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IT'S MARCH 2022 (and BEYOND) . . . NOW WHAT?
Status Update Re: Oregon COVID-Era Tenant Protections

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I. NONPAYMENT OF RENT NOTICES AS OF MARCH 1, 2022

A. Grace Period Expired February 28, 2022 (Emergency Period ended June 30, 2021)

Tenants had through February 28, 2022, to repay all sums that accrued between April 1, 2020, and June 30, 2021 (the emergency period). As of March 1, 2022, termination notices may now include all unpaid sums—even those that accrued during the emergency period.

B. 10-Day Nonpayment Notices

While 10-Day Nonpayment Notices were supposed to revert back to 72-Hour Notices on March 1, 2022, SB 891 (passed in December 2021) extended the 10-Day Nonpayment Notice requirement to October 1, 2022.

1. When to Use a 10-Day Nonpayment Notice

10-Day Nonpayment Notices are appropriate only when *all* of the following apply:

a) There is no pending rental assistance application (SB 891); and

b) The property is not subject to the federal CARES Act (Property is subject to CARES if participating in a federal housing program, it's subject to a Fannie/Freddie loan, or there is even a single Section 8 voucher holder); and

c) The landlord only wants to demand rent; and

d) There are no partial payment issues.

2. Technical Elements of 10-Day Nonpayment Notice

a) Cannot be served until the 8th day of the rental period

b) No longer has to include the following grace period disclosure: "Eviction for nonpayment of rent, charges and fees that accrued on and after April 1, 2020, and before June 30, 2021, is not allowed before February 28, 2022. Information regarding tenant resources is available at www.211info.org."

c) The SB 891 Rental Assistance Notice must still be delivered along with any nonpayment termination notice:

THIS IS AN IMPORTANT NOTICE ABOUT YOUR RIGHTS TO PROTECTION AGAINST EVICTION FOR NONPAYMENT.

For information in Spanish, Korean, Russian, Vietnamese or Chinese, go to the Judicial Department website at www.courts.oregon.gov.

If you have applied for emergency rental assistance, then you may be protected from eviction for nonpayment of rent as long as your application is pending with the rental assistance provider. To qualify for this protection, no later than June 30, 2022, you must give your landlord documentation of your rental assistance application at or before your first appearance in court. The protection from eviction for nonpayment of rent applies until your application is no longer pending, but no later than September 30, 2022. Do not miss an eviction court date, even if you believe your eviction should not be moving forward.

Documentation of your application for rental assistance can be provided by any reasonable method, including by sending a copy or photograph of the documentation to your landlord by electronic mail or text message. "Documentation" includes electronic mail, a screenshot or other written or electronic documentation verifying the submission of an application for emergency rental assistance.

To apply for rental assistance (before June 30, 2022), go to www.oregonrentalassistance.org, dial 211 or go to www.211info.org.

To find free legal assistance for low-income Oregonians, go to www.oregonlawhelp.org.

C. 30-Day Nonpayment Notices

A 30-Day Nonpayment Notice is going to be the best option in many instances.

1. When to Use a 30-Day Nonpayment Notice

30-Day Nonpayment Notices are appropriate if:

a) There is no pending rental assistance application (SB 891); and

b) The property is subject to the federal CARES Act (Property is subject to CARES if participating in a federal housing program, it's subject to a Fannie/Freddie loan, or there is even a single Section 8 voucher holder); or

c) The landlord wants to demand non-rent items (utilities, late fees) in addition to rent; or

d) The notice will include the emergency period nonpayment balance.

2. Technical Elements of 30-Day Nonpayment Notice

a) Cannot be served until the 5th day of the rental period if current month's rent is demanded; otherwise, can be served any day of the month.

b) No longer has to have the following grace period disclosure: "Eviction for nonpayment of rent, charges and fees that accrued on and after April 1, 2020, and before June 30, 2021, is not allowed before February 28, 2022. Information regarding tenant resources is available at www.211info.org."

c) The SB 891 Rental Assistance Notice must still be delivered along with any nonpayment termination notice (see above for language).
d) A 30-Day Nonpayment Notice is really just a 30-Day for Cause (aka 14/30) for monetary defaults. Payment deadline must be at least 14 days after service (17 if mailed), cure date at least 30 days after service (33 days if mailed). (Day 0 is the day of service; day 1 is the day *after* service. Example: A notice mailed on March 8 should have a cure date of March 25 and a termination date of April 10). Pro tip: If the cure date falls on a Sunday or other non-mail day, use the next mail date instead.

e) HUD properties require a specific HUD-mandated notice.

