

Mind Your Business – Tia’s Tips for Better Rental Management
The Pitfalls of Providing Rental References
By Tia Politi

Part of the job of property management includes obtaining rental references from an applicant’s current and former landlords and providing rental references on past renters to other landlords. Many folks are hesitant to provide poor references for their past renters for fear of a lawsuit even when there were provable problems.

My policy for rental references

- Be honest
- Only answer the questions you are asked – don’t volunteer information
- Only report bad behavior that you could prove in a court of law
- Don’t share your feelings, opinions, or rumors
- Require a signed release before providing any information

For me, good rental history will overcome deficiencies in other areas; poor rental history will not overcome anything at all. It is important to consider the source of the information though. I once had an applicant tell us that she was sure to get a bad reference from her current landlord, and claimed the landlord was mentally unstable and exceedingly difficult to work with. We called for a reference and confirmed that indeed, this landlord was out there! We had two other prior references that came back great so chose to disregard the current reference. There are wacky landlords.

Is the reference legitimate?

Do not assume that you have received the correct info for landlord references. Unless the reference is coming from a property manager or apartment complex, take time to look up ownership online to ensure you are not being set up - it is public record. Some county websites are easier to use than others so instead you could call the county records department in question for the information.

Are you required to provide a reference?

I do not think so, but to me that is unfair to former renters with great history and does a disservice to other landlords who may take a chance on your terrible tenant. Many companies are refusing to provide full rental references and will only verify dates of residency and rent amount or will refuse to provide references for tenants unless they have already submitted their notice to vacate. I am sympathetic to tenants in this situation. What if they give notice and then cannot obtain new housing? They can be forced out, so I will always give a reference to the best of my ability for any tenant whether they have provided notice to vacate.

If your property is subject to the **Eugene Rental Housing Code** or the rules of the **Portland Housing Bureau**, you must provide a rental reference for an existing tenant up to twice per year regardless of

whether they have submitted a notice to vacate. What's ridiculous about both cities' requirements is that their definition of rental reference is two years of payment history. There is a lot more to a reference than that.

What about limited references?

One time I received a reference request for a tenant whose sons had done substantial damage to a rental property. After they moved out, we billed her for the damage and her attorney responded. Our owner retained her own counsel to negotiate a resolution, but during that time I got two reference requests. My answer was to verify the rent amount and dates of residency and let the requester know that because the account was subject to pending litigation I was unable to provide any other information. I think the requesting landlords got the message.

Toward the end of my career in private property management I could not seem to get a reference from anyone in California that would confirm anything but dates of tenancy and rent amount. If a landlord will not provide any information about a past renter beyond that, I can tell at least something about the quality of the tenancy by two documents: the tenant ledger and the security deposit accounting. That information could help someone at least partially document their history, so have the tenant provide those documents and it could help them move forward.

How do you provide a reference for a tenant who scares you?

This is a legitimate concern, and many landlords give false-good references to other landlords to get rid of a problem tenant, but that creates a problem for someone else. You can always ask them to keep your reference confidential. Twice, I have gotten scary-bad references from landlords who swore me to secrecy because they were afraid of the tenant and the potential for violence or other retribution. In both cases, the tenants met our other criteria perfectly, which was problematic because I had no other basis for denial of their applications.

In the first instance, the co-applicant did not meet criteria, which allowed me to deny the bad apple as well for the fact that their co-applicant did not qualify.

In the second instance the scary reference was all I had, and the applicant belonged to two protected classes (in this case, a single father of Hispanic descent). I was in a real pickle. The landlord told me that he had a temper problem and had significantly damaged her home, but she was too scared of him to try to evict. She reported that he and his ex-partner had a volatile relationship with aspects of domestic violence and the partner cycling in and out of the rental property. Neighbors complained multiple times to the landlord but were afraid to call the police or testify after the fact due to his threats and explosive temper, so there were no police reports. He had no criminal history, a good job, and good credit. I even did a drive by to see if I could spot any issues with his care of the property, but it looked fine.

