

# Landlord Tenant Law in Oregon

Legal Aid Services of Oregon

42 NW Greeley Ave, Bend, OR 97703

541-385-6944

# Disclaimer

- This presentation is meant as general legal information
- This presentation is not legal advice
- I am not your lawyer
- If you have a specific legal question, Legal Aid Services of Oregon provides free legal services to low income people or you can contact a private attorney

# The law is complicated!

Websites created by non-profits

Legal Aid: [www.oregonlawhelp.org](http://www.oregonlawhelp.org) and [www.oregonrentersrights.org](http://www.oregonrentersrights.org)

- Community Alliance of Tenants: [www.oregoncat.org](http://www.oregoncat.org)
- Fair Housing Council of Oregon: [www.fhco.org](http://www.fhco.org)
- Disability Rights Oregon: [www.droregon.org](http://www.droregon.org)

Oregon State Bar: <https://www.osbar.org/public/>

Or talk to a lawyer:

- Legal Aid for Deschutes/Crook/Jefferson: 541-385-6944
- Oregon Lawyer Referral Service: 1-800-452-7636

# When does Landlord Tenant Law apply?

- Landlord Tenant Law does apply when there is a rental agreement (written or oral)
- Landlord Tenant Law does not apply:
  - Motels, for stays less than 30 days
  - Dorms or nursing homes
  - Housing as part of employment
  - Couch surfers or guests

# COVID-19 Changes

# Sources of Protections

- There are a number of different governmental orders and legislation that impact housing protections during the COVID-19 pandemic
  - Oregon HB 4213
  - CDC Eviction Moratorium
- These protections are subject to change, keep updated by following legislation, checking [www.oregonlawhelp.org](http://www.oregonlawhelp.org) or contacting legal counsel

# HB 4213

- Moratorium on residential evictions
- Prohibition on terminating tenancy for not paying current month rent - expires 9/30/2020
- Until 9/30/2020, Landlord is prohibited from:
  - Giving a termination notice for non-payment of rent
  - Charging late fees
  - Giving a termination notice for no-cause
  - Starting an eviction case based on nonpayment or termination without cause
  - Report non-payment to credit bureau
- After 10/1/2020 – there is a grace period of 6 months for tenant to pay any rent owing from April-September 2020
  - Landlord can issue a notice after 10/1/2020 regarding any outstanding balance and tenant must respond that they plan to use the 6 month grace period or pay the balance – within 14 days

# CDC Eviction Moratorium

- Exists --- but currently a little unclear how it will work
- Oregon law is *currently* more protective for tenants and should be relied upon (through September 30, 2020)
- If no new legislation or executive action in Oregon before October 1, 2020 --- tenant should consult with an attorney or review updated legal information on OregonLawHelp.org
  - Fact sheet available:  
<https://www.allianceforhousingjustice.org/understand-cdc-eviction-moratorium>



# Finding and Securing Housing

Applications,  
Move-In, Rental  
Agreements,  
Deposits

# Applying

- Landlords can consider:
  - References from past landlords
  - Credit history & income
  - Criminal records or active charges for:
    - Person, sex, financial theft/fraud, or drug crimes
    - Any other crime if the conduct would adversely affect the property of landlord or tenant, or health, safety or right to peaceful enjoyment of residents or landlord
- Prior court eviction cases
  - Unless tenant won, the case was dismissed because tenant satisfied all terms of a stipulated agreement or the case is more than five years old
  - New process for expunging eviction records (began 1/1/2020) – court has forms

# Applying: Application fees

Landlord can charge a fee (\$\$\$), but . . . there are rules!

- Can only charge actual cost of screening tenant's application and application must be screened
- Have a written screening criteria and give applicants a copy
- Explain the landlord's method for evaluating applications (first come, first serve?)
- Tell the applicant what rentals are available and if there are other applications submitted
- Tell the applicant the rent and deposits required

# Denying an Application

[ORS 90.304]

- If applicant paid a fee:
  - Landlord must deny in writing and list reason for the denial
  - Must be provided “promptly”

- If applicant did not pay a fee:
  - Applicant can make a written request for a written denial listing the reason

## Process to appeal the denial

- Some landlords have a formal process (i.e. Epic Property Management)
- Applicant can provide additional information
  - *A letter of explanation or request a reasonable accommodation if reason for denial is related to a disability {Note that these can also be provided with the initial application}*

# Rental Agreement



- Read it! Keep a copy of it.
  - Ask questions, get clarifications in writing.
  - Understand the full costs:
    - What utilities are included? Are there fees?
  - Landlord required to give tenant a copy when you sign
  - Landlord can charge if tenant needs a copy later
- Oral agreement counts
- A rental agreement cannot reduce the rights of the tenant granted by the Oregon Residential Landlord Tenant Act

# Deposits

**Security deposit**: to pay for damage tenant and/or guests cause, beyond normal wear and tear

Refundable: tenant gets it back!

