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

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(Many thanks to Attorney Brian Cox for his review of this article)

Senate Bill 608 FAQs: Know the law

General Provisions of SB 608

The confounding impacts of SB 608 continue to cause concern among landlords, and rightly so. With penalties of three times the monthly rent plus the tenant's actual damages (which can be multiplied exponentially with multiple tenants and attorney's fees), there is a lot to be concerned about. With no case law to rely on when interpreting the new statutory changes, landlords are advised to proceed cautiously and seek the advice of competent legal counsel if there are any questions. Hopefully, this FAQ will help provide clarity to some of the most challenging parts of the law.

When did the law become effective?

The Governor signed the bill on February 28, 2019 and is in effect for fixed-term tenancies entered into or renewed on or after that date, as well as rent increase notices delivered on or after that date.

Who does the new law apply to? All tenancies subject to the Landlord-Tenant Act – ORS Chapter 90, except week-to-week tenancies.

Does the law apply to people who rent rooms in their house? Yes, unless the rental contract is week-to-week.

The law continues to allow no-cause notices of termination of month-to-month tenancies within the first year with a 30-day written notice, correct?

Yes, as long as the notice is effectively served prior to the last day of the first year.

The law continues to allow no-cause notices of non-renewal of lease within the first year, correct?

Yes, and maybe no. All unexpired leases in effect on February 28th, 2019 may be terminated by issuing a notice of non-renewal before the lease expires. For all other leases, the language of the bill specifies that in order to terminate a lease at its end for no cause in the first year, the specified ending date of the fixed term must fall within the first year of occupancy. So, you must have a lease of no more than one year for this type of termination to be allowable. Some landlords initiate a lease in the middle of the month and then have it terminate at the end of that month the following year, or create a lease that begins and ends on the same day the following year. Those scenarios create an ending date of more than one year. If you do have a fixed-term tenancy where the expiration falls within the first year, you may issue a ***Notice of Non-Renewal of Lease (ORHA Form #5B)***. The notice must provide a minimum of 30-days' written notice. The termination date specified in the notice may overlap or extend beyond the ending date of the lease, but the 30-day non-renewal notice must be effectively served prior to the end of the lease.

Can I give my tenants more than the minimum time specified by law when I issue a notice to vacate within the first year? Yes, your notice to vacate for no-cause within the first year must be at least 30 days, but does not preclude a longer termination period. In the cities of Bend, Milwaukee and Portland, this rule is modified by their local ordinance requiring at least 90 days' notice regardless of length of tenancy. Termination timeframes may also vary in subsidized housing contracts, or may require you to

make the termination date the end of a calendar month, so check your local laws and if you have a subsidized tenancy check your agency contract for specifics.

Terminating tenancy for a Qualifying Landlord Reason

I've heard landlords can still terminate tenancies for one of four Qualifying Landlord Reasons. What are they? 1) The landlord intends to demolish the unit or convert it to a use other than residential within a reasonable time; 2) The landlord intends to undertake repairs or renovations within a reasonable time and the unit is unsafe or unfit for occupancy, or will be unsafe or unfit for occupancy during repairs; 3) The landlord intends for the landlord or a member of the landlord's immediate family to occupy the dwelling unit as a primary residence within a reasonable time; 4) The landlord has accepted an offer to purchase the dwelling unit separately from any other dwelling unit from a person who intends in good faith to occupy the dwelling unit as the person's primary residence.

What kind of notice can be served to terminate a tenancy for a Qualifying Landlord Reason, and how much notice am I required to give? If you use ORHA forms, you will select ***Notice of Termination – Qualifying Landlord Reason (ORHA Form #5A).*** The notice must provide a minimum of 90-days' notice, but as always you can give more time, you just can't give less. Remember – when mailing the notice by first class mail – add three days.

What kind of "different use" would qualify for a landlord to choose option 1?

Any change of use from a residential rental unit to a use as something other than a non-residential rental unit.

What level of renovation is required to choose option 2?

