

Landlord - Tenant Law in Oregon

Rental Agreements

Deposits

Getting Repairs Done

Evictions



Legal Aid Services of Oregon
Community Education Series
2007



IMPORTANT!

This booklet is for general educational use only. ***It is not a substitute for the advice of an attorney.*** If you have a specific legal question, you should contact an attorney.

The information in this booklet is accurate as of September, 2006. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies. There is a one year statute of limitations on all claims brought under the Oregon Residential Landlord and Tenant Act. To sue your landlord for claims under this Act, you must file those claims in court within one year after you have been damaged.

CONTENTS

Note: In some of the answer sections of this booklet you will see references to ORS, which stands for Oregon Revised Statutes. Chapter 90 of the Oregon Revised Statutes focuses on landlord-tenant law. You can view an online version of Chapter 90 at www.leg.state.or.us/ors/090.html. You do not need to read these or any other laws to use this booklet.

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LAWS AND ORGANIZATIONS THAT HELP CLIENTS

TIME LIMIT WARNING

Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other - shorter - time limits that apply in other cases. Ask a lawyer about the time limits that could apply in your situation.

Residential Landlord and Tenant Act

Q1. Does the law protect tenants?

Yes. A state law, called the Oregon Residential Landlord and Tenant Act, sets rules that landlords should follow. These rules apply if you rent a home, apartment, or room to sleep in, with only a few exceptions.

The rules listed in this booklet *do not* apply to the following exceptions: transient occupancy in a hotel or motel; living in a place as part of your employment in or around the rental building, such as a resident manager or janitor; for a buyer, living in a place within 90 days before the closing of a sale, or for a seller, living in a place within 90 days after the closing of a sale; living on land rented primarily for the purpose of farming; living in certain institutions; living in a place as a squatter; living in a place on vacation for less than 45 days if you have another home; and living in certain parts of a structure operated for the benefit of a fraternal or social organization, of which you are a member. A squatter is a person who moved in without permission from the landlord or tenant.

ORS 90.110

Q2. What if I haven't discussed the terms of my tenancy with my landlord?

In order to be considered a tenant, you must

have, at a minimum, entered into a rental agreement with your landlord concerning the terms and conditions of your use and occupancy of a dwelling, which must include agreement on your right to occupy a dwelling unit to the exclusion of others (ORS 90.100(41)). Your landlord is the owner, lessor, or sublessor of the dwelling unit that you're renting or a person with the authority to act on behalf of your landlord (ORS 90.100(20)).

In the absence of an agreement on the following matters between you and your landlord, your rent is considered to be "fair rental value," your tenancy is considered to be month-to-month, and your rent for a particular month is payable at your dwelling unit at the beginning of the month or later in that month. You and your landlord have all the rights and responsibilities provided for by the law, except where an agreement is required in order for the right or responsibility to go into effect.

ORS 90.220

Q3. Do the landlord and tenant laws protect people who are living in a hotel or motel?

Yes, unless the renter has a "transient occupancy" in the hotel or motel. There is a "transient occupancy" when: 1) rent is charged per day and is not collected more than six days in advance; *and* 2) maid and linen service is provided at least once every two days; *and* 3) the person has not lived there more than 30 days. All other people living in a hotel or motel are covered by the Landlord and Tenant Act.

ORS 90.100(43)

Q4. What are my rights if I rent space for a mobile home/manufactured dwelling or houseboat?

Tenants who are renting space in a manufactured dwelling (also known as a “mobile home”) park or in a floating home moorage, but who live in and own (or are buying) a mobile or floating home, have more rights than other tenants. For example, prior to eviction, the landlord must give you a 30-day written notice listing the problems. If you correct the problems listed in the notice during the 30 days, you may stay. If you violate the same section within 6 months the landlord can give you a 20-day notice without giving you a chance to correct the problems. Other time periods may apply if the landlord’s notice is based on your failure to keep your home in good repair. If your landlord is closing the mobile home/manufactured dwelling park, the landlord must give 365 days’ notice in writing or locate another reasonable space for the same rent, pay for moving your home, and give 180 days’ notice. For more information, contact a law office.

Tenants who live in and own (or are buying) a mobile home or floating home but who rent space that is not part of a manufactured dwelling park or floating home moorage may be evicted with a 180-day notice without cause.

There are different rules for RVs (recreational vehicles). Contact a lawyer if you have questions.

ORS 90.630

Discrimination Against Tenants

Q5. Can a landlord evict me, refuse to rent to me, or treat me differently because of my sex, race, color, religion, marital status, national origin, physical handicap, mental handicap, because I have a guide dog, or because of my source of income?

Not legally. If you think that the landlord is

treating you differently because you fit into one of these categories, contact a lawyer (see the Resource Section at the back of this booklet), the Fair Housing Council of Oregon (1-800-424-3247 or (503) 223-8197, in Portland), or the Department of Housing and Urban Development (HUD - 1-800-877-0246).

There is one exception to the general rule stated above: a landlord can discriminate based on sex when the landlord rents a space in the landlord’s own residence and all occupants share some common space within the residence (42 USC §§ 3601-3617).

It is not legal to refuse to rent to a blind or deaf person because the person has an animal needed to help this person. Landlords cannot charge additional rent or fees for a hearing or guide dog.

State law also prohibits discrimination because of a tenant's source of income (for example, welfare). But, state law does not clearly say that a landlord is prohibited from discriminating against people with Section 8 certificates or vouchers.

ORS 659A.421

Q6. Does a landlord have to make a unit accessible if I have a disability?

If you live in federally-subsidized housing (see Question 11), the landlord has to permit and pay for changes to the unit in order to reasonably accommodate your disability, unless doing so would impose an undue financial burden on the landlord.

Examples of reasonable accommodation include assigning you a parking space near the door, installing a ramp, or changing a rule.

Private landlords, as a general rule, must permit you to make changes to the unit to reasonably accommodate your disability, but are not required to pay.

Contact the Fair Housing Counsel at the numbers listed in Question 5 if you have questions about reasonable accommodations in rental units.

Q7. Can a landlord refuse to rent to me or treat me differently because I have children?

A landlord may not refuse to rent to you, evict you, or treat you differently because you have children. There are exceptions for certain federally subsidized projects, for projects where all of the tenants are over 62, for projects where 80% of the tenants are over 55, and when the landlord rents space in the landlord's own residence if all occupants share some common space within the residence. In all other cases, if your landlord is discriminating against you because you have children, you should contact a lawyer (see Resources Section at the back of this booklet), or the organizations listed under Question 5, above.

Q8. Can a landlord rent to me if I am younger than 18?

Yes. A state statute says that, if you are at least 16 years old or if you are pregnant with a child who will live with you, you can enter into rental agreements and be held responsible for paying rent and utilities. Minors who are younger than 16 or who are not pregnant can also sign a binding rental agreement under some circumstances. Under state law, landlords are not required to rent to people who are under age 21 or over age 45. But some city ordinances make it illegal to discriminate against a person because of his or her age.

Q9. Can a landlord refuse to rent to me because of my sexual orientation or my gender identity?

City ordinances in Ashland and Eugene prohibit discrimination in housing based on sexual orientation. Ordinances in Beaverton, Bend, Benton County, Lake Oswego, Portland / Multnomah County, and Salem prohibit discrimination in housing based on sexual orientation and/or gender identity. If you live in one of these areas and feel you have been discriminated against based on your sexual orientation or gender identity, contact a lawyer or the Fair Housing Council of Oregon (1-800-424-3247 or

(503) 223-8197, Portland).

State law does not prohibit discrimination based on sexual orientation. But no landlord may refuse to rent to you, increase your rent, evict you, or otherwise treat you differently because you have HIV disease or because they think you carry the virus or are likely to acquire it. This would be discrimination based upon disability. Some courts may find that private landlords cannot discriminate against two men or two women because this would be sex-based discrimination. Courts are more likely to find that discrimination on the basis of sexual orientation is prohibited in federally subsidized housing, because government benefits cannot be denied without a good reason.

Q10. Can a landlord refuse to rent to me because a former landlord tried to evict me from another place?

Sometimes the landlord of a new place that you want to rent finds out during an application screening that one of your old landlords had tried to evict you in court. If you won the earlier eviction case, it is not legal for the new landlord to refuse to rent you now solely because of the earlier eviction case. If the new landlord refuses to rent to you for this reason, you can sue the landlord for actual damages or \$200, whichever is more. (See Time Limit Warning at the beginning of this booklet section.) See Question 21 for more information about applicant screening.

ORS 90.390

Federally Subsidized Housing

Q11. What rights do I have if I live in federally subsidized housing?

If you live in a Housing Authority project or have some other kind of federally-subsidized housing, such as a Section 8 voucher, the rules described in this booklet protect you. You have additional rights set out in your rental agreement,

federal law, federal regulations, and court orders. There have been many changes recently in federally-subsidized housing. It is important to get updated legal information if you are having a problem in federal housing.

Tenants in federally subsidized housing generally pay 30% to 35% of their income as rent or pay the amount set aside in the welfare grant to pay for housing. Tenants may be required to pay a minimum rent of \$25 a month.

Tenants have a right to use their federal housing just like they would use a private home. Tenants may have guests. Landlords have no right to intrude on a tenant's privacy just because the tenant is in federal housing.

Q12. How do I get into federally subsidized housing?

Some subsidized housing is owned by the housing authority; some subsidized housing is owned by private landlords. You should call both the housing authority and the resident manager living in the buildings owned by private landlords to get on the waiting list. Low-income families and individuals can be eligible. Eligibility varies from project to project.

If the housing authority or landlord refuses to put your name on the waiting list, you may ask for a hearing or a conference. If you think that the landlord does not have a waiting list, that the landlord does not want to rent to you for any reason, or if you have questions about federally subsidized housing, contact a lawyer (see the Resources Section in the back of this booklet).

There are also loans from Rural Housing (formerly, FmHA) or the United States Department of Housing and Urban Development (HUD) that enable low-income and disabled persons to buy homes without a large down payment and with low monthly payments. Call Rural Housing or HUD. The numbers are listed in most local phone books. Information is also available online at www.hud.gov.

Self-Help for Tenants

Q13. What is a tenants' union?

It is a group of two or more tenants who have come together informally or formally to discuss tenant problems, to sign petitions, to complain about the need for repairs, to request other changes, to complain about the management, or to take other action for tenants. See Question 31 for information about retaliation against a tenants' union.

Q14. How can small claims court help me?

You can use small claims court when your landlord does not return a deposit after you moved, unlawfully destroys your things, does not make repairs required by law, enters your home without the required notice, unlawfully shuts off your utilities, or changes the locks, or otherwise violates the rules set out in this booklet. The landlord may file counterclaims for unpaid rent or damages. It is a good idea to talk with a lawyer before filing a case against a landlord.

You cannot ask for more than \$5,000 in small claims court. The small claims court cannot order the landlord to make repairs or to return possessions; the court only has power to award money for damages. Before you can sue in small claims court you must write a letter to your landlord asking your landlord to pay you within ten days. See Sample Letters 1 and 9. When you go to court, you must prove your case. Take photographs, witnesses, and copies of any letters you have sent to or received from your landlord. There is no appeal from small claims court. Note: When a tenant sues a landlord for violations of the Oregon Residential Landlord and Tenant Act, the lawsuit must be filed (started) within one year of the incident. Claims based on other laws might have different deadlines.

ORS 46.405

MOVING IN: RENTAL AGREEMENTS

Q15. What should I do before I rent a place?

Make sure that:

- ▶ The place meets your needs;
- ▶ You can afford the rent;
- ▶ You clearly understand who will pay for electricity, heat, water, and garbage pick-up; and
- ▶ You inspect the place and note in writing any problems.

You can use the "Inventory and Condition Report" on Page 34 when you inspect the unit. Ask the landlord to be there. Ask the landlord to sign your notes, or send a copy of your notes later. Take pictures and have friends look at any problems so you can later prove in court that the problem was there before you moved into the unit.

If you find out after you move in that a building inspector told the landlord not to rent the place until repairs were made, but the repairs were not made, contact a law office.

Q16. What is a rental agreement?