Within 31 days of moving out

Except for:

Damage beyond normal wear and tear

Defaults in lease

Landlord must send accounting itemizing withheld amounts to forwarding address

Cannot automatically be used for last month's rent

**Deposit to hold**: to secure the execution of a rental agreement

- Should be refunded or applied to first month's rent
- Landlord gets to keep if tenant does not end up moving into unit because of tenant's fault
- Tenant gets it back if can't move in because of landlord fault

# Fees and late charges

- Landlord can only charge a fee that is in your lease and allowed by law.
  - Law is very particular about what fees can be charged: things like parking violation, trash, bad check
  - Usually, only \$50 and only after the second violation
  - \$250 for tampering with a smoke detector (including taking out the batteries)
- Tenant is responsible for paying for damages they cause
- Can receive notice of termination if you don't pay the fee

# Rights and Responsibilities During a Tenancy

Rent, Rent  
Increase,  
Landlord  
Access, Repairs



# Paying the rent



- Landlord can specify where and how (cash/check/money order)
- Most rent is due on the 1<sup>st</sup>
  - Late fee after five days late
- Landlord should give a receipt

# Rent Increases

ORS 90.323

- Rent cannot increase during a fixed term lease
  - Rent can increase when a new lease is signed
- In month-to-month tenancy, rent cannot increase during the first year
  - After the first year, landlord must give 90 days written notice of the increase and cannot increase the rent by more than 7% + CPI per year (in 2020 this is set at 9.9%). UNLESS . . .
    - First certificate of occupancy was issued less than 15 years ago or the unit is subsidized housing

# Right of entry

- Landlord must give 24 hours' actual notice before entering the rented unit
  - Actual notice can be a phone call, text message, email, etc.
- Except:
  - Serving notices
  - Emergency
  - Maintenance requests (within 7 days)



# Rules...

- Should be in the written rental agreement
- Smoking: Landlord can prohibit smoking (of anything!)
- Landlord can serve a notice of termination for breaking the rules

# Landlord must provide:

- Effective weather protection (roof, doors, exterior walls)
- Plumbing
- Hot & cold running water
- Heat
- Electric wiring and lights
- Working keys, locks, window latches



# Landlord must provide:

- Smoke detectors (and carbon monoxide detectors if a source of CO exists)
- Common areas free from garbage, rodents, vermin & safe for normal and expected use
- If provided, landlord must maintain:
  - Appliances, air conditioning, elevators
  - Garbage containers and service

# Tenant must...

- Use house as intended
- Keep the unit clean
  - No vermin, garbage, rodents
- Keep all plumbing as clean as possible
- Test and replace smoke detector batteries *every six months*
- Do not disturb other tenants
- Abide by lease (maintain landscaping if required, etc.)



# Repairs (maintenance requests)

- Tenant should (but is not required to) make requests in writing and keep a copy
- Landlord can't retaliate for repair requests





# If landlord doesn't fix it...

- If repair will be less than \$300,
  - Tenant can notify landlord **in writing** that tenant will fix it if repair is not made by a certain date
  - Hire someone to do the work
  - Give landlord copy of invoice
  - Deduct cost from next month's rent

OR...

