't have everything spelled out in your lease or addenda, or you only have a verbal agreement, ORS 90.325 spells out residents' responsibilities to keep the property and grounds, "...as clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, as the condition of the premises permits and... use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances..."

It can be good to have an inspection checklist and have your tenant sign it when the inspection is done to document the condition throughout the tenancy. It can also be helpful to use an inspection app such as **Z Inspector, Chapps Rental Inspector, Happy Inspector, Snap Inspect, or Tap Inspect**. You can also use the **Check-in/Check-out Report - ORHA Form #9** – to document the condition and help you remember what you need to look at inside, and to give you and the tenant something to sign to keep in their file. If the resident isn't there, or you don't care to use a form or an app, it's a good idea to follow up with a written recap of your inspection by mail or email. Also, remember to acknowledge and thank them for the things they are doing right. A kind word can make all the difference in the relationship.

Denial of Entry, Lease Violations & Tenant-Caused Damage

If, during the inspection, the tenant refuses to allow entry to a portion of the premises, or you identify lease violations or tenant-caused damage, I suggest that you document it, but do not address it with the resident during the inspection. Addressing issues at the moment can lead to arguments which can quickly escalate to problems neither one of you is prepared to deal with and stop the inspection in its tracks.

For denial of entry to all or part of the unit, remember that ORS 90.322 allows a tenant to deny entry if the landlord's stated time and date for entry, "...conflicts with their reasonable and specific plans to use the property." For example, on the date and time you want to enter, the renter has scheduled a gathering. In a case like that, their denial would likely be considered reasonable. While the statute says landlords have the right of entry after a minimum 24-hour notice, and says the tenant may not unreasonably deny entry, it also says that the landlord may not abuse the right of access or use it to harass the tenant.

Especially now, during the COVID pandemic, there are lots of reports of renters denying entry. One caller shared that every time they have tried to enter for the past six months, the tenant claims to have contracted COVID (apparently again and again). I'm also hearing about denials of entry related to possible exposure and the need to quarantine. It's a challenging time to be a housing provider and we're in a situation we've never experienced before, so remain calm and consider your options. You may want to delay for a time, but really six months??!! At some point, you may have to take decisive action and serve a notice for unreasonable denial of entry using **Notice of Termination with Cause – ORHA Form #38**. The tenant has to let you in within the cure period or their tenancy will terminate. Taking a case like that to court these days can be risky. Who knows how a judge would rule? I recommend providing some flexibility, and only serve notice to terminate after two or three denials.

You might also consider writing up something on every notice to enter – **24-Hour Notice to Enter – ORHA form #18** – that you serve, “We will take all COVID-safe precautions prior to entry including double-mask and gloves and will not enter or allow anyone else to enter who has any symptoms of illness or a fever. We will have a forehead thermometer with us to provide evidence if that makes you feel more comfortable. We will only spend as little time in the unit as possible and expect the walk-through will take a maximum of 15 minutes. If the listed time and date for entry conflicts with your plans to use the property at that time, we will accommodate a different time or day within a 48-hour period following our intended date and time of entry; otherwise, please be advised that your tenancy may be terminated as allowed by law for unreasonable denial of entry under ORS 90.322.”

Communications with the renter showing the efforts you made to address any COVID-related concerns and your attempts to be flexible and adapt to their schedule should be helpful in proving that any specific denial was unreasonable.

What if the renter denies access to only a portion of the premises? That also constitutes unreasonable denial. I spoke with a Helpline caller recently who said on her last two inspections, there was one bedroom that the tenant would not allow her to inspect. On each occasion there was always “someone asleep in there.” Uh huh, sure. Remember, that too is a violation. To forestall this possibility, remember to let the renters know that you will need access to every part of the premises, including all rooms, closets, the garage and any outbuildings.

During the inspection, take notes or discreet pictures of any violations, go back to your office and write up either a warning notice – **Notice of Non-Compliance – ORHA form #35** – or a **Notice of Termination with Cause – ORHA form #38** – letting them know that they have violated their rental agreement and they need to fix the problem or move out. Sometimes a written warning notice is all that’s needed to turn things around, but unless you’re pursuing termination based on Three Strikes in a fixed-term lease, warning notices have no teeth for enforcement. That’s why in many situations it can be best to start with a for-cause notice. If they cure the violation within the cure period, calendar another inspection for four or five months down the road so that if they repeat the same or substantially the same violation, you have the option to terminate the tenancy on a **Repeat Violation Termination Notice – ORHA Form #7**.

I once discovered tenants had been smoking inside their unit. I documented the evidence, went back to the office and wrote up a notice requiring them to stop immediately, then have all the walls, ceilings and other hard surfaces thoroughly cleaned, all curtains and carpets professionally cleaned, and have the unit treated with an ozone machine. They accomplished most of this before the tenancy ended saving my owner quite a lot of money and in the end their security deposit covered the remainder of correcting the damage. They actually got a small refund.