It is all oral (spoken) or written agreements between a landlord and tenant, and all valid rules and regulations, that give the terms and conditions concerning the tenant's use of the rental unit. This typically includes the amount of rent, the date rent is due, where to pay rent, and any other rules that apply to using the rental unit.

ORS 90.100(32)

Having a written rental agreement that is signed by both you and your landlord can help you to prove in court that your landlord agreed to certain provisions that the law wouldn't otherwise provide for automatically. If you decide to enter into a written rental agreement, your landlord is required to provide

you with a copy of the written rental agreement when you sign it and to make a copy available later at a cost of not more than 25 cents per page (or the actual copying costs) (ORS 90.305). (See Question 18 for more information on written agreements for a fixed-term tenancy.)

Q17. Should I keep receipts, copies of letters I send to my landlord, and other documentation of agreements that I made with my landlord?

Yes. You should get and keep written documentation whenever it would be to your advantage to be able to prove at some later date that the actions documented took place. If you want to be able to prove that you paid rent on time, you should get a receipt to show complete and timely payment of rent (a landlord is required to give you a receipt for any payment if you request one (ORS 90.140)). If you want to be able to prove that you requested repairs, you should correspond with your landlord in writing, keep copies of your letters. If you want to show that you sent something to your landlord on a certain date, you should get a certificate of mailing from the post office (different than certified mail). Keeping a signed copy of your rental agreement will help you to prove in court what it is that you and your landlord agreed to.

Q18. What is a lease?

Most people use the word "lease" to describe a written rental agreement that is for a set period of time, such as a year, at a fixed rate of rent. But some leases permit an increase of rent after a 30-day notice. Most leases permit termination of the lease before the ending date in some situations. The lease will state how the tenant and landlord can end the lease early.

If you have a long-term lease at a fixed rate,

the landlord cannot raise the rent during the fixed term. But, with this type of lease, you also have to pay for the entire term if you move out early unless the landlord rents to another tenant. Whenever a tenant terminates a lease early, the landlord has an obligation to try to rent the unit to someone else; this is known as the obligation to “mitigate damages.”

Q19. Can the rental agreement waive or take away a tenant's rights under Oregon's Residential Landlord-Tenant Act?

No. The landlord and tenant cannot agree to waive or take away the rights given to tenants under Oregon law.

ORS 90.245

APPLICATION FEES, DEPOSITS, RENT

**TIME
LIMIT
WARNING**

Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other - shorter - time limits that apply in other cases. Ask a lawyer about the time limits that could apply in your situation.

Q20. What is the difference between a fee and a security deposit?

A "fee" is a **nonrefundable** payment, usually for expenses that a landlord expects, such as the cost of cleaning the unit after you move. The landlord cannot charge a fee more than once, *except* a landlord can charge fees each time that the tenant fails to do something required by the rental agreement. For example, a tenant can be charged a late fee each time the rent is paid late. These kinds of fees, like the late fee, must be described in the rental agreement.

ORS 90.100(13)

A "**Security deposit**" is any **refundable** payment that encourages to tenant to live up to the rental agreement.

ORS 90.100(35)

If the tenant follows rules stated in the rental agreement and does not damage the rental unit beyond ordinary wear and tear, then the landlord must refund the security deposit within 31 days after the rental agreement ends.

ORS 90.300

A landlord may charge both a fee and a security deposit. After the rental agreement ends, the landlord must first use the fee that the tenant paid to pay for any costs before the landlord can use the security deposit to pay these costs.

ORS 90.302(4)

EXAMPLE: When the tenant moved in, she paid a \$100 cleaning fee and a \$200 security deposit. When the tenant moved out, it cost the landlord \$200 to clean the rental unit. To cover these costs, the landlord must use \$100 from the cleaning fee and \$100 from the security deposit that the tenant paid. The landlord can't use only the security deposit to pay costs if the tenant also paid a fee, and the landlord must use the fee first.

See Question 22-24 for more information about security deposits.

Q21. When I find a place that I want to rent, can the landlord make me pay in order to apply?

You cannot be charged a fee just to have your name placed on a waiting list, but you can be charged other fees.

a) **An applicant screening charge** -- is a payment that covers the costs of screening tenants, such as reference checks and credit reports. These charges can be collected only if there is a unit that is available for rent (or that will be soon), unless you agree otherwise in writing. The landlord must give you a receipt for the payment.

You must be given a **written notice** before you pay an applicant screening charge. This notice must tell you:

- ▶ the amount of the charge; **and**
- ▶ the factors the landlord will consider in deciding on your application; **and**
- ▶ the process the landlord will use in screening, including whether the landlord uses a tenant screening company; **and**
- ▶ that you have the right to send a statement if you think the information the landlord gets is wrong.

The landlord must also give you an estimate of the number of other current applicants who are ahead of you in applying for units of the size you want. This information can help you decide whether it's worth applying.

If a landlord does not rent to you because of any information the landlord gets from a tenant screening service or credit reporting agency, the landlord must tell you this. The landlord must also tell you the name and address of the screening service or reporting agency. These rules apply even if you did not pay an applicant screening charge. (In addition, if the landlord charges you an application fee and you are denied, or if you request in writing

the reason for denial, the landlord must promptly provide you with one or more reasons for your denial (ORS 90.304).)

If the landlord doesn't do the screening after you've paid an applicant screening charge (because, for example, the unit is rented to someone else first), you must be refunded the money within a reasonable time.

If the landlord makes you pay an applicant screening charge without following these rules, you can sue the landlord for the amount of the applicant screening charge plus \$100. See Question 14 for information about small claims court.

ORS 90.295

b) **A deposit to hold the unit** -- is a fee paid before you enter into a rental agreement so that the landlord will hold the rental unit (not rent it to others). There must be a written agreement that describes when the deposit must be refunded to the tenant and when it can be kept by the landlord.

If the tenant and landlord then enter into the rental agreement, the landlord must give back the deposit - either by giving the tenant a refund or by crediting the tenant's account. If the **tenant** doesn't take the necessary steps to enter into the rental agreement, the landlord can keep the deposit. If the **landlord** doesn't take the necessary steps to enter into the rental agreement, the deposit must be refunded within four days. If the landlord charges a deposit without following these rules, the tenant can sue the landlord for the amount of the deposit plus \$100. (See Time Limit Warning at the beginning of this booklet section.)

ORS 90.297

Q22. When I rent a place, can a landlord make me pay a deposit?

Yes. A landlord can make you pay a security deposit. (But if you rent week-to-week, you cannot be charged this deposit (ORS 90.100(46)).) You can try to work out the amount of these deposits with the

landlord. Some landlords will let you make several payments on the deposit instead of paying it all at once.

Once you have moved in, the landlord cannot, without your agreement, charge a new deposit or increase the deposit you have already paid for the first year after you move in. After the first year, a landlord can charge or increase the deposit but must give you at least 3 months to pay it.

If you paid a deposit, the landlord must return the deposit when you move out as long as you haven't damaged the place beyond ordinary wear and tear and have given the landlord the required notice, paid the rent, returned the keys, and followed other rules stated in your rental agreement. When you pay the deposit, ask for a receipt that shows you paid a "security deposit." Check the receipt, rental advertisement, canceled check and other writing you may have to see whether the deposit was clearly labeled as a "security deposit" rather than a "fee."

ORS 90.300

When you first rent a place, the landlord may also require you to pay rent in advance, sometimes called a "last month's rent deposit" (ORS 90.100(22)). See Question 44 for more information.

Q23. Can I get interest payments on a security deposit?

State law does not require landlords to pay interest, but you may ask if your landlord will agree to do this.

Q24. What if my landlord does not return my refundable security deposit?

Within 31 days after you move and return your keys, the landlord must either return all of your deposit or tell you in writing why all of it is not being refunded. If the landlord does not return the right amount of your money or does not give you a written explanation, you may sue, asking for twice

the amount wrongfully withheld.

ORS 90.300

If the landlord refunds only part of the deposit, you can cash the check and still sue the landlord if you think you are owed more money. But you should be ready to defend yourself against a possible counterclaim by the landlord for property damages. See Question 14 for information about small claims court; see Time Limit Warning at the beginning of this booklet section. If the landlord has written "full settlement" or "accord and satisfaction" on the back of the check, you should see a lawyer before you cash the check.

Read Questions 41 through 46 for information on what to do to improve your chances of getting your deposit back when you move out. (See Sample Letter 9.)

Q25. What happens if the place I am renting gets a new landlord?

Sometimes a landlord sells a building that is being rented out. Both tenants and new landlords must follow the terms of the original rental agreement. The new landlord must return any deposits when the tenants move, even if the new landlord did not get the deposit money from the old landlord. The new landlord must also make repairs and follow the rules set out in this booklet.

Q26. Can my landlord raise my rent after I move in?

Unless you have a lease that fixes the amount of rent for a specific term, rent may be increased with a 30 day written notice in a month-to-month tenancy and a 7 day written notice in a week-to-week tenancy (ORS 90.220). If you want to move rather than pay the new rent, you can give a notice (30 days - if you rent month-to-month; 10 days - if you rent week-to-week) to end the tenancy and move when the new rent goes into effect (ORS 90.497). See Question 41 for information on how to give a notice. Also, if you feel the landlord raised your rent to retaliate against you, see Question 31.

Q27. Can a landlord charge me late fees for late rent payments?

Yes, if the written rental agreement says that late fees can be charged. But the landlord may not charge a late fee if you pay the rent by 12 midnight on the fourth day of the rental period. (This is midnight of the fourth day of the month if the rent is due on the 1st day of the month; a rental agreement cannot make rent for a particular month due any earlier than the first day of *that* month).

There are three different kinds of late fees. The rental agreement must state the type and amount of late fee and when it can be charged. The landlord can change the kind of late fee or the amount that is charged by sending the tenant a 30-day notice in advance.

(1) **Per rental period late fee:** a reasonable flat amount charged one time for the month the rent is late. ("Reasonable" means an amount that is within the range of fees charged by landlords in that rental market.)

(2) **Per day late fee:** a daily fee that cannot be more than 6% of the reasonable flat monthly late fee described in (1) above.

(3) **A five-day period late fee:** a fee that is 5% of the rent, charged once for each five-day period the rent is late.

The per day and every 5 day late fees do not continue to accrue after the end of the month in a month-to-month tenancy. The landlord can charge you simple interest though, if you don't pay your late fee at the time that it is imposed.

A tenant who fails to pay a late fee cannot be evicted on a nonpayment of rent notice. A tenant who receives a 72-hour or 144-hour notice for nonpayment of rent can keep from being evicted by paying only the rent and not the late fee during the notice period. A landlord cannot deduct the late fee from this rent payment and claim that rent is owing. (Tenants who haven't paid late fees *can* be evicted on

a 30-day notice, even if all *rent* has been paid. See Question 50, For-Cause notice.)

ORS 90.260

Q28. Can a landlord charge me utility or service fees?

If a landlord is being billed directly for utility services to your rental unit or to a common area, the landlord can charge you for these services, if the written rental agreement allows for this. Examples of utilities or services are: electricity, natural or liquid propane gas, water, heat, air conditioning, cable television, sewer service, and garbage collection. For video subscription services, such as cable TV or internet access, a landlord can charge up to 10% over the landlord's cost for these services, as long as the total cost is not more than the tenant would have to pay if the tenant got the service directly. (This rule applies to tenants who entered into rental agreements after October 23, 1999.) If the rental agreement doesn't say how the amount charged to the tenant was figured out, the tenant can get a copy of the bill from the landlord before paying the charge.

A tenant who fails to pay a utility or service charge cannot be evicted on a nonpayment of rent notice. A tenant who receives a 72-hour or 144-hour notice for nonpayment of rent can keep from being evicted by paying only the rent and not the utility charge during the notice period. (A landlord cannot deduct the utility fee from this rent payment and claim that rent is owing.) Tenants who haven't paid the utility charge *can* be evicted on a 30-day notice, even if all *rent* has been paid. (See Question 50, For-Cause notice.)

ORS 90.315

Q29. What can I do about utility bills that I don't owe?