D. Don't Forget: SB 891 Still in Effect through June 30, 2022 (and Beyond)

1. No Nonpayment Actions While Rental Assistance Application Pending

When a tenant provides rental assistance documentation (proof they've applied for emergency rental assistance), the landlord must pause all nonpayment-related actions until the earlier of two dates:

a) The date the rental assistance application is no longer pending; or

b) October 1, 2022

Note: There is an argument that local ordinances (Multnomah and Washington counties) providing for a 90 day pause still apply if the SB 891 pause ends up being less than 90 days.

2. One-Time Pause

If a tenant's SB 891 pause has ended (because the rental assistance application is no longer ger pending), they are not entitled to another pause, even if they apply for rental assistance again. Subsequent post-pause nonpayment notices do not need to include the Rental Assistance Notice.

E. Rental assistance applications made after June 30, 2022 are not subject to SB 891.

While the technical requirements of SB 891 are in place until October 1, 2022 when SB 891 is repealed by its terms, any rental assistance applications received after June 30 ***do not*** require the landlord to pause the eviction action.

KEEP IN MIND the technical requirements include continuing to provide the disclosure stated above. Continue to do so unless and until you hear otherwise!

II. APPLICATION OF PAYMENTS

Although it was effectively modified during the grace period, the pre-COVID application of payments statute (ORS 90.220) is now back in in full effect.

A. How to Apply Tenant Payments

Regardless of what the rental agreement says, "a landlord shall apply tenant payments in the following order:"

1. Outstanding rent from prior rental periods;

2. The current month's rent;

3. Utility/service charges;

4. Late fees;

5. Finally, to all other fees or charges owed by the renter (e.g., damages).

III. TENANT SCREENING AND REPORTING RESTRICTIONS

A. Prohibition on Credit Reporting of Emergency Period Debt

A landlord may not report to any consumer credit reporting agency (Experian, TransUnion, etc.) a tenant's nonpayment of rent, charges or fees that accrued on or after April 1, 2020, and before July 1, 2021.

B. Prohibited Screening Considerations re Prior FEDs

When considering applicants, landlords cannot consider FED actions in which the landlord prevailed, if the FEDs are based on "claims" that arose on or after April 1, 2020, and before March 1, 2022.

Read broadly, this means landlords must disregard any eviction judgment based on any termination notice issued from April 1, 2020-February 28, 2022—not just nonpayment evictions.

C. Prohibited Screening Considerations re: Unpaid Rent

When evaluating an applicant, a landlord cannot consider an applicant's unpaid rent that accrued from April 1, 2020, through February 28, 2022 (including rent reflected in judgments or referrals of debt to a collection agency).

The above provisions remain in effect until January 2, 2028.

IV. DEBT COLLECTION

A. Civil Lawsuits

Landlords may file a small claims case (if debt is less than $10,000) or civil action to collect all debt, including debt that accrued during the emergency period.

B. Collection Agencies

1. Collections, Yes

Landlords often ask, "Can I send the tenant's debt to collections?" "Collections" is a very broad term that means different things to different people. Landlords can send collection/demand letters and can engage a third-party debt collection agency to attempt to collect the debt.

2. Credit Reporting, No

Remember, landlords are prohibited from reporting emergency period rent debt to credit reporting agencies (see above). An argument exists that therefore, a third-party collection agency acting as the landlord's agent cannot report the debt to a credit reporting agency either. While this is a grey area, and could involve complex aspects of the law of agency, a cautious landlord may wish to instruct a third-party debt collector not to report the debt to a credit reporting agency.

C. Statute of Limitations

1. One Year Statute of Limitations

Claims arising under the Residential Landlord & Tenant Act or a rental agreement are subject to a one-year statute of limitations, measured from the date the claim arose.

2. Tolling Period Ended March 1, 2022

SB 282 tolled the statute of limitations for emergency period debt (April 1, 2020 – June 30, 2021) until March 1, 2022. "Tolling" means that the statute of limitations is halted. Beginning March 1, 2022, the one-year statute of limitations for emergency period debt began running.

