

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

By Tia Politi

Taking Over Existing Tenancies

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 renter 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 challenge. Most residents handle the transition to a new owner or manager well, others not so much. Most managers or sellers have good renters, professional documentation, and a habitable unit, others not so much.

Transition 101 – Change is hard

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 renters 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.

One lady I encountered burst into tears when I showed up with transition paperwork. She thought she was being evicted and as she sobbed her heart out, it was all I could do to get her to hear me and let her know that wasn’t the case. Another tenant refused to accept the transition, refused to send us rent, kept sending it to the old management company and was evicted for non-payment despite my many attempts to get him to understand that we were his new managers.

You can’t make the need for change go away, but in most cases your attitude will influence the response from your new renters, so be mindful of that and your chances of a successful transition will increase exponentially.

I start by writing a nice letter introducing myself, welcoming them and letting them know the effective date of the change, where they should pay rent in the future, and how to submit maintenance requests. For month-to-month tenancies (or tenancies with only a verbal rental agreement), I also include a new rental agreement and addenda for them to initial, sign and return. Unfortunately, unless a tenant is renewing a lease, or lives in a manufactured housing park, there are no requirements that they sign anything once the tenancy has begun – another reason to be gentle with the transition. While most renters will agree to sign new paperwork, some will not, and there’s no way to force the issue. There are, however, rules that you can change if they won’t sign – more on that later.

If the rental unit was built prior to 1978, it’s especially important that you provide the EPA booklet, “Protect Your Family from Lead in your Home.” If the renters won’t sign the **Lead Based Paint Disclosure – ORHA form #M5**, at least you provided the required information. I would also recommend emailing the link, so you have proof. The EPA takes this issue seriously and you could incur substantial fines for failing to provide the booklet.

I add a paragraph that says something like, “As a valued customer your satisfaction is important to us. Enclosed you will find a new rental agreement and assorted addenda. Please have all adult household members initial, sign and date the forms where indicated, and return them to us within 30 days. We will

be reaching out soon to schedule a maintenance inspection. In the meantime, feel free to reach out to us with any questions or concerns and please let us know now or in the future if there's anything we can do to improve your experience in the home."

Yes, you may open yourself up to an avalanche of requests, but in my experience most reasonable folks don't push it and you can always deny the unreasonable requests.

Waiver

Sometimes when I took over management of a property, I knew for sure the prior owner had created waiver by not enforcing the terms of the agreement – sometimes there was no written agreement at all, or a couple of pages of a rental agreement but no addenda. Other times I didn't know but wanted to be sure I was on solid ground so I used the opportunity to address that possibility by including a statement later in the letter that said something like, "Please be advised that this letter shall also serve as your notice of change in terms. All the conditions, rules and regulations contained in your existing rental agreement or in the agreement and addenda included with this letter will be effective and enforceable 33 days from the date of this letter regardless of whether the prior owner or manager enforced those terms."

What about a fixed-term lease? **ORS 90.220** "(2) The terms of a fixed term tenancy, including the amount of rent, may not be unilaterally amended by the landlord or tenant." Not too long ago I took a class from a very knowledgeable attorney, and she indicated that if you're reverting to the original terms of the rental agreement there were certain waivers that could be cured with proper notice even in a fixed-term lease.

So, unless the tenant is willing to sign a new agreement, if I'm taking over a fixed-term lease, there's nothing I can change until it expires, but I still want to cure any waiver of the existing terms the prior landlord may have created, so I add a statement like, "This letter shall serve as your notice that all the terms and conditions of your current lease agreement are in full force and effect, regardless of whether your prior landlord enforced those rules." I have been pleasantly surprised on many occasions though, when tenants in a lease will agree to sign new lease forms, so it doesn't hurt to ask.

This subject and the parameters of what can change and what waivers can be cured during a tenancy are up to a judge's discretion, so err on the side of caution. If a prior landlord didn't enforce their pet policy, I'm not sure it would be allowable to require renters to get rid of their pet even with a notice of change in terms – get legal advice for your specific situation before thinking you can cure any kind of waiver or change whatever rules you want. Read **ORS 90.412** for the legal description of waivers.