Before you move in, if you can't get utility service because a former tenant or the owner was supposed to pay the utility bill, but didn't pay, you can: 1) pay the bill and deduct it from your rent, 2) reach an agreement with the landlord as to how the bill will be paid and get the agreement in writing, or

3) immediately end the tenancy by telling the landlord what happened and explaining that you will not keep the unit; the landlord has 4 days to return prepaid rent and your refundable security deposit. If the rental agreement is terminated and the landlord fails to return money owed to you, you are entitled to twice the amount wrongfully withheld. (See Time Limit Warning at the beginning of this booklet section.)

YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE! (See the Resource Section at the end of this booklet.)

After you move in, if you can't get service because a former tenant or the owner was supposed to pay the utility bill, but didn't pay, or if your utilities are shut off because the landlord was supposed to pay the utility bill and didn't pay, you can: 1) pay the bill and deduct it from your rent, or 2) give the landlord a 72-hour written or verbal notice and, if utility service is not turned back on within the 72 hours, you can move. If the utility service is not restored and you move, the landlord is required to return prepaid rent and refundable

security deposits within 4 days. If the rental agreement is terminated, you can also sue the landlord for compensation for the actual damage that you suffered as a result of not having utilities and if the landlord fails to return money owed to you, you are entitled to twice the amount wrongfully withheld. (See Time Limit Warning at the beginning of this booklet section.) You can also go to court to ask for an order to require the landlord to turn the utilities back on if the landlord had agreed to pay the bill and did not pay. (See Question 48.)

YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE! (See the Resource Section located at the end of this booklet.)

ORS 90.315

If your landlord has caused or attempted to deny you an "essential service," which can include services such as heat and water, you may have additional or different rights. (See Question 34 for details.)

RIGHT OF ENTRY, RETALIATION

<p>TIME LIMIT WARNING</p>	<p>Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other - shorter - time limits that apply in other cases. Ask a lawyer about the time limits that could apply in your situation.</p>
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Q30. Does my landlord have a right to enter the rented space?

Yes, at reasonable times and with reasonable frequency. But the landlord must have a reasonable purpose, such as to inspect the rental unit or to supply necessary or agreed upon services, and must give you a 24 hour verbal or written notice before

entering, with a few exceptions. A landlord does not need to give a 24 hour verbal notice to enter your dwelling or your yard if the landlord is:

- ▶ Posting a legally permissible or required notice on your door (the landlord may enter only your yard for this reason, not your home); or
- ▶ Doing yard work that the written rental

agreement requires the landlord to do (the landlord may only enter your yard for this reason, not your home); or

- ▶ Responding to an emergency at any time, which includes a repair problem that may cause serious damage to the premises if not fixed immediately (the landlord must notify the tenant that the entry was made within 24 hours *after* the entry); or
- ▶ Entering with the tenant’s permission, in the case of a specific entry; or
- ▶ Responding to a tenant’s written request for repairs and either entering during reasonable times or, if the tenant has specified allowable and reasonable times for entry in their written request, entering within those specified times. However, the landlord must initiate the repairs within 7 days of the tenant’s written request in order to enter without giving notice, and may continue to enter without giving notice in order to complete those repairs, as long as the landlord is making a reasonable effort to complete the repairs in a timely manner; or
- ▶ Showing the property to a prospective buyer at reasonable times, but only if both the landlord and tenant have signed a written agreement to allow this that is separate from the rental agreement and that went into effect while the landlord was actively trying to sell the property.
- ▶ The landlord can also enter your property in cases involving a court order, a requirement from a government agency, or your abandonment of the property.

You have the right to deny entry to the landlord for good reasons; you must tell the landlord the reasons before the time the landlord intends to enter. Tenants can be evicted for unreasonably denying entry.

If a landlord enters the property without following these rules, a tenant can sue and ask for damages caused by the entry or one month's rent

(one week's rent for weekly renters), whichever is more. (See Time Limit Warning at the beginning of this booklet section.)

ORS 90.322

Q31. Can a landlord retaliate against me after I complain about the need for repair?

A landlord may not legally retaliate by increasing rent, decreasing services, serving an eviction notice, threatening eviction, or filing an eviction case after a tenant:

1. Has made any good faith complaint to the landlord about the tenancy [about the need for repair or a violation of the rental agreement]; *or*
2. Complains to certain code enforcement agencies; *or*
3. Joins or organizes a tenants' union; *or*
4. Testifies against the landlord in court; *or*
5. Wins in an FED case within the previous six months, unless the win was based on a technicality; *or*
6. Does something or says that the tenant will do something to assert the tenant’s rights under any law.

Tenants may sue for retaliation and may ask for twice the actual damages or up to two months' rent, whichever is more. It is usually a defense to an eviction based on a 30-day notice without cause if you can prove the notice was given in retaliation. But retaliation may not keep you from being evicted if you owed rent when the notice was given, if the code violations were caused by the tenant or guests, if you made repeated or harassing complaints, and when repairs needed for code compliance cannot be made without forcing the tenant to move. Contact a lawyer before using retaliation as a defense or claim because it can be a complicated issue. A landlord is likely to give a non-retaliatory explanation for the notice. (See Time Limit Warning at the beginning of this booklet section.)

ORS 90.385

GETTING REPAIRS DONE

TIME	Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential
LIMIT	Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other - shorter - time limits that apply in other cases.
WARNING	Ask a lawyer about the time limits that could apply in your situation.

Q32. Does the landlord have to make repairs?

Yes. The landlord must keep your place and the common areas in good repair at all times. This means that the unit must not substantially lack the following:

- 1) Effective waterproofing and weather protection;
- 2) A proper and functioning plumbing system
- 3) A water supply, under the control of the tenant, that is capable of producing hot and cold running water, furnished to appropriate fixtures, connected to a proper sewage system, and, to the extent that landlord can control this, maintained so as to be in good working order and to provide safe drinking water
- 4) Adequate heating facilities
- 5) Electrical lighting and wiring
- 6) Smoke detectors installed and working when you move in (but tenants must test the detectors every 6 months, replace batteries when needed, and give the landlord written notice if the detectors are broken);
- 7) Safety from fire hazards;
- 8) Appliances and facilities (air conditioning, ventilating) in working order if they are provided by the landlord;
- 9) Working keys, locks, and window latches;
- 10) No garbage, rodents, or vermin in your place or common areas around the building when you move in or throughout the tenancy;
- 11) Garbage containers and garbage service,

unless you agree otherwise in writing or unless there is a local ordinance that doesn't require this;

- 12) Adequate plumbing, heating, and electrical equipment kept in good working order;
- 13) Walls, floors, ceilings, stairways, and railings in good repair;
- 14) The place must be clean and in good repair when you move in; and
- 15) The areas under the control of the landlord must be safe for normal and expected use.

The landlord and tenant can agree in writing that the tenant will fix certain things if the agreement is not an attempt by the landlord to get away from the duty to repair. The written agreement must state the amount of the payment for repair and it must be a fair amount.

ORS 90.320

Q33. What can I do if my landlord will not repair my place?

Ask your landlord to make repairs. If this does not work, write a letter to your landlord asking for repairs. See Sample Letter 1. Keep a copy of the letter.

If this does not work, call a law office to ask for advice on what to do next, such as calling building inspectors, health inspectors, fire inspectors or neighborhood mediation. In an emergency, like a broken pipe or no heat, call a law office right away.

You can sue a landlord for a court order to

force repairs. If you have given the landlord notice of the need for repair and if the problem was *not* caused by you or someone else (besides the landlord), you may sue the landlord for damages to compensate you for reduced rental value, destroyed property, attorney fees and court costs. You should have a lawyer in order to file this kind of case.

In small claims court you can sue the landlord for money. You cannot get an order for repairs in small claims court. When you sue the landlord for money, be sure to ask for all the money that you think you should get. You may sue for money because the landlord failed to make repairs, or because your landlord damaged or destroyed your clothing or furniture. You may sue for money because your home was worth less each month because of the need for repairs. For example, if you could not use two rooms in a four-room apartment because of a bad leak in the roof, you might say that there was a 50% reduced rental value. (Because you could use half the apartment, you could argue that you should only pay half the rent during that time.) You may also sue for lost work time, medical expenses, higher heat bills, and other expenses caused by the landlord's failure to make repairs. See Question 14; see Time Limit Warning at the beginning of this booklet section.

Q34. What can I do if my landlord fails to provide an “essential service”?

An “essential service” means heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows, and any cooking appliance or refrigerator supplied or required to be supplied by the landlord. An “essential service” also includes any other service that the landlord is required to provide because of habitability requirements (see Question 32) or because of the rental agreement, where failing to do so creates a serious threat to the tenant’s health, safety, or property, or makes the rental unfit to live in (ORS 90.100(10)).

If the landlord fails to provide an “essential service,” and you have provided the landlord with a written notice saying both that the landlord has failed

to supply an essential service and that you may take certain actions as a result of this (See Sample Letter 6), and you have provided the landlord with reasonable access and time to fix the problem, then you have several options:

- ▶ You can get reasonable amounts of the essential service during the time that the landlord is failing to supply the service, and deduct the cost from the rent; **(YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE!)**
- ▶ You can get compensation for the damage caused by the failure to provide an essential service, based on how much less the rental unit was worth at the time of the landlord’s violation;
- ▶ If the failure to supply an essential service makes your rental unit unsafe or unfit to live in, you are not obligated to pay rent for the time period in which the landlord was failing to supply this service. You may also seek compensation from the landlord for the fair cost of comparable housing;
- ▶ If the landlord’s failure to supply the essential service poses an “imminent and serious threat” to your health, safety, or property, then you can give the landlord a written notice that says that you are moving out in 48 hours unless the problem is fixed in that time (See Sample Letter 7); or
- ▶ You may fix the problem yourself, and if you have kept receipts and given proper notice to the landlord (which may also need to be 48 hours or 72 hours in advance), you may be able to demand specific amounts of compensation.
- ▶ You *can't* use this law for certain specific problems such as lead-based paint, radon, asbestos, or the future risk of flooding or earthquakes.

ORS 90.365

Also, it is illegal for a landlord to intentionally diminish an essential service to your rental unit, to seriously attempt to do so, or to seriously threaten unlawfully to do so by causing an interruption of an

essential service. If the landlord does this, you have a right to terminate your rental agreement. Regardless of whether or not you terminate your rental agreement, you also have a right to get a court order requiring the landlord to restore the essential service(s) and you have a right to sue for two months rent or twice the amount of the actual damages caused by the shut off of the essential service, whichever is greater. If you terminate the rental agreement, the landlord is required to give you back all prepaid rent and security deposits.

ORS 90.375

(See Question 29 for more information on situations in which you can't get a utility service.)

Q35. If I am a victim of domestic violence, stalking, or sexual assault, may I have my locks changed?

If you are a victim of domestic violence, sexual assault, or stalking, you may request that your landlord change your locks. You are responsible for the cost of the lock change. You are *not* required to provide evidence that you are a victim of domestic abuse, sexual assault, or stalking. If the landlord fails to act promptly, you may change the locks without the landlord's permission and then give a key to the landlord. If the perpetrator of the domestic violence, sexual assault, or stalking is your co-tenant, you must give your landlord a copy of a restraining order signed by a judge before the landlord can change your locks. A perpetrator who was a co-tenant remains jointly liable with any other tenants for rent or damages to the dwelling unit incurred before the perpetrator was excluded from the dwelling unit.

ORS 90.459

Q36. May I withhold rent if repairs aren't made?

First, follow the steps listed under Question 33, including making a demand for repairs, writing a letter to the landlord, and calling an inspector. If this does not work, it is legal for a tenant to withhold all or part of the rent to force legally required repairs when there is serious need for repairs and the

landlord refuses to make repairs. **YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE!** (See the Resource Section at the end of this booklet.)

If you decide to withhold rent, you should probably withhold less than the full amount of rent. Think about what is a fair amount to withhold because of the need for repairs. **YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE!**

IF YOU WITHHOLD RENT, DO NOT SPEND IT. PAY IT TO YOUR LAWYER'S TRUST ACCOUNT OR OPEN A SEPARATE BANK ACCOUNT. KEEP THE MONEY.

