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Landlord-Tenant Law in Oregon

Oregon Legal Services -- Community Education Series

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 November, 1993. Please remember that the law is always changing through the actions of the courts, the legislature and agencies.

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RESOURCE SECTION

Residential Landlord and Tenant Act

1. Does the law protect tenants?

Yes. A state law, called the 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; living in a place you are buying; living on land rented primarily for the purpose of farming; and living in certain institutions.

ORS 90.110

2. 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. A "transient occupancy" is where: 1) rent is charged per day and is paid no later than every two weeks; 2) maid and linen service is provided at least once every two days; 3) the person has not lived there more than 30 days; and 4) the person who has lived there more than 5 days has a business address or a residence someplace else. All other people living in a hotel or motel are covered by the Landlord and Tenant Act

3. What are my rights if I rent space for a mobile home or houseboat?

Tenants who are renting space in a manufactured dwelling park or floating home moorage but who 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 30-day notice without giving you a chance to correct the problems. If your landlord is closing the mobile home 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 legal services.

Tenants who 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.

The Oregon State Tenants Association (OSTA) works for mobile home tenants and may be able to help you with information:

Oregon State Tenants' Association

3791-B River Road, North
Salem, Oregon 97303
Telephone: 393-7737

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

Note: In some of the answer sections of this booklet you will see

references to ORS, which stands for Oregon Revised Statutes. For example, ORS 90.110. These references are to some of Oregon's landlord-tenant laws. These statutes can be found in most libraries as a part of a sixteen-volume set. You do not need to read these laws to use this booklet.

Discrimination Against Tenants

4. Can a landlord evict me or refuse to rent to me because of my sex, race, color, 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 legal services. You can also call the Oregon Bureau of Labor, Civil Rights Division. In Portland, the number is 229-5900. In Eugene, 686-7623. In Salem, 378-3296.

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 an additional nonrefundable fee for a hearing or guide dog. ORS 90.390

City ordinances in Portland and Corvallis also prohibit discrimination because of a tenant's source of income, for example, welfare.

5. 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 is an exception for certain federally subsidized projects, projects where all of the tenants are over 62, and projects where 80% of the the tenants are over 55 and are given significant services. In all other cases, if your landlord is discriminating against you because you have children, you should call legal services or the Fair Housing Council of Oregon at 1-800-424-3247.

6. 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 common law, all minors are responsible for the reasonable value of debts related to necessities, like housing. ORS 105.168

7. Can a landlord refuse to rent to me because I am gay or a lesbian?

City ordinances in Portland, Corvallis and Ashland prohibit discrimination based on sexual orientation. State law does not. 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 on handicap. Contact the Civil Rights Division at the numbers listed under Question 4, above. Some courts may find that private landlords cannot discriminate against two men or two women because this would be sex-based discrimination. Landlords who get federal subsidies should not discriminate on the basis of sexual orientation. If you feel you have been discriminated against, contact legal services.

Federally Subsidized Housing

8. What rights do I have if I live in a Housing Authority project or other federally subsidized housing?

The rules listed in this booklet protect you. You have additional rights set out in your rental agreement, federal law, federal regulations and court orders. If you have a problem in federal housing, call the nearest legal services office as soon as possible.

Tenants in federally subsidized housing generally pay 30% of their income as rent or pay the amount set aside in the welfare grant to pay for housing.

Tenants have a right to use their federal housing just like they would use a private home. Tenants may have guests.

Landlords should not harass or spy on tenants in federal housing.

9. How do I get into federally subsidized housing?

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. Individuals who are homeless, about to be evicted, living in substandard housing, paying more than 50% of their income for housing, or involuntarily displaced, get priority on the waiting list.

If the housing authority or landlord refuses to put your name on the waiting list, you may ask for a hearing. 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, call your local legal services office.

There are also loans from the Farmers Home Administration (FmHA) or the United States Department of Housing and Urban Development (HUD) that enable low-income and handicapped people to buy homes without a large down payment and with low monthly payments. Call FmHA.

Self-Help for Tenants

10. 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 26 for information about retaliation against a tenants' union.