Changing Terms

And the law is clear that there are many things you can't change without the renter's agreement after the tenancy has begun. Those would be the due date for rent or maybe even a longer grace period if the prior owner had one. You also cannot implement any other "substantial modification" of the rules without the renter's written consent. That might include things like assessing a utility fee or any other new requirement that requires the tenant to pay for something that they didn't previously have to pay for like garbage service or take over a task like yard care that was previously included in the rental agreement. I've even had some buyers think that because they are the new owners they can reset rents to the market – not so.

Here's what the law says:

90.262 Use and occupancy rules and regulations; adoption; enforceability; restrictions. (1) A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if:

- (a) Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;
 - (b) It is reasonably related to the purpose for which it is adopted;
 - (c) It applies to all tenants in the premises in a fair manner;
 - (d) It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;
 - (e) It is not for the purpose of evading the obligations of the landlord; and
 - (f) The tenant has written notice of it at the time the tenant enters into the rental agreement, or when it is adopted.
- (2) If a rule or regulation adopted after the tenant enters into the rental agreement works a substantial modification of the bargain, it is not valid unless the tenant consents to it in writing.

A few areas of landlord-tenant law do allow specific changes in a month-to-month agreement. For example, **ORS 90.260** allows for a change in the type or amount of your late fee with a 30-day written notice. **ORS 90.222** allows a landlord to implement a requirement for the tenant to obtain and maintain a renters insurance policy with a minimum of \$100,000 in liability coverage and naming the landlord as an interested party with a 30-day written notice unless the tenant qualifies for an exception. If you're wanting to make a change of that sort, we have a form ***Late Fee/Renters Insurance Notice of Change in Terms – ORHA form #O15*** that can help you accomplish that change.

Property Condition

If the former owner or manager failed to provide documentation of the property condition on move in, security deposit reconciliation becomes more problematic. I need to not only address any needed maintenance issues but also document the current condition so there's some sort of baseline for when the renter moves out. First, I call to see whether I can set up an inspection for a time that works for both of us. If I don't get a response, I will serve notice to enter.

When you do your initial inspection after taking over, even if you may be looking for lease violations as well as needed repairs, keep the focus on maintenance. Make sure they know you will need access to all parts of the unit and grounds - rooms, closets, the garage and even storage sheds. (If they deny access to any part of the home or grounds, you can serve a for-cause notice for unreasonable denial of entry under **ORS 90.322.**)

I start by asking them how things are with the property and run through a rough list of habitability items: Do your doors and windows open, close and lock properly? Does your heating/cooling system work properly? Hot water? How about the electrical system, any issues with lights, plugs or switches? Any leaks, drips, or plumbing issues you are aware of? Do your appliances work properly? Have you tested your smoke & CO alarms recently?

That usually puts people more at ease because the focus is on the unit not them and makes the walk-through less awkward for both. As you're inspecting, document any lease violations you may see but hold off on addressing them at that moment as things can escalate quickly. Just document what you see and let your legal notice do the talking for you. Read my article ***Inspections: No news is BAD news***, for in-depth guidance to the unit inspection process.

Illegal Provisions

Illegal provisions in a rental agreement are another potential pitfall 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, just don't attempt to enforce those provisions.

ORS 90.245 (2): "A provision prohibited by subsection (1) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by the landlord to be prohibited and attempts to enforce such provisions, the tenant may recover in addition to the actual damages of the tenant an amount up to three months' periodic rent."

Some 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. The renter has the right to use the home and property for any reasonable, legal uses and you may not unreasonably restrict their rights to do so.

Habitability

Habitability issues often rear their ugly head, so be careful regarding 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 or the issues addressed so that I don't inherit a legal claim for damages from the renter. Should you choose to take on that risk, deal promptly with all needed repairs, but especially habitability-related repairs such as lack of smoke or CO alarms, heat or hot water, doors and windows that don't lock, rot or pest issues, safety and security, waterproofing & weatherproofing, electrical, plumbing and waste systems. Check out **ORS 90.320** for a complete rendition of your obligations to provide habitable housing.