When the landlord sues you for nonpayment, the court can order you to pay the withheld rent into court. If the landlord fails to make repairs and rent becomes due again while you are waiting, pay the withheld rent into the lawyer's trust account or into the separate bank account on the date rent is due and get a receipt.

If you withhold rent, almost all landlords will give you a 72-hour OR 144-hour notice of nonpayment and will file an eviction case against you in court. If the landlord files an eviction case against you, this may appear on your credit record whether you win or lose the case. (You have a right to dispute the accuracy of your credit report.) Also, if the landlord files an eviction case against you, you must be ready to pay the rent into court, to file an answer describing the serious need for repairs, and to then go to court to prove that there were serious problems that the landlord did not fix after receiving notice. **YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE!**

Sometimes tenants lose in court after withholding rent.

If you decide to withhold rent, you should ask a lawyer to send a demand letter like Sample Letter 5. The lawyer may tell you to send one like it yourself. **A TENANT SHOULD NOTIFY THE LANDLORD**

OF THE REASONS FOR WITHHOLDING RENT BEFORE THE LANDLORD FILES THE EVICTION CASE IN COURT.

ORS 90.370

Q37. May I hire a repair person to do the repairs and deduct the costs of repair from the next month's rent?

You should make the demand for repair as described under Question 33. Do not use repair and deduct unless you are advised to do so by a law office.

IT IS USUALLY NOT A GOOD IDEA FOR PEOPLE TO USE THE REPAIR AND DEDUCT SECTION UNLESS YOUR LANDLORD AGREES IN ADVANCE TO LET YOU USE REPAIR AND DEDUCT.

If you decide to repair and deduct, you must follow these rules:

- 1) You must notify the landlord before you have something fixed. How you notify the landlord and how long the landlord has to deal with the problem before you can have it fixed, depends on what's the matter and how serious it is. If the problem poses an immediate and serious threat to your health, safety, or property, you must give the landlord at least 48 hours notice before you get the work done. The notice may be written or oral, followed by a written notice as soon as possible. Sample Letter 3. If the problem is with a cooking or refrigerator appliance provided by the landlord, you must give at least 72 hours written notice of your intent to have the problem fixed. In all other cases, you must give the landlord written notice seven days before you have the work done. Sample Letter 2. Try to call the landlord as soon as possible. Try to get the landlord to agree to make the repair or to agree to your having it done. **As always, keep copies of all letters!**

- 2) The total costs of the repairs must not be more than \$1000 if the lack of the service is a serious threat to the tenant's safety or property and the work is done professionally, or \$500 if the problem is significant but is not a serious threat, or if the work is not done professionally.
- 3) The problem that needs to be repaired must not have been caused by the tenant, family, or guests.
- 4) You must be fixing an "essential service." "Essential service" means heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows, and any cooking appliance or refrigerator supplied by the landlord. "Essential service" is also anything else required under the law or your rental agreement which, if it is not provided, creates a serious threat to the tenant's health, safety, or property or that makes the dwelling unfit to live in.
- 5) The work must be done in a professional manner and at the lowest possible cost. If the person you hired to do repairs causes damage to the property, the landlord may argue that you must pay. The landlord may specify the person you must use to do the repairs.

ORS 90.365

Q38. Are there any risks if I use the repair and deduct section?

Yes. You must follow all the rules listed under Question 36. The landlord might try to evict you for not paying the full rent and might sue you to recover the rent not paid if you do not follow all the rules. If the landlord files an eviction case, the filing may appear on your credit record even if you win the case in court. (You have the right to dispute the accuracy of your credit record.)

Q39. If I call the building inspector, can I be evicted?

Your landlord cannot legally evict you in retaliation for your calling a building inspector. But you may have to go to court to prove that this was the reason for the eviction.

ORS 90.385

The building inspector could force you to move if the unit is very dangerous, but this doesn't happen often. If it does, contact a law office.

Q40. Can my landlord bill me for repairs?

Yes, if you cause damage to the premises that is beyond normal wear and tear.

MOVING OUT

**TIME
LIMIT
WARNING**

Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other - shorter - time limits that apply in other cases.

Ask a lawyer about the time limits that could apply in your situation.

Q41. Do I have to give notice to my landlord before I move?

For all notices that are mailed, tack on an additional 3 days to calculate when the notice will go into effect. (ORS 90.150(3))

If you are renting *month-to-month*, you must notify your landlord in writing 30 days before the day you move. You may serve the notice in person or mail the notice. If the rental agreement allows for posting, you may post and mail 30 days before terminating (33 days if only mailing). (See Sample Letter 8.) You do not need a reason to end the tenancy. Your landlord may agree to accept a shorter notice without penalty to you. Get the agreement in writing.

If you are renting *week-to-week*, you must notify your landlord in writing 10 days (13 days if by mail and not posted) before the day you move.

You may give the notice on any day of the month, not just the first day of the month or on the day that rent is due.

If you have a lease, read the lease carefully to see if the lease requires written notice before you move at the end of the lease term. You may be able to break the lease earlier if the landlord violates the lease terms or the law.

ORS 90.427

Q42. Do I have to pay rent for the full 30 days after I give the landlord notice that I'm leaving?

Yes, even if you move out before the 30 days are up, unless the landlord agrees to your moving early without paying. (Get all agreements in writing.) If you do not pay, the landlord will probably deduct the rent from your deposit and might sue you in small claims court. If you move out early, and don't pay for the full 30 days, the landlord must make reasonable efforts to find a new tenant. This is known as the obligation to "mitigate damages." You do not have to pay rent for any time that a new tenant is living in the unit.

ORS 90.427

Q43. If I am a victim of domestic violence, stalking, or sexual assault, can I terminate my rental agreement more quickly?

Yes. You can terminate your rental agreement with only 14 days written notice to your landlord. Your written notice to terminate your rental agreement must include verification that you have been a victim of domestic violence, sexual assault, or stalking within 90 days of your notice to end your rental agreement. That verification can be in the form of a restraining order signed by a judge, a police report, or a statement signed by a law enforcement officer saying that you have reported abuse within the past 90 days. Once your rental agreement has been terminated, you are not liable for any rent or damages to your rental unit that were incurred after your rental agreement was terminated. Your landlord is also not allowed to charge you a fee solely for terminating your rental agreement when you use this 14-day notice.

ORS 90.453

Q44. If I paid last month's rent when I moved in, will I have to pay any more rent when I give a 30-day notice that I am moving?

If it is clear that you paid a "last month's rent deposit," and not some other kind of deposit or fee, the landlord must use this money for the last month's rent when either you or the landlord gives the other notice to terminate the rental agreement (except if your landlord gives you an eviction notice for non-payment of rent). If your landlord raised your rent after you moved in, the landlord can also make you pay the difference between the last month's rent paid when you moved in and the higher amount of rent after the rent increase.

ORS 90.300

Q45. Can I move out if my rental unit is posted or condemned because of a city, county, or fire code violation?

Yes, if your place has been posted as being unsafe and unlawful to occupy because of code violations that affect health or safety and that you did

not cause. You can move out right away by telling the landlord that you are moving and the reasons for your move. In this situation, the landlord is required to return, within 14 days, all of the security deposit (except for money you owe for unpaid rent and damages), last month's rent, and rent paid for the current month for the days you could not live in the unit. If the landlord knew or should have known about the conditions, you might also be able to sue the landlord. Contact a law office for information about your rights in these cases. See the Time Limit Warning at the beginning of this booklet section.

ORS 90.380

Q46. Should I clean my place when I move out?

Yes. You should remove all of your things, remove any garbage and reasonably clean the unit. It is a good idea to walk through the clean unit with your landlord and ask if the landlord thinks that it is clean enough. Ask the landlord to agree in writing that the rental unit was clean and undamaged when you moved out and that you do not owe for cleaning or damages. You should take pictures, take notes on what you did to clean it and have a witness with you if you think that the landlord will later say that it was left in a mess.

If you do not clean the rental unit, the landlord usually keeps the deposit and may bill you for additional cleaning and repairs.

The law only requires that you leave the place as clean as you found it, minus normal wear and tear. If it was a mess when you moved in - and you can prove it - you should be able to leave it in the same condition and still get your deposit back. But it is a good idea to clean it up so that you will have a better chance of getting your deposit back and so the next renter has a clean place. See Question 24 for information on refunds of deposits.

THE LANDLORD WANTS YOU TO LEAVE; EVICTION

**TIME
LIMIT
WARNING**

Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other - shorter - time limits that apply in other cases. Ask a lawyer about the time limits that could apply in your situation.

Q47. Can my landlord force me to leave the rental unit?

The landlord *must* go to court to force you to leave. The landlord cannot legally change the locks, shut off the utilities, remove your furniture, threaten these actions or take any other action to force you to move without first getting a court order.

There are only three ways that a landlord can get a rented place back legally:

1. The tenant can move and return the keys to the landlord;
2. The tenant can move away, abandoning the unit without telling anyone of plans to come back; or
3. The landlord can go to court and get an order, after a hearing, to have the sheriff force the tenant to move out. Only the sheriff, with a court order, has authority to physically remove you.

Q48. What can I do if I am locked out or my utilities are shut off by my landlord?

The only legal way to force you out of your home is for the landlord to go to court and get an order that requires you to leave. If the landlord locks you out, tell the landlord that it is illegal and ask to be let back into your home. If this doesn't work, and

if you can get in through a window or another door, do so and contact a law office. If the landlord refuses to let you back into your home and you cannot get in on your own, you can call the police. They will sometimes help. They may say that it is a civil dispute and that they will not help you. If so, contact a law office.

If your landlord unlawfully changes the locks, shuts off the power, makes serious threats or attempts to shut off your utilities, or takes other out-of-court action to force you to move, you may file a lawsuit to try to get an order so that you can return to your home. You can also sue for money damages - for an amount up to two months' rent or for twice your actual damages, whichever is more; and for another month's rent or actual damages if the landlord entered your home illegally (for example, to change the locks). This lawsuit can include damages for emotional distress causing loss of sleep, inability to eat, and other interference with your ability to use the rental unit. Note: When a tenant sues a landlord for violations of the Oregon Residential Landlord-Tenant Act, the lawsuit must be filed (started) within one year of the incident. Claims based on other laws might have different deadlines.

ORS 90.375

See Question 29 for information about additional rights that you have if the landlord doesn't pay utility bills that the landlord is supposed to pay.

Q49. What does a landlord have to do to evict me?

The landlord must go to court and get a court order that says you must leave. A landlord must first give you an eviction notice, unless you had an agreement that expired on a certain date. If you do not move by the date listed in the notice, the landlord may take you to court. If your landlord takes you to court, you will be given legal papers, including a summons and complaint telling you when to go to court for first appearance. See Questions 55 and 56 for information on what happens in court.

Q50. What kinds of eviction notices can a landlord give?

Note: If you live in federally-subsidized housing you have additional rights to the ones included in the following rules. See Question 11.

For all notices that are mailed, tack on an additional 3 days to calculate when the notice will go into effect.

ORS 90.150(3)

No-Cause

If you rent month-to-month, your landlord may give you a 30-day notice (33 days if mailed and not posted) to leave without giving a reason. **If you rent week-to-week**, your landlord can give you a 10-day (13 day if mailed and not posted) notice to leave without giving a reason.

But, a landlord cannot retaliate or discriminate, as explained under Questions 5, 7, and 9. If you live in a mobile home park or some kinds of federally subsidized housing, the landlord cannot use a no-cause notice. (See below.)

ORS 90.427

For-Cause

Your landlord may also give you a 30-day notice (33 days if mailed and not posted) for cause with the opportunity to fix the problem. If the

problem in the notice is “ongoing” (an unauthorized roommate, for example), you are entitled to at least 14 days to fix the problem. If the problem is “not ongoing” (a loud party, for example), the landlord may require you to immediately fix the problem.

If you cause the same problem within six months after receiving a 30-day notice for cause with an opportunity to fix the problem, the landlord may give a 10-day notice (13 days if mailed and not posted) without allowing you any time to fix the problem.