Statute of limitations issues can be complex, so landlords should get legal advice regarding their specific situation. Once the SOL runs out, the debt is extinguished.

V. UNAUTHORIZED OCCUPANTS

A. Can Terminate Tenancy for Unauthorized Occupant

The "safe harbor" for unauthorized occupants has ended. Beginning March 1, 2022, landlords can terminate a tenancy for cause if a tenant is allowing an unauthorized person to occupy the premises in excess of the time limits specified in the rental agreement.

B. Beware of Evidentiary Challenges and Waiver

1. Unauthorized occupant cases are notoriously hard to prove.

2. Landlords waive their ability to terminate for an unauthorized occupant by accepting rent during three monthly rental periods with knowledge of the violation. Preserve the issue with a statutory "warning" notice, aka a non-waiver notice.

Oregon Senate Bill 291

Passed in June 2021, SB 291 took effect on January 1, 2022. SB 291 effects several changes to Oregon's application and screening process.

I. Screening Charges

A. Limitations

1. **Amount.** Cannot be greater than the landlord's average actual cost of screening applicants or the customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening.

2. Actual Costs. Actual costs may include the cost of using a tenant screening company or a consumer credit reporting agency and the reasonable value of any time spent by the landlord or the landlord's agents in otherwise obtaining information on applicants.

3. Only One Screening Charge Per 60-Day Period. This is not new law, just a reminder.

B. Disclosures Required Prior to Assessing Screening Charge

Oregon law has long provided that prior to accepting payment for a screening charge, the landlord must adopt written screening criteria, provide them to the applicant, notify applicants of the amount of the screening fee, and provide written notice of the landlord's typical screening process, including whether they will use a screening company, credit reports, public records, criminal records, and whether they will contact employers, landlords, or other references.

SB 291 adds four new written disclosures that must be provided prior to accepting a screening charge.

1. Appeal Rights. If a right to appeal a negative determination exists, the landlord must disclose this right.

2. Non-Discrimination Policy. Landlords must disclose "[a]ny non-discrimination policy as required by federal, state or local law plus any non-discrimination policy of the landlord, including that a landlord may not discriminate against an applicant because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of the applicant."

N*ote: Other protected classes under federal, state, and some local laws include disability, gender identity, ethnicity, citizenship, age (if over 18, with exception for valid 55+ communities), occupation, and status as victim of domestic violence, sexual assault or stalking.*

3. Amounts of Rent/Deposits. Landlords must disclose the amount of rent and deposits, subject to change by agreement before entering into rental agreement.

4. Renter's Insurance. Landlords must disclose whether they require renter's liability insurance and the amount of insurance required if they do. *This is somewhat duplicative of existing law, which requires the landlord to disclose these factors, as well as legally required exceptions to the requirement, prior to entering into a new tenancy.*

C. Damages. Violations result in damages of twice the screening charge plus $150. (This isn't new).

II. New Criminal Screening Requirements

A. Limitation on Type of Criminal Record. A Landlord may consider only:

1. Convictions

2. Pending Charges. Can be considered if the applicant is not presently participating in a diversion, conditional discharge or deferral of judgment program on the charges.

3. Currently Illegal in Oregon. A landlord can only consider pending charges/convictions for crimes that are currently illegal in Oregon.

4. Types of Crimes. This is not new law, just a reminder. Landlords can only consider:

a) Drug-related crimes (excluding use/possession of marijuana)
b) Person crimes
c) Sex offenses
d) Crimes involving financial fraud, including identity theft and forgery
e) Any other crime of underlying conduct is of a nature that would adversely affect property of the landlord or a tenant, or the health, safety, or right to peaceful enjoyment of the premises by residents, the landlord, and the landlord's agents.

B. Prerequisites to Denial on Basis of Criminal History

There are two requirements for denial of an applicant based on criminal history:

1. Supplemental Evidence. The landlord must provide an opportunity for the applicant to submit supplemental evidence to explain, justify or negate the relevance of potentially negative information.

2. Individualized Assessment. The landlord must conduct an individualized assessment of the applicant, including any supplemental evidence, taking into consideration:

a. The nature and severity of the incidents that would lead to a denial;

b. The number and type of incidents;

c. The time that has elapsed since the date the incidents occurred; and

d. The age of the individual at the time the incidents occurred.

