

New Laws for 2012: 2011 Senate Bill 293

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The Oregon legislature recently passed Senate Bill 293, which contains the latest amendments to the ORLTA. A second Senate Bill (SB 294) also amends the ORLTA, but focuses on Manufactured Home Parks and is beyond the scope of today's lecture.

Since we're talking about the aftermath of the 2009 amendments to the ORLTA, the following text simply provides highlights of the new laws. So as to simplify these highlights, they appear in the same order as the statutes they're amending.

When reading the following text, please note the following: The statute numbers and statute titles appear in bold at the beginning of each statutory section. If you see any bold language after the title, then that bold language is **new** statutory language. If you see any language appearing in brackets and italics (i.e., *[brackets and italics]*), then that language was deleted from the statutes.

Disclosures

ORS 90.220(4) Terms and conditions of rental agreement; smoking policy; rent obligation and payment:

The following language was deleted from ORS 90.220: *[Before the landlord enters into a new rental agreement with an applicant or accepts any payment from an applicant, the landlord shall provide the applicant with a written list of all deposits, fees and rent that are charged by the landlord. The landlord and applicant may agree to amend the written list before entering into the rental agreement. The list may be included in the written rental agreement. The written rental agreement must, at a minimum, include a description of the fees that the landlord may charge.]*

Note that ORS 90.295(3)(d) was simultaneously modified so as to create new disclosure requirements for landlords. (See below.)

ORS 90.300(3) Security deposits; prepaid rent: The following language was added to ORS 90.300: "A written rental agreement, if any, must list a security deposit paid by a tenant or required by a landlord."

Screening Charge Disclosures / Penalties

ORS 90.295(3)(d) Applicant screening charge; limitations; notice upon denial of tenancy; refund; remedies: The following language was added to ORS 90.295: "Gives written notice to the applicant of the amount of rent the landlord will charge and the deposits the landlord will require, subject to change in the rent or deposits by agreement of the landlord and the tenant before entering into a rental agreement." This amendment helps make the written disclosure requirements (regarding amounts the tenant will have to pay for rent, fees, deposits, etc.) more functional in the real world setting. For example, the listed deposit amount could be changed based upon the tenant's credit history, and the terms could be modified by mutual consent before the rental agreement is executed.

ORS 90.295(8) Applicant screening charge; limitations; notice upon denial of tenancy; refund; remedies: The following language amends ORS 90.295: "The applicant may recover from the landlord **twice** the amount of any applicant screening charge paid, plus *[\$100]* **\$150**, if: (a) The landlord fails to comply with this section and does not within a reasonable time accept the applicant's application for a rental agreement; or (b) The landlord

does not conduct a screening of the applicant for any reason and fails to refund an applicant screening charge to the applicant within a reasonable time.”

Deposit to Secure Execution of a Rental Agreement

ORS 90.297(2)(a) Prohibition on charging deposit or fee to enter rental agreement; exceptions; deposit allowed for securing execution of rental agreement; remedy: The following language amends ORS 90.297 “(2) A landlord may charge a deposit, however designated, to an applicant for the purpose of securing the execution of a rental agreement, after approving the applicant’s application but prior to entering into a rental agreement. The landlord must give the applicant a written statement describing: **(a) The amount of rent and the fees the landlord will charge and the deposits the landlord will require; and (b) The terms of the agreement to execute a rental agreement and the conditions for refunding or retaining the deposit.**”

Retaliation

ORS 90.385(4)(c) Retaliatory conduct by landlord prohibited; tenant remedies and defenses; action for possession in certain cases: This statute now includes some additional language clarifying the exception to the retaliation statute for rent defaults: A landlord is allowed to bring an action for possession, without it being retaliatory, if “(4)(c) (c) The tenant [is] was in default in rent **at the time of the service of the notice upon which the action is based;**”

Abandoned Property (\$1,000.00)

ORS 90.425(10)(b)(B) Disposition of personal property abandoned by tenant; notice; sale; limitation on landlord liability; tax cancellation; storage agreements; hazardous property: The abandonment statute now allows the landlord to destroy or otherwise dispose of the personal property (after complying with ORS 90.425) if the landlord determines that the reasonable current fair market value of the personal property is [*\$500.00*] **\$1,000.00** or less or so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale.