ORS Chapter 90 does not define the terms 'unsafe' or 'unfit to occupy,' though both may be defined within your local building and safety code. We recommend you evaluate this by checking your local building and safety code as well as the habitability requirements of ORS 90.320, which requires that, at a minimum, the rental property must have the following:

- Effective waterproofing and weather protection of roof and exterior walls, including windows and doors;
- Plumbing facilities that conform to applicable law in effect at the time of installation, and maintained in good working order;
- A water supply approved under applicable law that is:
    - ✓ Under the control of the tenant or landlord and is capable of producing hot and cold running water;
    - ✓ Furnished to appropriate fixtures;
    - ✓ Connected to a sewage disposal system approved under applicable law; and
    - ✓ Maintained so as to provide safe drinking water and to be in good working order to the extent that the system can be controlled by the landlord;
- Adequate heating facilities that conform to applicable law at the time of installation and maintained in good working order;
- Electrical lighting with wiring and electrical equipment that conform to applicable law at the time of installation and maintained in good working order;
- Buildings, grounds and appurtenances at the time of the commencement of the rental agreement in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part safe for normal and reasonably foreseeable

uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;
- Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord.

There are other conditions included in the habitability section, but for the purposes of rendering a unit uninhabitable, the condition should impact the delivery or maintenance of one or more of the above-listed categories to qualify as rendering the unit unsafe or unfit for occupancy.

When relying on the renovation exception, landlords would be well-advised to ensure that if the unit is legally habitable currently, that the level of renovation would result in the unit becoming uninhabitable during the renovation, and that the level of renovation is adequately explained in the notice. In other words, what exactly, are you intending to repair or renovate? A contractor's bid or estimate might be helpful in avoiding any claims that the renovation does not create a mandate that the tenant can't live in the unit. Remember, either the unit is currently unsafe or unfit for occupancy, or will be unsafe or unfit for occupancy during repairs. Another concern about choosing this option is if you have a unit that is not legally habitable currently and that condition is due to your negligence, remember you are admitting that fact in writing and there are other potential penalties you can incur for your failure to maintain the unit in a legally habitable condition.

What if the tenant says they are fine staying with friends while the renovation happens? Am I required to work around their property and let them move back in? There is no language in SB 608 that allows a tenant this option, only that the renovation render the unit unsafe or unfit during the repairs. In other words, you can choose to work with the tenant, but you are not required to do so.

If I choose option 3, who qualifies as an "immediate family member"?
- (A) An adult person related by blood, adoption, marriage or domestic partnership, as defined in ORS 106.310, or as defined or described in similar law in another jurisdiction;
- (B) An unmarried parent of a joint child;
- (C) A child, grandchild, foster child, ward or guardian; or
- (D) A child, grandchild, foster child, ward or guardian of any person listed in subparagraph (A) or (B) of this paragraph.

If I move in to a unit myself or move in an immediate family member, how long do I or my family member need to occupy the unit as their primary residence to be safe from potential tenant claims? There's no good answer to that question. If the intent is to defraud the tenant of their legal rights, beware. If challenged, a judge could determine if you had a good-faith intention to move in an immediate family member. In reality life circumstances can change in an instant, so if things quickly move in a different direction despite what the notice said you were planning to do, be prepared to explain your actions to a judge if challenged.

If I'm selling the property, can I terminate the tenancy using option 4?
Yes, but, only if the buyer intends in good faith to occupy the tenant's unit as their primary residence. In that case, you are required to provide the minimum 90 days' written notice as well as a copy of the accepted sales agreement signed within the past 120 days, or sufficient supporting facts describing the sale in the notice at the time the notice is delivered; otherwise, the tenant comes with the sale. And remember, if the tenant is in a fixed-term lease, the ending date of the notice cannot be sooner than the ending date of the fixed term. Please read my article ***Mind Your Business – SB 608 and Property Sales***

on the website (https://www.laneroa.com/ (members only) or https://oregonrentalhousing.com/) for a refresher on the issues around property sales.