11. How can small claims court help me?

You can use small claims court when your landlord did not return a deposit after you moved, unlawfully destroyed your things, did not make repairs required by law, entered your home without the required notice, unlawfully shut off your utilities or changed the locks, or otherwise violated the rules set out in this booklet. The landlord may raise counterclaims. You should call a law office or legal services before you sue.

You cannot ask for more than \$2,500 in small claims court. 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 7 on Pages 17 and 20. When you go to court, you must prove your case. Take photographs, witnesses, and copies of any letters you have sent to your landlord. 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.

MOVING IN: RENTAL AGREEMENTS

12. 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 any problems.

You can use the "Inventory and Condition Report" on page 21 to help make the inspection. Try to have the landlord with you during the inspection. Ask the landlord to sign your notes. Take pictures and have friends look at any problems so you can later prove in court that the problem was there on the day you moved into the unit.

13. What is a rental agreement?

It is a verbal or written agreement between the landlord and tenant that gives the terms and conditions concerning the tenant's use of the rental unit. This 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 90.240

It is a good idea to get a written rental agreement. It helps if you have a problem later. Any changes made to the original rental agreement should also be in writing. If you have a written agreement, the landlord must give you a copy when you sign it and make a copy available later at a cost of not more than \$.25 per page. ORS 90.305

14. Should I get the rental agreement and receipts in writing?

Yes. **Always** get a written copy of any agreements you make with the landlord. Both you and the landlord should sign the rental agreement and any agreements about repairs and making late rent payments. Get a receipt when giving the landlord any money. If the landlord won't give you a receipt, get a money order from a bank or use a check. **Keep all copies.**

15. How can I make the landlord live up to a spoken rental agreement?

A judge can order that both the landlord and tenant follow the agreement that was made. It is harder to prove what was agreed to if you do not have the agreement in writing. It may end up being the landlord's word against your word. A person who was with you when you and the landlord talked about the agreement can be a witness. Rent receipts and other written statements by the landlord can help prove the terms of the agreement.

1. What is a lease?
2. Most people use the word "lease" to describe a rental agreement that is for a fixed 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.

Always read the lease. 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. (See Question 34).

APPLICATION FEES, DEPOSITS, RENT INCREASES, LATE CHARGES, UTILITY BILLS

17. When I find a place that I want to rent, can I be charged an application fee

You cannot be charged a fee just to have your name placed on a waiting list. You can be charged a **refundable fee** to have the landlord hold the rental unit (not rent it to others) before you have entered into a rental agreement.

You can also be charged a **nonrefundable Applicant Screening Fee** -- which covers the costs of screening tenants, such as reference checks and credit reports. These fees can be charged only if there is a unit that is available for rent (or that will be soon), unless you agree otherwise in writing.

You must be given a **written notice** before you are charged a nonrefundable applicant screening fee. This notice must tell you:

- the amount of the nonrefundable fee;
- the kinds of information the landlord is going to get;
- the name and address of the screening service or credit reporting agency the landlord uses;
- that you have the right to send a statement if you think the information the landlord gets is wrong.

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 were not charged a screening fee.

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

If the landlord charges you an application fee without following these rules, you can sue the landlord for the amount of the fee plus \$100. See Question 11 if you want to take the case to small claims court. ORS 90.440

18. Can a landlord make me pay a deposit?

Yes. A landlord can make you pay a deposit for pets, cleaning, keys and security. You can try to work out the amount with the landlord. Some landlords will let you make several payments on the deposit instead of paying it all at once.

If you paid a "refundable deposit," the landlord must return the deposit when you move out if you leave the place in good repair, pay the rent, and return the keys. The landlord does not have to return your deposit if it was clearly marked as a "nonrefundable fee" when you paid it. When you pay the deposit, ask for a receipt that shows you paid a "refundable deposit." Check the receipt, rental advertisement, cancelled check and other writing you may have to see whether the deposit was clearly labeled as a "nonrefundable fee." ORS 90.300

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

No, in most cases.

20. What if my landlord does not return my refundable deposit

Within 30 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. Read your rental agreement to find out how the landlord may use the deposit money.

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. 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 11 for information about small claims court.

Read Questions 33, 34, and 37 for information on what to do when moving out to improve your chances of getting your deposit back. See Sample Letter 7. ORS 90.300

21. 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 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.

