

# Mind Your Business: Tia's Tips for Better Rental Management

By Tia Politi, ORHA President

## ***Fixed-Term, Month-to-Month, or Week-to-Week: What's right for you? What about vacation occupancy and short-term rentals?***

As a rental owner, one of the most basic of considerations is whether to offer your property for rent on a fixed-term lease (FTL) or month-to month (MTM) basis, or even week-to-week (WTW). Many landlords have a strong preference one way or the other; others are open to letting the tenant decide. Whichever choice you make, there are benefits and drawbacks that you should be aware of.

### **The Month-to-Month Option**

A MTM agreement offers more flexibility for tenants and landlords alike. There is no defined minimum period that a tenant must fulfill, which can result in a shorter-term tenancy than you may prefer, the only tenant obligation being a 30-day notice to vacate.

Certainly, the biggest drawback in the minds of rental owners is the potential for a vacancy at a "bad" time of year, like winter, when your vacancy may be more difficult to fill, or you may not be able to rent your property for quite as much. On the other hand, many long-term tenancies are MTM. Two of my own residents have been in place for a very long time on MTM agreements – one for more than 17 years.

One of the main benefits of MTM agreements for the landlord, is the ability to serve a No-Cause Notice of Termination during the first year of occupancy. Use ***Notice of Termination Without Stated Cause – ORHA form #5***. First year of occupancy includes all periods during which any of the tenants has resided in the dwelling unit for one year or less, so if a new tenant gets added to a tenancy of more than one year the occupancy is re-set and the landlord may terminate without cause for up to one year following the day that the new tenant signs on to the rental agreement. The tenancy re-set provision does not apply to temporary occupants, guests or caregivers, or children aging into adulthood. It also is not triggered by a tenant leaving the tenancy, only when a tenant is added.

Notice to vacate from one party to the other may be served by either party at any time during a month and is not restricted to a full rental period as some owners and tenants believe; however, in the case of subsidized tenancies, the Housing Assistance Payment (HAP) Contract may specify a longer notification period or require that a no-cause termination notice from the landlord expire at the end of the month or other rental period. Check your HAP Contract before terminating a subsidized renter as the housing agency's contract supersedes yours.

The ability to serve a no-cause notice can be useful when you are dealing with a variety of tenant issues. If things take a bad turn early on, you can terminate right away without having to wait for a fixed term to end. Examples range from tenants with difficult personalities, active addictions, or untreated mental illnesses, to ones that don't keep the property in a sanitary condition.

I once rented to a female applicant who presented well during the application and move-in process. She was neat, clean, well-dressed, educated, and had good credit and rental history. Only after she moved in did we discover that she was a raging alcoholic with mental health issues. When she was sober and on her meds, as she was during the application and move in process, she was great but when she drank, she turned into another person entirely. Shortly after moving in, she fell off the wagon and stopped taking her meds.

She started banging on her neighbors' doors, asking for beer, or wanting to visit, trying to force her way into their apartments, sometimes with lit cigarettes. When the neighbors objected, she got nasty and would yell, scream and curse at them. On two occasions, it got so bad that the other tenants called the police, and she was arrested, which escalated her inappropriate behavior. She began banging on their windows and walls as she walked by, dropping her dog's feces on their door mats, and continuing to verbally assault anyone who was outside.

Obviously, all these things are violations of the rental agreement and could have been addressed with a **Notice of Termination with Cause – ORHA form #38** (30/14), but with that type of notice, it was possible she could have cured. I didn't want to keep dealing with this situation or try to get the other residents to come to court to testify against her. Because she was on a MTM agreement, I was able to give her a no-cause notice, just to get her to go away. It was a tense month, but in the end, her family was able to get her into a treatment facility and she moved without incident.

Often there are other less dramatic, but still irritating behaviors, such as lack of care of the property, failure to pay rent on time, parking on the lawn, unlawful subletting, disturbing the peaceful enjoyment of the neighbors, or any of several ways tenants can make a nuisance of themselves. Having the ability to serve a no-cause notice is a huge benefit. Another benefit of a MTM agreement is that the tenancy just continues indefinitely, and you don't have to redo paperwork every year.

### **The Fixed-Term Option**

Leases are not so simple. In a FTL, the tenancy is just that: a fixed term. There is no minimum or maximum length of a fixed-term lease. Sometimes tenants feel more secure with a lease because they can be assured of retaining possession at the stated price for that time frame as long as they don't breach the terms of the agreement. For landlords, a FTL provides at least some assurance that the tenants will stay for a longer period and allows the landlord to charge a lease break fee (not to exceed 1-1/2 times the monthly rent) or actual damages if the tenant leaves early for no cause. And while most tenants fulfill their lease terms, a lease can give you a false sense of security. Tenants break leases all the time and you still must do your best re-rent the property quickly to mitigate damages to the tenant and go after them for payment if the charges exceed the deposit, regardless of the time of year or the convenience to your schedule.