I felt obligated to protect the confidentiality of the person giving me the reference, so I denied him under the checkbox, “Negative or insufficient reports from references or other sources.” He unleashed a vulgar tirade at me by email but did not ask me to reconsider. I wrote up a description of the series of events and put it in the file along with the nasty email. If he had filed a complaint with Fair Housing for discrimination based on his race, national origin, or familial status, I could have privately disclosed the actual reason to an investigator and shown them my notes while protecting the confidentiality of the landlord.

I tell you this story to encourage you to tell the truth to other rental owners, even if you must ask for confidentiality, and to encourage you to maintain others’ confidentiality when it is requested.

If I deny for poor rental history, do I have to disclose who provided the reference?

I am not aware of any legal requirement to provide significant detail regarding who provided the reference or specifics of what the negative information was, and I certainly do not want to get dragged into a conflict or lawsuit between the applicant and their former landlord. In my experience, most denied applicants do not ask as they are well aware of their past misbehavior and were perhaps hoping you wouldn’t actually check.

Reporting difficult behaviors related to disability

Sometimes I have had to provide references for residents who paid on time, reported maintenance, and did not damage the property but had difficult personalities. Providing references for people like that is exponentially more challenging when the tenant’s behavioral issues are related to a disability.

Fair housing law mandates a policy of non-discrimination against members of protected classes in the sale or leasing of real estate. Federally, this includes race, color, national origin, religion, gender, familial status, and disability; statewide, it includes marital status, source of income, sexual orientation, and gender identity. Some cities have their own additional protected classes. Eugene, for example, includes protections for age, type of occupation, ethnicity, and domestic partnership. Victims of domestic violence and active-duty military also have housing protections under the law so you must proceed carefully to ensure you are not violating Fair Housing law.

I once had a tenant who years before had been hit by a car while riding her bicycle, lost her three-year-old son and suffered a traumatic brain injury from the accident – an incredibly sad story. She lived in a downstairs apartment and was an excellent tenant in every way, paid her rent, was very clean, reported maintenance issues, but she filed noise complaints about every single one of four different tenants who lived above her. No one could be quiet enough. On occasion, she would vent her unreasonable anger toward her neighbors, yelling and cursing at them, which I put a stop to. If I could have found a separate unit for her everything would have been fine, and she eventually moved out when she found an upstairs apartment with another company. When I gave references for her, I had to be careful to consider her brain injury which made it difficult for her to control her anger.

For tenants without a documented disability who are just unreasonable or difficult to work with, remember, “nasty jerk” is not a protected class. In precarious situations if you are not sure what to say, instead of saying you would not rent to someone again who displayed troubling behaviors you might instead say, “if requalified.” You are not saying yes or no, but you may get asked for more details. Whether you choose to elaborate is up to you.

What kinds of questions should you ask?

With my policy of only answering the questions I am asked, I have had landlords just fail to ask the right questions. In one case we rented a campus house to a group of students. They had loud parties with dozens of people spilling into the street, police were called and issued citations for minor in possession, open container, public urination – all the fun stuff kids do in college. It took a for-cause notice to shut them down, and at the end of the school year they moved out.

Afterwards, I got a request for a reference for one of them, but the prospective landlord only asked me three questions: 1) Did they pay rent on time? Yes. 2) Did they damage the property? No. 3) Did they leave owing any money? No. They never asked if there were complaints or violations, if they were served notice for misbehavior, or if we would re-rent. I do not volunteer information, and neither should you.

If you are looking for a good list of questions, for free, you can access ORHA’s Landlord Questionnaire at the forms store. It has a good list of questions including:

- Were applicants on the rental agreement?
- How much was their rent?
- Was rent always paid on time? If no, how many late pays? Were there late payments during the COVID-19 Protected Period - April 1, 2020 – February 28, 2022? (*Remember, landlords may not consider late payments or unpaid rent or fees owing from the Protected Period until January 2, 2028, so you want to make sure that you separate out payment issues during that timeframe from nonpayment issues outside that timeframe; however, you may consider unpaid money owed for damage to the premises. SB 291*)
- Were any payments declined for non-sufficient funds? If yes, how many?
- Did the resident care for the property inside and out? If no, please explain.
- Did the applicant report maintenance issues when they arose?
- Did they ever deny reasonable entry to the property?
- Were there any verified complaints about the applicant(s)? If so, how many? Reasons:
- Did applicant(s) receive any notices for violations of the rental agreement? If yes, how many? Reasons:
- Was the applicant(s) easy to work with? Were they cooperative?
- Were there any unauthorized occupants or animals on the property? If yes, please explain.
- Did the applicant(s) have authorized animals? Were there any damages from the animals, or repairs needed or performed because of the animals?