Victims of Domestic Violence

ORS 90.449(1) Landlord discrimination against victim; exception; tenant defenses and remedies: The following bolded language was added to this section: “(1) A landlord may not terminate or fail to renew a tenancy, **serve a notice to terminate a tenancy, bring or threaten to bring an action for possession, increase rent, decrease services** or refuse to enter into a rental agreement: (a) Because a tenant or applicant is, or has been, a victim of domestic violence, sexual assault or stalking. (b) Because of a violation of the rental agreement or a provision of this chapter, if the violation consists of an incident of domestic violence, sexual assault or stalking committed against the tenant or applicant. (c) Because of criminal activity relating to domestic violence, sexual assault or stalking in which the tenant or applicant is the victim, or of any police or emergency response related to domestic violence, sexual assault or stalking in which the tenant or applicant is the victim.”

ORS 90.453 Termination by tenant who is victim of domestic violence, sexual assault or stalking; verification statement. This statute was overhauled as follows:

90.453. (1) As used in this section:

- (a) **“Immediate family member” means, with regard to a tenant who is a victim of domestic violence, sexual assault or stalking, any of the following who is not a perpetrator of the domestic violence, sexual assault or stalking against the tenant:**
 - (A) **An adult person related by blood, adoption, marriage or domestic partnership, as**

defined in ORS 106.310, or as defined or described in similar law in another jurisdiction;
(B) A cohabitant in an intimate relationship;
(C) An unmarried parent of a joint child; or
(D) A child, grandchild, foster child, ward or guardian of the victim or of anyone listed in subparagraph (A), (B) or (C) of this paragraph.

[(a)] **(b)** “Qualified third party” means a person that has had individual contact with the tenant and is a law enforcement officer, attorney or licensed health professional or is a victim’s advocate at a victim services provider.

[(b)] **(c)** “Verification” means:

(A) A copy of a valid order of protection issued by a court pursuant to ORS 30.866, 107.095 (1) (c), 107.716, 107.718 or 163.738 or any other federal, state, local or tribal court order that restrains a person from contact with the tenant;

(B) A copy of a federal agency or state, local or tribal police report regarding an act of domestic violence, sexual assault or stalking against the tenant;

(C) A copy of a conviction of any person for an act of domestic violence, sexual assault or stalking against the tenant; or

(D) A statement substantially in the form set forth in subsection (3) of this section.

[(c)] **(d)** “Victim services provider” means:

(A) A nonprofit agency or program receiving moneys administered by the Department of Human Services or the Department of Justice that offers safety planning, counseling, support or advocacy to victims of domestic violence, sexual assault or stalking; or

(B) A prosecution-based victim assistance program or unit.

(2)(a) If a tenant gives a landlord at least 14 days’ written notice, and the notice so requests, the landlord shall release the tenant **and any immediate family member of the tenant** from the rental agreement.

(b) The notice given by the tenant must specify the release date **and must list the names of any immediate family members to be released in addition to the tenant.**

(c) The notice must be accompanied by verification that the tenant:

(A) Is protected by a valid order of protection; or

(B) Has been the victim of domestic violence, sexual assault or stalking within the 90 days preceding the date of the notice. For purposes of this subparagraph, any time the perpetrator was incarcerated or residing more than 100 miles from the victim’s home does not count as part of the 90-day period.

(3) A verification statement must be signed by the tenant and the qualified third party and be in substantially the following form:

QUALIFIED THIRD PARTY VERIFICATION

Name of qualified third party

Name of tenant

PART 1. STATEMENT BY TENANT

I, _____(Name of tenant), do hereby state as follows:

(A) I or a minor member of my household have been a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS 90.100.

(B) The most recent incident(s) that I rely on in support of this statement occurred on the following date(s): _____.

_____ The time since the most recent incident took place is less than 90 days; or

_____ The time since the most recent incident took place is less than 90 days if periods when the perpetrator was incarcerated or was living more than 100 miles from my home are not counted. The perpetrator was incarcerated from ____ to ____ . The perpetrator lived more than 100 miles from my home from ____ to ____.

