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(revisions highlighted)*

Legal Q&A: An Update to Landlord/Tenant Law in Oregon

Wednesday, July 10, 2019
11:30 a.m.–1 p.m.

No CLE credit is associated with this event.

LEGAL Q&A: AN UPDATE TO LANDLORD/TENANT LAW IN OREGON

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TABLE OF CONTENTS

Schedule	v
Rent Increase Notices Under SB 608	1
Terminating a Fixed Term Tenancy Under SB 608	2
1. “For Cause” Terminations	2
2. Fixed Term Tenancy with an Expiration Date Within the First Year of Occupancy.	2
3. Fixed Term Tenancy with an Expiration Date After the First Year of Occupancy	2
“Three Strikes Rule”—Preventing a Fixed Term Tenancy from Becoming Month-to-Month	3
Terminating a Month-to-Month Tenancy Under SB 608	4
1. “For Cause” Terminations	4
2. Terminating Month-to-Month Tenants During the First Year of Occupancy	4
3. Terminating Month-to-Month Tenants After the First Year of Occupancy	4
“Qualifying Landlord Reasons” to Issue a 90-Day Termination Notice	6
Miscellaneous	7

SCHEDULE

Presented by

- ◆ **Timothy Murphy**, *Murphy Law Group PC, Portland*
- ◆ **Troy Pickard**, *Portland Defender PC, Portland*

11:00 Check-in

11:30 Legal Q&A: An Update to Landlord/Tenant Law in Oregon

This presentation is designed for nonlawyers, both landlords and tenants, and explains key legal changes that affect Oregonians who live in rental property and those who own Oregon rental property.

1:00 Adjourn

Rent Increase Notices Under SB 608

Except for two exemptions, SB 608 limits the amount that a landlord can increase rent with a rent increase notice over any 12-month rolling period. SB 608 limits rent increase notices to increase the rent by no more than 7% plus the consumer price index (CPI) above the existing rent.

The Oregon Department of Administration Services is publishing the maximum annual rent increase. The maximum rent increase for 2019 is 10.3%.

A landlord may issue a rent increase notice that increases rent more than the maximum rate over a 12-month rolling period if (1) the first certificate of occupancy for the dwelling unit was issued less than 15 years before the rent increase notice; or (2) the landlord is providing reduced rent to the tenant as part of a federal, state or local program or subsidy.

SB 608 adds an additional requirement to certain rent increase notices. A rent increase notice must be in writing and state:

1. The amount of the rent increase;
2. The amount of the new rent;
3. The date on which the increase becomes effective; and
4. If the increase is more than 7% + CPI, including the facts supporting why the landlord is not subject to the rent increase limitation.

A landlord may not increase the rent with a rent increase notice during the first year of any tenancy. This does not prevent a landlord from entering into a new lease with a rent increase greater than 10.3%.

Terminating a fixed term tenancy under SB 608

1. “For cause” terminations

A landlord can issue a written ‘for cause’ termination notice at any time during the tenancy for the same reasons as previously allowed under Oregon law, including but not limited to:

1. ORS 90.392 – 30 day ‘for cause’ eviction for material breach of the rental agreement or material violation of ORS 90.325
2. ORS 90.394 – 72 hour ‘for cause’ eviction for failure to pay rent
3. ORS 90.396 – 24 hour ‘for cause’ eviction for outrageous conduct by a tenant, such as committing certain crimes on the premises, causing substantial personal injury to someone on the premises, or intentionally inflicting substantial damage to the premises.
4. ORS 86.782 (6)(c) – eviction of bona fide tenants after non-judicial foreclosure
5. ORS 90.405 – 10 day ‘for cause’ eviction for tenant keeping unpermitted pet
6. ORS 90.445 – 24 hour ‘for cause’ eviction if a tenant commits domestic violence, sexual assault or stalking against a household member who is a tenant

2. Fixed term tenancy with an expiration date within the first year of occupancy

For a fixed term tenancy with an expiration date within the first year of occupancy, a landlord may terminate the tenancy without cause at its expiration by giving the tenant 30-day* written notice (30 days prior to the ending date of the fixed term, or 30 days prior to the date designated in the notice for the termination of the tenancy, whichever is later.). *This time period is 90 days in certain jurisdictions, including Portland and Milwaukie.