- Date of the most recent inspection of the property:
- Was there any damage done to the property? If yes, please list: How much did the damages cost?
- Any rent, fees, or damages still owing? If yes, please list amount:
- Was the security deposit refunded? If no, please list why:
- Are the applicant(s) in a documented payment arrangement? Are the payments current?
- Did you file an eviction against the applicant(s)? If yes, what was the reason for the action? Was an eviction judgment awarded against the applicant(s) during the COVID-19 Protected Period - April 1, 2020 – February 28, 2022? (*Remember, you may not consider eviction judgments rendered during this timeframe; although the reason may be relevant if it was for bad behavior or unpaid charges for damages to the rental unit. SB 291*)
- Did the applicant give proper notice to vacate if required? If no, please explain:
- Did the landlord initiate the termination of tenancy? If yes, what was the basis?
- Would you re-rent to the applicant(s) again?
- Are you related to the applicant(s) in any way? If yes, what is your relationship?
- Is there anything I should know about that I have not asked you? If so, please list:

The dead landlord scenario

There can be reasons that some part of an applicant's history is unavailable such as the death of the landlord. Be sure to check on that, though. I did once have an applicant tell me his landlord was dead, only to find out that he was very much alive and was owed more than \$5000 by the tenant for the damage done to the home. The internet is helpful in discovering whether someone is still with us.

What if you cannot get a reference?

Every day a property sits empty, is a day with no rent. It is reasonable to work on an application for a couple of days, and let the applicant know if one or more of their references is not responding, but at some point, you need to move on. Just make sure you can document your efforts to reach the person in case the applicant thinks you just went through the motions to deny them for another reason.

Most landlords who have good things to say will respond timely, but if you cannot get a reference, or only a limited reference, you can deny the application for an inability to verify the information provided by the applicant. If the landlord isn't responding to your outreach, it is usually because they have nothing good to say.

Should you give a reference before the tenants leave?

Generally, no. Current tenants who are leaving may try to pressure you to write them some sort of reference before they vacate. That is a bad idea, especially if you have not inspected it in a while. The quality of a reference will be impacted by how things go in the end, so wait until they are out before you decide. Once, a former resident of a sorority I managed called asking if I would write a letter of reference to help her to obtain a new rental.

I reviewed her group's history and there had been multiple issues with the tenancy including loud parties, failure to pick up trash, climbing on the roof, etc., but they did not owe any money and had not damaged the house. I told her that I would have to tell the truth if she released me to do so, but that I would only answer the questions I was asked and would not volunteer any information. I suggested that she should just show them her tenant ledger, which I emailed to her. She then emailed me a letter she wanted me to sign that stated she was an exemplary tenant. I told her that I would not feel comfortable signing a statement like that and she got the message.

The takeaway

For all the negative history examples I cite in this article, I have documentation. I have dates, times, and reports; I have notes; I have ledgers; I have inspection reports; I have copies of rental agreements, notices, and letters. The time to worry about being sued for libel or discrimination regarding your rental references is when you cannot back up negative information you are providing to other people, when you go beyond relating the history of them as a tenant, or you make discriminatory statements. So, again I urge you to be honest, only answer the questions you are asked – don't volunteer information, only report bad behavior that you could prove in a court of law, don't share your feelings, opinions, or rumors, and require a signed release before providing any information

Any rental reference you provide could be used as evidence against you in a court of law, so remember what Sergeant Joe Friday used to say in the old-time sitcom Dragnet, "Just the facts, ma'am." Good advice, Joe.

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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