Other Concerns

Are there things I should worry about in relation to how I prepare and serve the notice? Yes, definitely. Remember that in order for a notice of termination of any kind to hold up in court, the notice must be prepared and served just right, or you could lose and have to start over again. A defective or imperfectly served notice might also incur statutory damage penalties of three times the monthly rent plus the tenant's actual damages, which could include attorney's fees. If you don't know how to prepare and serve a legal notice of termination, you should get help from someone who does – either an attorney or eviction specialist.

Are there any other concerns I should be aware of when I'm preparing the notice? Absolutely. There are various legal defenses to notices of termination, but for the purposes of a ***Notice of Termination – Qualifying Landlord Reason (ORHA Form #5A)***, you must indicate which of the four reasons you are relying on for termination and provide a written description of the "supporting facts."

What does it mean that the landlord must provide "supporting facts" for their reason to terminate? If the termination is based on demolishing the unit or converting to a different use, just state that in the notice with sufficient detail so the tenant knows what's going on. If you need to repair or renovate the unit, you need to be specific about what work you are doing that will make the unit unsafe or unfit for occupancy. If you or an immediate family member is moving in, you need to state who exactly is moving in and what their relation is to you. If you're selling the property to a buyer who will occupy as their primary residence you need to provide either a copy of the signed sales agreement or sufficient supporting facts describing the sale in the notice.

The form, *Notice of Termination – Qualifying Landlord Reason (ORHA Form #5A)* doesn't provide a lot of space to write out the facts supporting the choice. Can I attach an exhibit to the form that explains it more fully? Yes, certainly, but make sure you indicate that there is an attached exhibit in that area of the form. Something like, "See attached Exhibit for explanation of supporting facts."

The new law says that if a landlord gives notice to demolish, convert to a different use, move in a family member, or repair/remodel that it must be done, "within a reasonable time." What's a reasonable time? It depends on the reasons and what you're doing. The Reasonable Person Standard would come into play and you may be called upon to justify any unreasonable delay. What's reasonable is hard to say, but imagine explaining yourself to a judge.

What if I issue a Notice of Termination – Qualifying Landlord Reason, and the tenant doesn't move out? Just like any other termination notice, you would have to proceed to court to legally evict the tenant if they don't move out. The tenant has the right to defend themselves against the notice, and if they win, can remain in and continue to rent the property, while also possibly receiving a money award for damages.

What if the Qualifying Landlord Reason changes after the tenant has vacated the unit? Could a tenant sue for damages and win? That remains to be seen when case law is established. I got a call on the Helpline from a property manager who issued a ***Notice of Termination – Qualifying Landlord Reason (ORHA Form #5A)*** on behalf of his client, because the unit needed to be substantially renovated, but after the tenant moved out the owner got an offer from an interested buyer who wanted to purchase

the property as-is and do the renovation themselves. Could the owner sell the property to this person without risking tenant damages? What if a property owner serves a notice for an immediate family member to move in, but then something happens later and they don't? Does that render the landlord liable for damages? My answer to both scenarios is, who knows? Circumstances can change within 90 days either before or after the tenant moves out, but you'd better have a good explanation and be able to defend your decision to a judge, and in the end, you might be liable.

How will a former tenant be able to prove what I did after they leave? If you're trying to get around the provisions of the law, you would be well-advised to reconsider your actions. Former tenants see their old units advertised for rent. Neighbors get to know each other and their testimony may prove to be your undoing if you don't follow through with your stated intent. Say you terminate for no-cause in the first year, but increase the rent for the next tenant above the rent cap limit, it would be obvious in your ad. What if you claim you don't have an ownership interest in more than four residential rental dwelling units because you don't want to pay the relocation expenses? Property ownership is a matter of public record. Or, what if you say you're going to convert the unit to a different use, but then don't? That would be pretty easy to prove. It may be more difficult to prove the level of renovation that was taken, or if a family member moved in, but you're putting yourself at an extremely high risk financially if you're trying to be deceptive. The truth will out.

