

Oregon Landlord-Tenant Law

GreenspoonMarder

Marcel Gesmundo (503) 878-8037 Marcel.Gesmundo@gmlaw.com www.gmlaw.com

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 8th 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 it 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 5th. 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 1st when he emailed her on February 5th 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!

GreenspoonMarder

Marcel Gesmundo

Senior Counsel

1211 SW 5th Ave, Suite 2850

Portland, OR 97204

Direct: : (503) 878-8037

Marcel.Gesmundo@gmlaw.com

www.gmlaw.com