If a landlord issues a termination notice without cause to prevent a fixed term tenancy with an expiration date within the first year of occupancy from becoming month-to-month, a landlord may not increase the rent for the next tenancy by more than the maximum annual rent increase, which is 10.3% for 2019, unless one of the two exemptions applies.

3. Fixed term tenancy with an expiration date after the first year of occupancy

For a fixed term tenancy with an expiration date after the first year of occupancy, the fixed term tenancy automatically becomes a month-to-month tenancy at its expiration unless:

1. A landlord and tenant agree to a new fixed term tenancy;
2. The tenant gives 30-day written notice of termination; or
3. A landlord has a “qualifying landlord reason” to issue a 90-day termination notice.

If a landlord issues a 90-day termination notice for a “qualifying landlord reason” to terminate a fixed term tenancy upon its expiration, a landlord must include with the termination notice an amount equal to one-month rent UNLESS the landlord has an ownership interest in four or fewer residential units.

“Three Strikes Rule” - preventing a fixed term tenancy from becoming month-to-month

During any part of a fixed term tenancy, a landlord can prevent a fixed term tenancy from becoming a month-to-month tenancy at the end of the fixed term when, during a tenancy, the tenant commits at least 3 violations of the rental agreement. The landlord can prevent the fixed term lease from becoming month-to-month by:

1. Issuing a written warning notice to the tenant at the time of each violation; and
2. Issuing a written termination notice at least 90 days before the end date for the fixed term or 90 days before the termination date in the notice, whichever is later.

Each written warning notice must:

1. Describe the violation;
2. State that the landlord may terminate the tenancy at the end of the fixed term if there are three violations within a 12-month period during the fixed term; and
3. State that correcting the third or subsequent violation is not a defense to eviction.

The 90-day notice of termination for a “Three Strikes Rule” termination must be in writing and:

1. State that the rental agreement will terminate upon the ending date for the fixed term or upon a designated date at least 90 days after delivery of the notice, whichever is later;
2. Specify the reason for the termination and supporting facts; and
3. Be served to the tenant concurrent with or after the third (or final) written warning notice.

The tenant is not owed any rent as compensation if a landlord issues a “Three Strikes Rule” termination notice.

Terminating a month-to-month tenancy under SB 608

1. “For cause” terminations

A landlord can issue a written ‘for cause’ termination notice at any time during the month-to-month tenancy for the same reasons as previously allowed under Oregon law, including but not limited to:

7. ORS 90.392 – 30 day ‘for cause’ eviction for material breach of the rental agreement or material violation of ORS 90.325
8. ORS 90.394 – 72 hour ‘for cause’ eviction for failure to pay rent
9. ORS 90.396 – 24 hour ‘for cause’ eviction for outrageous conduct by a tenant, such as committing certain crimes on the premises, causing substantial personal injury to someone on the premises, or intentionally inflicting substantial damage to the premises.
10. ORS 86.782 (6)(c) – eviction of bona fide tenants after non-judicial foreclosure
11. ORS 90.405 – 10 day ‘for cause’ eviction for tenant keeping unpermitted pet
12. ORS 90.445 – 24 hour ‘for cause’ eviction if a tenant commits domestic violence, sexual assault or stalking against a household member who is a tenant

2. Terminating month-to-month tenants during the first year of occupancy

A landlord can issue a written 30-day* ‘no cause’ termination notice to month-to-month tenants during the first year of occupancy (*90-day in certain jurisdictions, including Portland and Milwaukie). “First year of occupancy” means the first year of any tenant’s residency at a rental property with a month to month rental agreement.