If you rent week-to-week, your landlord may give you a 7 day notice for cause, with an opportunity to fix the problem in 4 days. If you cause the same problem within six months, the landlord may give you a 4-day notice without allowing you any time to fix the problem.

ORS 90.392

Pets

If you are keeping a pet in violation of the rental agreement, the landlord may give you a 10-day notice to remove the pet or move (13 days if mailed and not posted).

ORS 90.405

If your pet: 1) inflicts substantial personal injury on someone on the premises, other than you; 2) seriously threatens to inflict substantial personal injury upon someone on the premises, other than you; 3) causes major damage to the unit on more than one occasion, or 4) commits an act that is outrageous in the extreme on, or very near, the premises the landlord may give you a 24-hour notice (add 3 days if mailed and not posted). This notice must tell you that if you remove the pet from the premises before the end of the 24-hour notice period you can stay in the unit. If you do this but then return the pet to the unit at any later time, the landlord can give a 24-hour notice (add 3 days if mailed and not posted). This notice can require you to move, without giving you another chance to remove the pet.

ORS 90.396

Late Rent

The landlord can give you a 72-hour notice to pay rent or move after your rent is more than 7 days overdue. If your written rental agreement allows, your landlord may also give you a 144-hour notice to pay rent or move after your rent is more than 4 days overdue. The 144-hour notice can be given sooner but must give you longer to pay, so the date you must pay or move works out to be the same as with a 72-hour notice. (If you rent week-to-week, a 72-hour notice can be given if your rent is more than 4 days late.)

The landlord must accept your full payment of rent during the notice period. The landlord does *not* have to accept any payments offered after the notice period. (If the landlord accepts partial payment of rent, the landlord cannot evict you for non-payment of rent unless the partial payment plan is in writing (ORS 90.415).)

If your written agreement permits, the landlord may post this notice on your door and then mail a copy. The service is then complete on the day it is put in the mail. The landlord must give three more days for you to pay or move if the notice is mailed. If you pay, your money is due by 11:59 p.m. of the third day for a 72-hour notice or 11:59 p.m. of the sixth day for a 144-hour notice.

Usually you can *mail* the late rent within the time periods. BUT if the nonpayment of rent notice was personally delivered to you (not posted on your door and then mailed) AND if your written rental agreement and the nonpayment of rent notice require this, you must *bring* (not mail) the rent to the place listed on the notice. (The place for paying rent must be either on the premises or where you always pay rent, and it must be available throughout the notice period.)

ORS 90.394

Personal Injury, Threats, Substantial Damage

If you, your pet, or someone in your control:
1) inflicts substantial personal injury upon others on

the premises; 2) seriously threatens to inflict personal injury or recklessly endangers a person on the premises; or 3) causes major damage to the unit, the landlord may give you a 24-hour notice (add 3 days if mailed and not posted).

ORS 90.396

Extremely Outrageous Acts

The landlord may give you a 24-hour notice (add 3 days if mailed and not posted) if you, your pet, or someone in your control commits an act that is outrageous in the extreme on, or very near, the premises.

"Someone in your control" means a person that you permit to come to or stay in your place when you know or should know that he or she is committing (or is likely to commit) an "outrageous act," personal injury, substantial damage, or seriously threatening injury or damage.

"Outrageous acts" include (but aren't limited to) drug manufacturing or delivery, gambling, prostitution activity, burglary, or intimidation. The act must be extreme or serious. If not, the landlord must use a 30-day or a 10-day notice and not a 24-hour notice to evict a tenant.

ORS 90.396

Drug and Alcohol Free Housing

If you live in "drug and alcohol free housing" (see below) and have lived there less than 2 years, your landlord may give you a 48-hour notice for consuming, possessing or sharing drugs or alcohol on or off the premises. The notice must tell you what you did wrong and give you 24 hours to fix the problem. If you correct the problem within 24 hours, then you may stay.

ORS 90.398

If you possess or use drugs or alcohol again within 6 months after receiving a 48-hour notice with a 24-hour opportunity to fix the problem, the landlord may give you a 24-hour notice to move without any chance to fix the problem.

ORS 90.398

"Drug and alcohol free housing" - for a rental complex to qualify as "drug and alcohol free housing" one tenant in each designated dwelling must be a recovering alcoholic or drug addict participating in an addiction recovery program, such as Alcoholics Anonymous or Narcotics Anonymous. The landlord must be a nonprofit corporation or a housing authority, must provide a drug and alcohol free environment, and must provide various forms of support for the tenants' recovery. There must also be a written rental agreement that states that the housing is alcohol and drug free, that the tenant must participate in a program of recovery and in urinalysis testing, and that the tenant may be evicted for not following these rules.

ORS 90.243

Unlawful Occupant

If the original tenant has moved and you are subleasing in violation of a written rental agreement that prohibits subleasing, and the landlord has not knowingly accepted rent from you, the landlord may give a 24-hour notice (add 3 days if mailed and not posted).

ORS 90.403

Dwelling Posted for Code Violations

If a government inspector posts your dwelling as unsafe and unlawful to occupy, the landlord may give you a 24-hour notice unless the problems were caused by the landlord.

ORS 90.380

Employee Termination

If you live in a place because of your employment in or around the rental building (for example, a resident manager), you can be given a written notice of at least 24 hours terminating your employment. After the time in the notice has passed, the former employer can file an eviction but cannot lock you out or call the police for trespass. If you receive this kind of notice, you should contact a lawyer.

ORS 91.120

Note: Farmworkers who work in fields, and

not in and around the rental buildings, may not be evicted with this kind of 24-hour notice.

Q51. How does a landlord give an eviction notice?

The landlord must hand-deliver the eviction notice, mail it to your address, or put the notice on your door and mail you a copy. ***If the notice is handed to you***, the notice period starts to run immediately. ***If it is only mailed to you***, the landlord must add 3 days to length of notice time. ***If it is posted and mailed*** (where the written rental agreement requires this kind of service of both the tenant and the landlord), the notice starts to run either when the landlord mails the notice or, for 72-hour and 144-hour notices, at 11:59 p.m. on the day the landlord posts and mails the notice.

All eviction notices must be in writing.

ORS 90.155, 90.160

Q52. Can I be evicted for nonpayment if I paid part of the rent this month?

If the landlord accepts part of the rent, the landlord may not evict you during the same month for nonpayment of rent, unless you agreed to pay the balance on a certain day and then did not pay. If the landlord accepted part of the rent after serving a 72-hour or 144-hour eviction notice, it is harder for the landlord to evict you. Contact a lawyer if the landlord files for eviction. But the landlord has not "accepted" the partial rent payment if the landlord refunds the rent within 6 days of receiving it. The refund may be by personal delivery or first class mail (mailed within the 6 days). The refund may be in any form of check or money - the landlord doesn't have to return the tenant's check. If you are a Section 8 tenant, a landlord can accept the Section 8 rent assistance payment and still evict you if you don't pay your portion of the rent.

ORS 90.415(5)-(9)

Q53. Can I be evicted if I have paid my rent?

Even if you paid your rent, you can be evicted for other reasons. See Question 50 for the other types of evictions.

If you have been given a 30-day no-cause eviction notice and the landlord accepts a rent payment that covers more than the 30 days, you can still be evicted after the 30 days. But, to be able to evict you, the landlord must return the extra rent to you within 6 days of receiving it. (Example: The landlord gives you a 30-day notice on July 15th and accepts a full month's rent payment from you on August 1st. On August 7th the landlord returns the rent that you paid that covers the time from August 16th to August 30th. You can be evicted after August 15th.)

Q54. What happens if I don't move out after getting an eviction notice?

The landlord must go to court to legally force you to move. The landlord will file a lawsuit called an FED, forcible entry and detainer. The sheriff or someone serving the court papers (FED Summons and FED Complaint) will hand them to whoever answers the door at your home or will tape them to the door and mail a copy later. The papers will tell you when and where to appear for court for what is called first appearance. The date will be about 7 days away in most counties. It is a good idea to get legal advice as soon as you get the papers.

Q55. What happens at the first appearance in court? What happens if I don't go?

When you go to court on the date listed on the court papers, this is called "first appearance." The process varies from county to county. In most counties in Oregon, tenants may:

- 1) Ask the judge to dismiss the case if the landlord does not show up;
- 2) Tell the judge about any agreements you made with the landlord before court. If the

landlord agreed to give you time to move, both you and the landlord should go to first appearance and tell the judge the terms of the agreement;

- 3) Ask the judge for a little time to move and have a good reason; or
- 4) Ask the judge for a trial and a fee waiver or deferral if you have a defense. See Page 36 for information about defenses.

The judge may ask you to try to work the problems out with your landlord by going through a mediation, before a trial is scheduled.

The landlord might ask you to agree to and sign a "stipulated order." "Stipulated" means that both you and the landlord agree to the terms of the paper that you sign. The stipulated order will sometimes say that you can stay in your place if you pay all of the back rent and other costs by a certain date and it can also require you to stay current on your rent for the next three months after you make the agreement. It will also probably say that you agree to move out if you don't pay by the agreed-upon date and that the landlord will have a judgment for the rent (a court order that says you owe the money). You don't have to sign the stipulated order, but if you do and don't follow what it says, the landlord can get a judgment against you and can enforce the agreement. If you live up to the agreement but the landlord says that you did not, you have the right to find out what the landlord says and to have a hearing before the sheriff moves you out. You should carefully read any papers the landlord gives you before signing.

ORS 105.146

If you ask for a trial and you do not have an attorney, you must fill out a form answer and file it on the same day that you first go to court. Most courthouses have form answers you can use to describe your defenses. See "How to Use a Form Answer in an Eviction" on Page 36. There will be a filing fee in court. **If you cannot afford the filing fee, ask the judge for a fee waiver or deferral at first appearance at the same time that you ask for**

a trial. Get a trial date from the clerk when you file the form answer. It is a good idea to talk to a lawyer before asking for a trial, even if you are going to represent yourself.

When you go to court, you should get there on time and be neatly dressed. Look at the judge while speaking, stay calm, and be polite.

If you do not show up in court for first appearance on the date listed in the papers, your landlord wins automatically. The landlord will get a court order directing you to move and may have the sheriff or process server post a four-day notice. See Question 58.

Q56. What happens at an eviction trial?

When you file your answer and ask for a trial, the court clerk will give you a date for your trial. Prepare for your case before you go to court. See Page 38.

At the trial you will need to prove the defenses listed in your answer. Bring photos of the conditions, copies of letters from and to your landlord, and other papers (receipts, rental agreements) that prove your case. *Take witnesses* who heard the landlord refuse to make repairs or who saw the conditions. See Page 38. Get to court on time and dress neatly. Stay calm and be polite to the judge and the landlord.

If you have a lawyer and win, the judge should order the landlord to pay your attorney fees. If the landlord has a lawyer and you ask for a trial and lose, the judge probably will order you to pay for the landlord's attorney fees and costs. One type of costs is called a prevailing party fee. If you do not have much income or property, state law may protect you against this order. See Question 65.

Q57. Can I go to eviction court without a lawyer?

Yes, but you should try to talk to a law office before going to the first appearance. Many tenants

and landlords go to the first appearance without an attorney. Most courts have form answers that you can fill out describing your defenses. See Page 36 for information on how to use the form answer.

It is helpful to have a lawyer if there is a trial in your case. At the trial you will need to prove the defenses that you listed in your answer. See Question 56 for information about trials. You should contact a law office before going to the trial if you did not do so earlier.

Q58. Can I be forced to leave my home if the landlord gets a court order that requires me to move?

Yes. The landlord may get a court order if: 1) you don't show up for court, or 2) you enter into a stipulated judgment (an agreement with the landlord that the judge signs as an order) and you don't leave by the agreed-upon date, or 3) you make an agreement with the landlord that the court enters as an order that you can stay if you pay rent or take some other agreed-upon action, but you don't do what you agreed to do, or 4) you go to trial and the judge orders you to leave by a certain date.

If you do not move by the date listed on the order, the landlord can have the sheriff or process server post a four-day notice on your door. If you don't move out by the time and date listed on the notice, the sheriff will come back and require you to leave while the landlord changes the locks. After that, you risk criminal charges if you return without permission.