Sometimes allowing residents to cure violations and continue the tenancy can benefit you from a financial standpoint, and benefit the tenants who may need extra coaching in how to properly care for their unit. At that point, they are motivated to work with you so that they can keep their housing, and

may do some or all of the corrective work, saving you money, and hopefully getting their tenancy back on track.

If you have a contentious relationship with the resident, they have indicated their willingness to sue you for a perceived problem, or are prone to raging outbursts, I would have someone else join you for the inspection as a witness. Prepare yourself to maintain control of your own emotions even if subjected to verbal abuse. It doesn't matter how the tenant behaves, you need to mind your manners. If things escalate, leave immediately and consult an attorney about your options.

Disability-related issues

Sometimes, lease violations are connected to a tenant's disability. Excess personal property, or failing to maintain the unit in a decent, safe and sanitary condition, can be related to mental illness or indicate physical limitations. Remember, if you have a tenant who is a hoarder, that is considered a mental disorder and you may need to provide more time for them to correct any problems. Sometimes residents just haven't been given good boundaries or learned reasonable expectations for order and cleanliness. You may want to start with a plan of action and see how it goes before proceeding to termination.

I once had a family with multiple issues discovered on inspection, including stacks of tires in the yard, an unauthorized chicken coop, evidence of a large visiting dog, an unauthorized cat in the attic, failure to maintain the yard, and unsanitary conditions throughout the house. They were very nice folks, paid their rent on time and were very easy to deal with. We didn't want to get rid of them, just get them to comply with the rental agreement, so we set up a series of 30-day benchmarks and follow-up inspections to give them time to address each area of concern. At each follow-up, we documented their success and in the end, they corrected all of the issues. They really just needed some coaching to turn things around and understand what they were required to do.

We could have issued a for-cause notice requiring them to fix it all within two weeks or terminate the tenancy, but it wouldn't have been reasonable or even possible for them to correct everything in that time frame. Remember, landlords have the obligation to be reasonable and act in good faith. We don't all start out the race of life in the same position. We don't all get born into perfect families who are functional and teach us things we need to know to get along in the world. Also, people with developmental disabilities or other cognitive issues may struggle with complying with the rental agreement and may need additional support, but they need a place to live too. You may not have thought that social service work was part of being a landlord, but it certainly can be.

If you have a resident who is struggling in some way to comply with the terms of the rental agreement or care of the property due to a disability, you can ask if they would like a referral to a social service agency, and see if you can find them some support. I'm not indicating you should put up with tenants who are intentionally disrespecting your property or otherwise choosing to flaunt their misbehavior and have full capacity to comply. That's very different from a resident who sincerely wants to or intends to comply, just lacks either the mental or physical capacity to do it on their own.

It's not up to you to set them up with social service help and they have to agree to accept it, but you can provide them with some information on available resources. We are blessed to live in a caring community that has many available social services such as Lane County Mental Health, South Lane Mental Health, Sheltercare, St. Vincent de Paul, and Catholic Community Services among others. Call 211 for referrals to services in your area, or check out the **White Bird Little Help Book**, the best compilation of supportive services in Lane County that I have found: <https://whitebirdclinic.org/wp-content/uploads/2020/01/Little-Help-Book-2020.pdf>. If the tenant then refuses to access the services they need, at least you know you tried.

Tenant-caused damage or failure to report

If you discover tenant-caused damage – depending on the severity – you may want to consider making a claim on their renter's insurance (if they have it), or set up payment arrangements to cover the cost. You can choose to require them to repair the issue at that time, repair it yourself and bill them, or, if it's something that isn't impacting the livability of the unit you can always choose to delay the repair, have them pay in advance for the cost of the repair, and hold the money as an additional security deposit so the funds are available at the end of the tenancy. That can be tricky as landlords may not increase the security deposit within the first year of tenancy, except for allowing things like pets, but in a case of discovered damage, that may be seen as a separate issue.

Remember, if you do increase the security deposit either after discovery of tenant-caused damage or later for whatever reason, it must be reasonable and you must provide the tenant with at least three months to pay. You can always provide more time for that, say, an extra \$50 per month until it's paid, but you have to allow at least the three months. If you have a low-income tenant and demand a huge deposit increase with only three months to pay, would a judge think you're being reasonable? Probably not.

I've often been asked about damage that tenants never reported and whether they can be held financially responsible. The answer is yes, but...the law presumes that landlords will be periodically inspecting their properties and so within the statutes exists a concept called, "...knew or should have known." That means that your failure to inspect makes you responsible for any damage occurring after six months to a year of a tenant's failure to report problems. And some problems aren't obvious.

So, if you haven't inspected in seven years and find the kitchen floor rotted due to a dishwasher leak, how are you supposed to determine when the leak started and what portion of the damage can be attributed to the tenant's failure to report? Also, if you end up in court over something like that, how do you prove to the judge just what the tenant failed to report and when? You should have known, because you should have inspected.

Inspections can be challenging, and if you really can't handle it, hire it out. Remember, no news is (usually) bad news.

This column offers general suggestions only and is no substitute for professional legal counsel. Consult an attorney for advice related to your specific situation.

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