There are also circumstances where tenants can break leases without penalty, such as deployment in the armed forces, or in cases of sexual assault, domestic violence, or stalking, or if the lease break is "for-cause" but in general, leases offer less flexibility to either party. You cannot change any of the terms or conditions without mutual agreement. If you make a mistake on the lease document, you are stuck with it until it expires or maybe for the entire tenancy depending on the mistake.

The law does allow for a no-cause termination of a lease at its end, but only if the specified ending date for the fixed term falls within the first year of occupancy. Use **Notice of Non-Renewal of Lease – ORHA form #5B**. If you want the ability to terminate in this manner, be sure you are not creating a lease of more than a year or you take this very important tool out of your landlord toolbox.

What is a year? It is 365 consecutive days, 366 consecutive days in a Leap Year, or 12 consecutive months. A year is not June 1st to June 1st (that's a year and a day), it's June 1st to May 31st. Many landlords leasing campus rentals used to start a lease say July 15th and have them expire on July 31st of the following year. Not okay anymore if you want to retain the right to terminate for no cause.

Except for specific rental properties like on campus or rentals in cold climates, I often wonder why a landlord would choose the lease option? The response I most often hear is that they don't want a vacancy in winter or want to be assured the tenant will stay for the specified time frame. What they don't often consider is that in a lease, unless you are in the first year of the lease and have created a lease of one year or less, you can only terminate for cause. While we all desire great long-term renters, a landlord's bigger problems usually result from renters with difficult personalities and other problematic behaviors that lead to conflict in the relationship.

The only way to terminate a tenant on a lease early is a 30/14, which means one or more material violations of the rental agreement. Even then the notice is curable, but if the tenant commits an act which is the same or substantially the same within six months of the date of issue of the 30/14 you can serve a **10-day Repeat Violation Notice – ORHA form #7** for which no cure is allowed. The sticky wicket here is that if the tenant doesn't move and the case proceeds to court you may be required to provide proof of the violation and the repeat violation to prevail, subject to the rules of evidence and/or credible witness testimony. Also, some judges are not excited to evict someone who, for example, doesn't mow their lawn frequently enough.

Another downside of a lease is, what if your plans change? I've gotten many calls from landlords whose life circumstances changed, and they needed to sell their property but were locked into a lease. Remember a lease supersedes a sale and may not be terminated early without agreement of the resident (except for cause). If that happens to you, you might consider offering cash for keys to end the lease early. We have a great new form **Mutual Termination Agreement – Release of Claim – ORHA form #69** where you can put the terms in writing allowing both parties to enforce the agreement if the other does not comply.

When I was starting out, I rented to a family on a one-year lease and learned shortly after lease-up that the mom was just a hostile, nasty person. This rental is next door to my home, and instead of calling to report an issue, she would just show up at my door hostile and angry as though I had somehow sabotaged the home just to irritate her. I started to wince every time I saw her coming, but they paid the rent on time and took okay care of the property, so I had no legal basis to end the tenancy until the lease expired. I was happy when they moved as it put me on edge never knowing when she was going to show up on my doorstep. If the rental agreement had been MTM, I could have terminated sooner.

Also, leases used to be a more secure option than they are now since the passage of SB 608 in 2019. Now, unless the landlord and tenant both agree to a new lease, or either party serves notice to terminate it, the lease converts to a MTM on expiration. That makes campus landlords unhappy, for sure, but there are ways to incentive a lease renewal. Using **Notice of Lease Renewal – ORHA form #67** allows the landlord to encourage a lease renewal by offering a lower rent increase than if the agreement converts to MTM. Because it is a rent increase combined with an offer of renewal, it must be served in writing no less than 90 days in advance. And remember, rent may not be increased within the first year of tenancy.

The timing of lease renewals can prove burdensome to track, requiring extra diligence on the landlord's part. Tracking the lease expiration date, communicating with your tenants about it within the time allowed by law, negotiating the new terms, and having them sign a renewal takes time and effort, so be sure you're up for that if you want to always keep an FTL in place.

A lease does offer one means of tenancy termination that MTM agreements do not: nonrenewal for Three Strikes. This part of statute came from SB 608 and is like the rules for manufactured housing or RV parks. It doesn't allow the tenancy to be ended early, but **ORS 90.427(7)** states

that a fixed-term tenancy does not become a month-to-month tenancy if the tenant commits at least three violations within the preceding 12-month period, and at the time of each violation the landlord serves a written warning notice with specifically cited statutory language, that the landlord may opt against continuing the tenancy. The termination period must be at least 90 days and may not expire prior to the end of the lease but may overlap the end of the lease if it is effectively served prior to the lease end date. The statute also requires that to terminate tenancy in this fashion, the landlord must specify the reason for the termination and supporting facts.