Q59. If there is a trial in my eviction case and the landlord wins, do I have to pay back rent and legal costs?

In most cases, the landlord must sue you in a separate court case to get rent that is owed. If you ask for a trial and lose, you may be asked to pay your landlord's attorney fees and court costs.

If you have signed a "stipulated order" and don't pay the rent that you agreed to pay, the landlord

will have a judgment against you for the rent if the order provides for this. (See Question 55 for more information about stipulated orders.)

Even if the landlord wins a judgment for back rent or for attorney fees and costs, your income might be exempt and the landlord could not take it until your income increased. See Question 65.

Q60. If I do not pay my rent, how long will it be before I have to move?

If you have not paid your rent, the landlord may give you a 72-hour eviction notice on the 8th day of the month or a 144-hour notice after the 4th day of the month. If you do not pay within the period of the notice--either 72 hours or 144 hours--the landlord may file an FED in court seeking an eviction order. Within a few days, the sheriff will serve you with the legal papers or tape the papers to your door, telling you to go to court for the first appearance on a date listed in the papers. That date is usually a few days to a week after you get the papers.

When you go to the first appearance, you can ask for some time to move or ask for a trial. If you

ask for a trial, a trial is usually held within one week of the date of the first appearance, but it could be as early as the next day. If you lose the trial or if you do not move on the date agreed upon, then the landlord files a paper causing the sheriff to go out to your home to put a four-day notice on your door. You will have four days to move. If you do not move within the time listed on the notice, the sheriff will return and require you to leave while the landlord changes the locks.

Q61. What can I do if I have children and I am facing eviction?

It is illegal to discriminate against families because they have children. (See Question 7.) It is not illegal to evict a family for nonpayment of rent or other legal reasons. You can call the state welfare agency to see if you can get an emergency grant to help pay for moving.

Call a law office if you have trouble getting a grant. You can also call local organizations and churches to find out whether they have emergency money or housing.

GETTING YOUR THINGS BACK

TIME

Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other - shorter - time limits that apply in other cases.

LIMIT

WARNING

Ask a lawyer about the time limits that could apply in your situation.

Q62. What happens if I leave my things in my place after I leave or have been evicted?

Usually, your landlord stores your things in the unit or nearby in a storage area or basement. The landlord must give or mail to you a written notice of abandoned property that asks you to pick up your things. This notice must also tell you if the landlord thinks that the value of the property you left is so low (under \$500) that he or she plans to throw it away if you don't pick it up. This notice must be sent to the address where you rented from that landlord, any post office box that you have that the landlord knows about, and to your most recent forwarding address. You will have 5 days to respond to the notice if it was given to you and 8 days to respond if the notice was mailed to you. You can respond verbally (e.g. by phone) or in writing. You must contact the landlord during the 5 or 8 day period and you must pick up your things no longer than 15 days after that or your landlord will dispose of them. If you were evicted through a court (FED), the landlord must give you your things without forcing you to pay before giving them to you. The landlord can add the boxing and storage costs to the FED judgment, if the landlord has a judgment, or can sue you for the costs of removal and storage.

If you cannot pick up your things during the notice period (5 or 8 days), you can contact the landlord (by phone, mail, or in person) and set a date to pick up your things. You must contact the landlord during the 5 or 8-day period and you must pick up your things no later than 15 days after that.

Take everything with you when you leave if you can. If you cannot, at least box your things to avoid breakage and loss. Ask your landlord if you can move your boxes into the basement or other storage area to reduce the landlord's work and reduce the chance of breakage. Give the landlord a forwarding address. Tell the landlord that you will return to pick up your things.

Sometimes a landlord will pay the sheriff to have your things removed by a moving company. If this happens, you must file a claim of exemption with the court and sheriff to recover your things. (See "How to Use a Claim of Exemption" on Page 39.) It is unusual for the landlord to use a moving company because it is very expensive.

Special rules apply if you had to move out of a recreational vehicle, mobile home/manufactured home, or houseboat that you own or are buying and that you left where it was when you moved. Call a law office for more information.

Q63. Can my landlord hold my property and sell it for storage costs, court costs, or unpaid rent?

If you were evicted in an FED, the landlord must permit you to pick up your things within the 5 or 8-day notice period (with a possible 15-day extension) without charge in advance to you. The landlord may add the notice and storage costs to an FED judgment and try to collect it later. If you missed the 5 or 8-day notice deadline and the landlord gave the proper notice, then the landlord can

ORS 90.425

sell your things at a reasonable sale to pay for the notice, boxing, storage, sale and unpaid rent. Call a law office if this happens to you to make certain that the notice was proper and the sale was reasonable. The landlord may throw out or otherwise get rid of property that cannot be sold for a profit. The landlord cannot keep the property for personal use.

If your landlord paid the sheriff to have your things moved by a moving company after eviction, then the sheriff will sell your things, unless you file a claim of exemption. It is very unusual for the landlord to use the sheriff to remove your things because it is expensive for the landlord. See Page 39 for information on how to file a claim of exemption.

Q64. What can I do if the landlord won't return my property?

If the landlord will not give back your property during the notice or extension period, there are forms available at the courthouse that you can use to ask the court for an order requiring the landlord to return your things. You can also sue the landlord to recover the things you left behind. In this type of case, the landlord loses the right to sue for unpaid rent and some kinds of other damages if he or she wrongfully refuses to return your property. If the

landlord takes and keeps a tenant's property without taking the steps listed in Question 62, a tenant may also ask the court for twice the amount of the actual damages. Note: When a tenant sues a landlord for violations of the Oregon Residential Landlord-Tenant Act, the lawsuit must be filed (started) within one year of the incident. Claims under other laws might have longer or shorter time deadlines.

Q65. What is exempt property?

Exempt property is property (including income and bank accounts) which the law says cannot be taken from you under any circumstances. See Page 40 for a list of exempt property.

If this kind of property is taken, you must file a claim of exemption with the court and ask the court to set a hearing to get it back. See "How to Use a Claim of Exemption" on Page 39.

You may need to use a claim of exemption if your landlord tries to garnish your bank account or wages, or asks the sheriff to take your property. This situation may come up if the landlord won in the FED case and got a judgment for costs or attorney fees or sued you in another case for unpaid rent and won.

SAMPLE LETTERS AND FORMS

There may come a time when you need to talk to your landlord about problems you are having with your rental unit. When you do this, try to state your problems clearly and calmly. If it looks like you will be running into trouble, communicate in writing and keep notes of phone calls. Often it is a good idea to send a letter after a phone call stating what you think was discussed on the phone. You can write or type your own letter using the wording in these sample letters as a guide. Change the wording to fit your situation. Keep copies of all letters you send to your landlord. **Written notice is often required for taking legal action and is a good idea in all cases. You should get all promises and agreements in writing.**

SAMPLE LETTER 1 REQUEST FOR REPAIRS

This is a sample letter for asking your landlord to make repairs to meet the requirements of the Landlord and Tenant Act. You should use this letter after you have contacted the landlord several times requesting that repairs be done (see Questions 32 and 33. You should also look at Question 30 (Access)). The law allows a landlord to enter a rental unit without notice, if making repairs that were initiated within seven days after a tenant's written request for repairs. If you wish to restrict that access to certain reasonable days and times, that must be clear in your written request for repairs.

[date]

Dear [landlord's name]:

Since I moved in on [date] we have discussed needed repairs on numerous occasions [add dates if known]. As I am sure you are aware, Oregon Law requires landlords to keep rentals in livable condition (ORS 90.320). These requirements are quite specific. The specific repairs needed to satisfy the law are as follows: [list needed repairs].

You have not made any attempts to complete these repairs. Please respond to this request for repairs in writing by [date] outlining your intentions to complete repairs. If no response is received by [date], I will pursue tenant remedies stated in the Landlord/Tenant Act by [add if appropriate] [contacting an attorney] or [starting a small claims court action].

[Include language here if you need to restrict landlord access.]

I was told that it is unlawful for a landlord to respond to this letter by sending an eviction notice, increasing rent, or otherwise retaliating (ORS 90.385).

Sincerely,
[your name and address]

SAMPLE LETTER 2

NOTICE OF REPAIR AND DEDUCT FOR ESSENTIAL SERVICES (Non-Emergencies)

This is a sample letter to send to your landlord if s/he fails to provide you with an essential service like heat, water, or electricity. (See Questions 36 and 37.) You may deduct up to \$500 for most problems and up to \$1000 for dangerous conditions where the repair is done by a professional.

NOTE: Your other option is to sue your landlord, asking for damages and an order requiring the landlord to make repairs.

[date]
Dear [landlord's name]:
I tried to contact you today about [explain the lack of essential services].
The law says that if you do not provide me with an essential service like [fill in the service that is lacking], I can have the repairs made myself and deduct up to [\$500 or \$1000] from my rent (ORS 90.365).
If you have not taken steps to [fill in the action that is needed] by [fill in the date - 72 hours for cooking or refrigerator appliance provided by landlord; 7 days for all other problems except emergencies--see Question 36], I will get the work done by a professional and make the proper deduction from my rent.
Sincerely, [your name and address]

SAMPLE LETTER 3

ESSENTIAL SERVICE REPAIR IN AN EMERGENCY

This is a sample letter to send to your landlord when you need to make essential service repairs in an emergency. Send this letter before you have the actual repair done. (See Questions 36 and 37.) You must send a letter like this if you are having repairs done, even if you discussed the matter with the landlord.

[date]
Dear [landlord's name]:
On [date] I experienced the following emergency situation. [Explain the emergency.]
I tried to call you on [give date and time], but I could not reach you. So, I will have the repairs made by [repair person] on [give date], which is at least 48 hours after I tried to call you. I will deduct [the cost of repairs] or [actual cost] from next month's rent.
If you have any objections please respond promptly in writing.
Sincerely, [your name and address]

SAMPLE LETTER 4
NOTICE OF DEDUCTION AFTER ESSENTIAL SERVICE REPAIRS MADE

This is a sample letter to send your landlord *after* you have: 1) notified him/her of your intent to make repairs for essential services and 2) have made the repairs and are deducting the cost from your rent. (See Questions 36 & 37 and Sample Letter 2). Include with the letter a copy of the receipt for repairs--keep the original.

[date]

Dear [landlord's name]:

Enclosed is a check for \$ [monthly rent] to cover my rent for this month minus \$ [repair cost] to cover the cost of repairing [essential service]. I notified you in my letter dated [date] of my intent to have this repair made if you failed to make the repair by [date]. You did not make the repair. I have enclosed a copy of the receipt from (repair person), who made the repairs.

If you have objections to what I have done please respond promptly in writing.

Sincerely,
[your name and address]

SAMPLE LETTER 5
NOTICE OF RENT WITHHOLDING

This is a sample letter to send to your landlord when you feel you have tried all avenues to get your landlord to make repairs. (See Questions 32, 33 and 36.) You can also go to court and get an order requiring the landlord to make repairs without waiting for the landlord to evict you. You will probably need a lawyer to do this.

WARNING: You should withhold rent only if you are willing to fight an eviction for non-payment of rent. You may want to withhold only part of the rent instead of all of it. **Talk to a lawyer before withholding rent. Open a bank account and save all of the withheld rent.** That way the withheld rent will be available in case the judge orders you to pay all the rent into court before you can fight the eviction. It will also give you something to negotiate with the landlord. Evictions that go through court may appear on your credit record and may make it difficult for you to rent in the future. (You have the right to dispute the accuracy of your credit record.)

[date]

Dear [landlord's name]:

Since moving in on [date], we have discussed needed repairs on many occasions [add sequence of events and dates]. As I am sure you are aware, Oregon law requires landlords to maintain rentals in livable condition, and the requirements are quite specific. (ORS 90.320) The specific repairs needed to satisfy the law are as follows: [list needed repairs].

This letter constitutes notice that I will not be paying \$ [amount] of my rent until you make sincere attempts to complete the above listed repairs. Please respond in writing by [date] indicating when these repairs will be started and completed.