Terminating Tenancy Under a Two-Unit/Owner-Occupied Exception

If I own a property that has two units on the same tax lot and I live in one as my primary residence, are there different rules for terminating a tenancy? Landlords who own two units occupying the same tax lot where the landlord occupies one unit as their primary residence, may continue to provide a minimum of 60-days' written notice of termination for no cause for that specific rental property, even after the first year of occupancy. The landlord may also terminate a tenancy that meets this property exception with 30-days' written notice, if the landlord has accepted an offer to purchase from a buyer who intends in good faith to occupy the tenant's rental unit as their primary residence. The landlord must provide the notice and written evidence of the offer to purchase the unit to the tenant not more than 120 days after accepting the offer to purchase. Remember, regardless of length of tenancy, proscribed notice periods may be longer in certain local jurisdictions or in subsidized housing. If terminating a tenancy under the exception, at the time the notice is delivered, the landlord must pay a relocation fee equivalent to one months' periodic rent, unless exempt.

Relocation expenses

I've heard that to terminate a tenancy, I may be required to pay my tenants one months' rent as a relocation expense. What are the conditions under which I would have to pay? Only if you are terminating a tenancy for a Qualifying Landlord Reason or you meet the standard for a Two-Unit/Owner Occupied property, are terminating the tenancy, **and** you hold an ownership interest in more than four residential rental units.

What if I terminate a tenancy for no cause in the first year, or for-cause due to lease violations, or non-payment of rent, do I have to pay relocation expenses? No.

When am I required to pay the relocation expense? You are required to pay the expense at the time the notice is delivered or the notice itself will be invalid and you could incur the penalty.

Can I issue a credit to the tenant for the relocation expense? No. The money must be paid at the time the notice is served or the notice will be invalid.

I own six units, but one of them is my own home and another is a vacation rental. Am I obligated to pay relocation expenses? No. When SB 608 was first written, this was unclear, but was clarified by the subsequent changes enacted by HB 2006, which says in part that the requirement to pay relocation expenses does not apply to units not subject to Chapter 90 (Landlord-Tenant Act).

If I own six properties and they are all in different LLC's, does that exempt me from payment of relocation expenses? Not under existing law, though the answer to that is less than clear.

What if I own residential rental properties in other states? We have no case law to guide us, so I would recommend consulting an attorney or paying the relocation fee just to be safe. ORS 90.115 indicates Chapter 90 applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located *within this state.* HB 2006 (amending SB 608) says that the requirement to pay relocation expenses does not apply to units not subject to Chapter 90, so some might conclude that only properties within Oregon are counted.

If I serve the notice by post-and-mail, should I include the payment with the posted copy or include it with the mailed copy? The law doesn't specify, but it seems more secure to include it with the mailed copy. So, if you serve the notice by post-and-mail, you might put a note in the posted copy that indicates the payment is enclosed with the mailed copy to avoid confusion. (Please note that many landlords believe they have the right to post-and-mail legal notices but they really don't. To have that right, you must have the right listed in the rental agreement or separate addenda, the rental documents must also specify the landlord's reciprocal physical posting address and location, declared with specificity and available at all hours where the tenant can post notices back to you, and lastly the reciprocal address must be located a reasonable distance from the dwelling unit.)

What if the landlord issues a Notice of Termination – Qualifying Landlord Reason, and because they own more than four rental units pays the tenant the relocation expense of one month's periodic rent, but the tenant doesn't move out? Or, before the 90 days is up, the landlord has to evict for some other reason? Or, what if the landlord rescinds the notice and the tenant ends up staying? Can the landlord get that money back? That is unclear, but an interesting question. Unfortunately, nothing in the law provides for a refund. On the one hand it seems reasonable to think that if a landlord isn't obligated to pay relocation expenses for a tenant who gets evicted for cause, that those funds would be due back to the landlord. On the other hand, the statute doesn't specify what happens in a circumstance like that, only that the money must be paid at the time the notice is served in order for it to be valid. So, it's a risk. What level of risk you want to assume is your decision, and the rest of us could learn a lot from whoever is willing to be the test case.