Discrimination & Retaliation

Encountering a challenging transition with a contentious renter makes most landlords want to just terminate tenancy, but that has been rendered significantly more challenging since the passage of **Senate Bill 608** back in 2019. Proceed carefully. Remember that even a termination without cause in the first year of occupancy has the legal defenses of discrimination or retaliation and in the cities of Eugene, Milwaukie and Portland requires a minimum 90-day written notice, and in Eugene and Portland inclusion of specific notifications and payment of relocation fees unless exempt.

Discrimination means treating people who belong to a protected class differently than those who don't in the buying, selling or leasing of real estate and is outlined in federal law through the **Fair Housing Act** and in state law under **ORS 90.390**. Protected classes are: Federal – race, color, religion, national origin, sex, familial status, and disability; State – marital status, source of income, sexual orientation, and gender identity. Other localities in Oregon may have additional protected classes. Eugene, for example, adds protections based on – age, ethnicity, type of occupation and domestic partnership.

Retaliation is defined in landlord-tenant law (ORS 90.385) as increasing rent, decreasing services, serving a notice of termination, or bringing or threatening to bring an action for possession after the tenant has:

- Complained to or expressed to the landlord in writing the intent to complain to a governmental agency charged with oversight for: building, health, or safety codes; mail delivery laws and regulations; or discrimination in rental housing.
- Or, the tenant has: made a complaint to the landlord that is related to the tenancy; formed or joined a tenants' union; testified against the landlord in any judicial, administrative or legislative proceeding; successfully defended an FED (eviction) action brought by the landlord when the notice served by the landlord was defective or imperfect, or the timing of the notice was miscalculated; or indicative of their intent to assert or invoke the protection of any right secured to tenants under any federal, state or local law.

Exceptions to the use of the retaliation defense by a tenant include:

- Complaints by the tenant were unreasonable in their timing or manner
- The violation of housing codes was caused by the tenant
- The tenant has defaulted on rent (unless they deposit full rent into court)
- Compliance with building codes requires the tenant to vacate

Maintain professional decorum with even the most cantankerous renter and terminate tenancy for cause if they violate the rental agreement. Some residents struggle with developmental disabilities, attention deficit disorder, mental illness, PTSD, health issues or family dysfunction. We don't all get the perfect renters who communicate well, obey every rule, are fully functional, and have healthy conflict resolution skills. It's up to us to de-escalate or walk away. Deal with lease violations by serving notice, not by issuing threats or ultimatums, and if you can't do that, hire someone who can.

Tenancy Termination

Sometimes you not only have to handle the transition, but termination of tenancy as well. That comes with its own set of challenges as to the reason and proper service of notice, but also due to the renter's reaction. Unless I was able to re-home a renter or they were ready to move out anyway, I never got a joyful reaction. Think about how much of a disruption it would be for you to move out of your home. Things may get hostile, or at the least the renter will be understandably upset. Be as compassionate and helpful as you can be and be prepared for some amount of anger or upset.

Keep in mind too, that about half the time the renter may experience some delay and not be able to vacate on the termination date. Yes, you can proceed to evict, but that takes time too. I always factor extra time into my plans, and depending on the situation, am okay with extending the move out date within reason if they will put their notice in writing to me and pay rent for the extra time. Don't accept payment of rent on an extension without notice from the tenant though, or you will create waiver on your notice in accordance with **ORS 90.414**.

The Takeaway

Take care with how you handle a transition with renters. Successful management is based on building relationships, and you set the tone at the first contact. Be kind and helpful but firm and you're likely to have fewer hurdles to overcome as they get accustomed to a new way of doing things. Be prepared for some amount of obfuscation, anger or upset and always keep your cool – remember, it's about the situation, not you personally.

Address issues of paperwork right away and cure any waiver the former manager may have created. Get in and document the condition of the unit as soon as possible and take care of any habitability issues immediately.

If you're purchasing or taking over management of an occupied rental property, you may want to require the seller to correct any deficiencies in the paperwork, terminate tenancies of questionably habitable units, or remove a problem resident ahead of you assuming legal liability. Buyers eager for a deal and property managers hungry for clients sometimes don't think these things through. They disregard performing their due diligence, resulting in 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.

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