Sincerely,
[your name and address]

SAMPLE LETTER 6
LACK OF ESSENTIAL SERVICE - BASIC NOTICE TO LANDLORD

This is a sample letter to tell your landlord that your place does not have one or more specific “essential services” and that you have a legal right to seek substitute services, a reduction in rent, compensation for damages, or substitute housing. It also gives the landlord a reasonable amount of time to restore the essential services. See Question 34 for more information.

[date]

Dear [landlord's name]:

My rental unit is lacking one or more essential services. [Describe the lack of the essential service.]

You have failed to provide these essential service(s) and I have a right to seek substitute services, a lessening of rent, compensation for damages, or substitute housing.

I am giving you a reasonable amount of time and reasonable access to my rental unit in order to restore the essential service(s). Please limit entrance to these days and times: [specify allowable days and times; make it reasonable]. Please restore the essential service by this time: [specify date and/or time, perhaps 48 hours after the letter is posted at the place where the landlord accepts notices or some other reasonable amount of time].

Sincerely,
[your name and address]

SAMPLE LETTER 7

LACK OF ESSENTIAL SERVICE - 48-HOUR NOTICE OF INTENT TO TERMINATE

This is a sample letter to tell your landlord that your place does not have an "essential service" and that, because of this, there is an immediate and serious threat to your health or safety (or the health and safety of others in the rental unit). In this letter you are telling the landlord that you will move out if the problem is not fixed in 48 hours. See Question 34 for more information.

[date]
Dear [landlord's name]:
As I have told you, there is a serious problem with my rental unit. [Describe the lack of the essential service.]
Because of this problem, there is a serious and immediate threat to my health, safety, and/or property.
The law says that if you do not provide me with an essential service like [fill in the service that is lacking] and if this presents an "imminent and serious threat to the health or safety of the tenant or the tenant's property" that I can move out if the problem is not fixed within 48 hours.
This letter is notice that I will move out and terminate the rental agreement if the problem described above is not fixed by [date and time--48 hours from the time you deliver the letter].
Sincerely, [your name and address]

SAMPLE LETTER 8

TENANT 30-DAY NOTICE OF INTENT TO VACATE

This is a sample letter to send your landlord when you want to end a month-to-month rental agreement. (See Questions 41, 42, and 43.)

[date]
Dear [landlord's name]:
I am a tenant at [your address]. This is my 30-day notice [33-day notice if mailed] that I will end my rental agreement on (date). I will remove my belongings by that date. My new address is [your new address]. You can send my deposit to that address.
Sincerely, [your name and address]

SAMPLE LETTER 9
REQUEST FOR RETURN OF DEPOSIT AFTER 31 DAYS

This is a sample letter to send to your landlord if you moved out more than 31 days ago and haven't received either your deposit or a written accounting of how the landlord used the money. The law requires that the landlord give you such a statement. (See Question 24.)

[date]

Dear [landlord's name]:

By law I am entitled to receive either a full refund of my security deposit or an accounting of what the deposit was used for within 31 days from when I moved out. I moved out on [date]. I have not received the deposit or the accounting.

Please let me know what you intend to do about the deposit within 10 days from the date of this letter. If I do not hear from you by [10 days from date of letter], I will file a claim in Small Claims Court. The law (ORS 90.300) says that I am entitled to twice the amount wrongfully withheld.

Sincerely,
[your name and address]

INVENTORY AND CONDITION REPORT

Use this report to record the contents and condition of your place when you move in and before moving out. If you mark anything as being dirty or damaged, describe it fully on an additional sheet. Use the blank before each item to indicate how many there are. Ask the landlord to sign your copy.

	Dirty		Damaged	
	Yes	No	Yes	No
LIVING ROOM				
Couch				
Chair				
Table				
Lamp				
Light fixture				
Window treatment				
Carpet or Rug				
Floor				
Ceiling				
Walls				

	Dirty		Damaged	
	Yes	No	Yes	No
BEDROOM				
Bed				
Dresser				
Night Stand				
Light fixture				
Window treatment				
Carpet or Rug				
Floor				
Ceiling				
Walls				

	Dirty		Damaged	
	Yes	No	Yes	No
KITCHEN				
Stove				
Oven				
Refrigerator				
Sink (Hot & cold water)				
Dishwasher				
Cabinets & drawers				
Counter tops				
Light Fixture				
Window treatment				
Carpet or Rug				
Floor				
Ceiling				

	Dirty		Damaged	
	Yes	No	Yes	No
BATHROOM				
Walls				
Towel rack				
Tissue holder				
Cabinets				
Mirror				
Counter top				
Sink				
Shower				
Tub				
Toilet				
Light fixture				
Window treatment				
Carpet or Rug				
Floor				
Ceiling				
Walls				

	Dirty		Damaged	
	Yes	No	Yes	No
MISCELLANEOUS				
Door key				
Windows				
Window screens				
Mailbox				
Thermostat				
Other				
Other				
Other				

Do all the windows work? _____

Does the heat work properly? _____

 Tenant Date

 Witness Date

Landlord

Date

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF *(YOUR COUNTY)*

(Landlord's Name) _____,)

)

SAMPLE

Plaintiff(s),)

)

ANSWER

v.)

)

Case No.

)

(The number listed on the complaint)

(Your Name) _____,)

)

Defendant(s).)

)

I (We) deny that the plaintiff(s) is (are) entitled to possession because:

_____ The landlord did not make repairs.

List any repair problem: *(See Page 37)* _____

_____ The landlord is attempting to evict me (us) because of my (our) complaints (or the eviction is otherwise retaliatory). *(See Page 37)*

_____ The eviction notice is wrong. *(See Page 37)*

_____ List any other defenses: *(See Pages 37 and 38)* _____

I (We) may be entitled as the prevailing party to recover attorney fees from plaintiff(s) if I (we) obtain legal services to defend this action pursuant to ORS 90.255.

I (We) ask that the plaintiff(s) not be awarded possession of the premises and that I (we) be awarded my (our) costs and disbursements and attorney fees, if applicable, or a prevailing party fee.

Dated this ____ day of _____, 20 ____.

Signature of Defendant(s) *(Your signature)*

HOW TO USE A FORM ANSWER IN AN EVICTION

When should I use the form answer?

If you have decided to ask for a trial on your eviction and want to represent yourself, you can use a form answer that you can get at the courthouse. An "answer" is a legal paper that gives your defenses to the "complaint" filed by your landlord. **You should only ask for a trial and use the answer form if you really want to stay in the rental unit and believe you have defenses to the eviction. If you lose, a judgment for your landlord's attorneys fees will be entered against you.** If you want to request money owed to you by your landlord, file in Small Claims Court or see an attorney.

How should I decide what defenses to claim?

A defense to an eviction (FED) is a legal reason why your landlord should not be able to evict you. The kind of defense you claim depends on the type of notice the eviction is based on. Before you fill out the Form Answer, look at the Complaint attached to your Summons to see which reason the landlord checked for the eviction. Also, look at the notice you received from the landlord to see if it matches the reason the landlord checked and if a copy of this notice has been attached to the Summons. (If these things are not right you may have a "bad notice" defense, see below.)

Not all defenses can be used in all evictions. For example, lack of repairs can be a defense to an eviction based on a 72-hour or 144-hour notice for nonpayment of rent, but it is not a defense to an eviction based on a 30-day notice. The chart below shows the most common types of notices and the defenses that can be used.

TYPE OF NOTICE	POSSIBLE DEFENSES
72-hour or 144-hour nonpayment of rent	Repairs needed (<i>See Questions 32, 33</i>) Bad notice (<i>49</i>) Other landlord violations: lockout (<i>48</i>), illegal entry (<i>30</i>), waiver (<i>52,53</i>), etc.
10-day notice/no cause (week-to-week) 30-day notice/no cause (month-to-month)	Retaliation (<i>31</i>) Bad notice (<i>50</i>) Discrimination (<i>5,7,8,9</i>)
30-day notice/for cause with right to cure 10-day (pet violation) 24-hour (outrageous conduct, personal injury,	Bad notice (<i>50</i>) Landlord's complaints untrue

How do I fill out the form answer?

There is a sample of the form answer on Page 35 of this booklet. Fill in the appropriate court and county at the top of the page. (These will be the same as the ones on the eviction papers that you received.) Put your landlord's name in as Plaintiff and yours as Defendant. Use the number from your eviction papers to fill in the blank after "case no." Fill in the appropriate defenses (see below) and sign and date the form. Make three copies, one for the court clerk, one for the landlord, and one for yourself. Ask the court clerk when your trial will be held.

What are some possible defenses for the form answer?

Call a law office for advice on how to fill out the form answer. Even if a law office cannot represent you in the FED, the office may be able to help you fill out the form answer. A sample of the form answer is on Page 35 of this booklet.

Repair Problems - Under Question 32 you will find a list of repairs that a landlord should make. If your landlord did not make repairs, you should check the first blank on the form answer and describe the needs for repair. Also, indicate how and when you told the landlord about the needs for repair.

You should be prepared to prove damages that equal or are larger than the rent that you owe. You must testify as to how much less your place was worth each month because your landlord refused to make repairs. For example, if you rented a four room apartment for \$400 per month but a leak in the roof prevented your use of one room for 3 months, you might testify that the apartment was worth 25% less or \$100 less per month because you could not use 1 of 4 rooms. In addition, you should describe any damages caused to furniture or clothing and the costs for repairing or replacing the property. Remember the one-year limitation to file this kind of case.

Retaliation Defense - If your landlord retaliated by serving the 30-day or 10-day eviction notice or eviction papers after you complained about the need for repair, testified against the landlord, joined a tenants union or engaged in other protected activity, you may check the second blank on the form answer to allege retaliation. See Question 31 in this booklet for more information.

Notice Defense - If your landlord did not use the right notice or did not give it at the right time (including 3 extra days for mailing), you should check the third blank on the form answer indicating a bad notice. See Questions 49 and 50 for more information on notices.

Other Defenses - There is also a fourth line listed on the form answer called "Other Defenses." This is the line to check and the space to fill in when the landlord's complaint is not true.

For example, you might write the following: "I paid my June rent in full on June 1, and I have a receipt," "I offered to pay June rent on June 9, during the 72-hour eviction notice period and the landlord refused to accept it," or "The dog in question was moved out during the 10-day eviction notice period and has not returned."

Other types of "Other Defenses" are:

Waiver - If the landlord accepted part of the rent after rent was past due, you should write in the word "waiver" under "Other Defenses" and describe the date and amount paid. For example, you could write, "Waiver - I paid \$50 to the landlord for rent on June 2." See Questions 52 and 53 for more information on waivers.

Discrimination - If the notice or eviction is discrimination, you should write the word "discrimination" under "Other Defenses" and describe what happened. See Questions 5 - 10 for more information on discrimination.

Utility shut off or lock out - If the landlord changed the locks, removed your things, shut off the water, heat, or electricity or took other out of court action to force you to move, describe the action under "Other Defenses" and ask for twice the actual damages or two months' rent, whichever is more. Talk to a lawyer. See Question 48.

Unlawful entry - If the landlord or someone working for the landlord came into your home without your permission or without a 24 hour notice in advance (except for an emergency or to complete repairs initiated within seven days after you asked for repairs in writing) you may claim at least one month's rent as a penalty for each unlawful entry. Write down the date and name of the person who entered under "Other Defenses." For example, you may write "Unlawful entry by the resident manager, John Doe, on May 14." See Question 30.

How should I prepare for my case in court?

You should be prepared to back up every statement that you have made in the Answer with as much proof as possible. If you are going to depend on other people to be witnesses for you, you should get in touch with them immediately. ***Witnesses must come to court.*** The judge will not accept letters or affidavits from witnesses. Go over the case with your witnesses carefully. Make sure your witnesses understand what you are going to ask of them and that they are prepared to clearly and honestly state the facts about what you want to prove at the trial.

Make sure you have all relevant evidence like canceled checks, copies of letters, building inspector's reports, and pictures of your place, if repairs are an issue.

HOW TO USE A CLAIM OF EXEMPTION

The law says that some property, wages, and money are **exempt** from collection - which means they cannot be taken from you to pay unpaid rent or other money you owe a landlord. See Page 40 for a list of exempt wages, money, and property. If you believe that the landlord is garnishing exempt wages or money or is taking exempt property, you may file a Claim of Exemption so you can keep the money or property. You should only file a Claim of Exemption if you have good reason to believe that one of the exemptions listed on Page 40 applies to your wages, money, or property. But, when a landlord uses the sheriff to take your property or mobile home, you may not be permitted to use a claim of exemption to get the property back. Contact a lawyer to find out.