The challenge with this type of termination is that if it goes to court there's a lot more to prove. You must prove that each violation happened, that you served written notice stating the violation along with the required statutory language, that each notice was served upon discovery (not six months later), and that your final notice of **Notice of Non-Renewal of Lease – ORHA form #5B** is perfect in every way – perfectly prepared, perfectly served. There's just more room for error, so proceed with caution. This type of termination is only allowed in an FTL, not MTM.

#### **Other Considerations with MTM & FTL**

- ✓ If, for whatever reason, you terminate in the first year without cause, you are limited to the statutory rent cap for an increase in rent to the next tenant. You can raise rent to the market if the tenant terminates tenancy, or you terminate for cause, or one of the four qualifying landlord reasons.
- ✓ After the first year, both MTM and FTL tenancies may only be terminated for cause or under a 90-day notice for one of the four Qualifying Landlord Reasons – use **Notice of Termination – Qualifying Landlord Reason – ORHS form #5A**:
  1. The landlord intends to demolish the unit or convert the unit to a different use other than residential use within a reasonable time.
  2. The landlord or a member of the landlord's immediate family need to occupy the unit as their primary residence.
  3. The landlord intends to renovate the unit and the unit is unsafe or unfit for occupancy (beware of admitting this in writing) or will be unsafe or unfit for occupancy during renovations.
  4. The landlord is selling the unit to a buyer who intends in good faith to occupy the unit as their primary residence.

There's more to these types of terminations such as providing supporting facts, and payment of relocation expenses if you own more than four residential units in Oregon, and this type of notice still won't allow you to terminate a lease before it expires. Review **ORS 90.427**.

Another issue that frequently bedevils housing providers is the revolving door of roommates, or when one person wants out of an agreement, but one or more others want to stay. This can get especially complicated with a fixed-term lease. Our new rental agreements are much improved and now contain a provision that allows the landlord to terminate everyone in the household if one tenant gives notice to vacate. Under these new agreements, it is up to you whether to allow a tenant swap. If you have older agreements, toss them and buy new ones: **Month-to-Month Rental Agreement – ORHA form #2A**, and **Fixed-Term Rental Agreement – ORHS form #2B**.

#### **The Week-to-Week Option**

And what about the week-to-week option? A week-to-week tenancy is defined as a tenancy that has all the following characteristics:

- a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days.

- b) There is a written rental agreement that defines the landlord's and the tenant's rights and responsibilities under this chapter. Use ***Week-to-Week Rental Agreement – ORHA form #2C.***
- c) You may not charge any fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in **ORS 90.295.**
- d) No cause termination of WTW tenancies can be accomplished with a 10-day written notice even after the first year – use ***Notice of Termination – Week-to-Week Tenancies – ORHA form #5D.***
- e) A ***72-Hour Notice to Pay or Vacate for Nonpayment of Rent – Week-to-Week Tenancies – ORHA form #4B*** may be served as early as the 5th day of the rental period.
- f) A ***Notice of Termination with Cause – Week-to-Week Tenancies – ORHA form #38A*** has a cure period of four days and a termination period of seven days.
- g) Rent increases are not subject to the statutory rent cap as provided in **ORS 90.323** and only require a minimum seven-day written notice. Use ***Notice of Rent Increase – Week-to-Week Tenancies – ORHA form #13A.***

It's also interesting to note that WTW tenants were afforded almost no protections from the COVID-19 restrictions we've experienced over the last two years. In my opinion this is the best option if you want to rent rooms in your own home and maybe for short-term rentals. Just because you can't charge any deposits does not mean the tenant is not liable for damage, so screen well, require renters' insurance, and it can be a great option. While rent is payable weekly, remember that the tenant can submit pre-paid rent if they prefer to pay a certain amount ahead.

#### **What About Vacation Occupancy and Short-Term Rentals?**

Vacation occupancy is defined in statute. ORS 90.100(51) "Vacation occupancy" means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

- a) The occupant rents the unit for vacation purposes only, not as a principal residence
- b) The occupant has a principal residence other than at the unit
- c) The period of authorized occupancy does not exceed 45 days

So, if you rent your unit through one of the vacation rentals sites, these are the parameters wherein you are excused from the requirements of landlord-tenant law. If you rent on a short-term basis, say to traveling nurses or other professionals, or under any other parameters other than those listed above, then landlord-tenant law does apply, so beware!

#### **The Takeaway**

It's up to you under what terms you want to rent your property, so based on the benefits and drawbacks of each choice, do what's in your best interest.

***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.***

**Rev. 5/2022**