C. Damages. Violations result in damages of $100. (This isn't new).

III. New Requirements for All Denials

A. 14-Day Written Notice of Denial. Landlords must provide applicants with a written statement of one or more reasons for the denial under the Landlord's screening or admissions criteria within 14 days of the denial.

B. Statement of Reasons for Denial. The written notice of denial must contain:

1. Names/Addresses of Screening Companies/Reporting Agencies

2. Supplemental Evidence. Statement of reasons for denial must include any supplemental evidence that the landlord considered.

3. Explanation of Inadequacy of Supplemental Evidence. Statement of reasons for denial must include an explanation of the reasons that the supplemental evidence did not adequately compensate for the factors that informed the landlord's decision to reject the application.

4. Disclosure of Appeal Right. If one exists, it must be disclosed in the notice of denial.

*Note: Properties in the **City of Portland** are also subject to FAIR's screening requirements, including 1) written notice of acceptance or denial within 14 days; 2) landlord must conduct an individualized assessment of any factor leading to denial, not just denial on basis of criminal history (unless landlord has adopted Low Barrier Criteria); and 3) the notice of denial must include an explanation of the reasons that any Supplemental Evidence did not adequately compensate for the factors that informed the landlord's decision to deny.*

C. Damages. Violations result in damages of $100. (This isn't new).

Oregon Senate Bill 1536; Portable Cooling Devices

I. INTRODUCTION

The 2022 legislative session has concluded. When compared to the sessions of the past two years—and the flurry of new laws landlords have had thrown at them arising from the same—this session seemed less noteworthy. However, the legislature did pass SB 1536, a bipartisan piece of legislation amending the Oregon Residential Landlord and Tenant Act. This law tackles restrictions on the use of "portable cooling devices" from May to September of each year and imposes new requirements that housing provide cooling devices in new construction. As you can imagine, this law was reactive to the unprecedented heat wave the Pacific Northwest experienced in the summer of 2021.

II. Definitions

Prior to SB 1536, the ORLTA had little discussion about air conditioners within the same, unless it was provided for by the landlord (at which time the landlord would have an obligation to maintain the same). SB 1536 defines "portable cooling devices" as "air conditioners and evaporative coolers, including devices mounted in a window or that are designed to sit on the floor." Notably, this does not include devices whose installation or use would require alteration to the dwelling unit.

III. Restrictions on Landlords/Standards for Tenants

Senate Bill 1536 prohibits landlords from restricting tenants from installing or using portable cooling devices in most circumstances.
There are several standards to be found within Oregon SB 1536 to which tenants will need to adhere:

- First, the installation and use of the portable cooling device cannot violate building codes, damage the premises, or make it uninhabitable, or require electrical power that cannot be accommodated by service to the building or dwelling unit.
- Landlords can also require that the portable cooling device be installed or removed by the landlord or their agent, be inspected and serviced by the landlord or their agent, and finally,
- Landlords can require that it be removed from October 1 through April 30.

There are additional restrictions allowed for portable cooling devices installed in the window. The window-installed device cannot:

- impede necessary egress from the dwelling,
- interfere with the ability to lock a window, or
- damage the housing unit.
- The window-installed unit must be installed so that it is not at risk of falling.

IV. Liability Questions

In the event the resident installs the portable cooling device (as opposed to the landlord), the landlord is ***immune*** from liability for claims for damages, injury, or death caused by a device installed by the renter. In essence, the landlord will be able to maintain some oversight over the device—and install it themselves as detailed above, should they desire—but doing so removes this liability exception.

V. New Constructions

Finally, with respect to new construction, cooling devices are now required. In buildings where permits are issued on or after April 1, 2024, the dwelling units must have cooling facilities that provide cooling in at least one room, not including a bathroom, which conform to applicable law at the time of installation and are maintained in good working order. This can include central AC or a portable air conditioning device provided by the landlord.

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A native of New Ulm, Minnesota, Mr. Kraus continues to root for Minnesota sports teams, specifically the Minnesota Vikings, in his free time. They continue to disappoint with alarming frequency. He is an avid sports fan, enjoys exercise, and spending time with his fiancée Vicky, and his dog, Thea.

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