(C) I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

(Signature of tenant)

Date: _____

PART 2. STATEMENT BY QUALIFIED THIRD PARTY

I, (Name of qualified third party), do hereby verify as follows:

(A) I am a law enforcement officer, attorney or licensed health professional or a victim's advocate with a victims services provider, as defined in ORS 90.453.

(B) My name, business address and business telephone are as follows: _____

(C) The person who signed the statement above has informed me that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, based on incidents that occurred on the dates listed above.

(D) I reasonably believe the statement of the person above that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS 90.100. I understand that the person who made the statement may use this document as a basis for gaining a release from the rental agreement with the person's landlord.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

(Signature of qualified third party
making this statement)

Date: _____

ORS 90.456 Other tenants remaining in dwelling unit following tenant termination or exclusion due to domestic violence, sexual assault or stalking. This statute has been amended as follows: "90.456. Notwithstanding the release of a **tenant who is a** victim of domestic violence, sexual assault or stalking, **and any immediate family members of that tenant,** from a rental agreement under ORS 90.453 or the exclusion of a perpetrator of domestic violence, sexual assault or stalking as provided in ORS 90.459 or 105.128, if there are any remaining tenants of the dwelling unit, the tenancy shall continue for those tenants. Any fee, security deposit or prepaid rent paid by the victim, perpetrator or other tenants shall be applied, accounted for or refunded by the landlord following termination of the tenancy and delivery of possession by the remaining tenants as provided in ORS 90.300 and 90.302."

Security Deposits / Foreclosures

ORS 90.367 Application of security deposit or prepaid rent after notice of foreclosure: This statute has been overhauled as follows:

90.367. (1) A tenant who receives actual notice that the property that is the subject of the tenant's rental agreement with a landlord is in foreclosure may apply the tenant's security deposit or prepaid rent to the tenant's obligation to the landlord. The tenant must notify the landlord in writing that the tenant intends to do so. **The giving of the notice provided by this subsection by the tenant does not constitute a termination of the tenancy.**

(2) A landlord may not terminate the tenancy of a tenant:

(a) Because the tenant has applied the security deposit or prepaid rent as allowed under this section.

(b) For nonpayment of rent during the month in which the tenant applies the security deposit or prepaid rent pursuant to this section unless an unpaid balance remains due after applying all payments, including the security deposit or prepaid rent, to the rent.

(3) If the tenant has not provided the written notice applying the security deposit or prepaid rent as required under subsection (1) of this section before the landlord gives a termination notice for nonpayment of rent, the tenant must provide the written notice within the notice period provided by ORS 90.392 or 90.394. If the tenant does not provide the written notice, the landlord may terminate the tenancy based upon ORS 90.392 or 90.394.

(4) Application of the security deposit or prepaid rent to an obligation owed to the landlord does not constitute a partial payment under ORS 90.417.

(5) If the landlord provides written evidence from a lender or trustee that the property is no longer in foreclosure, the landlord may require the tenant to restore the security deposit or prepaid rent to the amount required prior to the tenant's application of the security deposit or prepaid rent. The landlord shall allow the tenant at least two months to restore the security deposit or prepaid rent.

ORS 90.417(5) Duty to pay rent; effect of acceptance of partial rent: This statute now states, "Application of a tenant's security deposit or prepaid rent to an obligation owed to a landlord in foreclosure under ORS 90.367 does not constitute a partial payment of rent."

Carbon Monoxide Detectors

ORS 90.100(5), (6) Definitions: The following language was added to the definitions statute: (5) "Carbon monoxide alarm" has the meaning given that term in ORS 105.836. (6) "Carbon monoxide source" has the meaning given that term in ORS 105.836."

ORS 90.316 Carbon monoxide alarm: This statute was overhauled as follows:

90.316. [(1) As used in this section, "carbon monoxide alarm" and "carbon monoxide source" have the meanings given those terms in ORS 105.836.]