If a landlord issues a 30-day (or 90-day in certain jurisdictions) ‘no cause’ termination notice to month-to-month tenants during the first year of occupancy, the landlord may not increase the rent for the next tenancy by more than the maximum annual rent increase, which is 10.3% for 2019, unless one of the two exemptions applies.

3. Terminating month-to-month tenants after the first year of occupancy

After the first year of occupancy for a month-to-month tenant, a landlord may issue a 90-day written termination notice if it has a “qualifying landlord reason.” If a landlord has a qualifying landlord reason justifying a 90-day termination notice, the landlord must:

1. Issue a written termination notice that states the reason for the termination and supporting facts allowing termination; and
2. State the rental agreement will terminate on a specified date at least 90 days later.

If a landlord issues a 90-day termination notice for “qualifying landlord reason” to terminate a fixed term tenancy upon its expiration, the landlord must include with the

termination notice an amount equal to one-month rent UNLESS the landlord has an ownership interest in four or fewer residential units.

If the tenant occupies a dwelling unit located in the same building or on the same property as the landlord's primary residence, and the building or the property contains one or two dwelling units, the landlord may terminate the tenancy after the first year of occupancy by issuing a 60-day* 'no cause' termination notice. *This time period is 90 days in Milwaukie, Bend or Portland.

If the tenant occupies a dwelling unit located in the same building or on the same property as the landlord's primary residence, and the building or the property contains one or two dwelling units, a landlord can issue a 30-day* 'no cause' termination notice to month-to-month tenants after the first year of occupancy if:

1. The landlord has accepted an offer to sell a dwelling unit separately from any other unit;
2. The buyer is a person who intends in good faith to occupy the unit as the buyer's primary residence; and
3. Within 120 days after accepting the purchase offer, the landlord provides the tenant with written notice of termination with a specific termination date and written evidence of the offer to purchase the dwelling unit.

*This time period is 90 days in Milwaukie, Bend or Portland.

“Qualifying landlord reasons” to issue a 90-day termination notice

The “qualifying landlord reasons” to issue a termination notice are:

1. A landlord intends to demolish the dwelling unit within a reasonable time;
2. A landlord intends convert the unit to a use other than residential within a reasonable time;
3. A landlord intends to undertake repairs or renovations to the dwelling unit within a reasonable time and:
 - a. The premises is currently unsafe or unfit for occupancy; or
 - b. The dwelling unit will be unsafe or unfit for occupancy during the repairs or renovations; or
4. A landlord has:
 - a. Landlord has accepted an offer to sell a dwelling unit separately from any other unit;
 - b. The buyer is a person who intends in good faith to occupy the unit as the buyer’s primary residence; and
 - c. Within 120 days after accepting the purchase offer, the landlord provides the tenant with written notice of termination with a specific termination date and written evidence of the offer to purchase the dwelling unit.
5. A landlord intends:
 - a. For the landlord or a member of the landlord’s immediate family to occupy the unit as a primary residence; and
 - b. The landlord does not own a unit in the same building that is available for occupancy at the same time that the tenant receives notice to terminate the tenancy.

Miscellaneous

SB 608 applies to (1) any fixed term tenancy entered into or renewed after February 27, 2019, (2) the termination of any month to month tenancy; and (3) all rent increase notices.

SB 608 does not change how termination notices are served.

If a landlord terminates a tenancy in violation the new provisions of SB 608:

1. The tenant can recover three months' rent plus actual damages sustained as a result of the tenancy termination; and
2. The tenant has a defense to an eviction by the landlord.

A tenant has one year to file a claim against a landlord after the tenant knew, or should have known, that the landlord terminated the tenancy in violation of SB 608.

If a landlord increases rent in violation of SB 608, that landlord is liable to the tenant for three months' rent plus actual damages suffered by the tenant

If a landlord is paying a tenant one month rent pursuant to SB 608 and also Relocation Assistance required by Portland City Code for the same termination notice, the Relocation Assistance required by Section 30.01.085 may be reduced by one month rent required by SB 608 if both payments are paid when the termination notice is issued and as a single payment.