- Give notice that if landlord doesn't fix it within 14 days, tenant will move in 30 days
  - Must move if repair not made

# Disaster!

## (Failure of an essential service)



- Tenant should GIVE THE LANDLORD NOTICE IN WRITING and document the problem

# For failure of essential service

Tenant can:

1. Deduct the cost of replacement services from rent (such as eating at a restaurant or buying bottled water)
2. Get compensation for the damage caused
3. Obtain substitute housing and seek reimbursement from the landlord
4. Terminate the tenancy with 48 hours' notice (move)

# If repairs are not made...

- Tenant should talk to an attorney about options before withholding any rent

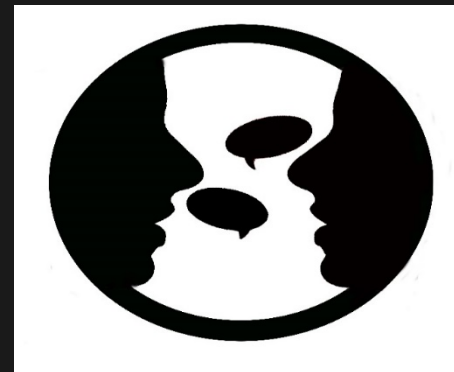
# Neighbor problems

Usually not the landlord's problem!

- Unless neighbor is also a tenant and there is a safety risk or harassment based on a protected class
- If there is a safety risk, discrimination or harassment, tenant should notify the landlord in writing and keep a copy of complaint

Community Solutions of Central Oregon

○ 541-383-0187



# Other problems...



- New room mates
  - Landlord must approve
  - Must pay application fee & pass background check
- Guests
  - Rules on how long a guest can stay should be in the rental agreement
- Common rules
  - Making noise at night; Disturbing other tenants; Smoking; Parking – should be in the rental agreement
- Pets
  - Landlord can: prohibit pets, require additional pet deposit, restrict by weight/breed/type
  - BUT ---- an animal needed to help with a disability is not a pet!

# Help after domestic violence

- Changing locks
  - Remove abuser from lease
  - Break lease or move with 14 days' notice
- 
- Saving Grace: 541-389-7021
  - Legal Aid: 541-385-6944

# Moving Out

Tenant Choice,  
Termination  
Notices, Court  
Eviction



# Moving out... tenant choice



- Tenant must give landlord at least 30 days' notice in writing
  - Tenant must move at end of 30 days
- Tenant must pay rent until the date the tenancy terminates
- Tenant should clean and **take pictures** of the unit at move-out
- Tenant should give landlord forwarding address and forward mail through USPS

# Breaking a lease

- If tenant moves out fix 'without cause' during the fixed term tenancy, the landlord can charge actual damages (cost of renting to new tenant)
  - Or, if your lease allows, they can charge a lease break fee of 1.5 times the monthly rent

# Landlord wants the tenant to leave...

- For Cause – Any rental agreement
  - 30 day for cause notice (14 days to fix)
  - 10 day notice (for repeat violation)
  - 24 hour for cause notice (serious crimes, threats)
  - 72 hour notice (for nonpayment of rent)
  - 48 hour notice for drug use (only for sober living facilities)
- Requirements:
  - Move out date & time (must be clear, specific and give enough time)
  - Sufficiently state cause
  - Give information about how to cure
  - Delivery requirements

# No Cause Termination

- 30 day no cause notice – only during first year of month-to-month tenancy

If Landlord lives with the tenant, can give a 60 day no cause notice after the first year

# Landlord Cause: After First Year of Tenancy

- Landlord can give 90 day notice if:
  - Landlord intends to demolish or use for other than residential purposes
  - Landlord intends to repair and will be unsafe
  - Landlord will use as primary residence for a family member
  - Landlord has sold and new owner plans to move in
- Landlord has to pay the tenant one month's rent unless Landlord has four or fewer units!

# Fixed Term

- If Landlord doesn't give notice, most fixed term tenancies roll over into month to month
- Landlord can refuse to renew a fixed term tenancy in the first year (but must give written notice 30 days before the tenancy terminates)
- After the first year, Landlord cannot refuse to renew except . . .
  - If the tenant committed three or more violations of the rental agreement within the preceding 12 months and landlord gave three written warnings at the time of the violations, landlord can refuse to renew fixed term tenancy
  - If the landlord terminates based on this three strikes rule – they must give 90 days notice (notice must specify reason for termination and supporting facts)



Landlord cannot change locks or have sheriff remove the tenant  
before going to court!

