

# Oregon Landlord-Tenant Law

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# Implicated Areas

- \* Fair Housing – federal law
- \* Disability/Ability issues – federal and state
- \* Oregon Unlawful Trade Practices Act
- \* HUD financing (section 8, projects, RD)
- \* Bankruptcy
- \* Contract Law
- \* Torts
- \* Property

# Limited Topics Covered ORLTA

- \* Habitability
- \* Deposits
- \* Entry
- \* Terminations/Evictions/Defenses

# Habitability

## Minimum Requirements – ORS 90.320

- \* Weather Protection,
- \* Plumbing,
- \* Water,
- \* Heat,
- \* Electrical,
- \* Buildings in good repair
- \* Areas under exclusive control of LL safe, clean, free of pests
- \* No Pests, Good Repair, Safe from Fire, Locks
- \* Trash Containers
- \* Any appliances provided in good repair
- \* Fire safety – smoke alarms
- \* Carbon Monoxide alarm

# Essential Services

- \* Heat,
- \* Plumbing,
- \* Water, Gas,
- \* Electricity,
- \* Light Fixtures,
- \* Locks,
- \* Window Latches,
- \* Cooking Appliances and Refrigerator (if supplied by LL)

# Habitability – cont'd

## Remedies

- \* Terminate the lease
- \* Money Damages
- \* Substitute Services – for essential services
- \* Repair and Deduct
- \* Injunctive relief
- \* Defense in Eviction, see *infra*

# Habitability - Terminations

## \* Elements

- \* Material noncompliance with lease or habitability requirements
- \* Written notice to LL, specifying the breach & stating the date (not less than 30 days) the tenancy terminates if not remedied (i.e. repaired, payment of damages, etc...) in 7 days for essential services or 30 days for anything else.
- \* If substantially the same breach occurs w/in 6 months, T may terminate with a 14 day termination notice specifies the breach and termination date.
- \* If T terminates, LL must return the security deposit, *infra*.

# Habitability – Money Damages

- \* Suit for \$\$ damages
  - \* Includes reduced rental value, personally injury, damage to items, other incurred expenses.
  - \* “[W]e think that the extension of damages to cover emotional distress due to the uninhabitable condition is inconsistent with adjoining provisions of the statute.” *Brewer v. Erwin*, 287 Or 435, (1979).
- \* Exceptions – (affirmative defense)
  1. LL neither knew nor reasonably should have known of the defect **AND**
    - a) Either, T knew or reasonably should have known of the defect and failed to give notice before the damage was suffered, **or**
    - b) The defect was caused after the tenancy began by the deliberate or negligent act or omission of someone *other than the landlord or a person acting on behalf of the landlord*.
  2. Defect caused by deliberate or negligent act or omission of the tenant or tenant’s guest.

# Habitability – Essential Service Remedies

- \* If Landlord
  - \* a) intentionally or negligently fails to any essential service (see supra),
  - \* b) is given written notice of the defect and tenant's right to remedies, and
  - \* c) and LL fails to supply the essential service in a reasonable time, T may be entitled to certain remedies (infra)
- \* LL is not intentionally or negligently failing to supply an essential service if LL:
  - \* substantially supplies the essential service (??); or
  - \* is making a reasonable and good faith effort to supply the essential service and the failure is due to conditions beyond LL's control.
- \* N/W if defect was caused by the deliberate or negligent act or omission of the tenant or their guest.

# Con't Remedies

- A. Obtain the essential service and deduct from rent;
- B. Damages for diminution of rental value; or
- C. If defect makes it unsafe or unfit to occupy, T may obtain substitute housing, and
  - i. T excused from paying rent until fixed.
  - ii. damages for the actual and reasonable cost or fair and reasonable value of comparable substitute housing in excess of the rent for the dwelling unit.
- D. NOTE: can't use essential service remedies and non-essential remedies.

