

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

By Tia Politi, ROA President

Buyer Beware: Transitions and the pitfalls of taking on occupied units

As a rental owner, most of the properties hubby and I purchased were vacant or were our primary residence before being turned into rentals. We did have instances however, when we purchased a property with a tenant in place. For most private investors this will happen at some point, and certainly for property managers it happens all the time. Either way it can be a risky proposition. Most residents handle the transition to a new owner or manager well; others not so much. Most sellers have good tenants, professional documentation, and a habitable unit; others not so much.

Transition 101

Just like other areas of life, courtesy and kindness go a long way to drawing people to your way of thinking. Transitions can be particularly difficult for some people and a pleasant, calm, helpful demeanor is always a good idea. I have occasionally had tenants who struggled with the transition at first, but then settled down, so don’t assume that the first reaction you get will be how things go forever. I also had a tenant who refused to accept the transition, and was evicted for non-payment. You can’t make the need for change go away, but in most cases your attitude will influence the response from your new tenants, so be mindful of that and your chances of a successful transition will increase exponentially.

I start by sending a nice letter introducing myself and letting the tenants know the effective date of the change, where they should pay rent in the future, and how to make maintenance requests. For MTM tenancies (or tenancies with only a verbal rental agreement), I also include a new rental agreement and addendums for them to sign and return. I add a sentence that says: “Enclosed you will find a new rental agreement and addendums, please let me know if you have any questions or would like to meet; otherwise, please have all adult household members sign and date the forms, and return them within 30 days. Thanks!”

If the former owner or manager failed to document the condition on move in, I need to document the current condition of the rental unit so there’s some sort of baseline, so I include an invite to call me to set something up. If I don’t hear back in a week, I send a notice for a time that works for me and again encourage them to call to set an appointment. If they’re willing to meet in person, it can be a good time to get forms signed and questions answered.

Month-to-Month

In the event they don’t cooperate, you still have the option of serving a No-Cause Notice of Termination. In fact it is the recommendation of some attorneys that with a MTM agreement you should issue a notice of termination, even with tenants you wish to keep. That way you have the option to continue the tenancy or not should the situation become difficult. I’d rather try the other way first.

Another approach for tenants who are not cooperating with signing a new agreement is to implement a 30- or 60-day Notice of Change in Terms referring to the rental agreement and addenda you have repeatedly asked for them to sign. This can potentially fix any waiver problems at least in regards to standard rules and regulations; it can also be a minefield if you try to change too much, and the law doesn’t provide much guidance. Signed agreements are best.

Another issue for rental owners or managers without signed docs is no proof of providing required legal disclosures. I'm especially reminded of the presentation by the EPA during a past meeting. If you take over a property built before 1978, they audit you, and you have no signed form from the tenant acknowledging that they have received the pamphlet, "Protecting Your Family from Lead in the Home," you could inherit a major problem and incur substantial fines. Security deposit reconciliation also becomes problematic if the prior owner doesn't have move-in documentation to share, especially when there's substantial damage at the end.

Fixed-Term Lease

Fixed-term lease transitions are more straightforward. While you can request that the tenants sign your lease, you cannot require it, at least not yet. With proper written notice by either party upon lease expiration or upon lease renewal, the terms can be altered. (Remember in Portland that is not the case. The city only allows modest modifications upon lease renewal.) For example, if you took over a lease that set the late fee at \$25 and requires you to provide lawn care, you are stuck with those terms until the lease expires. I have been pleasantly surprised on many occasions though, when tenants in a lease will agree to sign new forms.

Illegal Provisions

Illegal provisions in a rental agreement are another potential hassle that you may inherit from the previous owner/manager. Remember that a tenant cannot waive their rights under landlord-tenant law (even with their agreement), so if you have inherited a defective agreement, whether MTM or FTL, and the tenants won't sign a new one, and you're choosing to not push the issue, just don't attempt to enforce those provisions. Some common illegal provisions that have crossed my desk include usurious late fees; premature grace periods, such as three days instead of the minimum four; allowance for entry without 24 hours' notice; and unreasonable restrictions such as, no overnight guests or no sleepovers for children.

Habitability

Habitability issues can rear their ugly head, so be careful in regards to the condition of a property you purchase or take over for management. If there are substantial problems, I would decline to purchase or manage until or unless the tenants were removed so that I don't inherit a legal claim for damages from the prior owner. Should you choose to take on that risk, deal promptly with all needed repairs, but especially habitability-related repairs such as lack of heat or hot water, doors and windows that don't lock, rot or pest issues, safety and security, waterproofing & weatherproofing, electrical and waste systems, etc.

Contentious Tenants

One of the most challenging experiences is taking over a property with a contentious resident. If they are in a FTL, you will just have to find a way to endure through the term of the lease unless they repeatedly violate their rental agreement. With MTM tenants, you can still serve a no-cause notice of termination of 30, 60 or 90 days depending on your jurisdiction, as long as the termination is not retaliatory for protected behaviors. (Remember, in Portland landlord must pay tenant relocation fees in order to serve this kind of notice.) Retaliatory conduct by a landlord includes issuing or threatening to issue a notice of termination after the resident has reported maintenance issues, complained about neighbors, organized a tenant rights group, or is a member of a protected class, among other things. I've heard people (somewhat jokingly) say, "Well, I'll just raise the rent \$300 a month and they won't be able to afford it and will have to move out." Unless the unit was under-rented by that amount prior to your

taking over, and you can prove that to a judge, this meets the definition of **constructive eviction**, which may be punishable by two months' periodic rent or twice actual damages.

The Takeaway

It is not unreasonable to request copies of all documentation regarding the tenancies of properties you are considering for purchase or management, including all addenda such as smoke-free policies, lead-based paint disclosure for properties built prior to 1978, smoke & CO alarm acceptance, and deposit-to-hold agreement, among others. Paperwork that is incomplete or missing is a potential liability you may be inheriting. To protect your interests, it may be necessary to require the owner to correct the deficiencies in the paperwork, terminate tenancies of questionably habitable units, or remove a problem resident ahead of you assuming legal liability. Property managers hungry for clients and buyers desperate to get a deal don't think these things through and disregard performing their due diligence, creating unanticipated liabilities, legal bills, and intense stress. Sometimes a bargain is a bargain for a reason, and is no bargain at all.

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