Do I have to offer my tenant an available unit in my multi-unit building if I terminate their tenancy for a Qualifying Landlord Reason? According to the language of the bill, the landlord will only be obligated to offer an available unit to a displaced tenant if they are utilizing option 2 and are moving in themselves or moving in an immediate family member, and they have an available unit in the same building; otherwise, the landlord has no obligation to do so.

<u>Lease Renewals</u>

I always kept my tenants on leases in my rental business. Is this still allowed? The new law states that both the tenant and landlord must agree to a new lease or it will automatically convert to a month-to-

month agreement under the same terms. That means you can offer and ask for new leases, but not require them.

Then how can I continue to keep tenants in leases? Good marketing, good tenant relations, and by providing an incentive. For example, by using *Notice of Lease Renewal (ORHA Form #67)* - given more than 90 days ahead of the lease expiration if you intend to increase the rent, you can offer your tenant a lower rent increase if they will sign a new lease as opposed to a higher increase if they won't. Interestingly, the legislators never changed the legal definition of a lease, which still states: "'Fixed term tenancy' means a tenancy that has a fixed term of existence, continuing to a specific ending date and terminating on that date without requiring further notice to affect the termination," ORS 90.100 (17). Anyone want to be the test case on that?

I know that tenants have to give 30-days' written notice to terminate a month-to-month tenancy Does the tenant have to give 30-days' written notice to terminate a fixed-term lease? Yes.

Tenancy Reset

What if my current tenants add a new tenant? First year of occupancy includes all periods during which any of the tenants has resided in the dwelling unit, so their tenancy becomes "reset" to the rules of first-year tenancies each time a new tenant is added.

Does that mean I can terminate for no-cause on a month-to-month agreement when a new tenant is added, even if some of the tenants have lived there for years? Yes, as long as the person or people are actual tenants, not their minor children, temporary occupants or caregivers, and you are not terminating for discriminatory or retaliatory reasons.

What about signing a new lease with partly old and partly new tenants, or adding new tenants to an existing lease? Their tenancy is reset and if the specified ending date of the fixed term falls within one year (365 days or 366 in a Leap year, or 12 consecutive months), then a landlord can terminate the lease at its end by serving a ***Notice of Nonrenewal of Lease (Form #5B).*** This is a good opportunity to work out your new terms.

Termination of Tenancy for Three Strikes

If I have a tenant on a month-to-month agreement, can I terminate their tenancy for Three Strikes? No. That was a confusing section of SB 608 that was clarified by House Bill 2006 enacted on the last day of the 2019 Legislative Session. The right to terminate a tenancy for Three Strikes is limited to fixed-term leases only.

I have tenants in a fixed-term lease who have committed multiple lease violations. They cure each one, but then find something else to violate. How do I terminate the lease for Three Strikes? In order to be allowed to terminate the lease at its end, the tenant must commit at least three lease violations within the preceding 12-month period, and at the time of each violation the landlord must do certain things. First, you must serve the tenant a written warning notice at the time of each violation; second, each written notice must specify the violation, state that you may choose to terminate the tenancy at the end of the lease if there are three or more violations within a 12-month period preceding the end of the fixed term, and state that correcting the third or subsequent violation is not a defense to termination.

Lastly, the termination ***Notice of Non-Renewal of Lease (ORHA Form #5B)*** must provide a minimum of 30 days' notice. The expiration date of the notice may overlap and extend beyond the end of the lease by some part of those 30 days, but the notice must be effectively served prior to the expiration of the fixed term. The biggest challenge in a Three Strikes termination is proving each separate violation and ensuring that you can prove that the proper notices with the proper language were served in the proper way and at the proper time for each one. Remember, tenants have the right of due process and if they can prove you made a mistake along the way, or if you cannot document one or more of the violations, you could lose in court and not only be required to continue the tenancy, but also pay statutory damages to your tenant.