# Tenant Self-Help Remedy for Minor Repairs

- \* If Tenant Complains in Writing about “Minor” Repairs and Landlord does not respond within 7 days, Tenants may do own Repairs and Deduct the Cost of Repairs from Rent
- \* “Minor” Means Defects Less than \$300 to Repair
- \* “Minor” does not mean Mold, Radon, Asbestos, Lead Based Paint
- \* T must provide statement from party doing repair as to what done and amount billed
- \* Tenant may not use this Option if:
  - \* The Problem was Caused by Tenant
  - \* Tenant Knew about the Problem for at Least 6 Months Prior to Notice to Landlord
  - \* Landlord Fixes the Problem (Either before or after the Notice)
  - \* Tenant has used this Remedy in the Past for the Same Problem

# Entry

Allowed reasons for entry onto the dwelling or any part of the premises under exclusive control:

1. Inspect;
2. make necessary or agreed repairs, decorations, alterations or improvements;
3. supply necessary or agreed services;
4. perform agreed yard maintenance or grounds keeping; or
5. exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors

# Actual Notice

- \* Verbally to tenant
- \* Message on answering machine
- \* Posted on door
- \* Mailed (add 3 extra days)
- \* Other method allowed by rental agreement (e-mail)

# Entry Remedy

- \* Default: 24 hours notice of entry
- \* Notable Exceptions
  - \* No Notice or consent required
    - \* **Emergency – e.g. flood or fire:** within 24 hours after the entry, give actual notice of the entry, date and time, nature of emergency, names of the persons who entered.
    - \* **Requested repairs:** Tenant requests repairs in writing, LL may enter within 7 days unless repairs are ongoing.
  - \* Denial of Consent. No entry allowed
- \* Remedies for breach:
  - \* T may terminate
  - \* Money damages of at least 1 month's rent.

# Terminations/Evictions/Defenses

## Termination of Tenancies

- \* Requires Written Notice
- \* Properly Served
  - \* Personal delivery to tenant
  - \* First class mailing
  - \* Post and mailing

# Terminations

## Types of Terminations

- \* Nonpayment of Rent
- \* For-Cause
  - \* Failure make payments
  - \* Bad conduct – smoking, unauthorized occupants, fighting, noise/parties, etc...
- \* 24-hour terminations (severe/outrageous conduct)
- \* Without stated cause

# Terminations Examples

- \* **72 hour Nonpayment of Rent Notice**
  - \* Written notice to the tenants
    - \* Given no sooner than the 8<sup>th</sup> Day of rental period
      - \* E.g. March 8, 2018
    - \* LL's intent to terminate if the rent is not paid w/in no less than 72 hours
    - \* Specifies amount of rent owed (must be an entire month's rent) and the date and time that I must be paid by

# Evictions

- \* Standardized summons/complaints and answers
- \* Must be served within 1 judicial day of filing
- \* First appearance within 7 days of filing
- \* First appearance
  - \* Failure to appear by either party results in judgment
  - \* Both parties appear
    - \* Stipulated agreement
    - \* Dismissal
    - \* Trial

# Evictions Trial

- \* Within 15 days of first appearance
- \* Plaintiff/LL: only may pursue possession
- \* Tenant may
  - \* Defend; and
  - \* Counterclaim if and only if the right to do so is otherwise provided by statute.
  - \* NOTE: All ORLTA claims are authorized by statute
- \* Winner entitled to reasonable attorney fees

# Trials, Continued

## Hypothetical

- \* LL files eviction for nonpayment of rent based upon termination emailed to tenant and mailed by first class mail on March 8, 2018 demanding \$1,100 for unpaid March rent. Rent is \$1,000 with a \$100 late fee imposed on the 5<sup>th</sup>. The notice demands rent by midnight, March 11, 2018.
- \* Tenant had complained to LL on January 15 that the heat did not work. Tenant was upset to find out that Landlord had entered her apartment on February 1<sup>st</sup> when he emailed her on February 5<sup>th</sup> stating that he inspected the furnace but could not fix it. The heat remains unfixed but the weather hasn't been that bad....

# Trials, Continued

- \* Tenant Defendants – Possible defenses
  - \* I put the rent in the drop box and you lost it
  - \* Defective Notice
  - \* Defective service
  - \* No rent owed: counterclaim(s) offset rent

# Thank You!

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