# Court Eviction Process

1. Landlord serves a notice of termination
2. Tenant doesn't leave by the deadline.
3. Landlord files an eviction (FED) case in court
4. Tenant is served a summons and complaint
5. Tenant must attend "first appearance"
  - At first appearance, parties have the chance to mediate an agreement, or
  - Tenant must file an answer
6. Eviction trial – determines who gets possession of the rental
  - Tenant wins and gets to stay, or
  - Landlord wins and tenant must move



# Documentation, Legal Advice and Court

- **Retaliation** is against the law . . . but it can be hard to prove  
Tenant should document any complaints to landlord or verbal agreements
- Landlord Tenant Act is very technical ---- both tenants and landlords frequently make mistakes – get **legal advice**
  - **Legal advice** might be free ---- prevailing parties in landlord tenant cases often receive attorney fees
    - Oregon State Bar Lawyer Referral Service: 1-800-452-7636
    - Legal Aid Services of Oregon: 541-385-6944
- Court decisions and court mediated agreements are final --- get **legal advice** before going to court

# Brief Overview of Fair Housing Law

# Fair Housing Act Basics

- What are we talking about when we say “Fair Housing”?
  - Federal, State and Local Laws that protect housing consumers based on their membership in a protected class.
  - The Federal Fair Housing Act provides the baseline of protections afforded.
  - State and Local Laws provide additional protections.
  - Laws that promote equal access to housing.

# Protected Classes

## ○ Federal Fair Housing Act

- Race
- Color
- National Origin
- Religion
- Gender
- Familial Status
- Disability

## ○ Oregon

- Marital Status
- Source of Income (including housing assistance)
- Sexual Orientation/Gender Identity
- Domestic Violence Survivors

# Discrimination

- Landlord can't treat tenants or applicants differently because they are part of a protected class
  - Exception --- Renting a room: owner (who lives in the house & shares common areas with you) can discriminate based on gender

# Fair housing & Disability

- When it comes to disability – housing provider may not discriminate against a disabled housing consumer and a housing provider must consider requests for reasonable accommodations
  - Reasonable Accommodations: request for an exception or change to a standard policy, practice or procedure
  - Reasonable Modification
- Reasonable Accommodations must be considered, but may be denied
  - Undue burden, fundamental alteration of business or direct threat to person or property.

# What is a reasonable accommodation request?

- A reasonable accommodation = Changes to lease, rules or policies to accommodate the tenant's disability
  - Best to make the request in writing
- Landlord must respond, can ask for verification of disability & necessity of accommodation

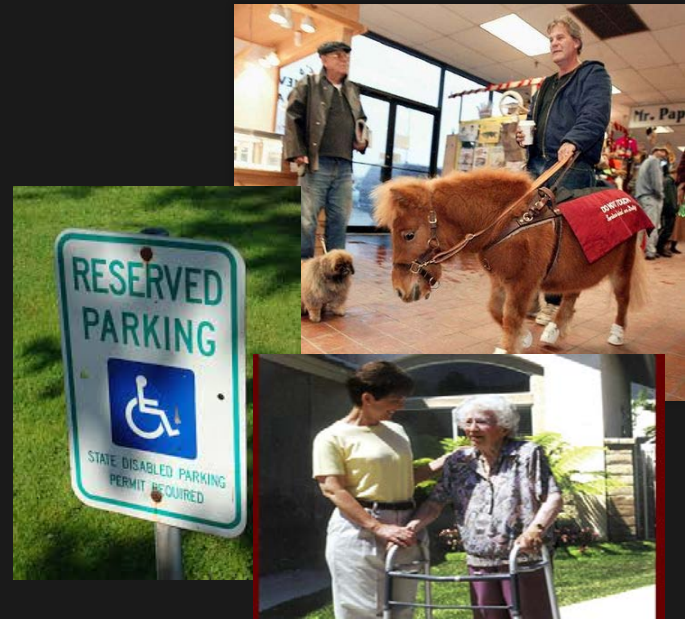
Disability Rights Oregon: 503-243-2081

Fair Housing Council of Oregon: 503-223-8197

Legal Aid: 541-385-6944

# Common Reasonable accommodations

- Reserved Parking Spots
- Assistance Animals
- Live In Caregivers
- Special Arrangements (late rent)
- More time to fix a rule violation





# Harassment & Fair Housing Act

- Tenant on Tenant/Neighbor on Neighbor Harassment
  - If harassment is based on tenant's status in a protected class: housing provider must investigate and take action to remedy
- Employees of Housing Provider
  - Housing provider is responsible for harassment by employee based on protected class (including sexual harassment)

# Questions?

## Legal Aid Services of Oregon

42 NW Greeley Ave, Bend, OR 97703

Intake line: 541-385-6944

Monday, Tuesday, Thursday: 10 am to noon  
and 1 pm to 4 pm