All of ORHA's violation notices now include the language required to terminate on the basis of Three Strikes, including:

ORHA Forms #4 & #44 **– 72/144 Hour Notice of Non-Payment of Rent**
ORHA Form #6 **– Unauthorized Pet Violation**
ORHA Form #14 **– Past-Due Rent Reminder**
ORHA Form #34 **– Parking Violation**
ORHA Form #35 **– Notice of Non-Compliance**
ORHA Form #38 **– Notice of Termination with Cause**

What if I make a mistake on my notice of termination? Big trouble. Especially if you terminate a tenancy…

- …for no cause after the first year and are not exempt;
- …for a Qualifying Landlord Reason that is false; or
- …at the end of a fixed-term where the occupancy has continued for more than one year.

Or if you…

- …fail to specify the Qualifying Landlord Reason or supporting facts;
- …fail to pay the relocation expense at the time the notice is delivered and are not exempt;
- …base the termination on the Three Strikes rule, but are ineligible due to a lack of proper procedure as outlined in the statutes, or by using this process in a month-to-month tenancy.

The landlord is liable to the tenant for three times the monthly rent plus the tenant's actual damages, and the tenant has a defense to an action for possession. If you find you issued an improper notice, withdraw it immediately before you get 'dinged.'

Rent Increases

A 2016 law change mandated that landlords not increase the rent during the first year after the tenancy begins and that they provide a minimum of 90-days' written notice to increase the rent thereafter. SB 608 went a step further by implementing an annual cap on rent increases on properties in Oregon where the Certificate of Occupancy is more than 15 years old to a maximum of 7% plus the Consumer Price Index (CPI) for the Western Region. It also placed a moratorium on increasing rental rates beyond this statutory maximum to subsequent tenants after issuing a no-cause termination notice or non-renewal of lease to a tenant within the first year of occupancy, or when offering a lease renewal. SB 608 also implemented a penalty that makes landlords liable for statutory damages of three times the monthly rent plus the tenant's actual damages if rent is increased in violation of the law.

My rental property is newer. Does that mean I can raise rents to what the market will bear after the first year of tenancy? Rental units where the Certificate of Occupancy was issued less than 15 years

from the date of the notice are exempt, but the landlord must state the facts supporting the exemption in the ***Notice of Rent Increase (ORHA Form #13)*.**

SB 608 says that landlords must provide the notice of rent increase to "each affected tenant." Does that mean I send separate notices to each of my tenants? Case law is clear that a single notice addressed to all tenants 'and all other occupants' is sufficient. Separate mailings are not required. Good practice includes terms in your rental agreement where the tenants agree to be the 'service agent' for receiving notices for all other tenants, but if it makes you feel comfortable to serve separate notices, it's not prohibited.

How much can I raise the rent on a lease renewal offer? That depends on the length of the lease. If the original lease is six months and you offer a six-month renewal you can't raise it at all because it's still the first year after the tenancy began. If the lease was for a year or more, the offer to renew the lease may not contain a rent increase provision that exceeds the statutory maximum, unless the property's Certificate of Occupancy was issued within 15 years of the date the notice is delivered.

Can I raise the rent for a new tenant above the limits of SB 608 after I terminate a tenancy for a Qualifying Landlord Reason such as renovation? Yes.

<u>Other Concerns</u>

What if I make a mistake on my notice of rent increase? It depends on what the mistake is, but could be big trouble. Especially if you increase the rent beyond the statutory maximum…

- …annually and are not exempt;
- …after terminating the prior tenancy (fixed-term or month-to-month) in the first year for no cause;

Or, if you…

- …claim an exemption where none exists;
- …fail to provide the facts supporting your right to the exemption;
- …fail to provide 90 days' written notice to each affected party.

If you find you issued an improper notice, withdraw it immediately before you get 'dinged,' because a landlord who increases the rent in violation of the law is liable to the tenant for three times the monthly rent plus the tenant's actual damages.

With more restrictions comes the need for more education. For landlords who have always operated professionally, this isn't a terrible situation, but for landlords who were used to turning a blind eye to their tenant's bad behavior knowing that they could issue a no-cause notice of termination at any time, this is a huge wake-up call. You now have to learn to enforce the terms of your rental agreement, keep rents up to market, and document everything – like a professional. If it's too much, then consider hiring a competent property manager. A good manager is worth their weight in gold and their fee is a tax-deductible business expense.

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.