After you file a Claim of Exemption, there will be a hearing in court and a judge will decide if you will be able to keep the money or property.

Where Do I Get a Claim of Exemption Form?

You will receive the Claim of Exemption papers when your wages or bank account are garnished or when the sheriff takes your property.

When Should I File a Claim of Exemption?

For a one-time garnishment (such as garnishing your bank account), you must file the claim within 30 days of receiving the papers. For a continuing garnishment (such as garnishing your wages), you must file the claim within 120 days of receiving the papers. But you should file the claim as soon as you can.

How Do I File a Claim of Exemption?

- ▶ Fill out the Claim of Exemption form. The landlord's name should be written on the line for the "plaintiff." Write your name on the "defendant" line. List the property or money

that you believe is exempt and should not be taken. To explain why the property is exempt, look at the list on Page 40 of this booklet and copy from the list the exemption that applies.

- ▶ Make a copy of the completed form for you to keep. Take the original to the court clerk at the courthouse or mail the claim to the clerk at the address listed on the garnishment papers.
- ▶ Ask the court clerk when your court hearing will be held.
- ▶ Get ready for the hearing by making sure you can give evidence about the value of the things you are claiming and which exemptions they fall under. It is a good idea to write some notes to use at the hearing.
- ▶ Go to the hearing on time. If you can, bring someone with you for personal support.
- ▶ Present your information to the judge clearly and briefly. Respond to questions politely. Keep calm.
- ▶ Give the order signed by the judge to the sheriff or person holding your things and claim them. You should argue that you do not owe storage costs because that would defeat the purpose of the exemptions, which is to make sure that you can keep your basic necessities of life.

EXEMPT WAGES, MONEY, PROPERTY

- | | |
|---|--|
| <p>1. Exempt wages: If you are paid weekly, \$170 per week of your disposable income, or 75% of disposable wages, whichever is more. Wages paid every two weeks - \$340; Wages paid twice each month - \$368.33; Wages paid once a month - \$736.67</p> <p>2. Social security (including SSI).</p> <p>3. Public assistance (welfare).</p> <p>4. Unemployment benefits.</p> <p>5. Disability benefits.</p> <p>6. Workers' compensation benefits.</p> <p>7. Exempt wages, social security, welfare, unemployment benefits, disability benefits, and other specific types of government benefits when placed in a checking or savings account (up to \$7,500).</p> <p>8. Spousal support, child support, or other support if necessary to support you or your dependents.</p> <p>9. A house with land you own and that you or certain family members live in up to **\$30,000 (**\$39,000 if more than one owner owes the debt). Includes proceeds from sale for (1) year (if you intend to use funds to buy another home).</p> <p>10. A mobile home and land you own and you or certain family members live in up to \$23,000 (\$30,000 if more than 1 owner owes the debt). A mobile home or houseboat you own and that you or certain family members live in with no land owned up to \$20,000 (\$27,000 if more than one owner owes the debt). Includes proceeds from sale for (1) year (if you intend to use funds to buy another home).</p> <p>11. Household goods, furniture, radios, 1 television set, and utensils to \$3,000.</p> <p>12.* Automobile, truck, trailer, or other vehicle to **\$2,150</p> <p>13. Tools, implements, apparatus, team, harness, or library necessary to carry on your occupation to \$3000.</p> <p>14.* Books, pictures, and musical instruments to \$600.</p> <p>15.* Clothing, jewelry, and other personal items to \$1800.</p> <p>16. Domestic animals and poultry for family use to \$1,000 and their food for 60 days.</p> <p>17. Provisions (food) and fuel for your family for 60 days.</p> <p>18. One rifle or shotgun and one pistol to \$1000.</p> | <p>19. Public or private pensions.</p> <p>20. Veterans benefits and loans.</p> <p>21. Medical assistance benefits.</p> <p>22. Health insurance proceeds and disability proceeds of life insurance policies.</p> <p>23. Cash surrender value of life insurance policies not payable to your estate.</p> <p>24. Federal annuities.</p> <p>25. Other annuities to \$250 per month, excess over \$250 per month subject to same exemption as wage.</p> <p>26. Professionally prescribed health aids for you or your dependents.</p> <p>27.* Your right to receive, or property traceable to:</p> <p style="margin-left: 20px;">a. An award under any crime victim reparation law.</p> <p style="margin-left: 20px;">b. A payment, not exceeding \$10,000, on account of personal bodily injury, (not including emotional pain & suffering or compensation for actual monetary loss) of you or an individual of whom you are a dependent.</p> <p style="margin-left: 20px;">c. A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.</p> <p>28.* Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.</p> <p>29. The difference between what you actually owe the creditor and the total amount due listed in the writ of garnishment, if the amount listed in the writ is larger.</p> <p>30. Your right to receive the federal earned income credit.</p> |
|---|--|

* If two or more people in your household owe the judgment, each may claim the exemptions marked by *. Note: The values listed represent your **equity** in the property.

** Revised to conform to 2005 ORS 18.300.

RESOURCE SECTION

LAW OFFICES

Legal Services Offices and Volunteer Lawyer Programs

These offices provide legal assistance to low-income persons who live in the counties that are listed.

Albany Regional Office

(Linn, Benton)
(541) 926-8678
 Legal Aid Services of Oregon
 433 Fourth Ave. SW
 Albany, OR 97321

Bend Regional Office

(Jefferson, Crook, Deschutes)
(541) 385-6944
1-800-678-6944
 Legal Aid Services of Oregon
 1029 NW 14th Street, Suite 100
 Bend, OR 97701

Center for Non-Profit Legal Services

(Jackson)
(541) 779-7291
 225 W Main
 P.O. Box 1586
 Medford, OR 97501

Columbia County Legal Aid (Columbia)

(503) 397-1628
 P.O. Box 1400
 St. Helens, OR 97051

Coos Bay Regional Office

(Coos, Curry, Western Douglas)
(541) 269-1226
1-800-303-3638
 Oregon Law Center
 Compass Building
 455 S. 4th Street, Ste. 5
 P.O. Box 1098
 Coos Bay, OR 97420

Farmworker Office

(Mid-Willamette Valley farmworkers)
(503) 981-5291
 Legal Aid Services of Oregon
 397 N First Street
 Woodburn, OR 97071

Grants Pass Regional Office

(Josephine)
(541) 476-1058
 Oregon Law Center
 424 NW 6th Street, Ste 102
 Grants Pass, OR 97528

Hillsboro Regional Office

(Washington, Columbia, Tillamook, Clatsop, Yamhill)
(503) 648-7163
 Legal Aid Services of Oregon
 230 NE Second, Suite A
 Hillsboro, OR 97124

Klamath & Lake Counties

Legal Aid Services of Oregon

(541) 882-6982

1-800-480-9160

Lane County Legal Aid & Advocacy Center

(Lane)
(541) 485-1017
1-800-422-5247
 376 E 11th Avenue
 Eugene, OR 97401

Lewis & Clark Legal Clinic

(Multnomah)
(503) 768-6500
 310 SW 4th Avenue, Suite 1018
 Portland, OR 97204

Lincoln County Office

(Lincoln)
(541) 265-5305
1-800-222-3884
 Legal Aid Services of Oregon
 304 SW Coast Highway
 P.O. Box 1970
 Newport, OR 97365

Marion-Polk Legal Aid

(Marion, Polk)
(503) 581-5265
1-800-359-1845
 Legal Aid Services of Oregon
 1655 State Street
 Salem, OR 97301
 and
 769 N Main Street, #B
 Independence, OR 97351
 (503) 606-3284

McMinnville Office

(Yamhill)
(503) 472-9561
 Legal Aid Services of Oregon
 720 East Third Street
 P.O. Box 141
 McMinnville, OR 97128

Multnomah County Office

(Multnomah)
(503) 224-4086
 Legal Aid Services of Oregon
 921 SW Washington, Ste. 500
 Portland, OR 97205

Native American Program

(assistance to tribal governments)
(503) 223-9483
 812 SW Washington, Suite 700
 Portland, OR 97205

Ontario Regional Office

(Malheur, Harney, Grant, Baker)
(541) 889-3121
1-800-250-9877
 Oregon Law Center
 225 SW 1st Ave., #6
 Ontario, OR 97914

Oregon City Regional Office

(Clackamas, Hood River, Sherman, Wasco)
(503) 655-2518
1-800-228-6958
 Legal Aid Services of Oregon
 421 High Street, Suite 110
 Oregon City, OR 97045

Pendleton Regional Office

(Gilliam, Morrow, Umatilla, Union, Wallowa, Wheeler)
(541) 276-6685
1-800-843-1115
 Legal Aid Services of Oregon
 365 SE Third Street
 P.O. Box 1327
 Pendleton, OR 97801

Roseburg Office

(Douglas)
(541) 673-1181
 Legal Aid Services of Oregon
 700 SE Kane
 P.O. Box 219
 Roseburg, OR 97470

OREGON STATE BAR

Lawyer Referral Service

Oregon State Bar

(503) 684-3763 in Portland , or

1-800-452-7636 toll free in Oregon

This service gives you the name of an attorney in your community. There is a fee of \$35 or less for the first meeting with the lawyer. LRS also operates the Modest Means Program, which makes referrals to lawyers who provide reduced-fee legal services on some cases to clients that meet eligibility guidelines. Call for information.

Monday - Friday, 9 a.m. to 5 p.m.

Tel-Law Tape Library

(503) 620-3000 in Portland, or

1-800-452-4776 toll free in Oregon

www.osbar.org/public/legalinfo/tenant.html

The information below is from the Oregon State Bar's Tel-Law service, a collection of recorded legal information messages prepared by the lawyers of Oregon. A touch tone phone allows direct access 24 hours a day, 7 days a week. To receive a free Tel-Law brochure listing the subjects available call 503-620-0222, ext. 0.

The landlord/tenant tapes are coded as:

- 1246 Rights and Duties of Tenants
- 1247 Rights and Duties of Landlords
- 1248 Illegal Housing Discrimination
- 1249 Rights of a Mobile Home Owner Threatened with Eviction from a Mobile Home Park
- 1250 Rent Increases
- 1251 Reasonable Rules in Mobile Home Parks and Floating Home Facilities
- 1252 Landlord Rules in Conventional Rental Housing
- 1253 Eviction Notices
- 1254 Evictions
- 1255 Eviction Defenses
- 1256 Getting Repairs Made
- 1257 When Tenants Leave Belongings Behind
- 1258 Tenant Privacy and Landlord Access
- 1259 Habitability
- 1260 Fees and Deposits

OTHER ORGANIZATIONS

211 Info

A referral and information hotline for a wide range of social service needs, including rental and housing assistance. **Dial 2-1-1.** This line is for callers in Multnomah, Washington, Clackamas, and Clark counties. Cell phone users must use one of the alternate numbers:

Multnomah and Washington County: (503) 222-5555

Clark County: (360) 694-8899

Clackamas County: (503) 655-8861

Community Alliance of Tenants (CAT)

(503) 288-0130: Renters' Rights Hotline

www.oregoncat.org

CAT's mission is to educate and empower tenants to demand affordable, stable, and safe rental homes.

The hotline serves all of Oregon, and messages can be left 24 hours a day. Workshops and advocacy activities are available in the Portland area.

Fair Housing Council of Oregon

1-800-424-3247; (503) 223-8197 (Portland)

This statewide organization enforces fair housing laws.

Housing Connections

www.housingconnections.org

A website that helps people find housing, housing services, and housing information. Focus on affordable, accessible, and special needs housing in the Portland Metro Area.

Housing and Urban Development (HUD) - Office of Fair Housing and Equal Opportunity

1-800-877-0246

This federal agency enforces fair housing laws.

Oregon Bureau of Labor, Civil Rights Division

(971) 673-0764

This state agency enforces laws that prohibit discrimination in housing and public accommodations.