[(2)] (1) Unless a dwelling unit contains one or more properly functioning carbon monoxide alarms installed in compliance with State Fire Marshal rules and with any applicable requirements of the state building code when a tenant takes possession of the dwelling unit, a landlord may not enter into a rental agreement creating a new tenancy in [a dwelling unit that] **the dwelling unit if the dwelling unit:**

(a) Contains a carbon monoxide source [or that]; or

(b) Is located within a structure that contains a carbon monoxide source [unless, at the time the tenant takes possession of the dwelling unit, the dwelling unit contains one or more properly functioning carbon monoxide alarms installed in compliance with State Fire Marshal

rules and with any applicable requirements of the state building code.] **and the dwelling unit is connected to the room in which the carbon monoxide source is located by a door, ductwork or a ventilation shaft.**

(2) The landlord shall provide a new tenant with alarm testing instructions as described in ORS 90.317.

(3) If a carbon monoxide alarm is battery operated or has a battery-operated backup system, the landlord shall supply working batteries for the alarm at the beginning of a new tenancy.

ORS 90.317 Repair or replacement of carbon monoxide alarm: This statute was overhauled as follows:

90.317. (1) [If a rental dwelling unit that is subject to ORS chapter 90 has a carbon monoxide source or is located within a structure having a carbon monoxide source, the] **A** landlord shall ensure that [the] a dwelling unit has one or more carbon monoxide alarms installed in compliance with State Fire Marshal rules and the state building code **if the dwelling unit:**

(a) Contains a carbon monoxide source; or

(b) Is located within a structure that contains a carbon monoxide source and the dwelling unit is connected to the room in which the carbon monoxide source is located by a door, ductwork or a ventilation shaft.

(2) The landlord shall provide the tenant of the dwelling unit with a written notice containing instructions for testing of the alarms. The landlord shall provide the written notice to the tenant no later than at the time that the tenant first takes possession of the premises.

[(2)] (3) If the landlord receives written notice from the tenant of a deficiency in a carbon monoxide alarm, other than dead batteries, the landlord shall repair or replace the alarm.

(4) Supplying and maintaining a carbon monoxide alarm required under this section is a habitable condition requirement under ORS 90.320.

RV Parks

ORS 90.230(1)(a) Rental agreements for occupancy of recreational vehicle in park; remedy for noncompliance; exception: The following language was added to ORS 90.230: “If applicable, that the tenancy may be terminated by the landlord under ORS 90.427 without cause upon 30 **or 60** days’ written notice for a month-to-month tenancy or upon 10 days’ written notice for a week-to-week tenancy.” This amendment will clarify when 60 Day No Cause Notices are permitted with regard to manufactured home and RV parks.

New Cases

Retaliation

Natural Lease Termination is not retaliatory: *Pendergrass v. Fagan*, 218 Or App 533 (2008).

Terminations are not retaliatory if done for a legitimate reason. *Elk Creek Management Co. v. Gilbert*, 244 Or App 382 (2011).

Posting and Mailing

A landlord can’t waive reciprocal mail and attachment notice because that notice also implicates a tenant’s right to communicate with the landlord. Where rental agreement allows for mail and attachment notice, right to notice

is reciprocal. Mailing address that landlord designates for receipt of mail and attachment service must be an address at which landlord will receive notice that is sent by first class mail. *American Property Management Corp. v. Nikaia*, 230 Or App 321 (2009).

Amending FED Summons/Complaint

If the landlord amends the FED Summons and Complaint, re-serves the defendants, and still provides eight days from the filing of the amended pleadings to the first appearance, the filing and service of the amended pleadings are legal. *Balboa Apartments and Silverstrand Investments, LLC vs. Lisa Patrick*, Oregon Supreme Court (2011).

Defaults

The court cannot enter a default judgment against the tenant/defendant after the tenant/defendant filed its answer, even if the answer was filed too late. *Hart v. Hill*, 230 Or. App. 612 (2009).

Employment

Occupancy is conditional upon employment if occupancy is for purpose other than mere residence, regardless of whether employer derives benefit from occupancy by employee. Payment of rent by employee whose occupancy is conditional upon employment does not create landlord-tenant relationship. *Montgomery v. Howard Johnson Inn, Gresham*, 228 Or App 315 (2009).