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

Yes, unless you have a lease that fixes the amount of rent for a specific term. Otherwise, if you are renting month-to-month, your landlord can raise your rent by giving you a written notice 30 days before the date that the new rent becomes effective. (If you rent week-to-week, your rent can be raised with a seven-day written notice.) If you want to move rather than pay the new rent, you can give a notice (30 days -- if you rent month-to-month; 7 days -- if you rent week-to-week) to end the tenancy and move when the new rent goes into effect. See Question 33 for information on how to give a notice. Also, if you feel the landlord raised your rent to retaliate against you, see Question 26.

ORS 90.240

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

Yes, if the rental agreement says that late fees can be charged. But there are limits on the fees that you can be charged. You cannot be charged more than once for any single rent payment. The landlord may not charge a late fee if you pay the rent by 5:00 p.m. on the fourth day after the rent was due. A landlord may not evict a tenant with a 72-hour notice for nonpayment if the only amount the tenant owes is the late charge. ORS 90.260

24. 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 who was supposed to pay the utility bill 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, or 3) move out; the landlord has 4 days to return prepaid rent and your refundable security deposit.

After you move in, if you can't get service because a former tenant who was supposed to pay the utility bill 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 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. You can also sue the landlord for any damages that were caused by the shutoff.

If the landlord does not return the rent and fees that are owed to you, you can sue for twice the amount that is wrongfully kept. (See note below.)

ORS 90.315

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.

RIGHT OF ENTRY, RETALIATION

25. Does my landlord have a right to enter the rented space?.

Yes, at reasonable times. But the landlord must give a 24 hour verbal or written notice before entering, unless there is a very good reason for not giving you notice, such as an emergency or where you have agreed to let the landlord in without notice. The landlord may give the notice to you or, if it says so in your written rental agreement, the landlord can mail the notice and securely fasten a copy of the notice to your door. (The date on the postmark of the mailed notice is the date that you are officially "served.")

The landlord must also give you notice before entering **the yard** of a single-family residence, or any other space rented to one tenant. (The landlord is allowed to come on the property to put a notice on the door.)

A **repair person** hired by the landlord may also enter, but the landlord must first give you a 24-hour written notice which tells you the names of the workers and the work that is to be done.

The landlord and tenant may agree in writing that if the **property is for sale**, the landlord may enter at reasonable times, without giving notice, to show the premises to prospective buyers. Both the landlord and tenant must sign the agreement.

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, whichever is more. (See note on Page 6.)

ORS 90.335 and ORS 90.920

26. 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:

- Complains to the landlord about the need for repair or a violation of the rental agreement;
- Complains to certain code enforcement agencies;
- Joins or organizes a tenants' union;
- Testifies against the landlord in court;
- Wins in an FED case within six months.

If your landlord retaliates, you should call legal services.

Tenants may sue for retaliation and may ask for twice the actual damages or up to two months' rent, whichever is more. Retaliation is usually a defense if you have been given a 30-day notice without cause. But, in other cases, 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, and when repairs needed for code compliance cannot be made without forcing the tenant to move. (See note on Page 6.) ORS 90.385

GETTING REPAIRS DONE

27. Does the landlord have to make repairs?

Yes. The landlord must keep your place and the public spaces in good repair. This means that the unit must not substantially lack the following:

- 1) Effective waterproofing and weather protection;
- 2) Hot and cold running water connected to a sewage system;
- 3) Safe drinking water;
- 4) 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);
- 5) Safety from fire hazards;
- 6) Appliances and air conditioning in working order if they are provided by the landlord;
- 7) Good ventilation;
- 8) Working keys, locks and window latches;
- 9) No garbage or rodents in your place or public spaces around the building when you move in or throughout the tenancy;
- 10) Garbage containers and garbage service, unless you agree otherwise in writing (in Portland, landlords must provide both containers and service);
- 11) Adequate plumbing, heating and electrical equipment maintained in good working order;
- 12) Walls, floors, ceilings, stairways and railings in good repair;
- 13) The place must be clean and in good repair when you move in; and
- 14) 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

28. 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 the legal services office to ask for advice on what to do next. In an emergency, like a broken pipe or no heat, call the legal services office right away.

You may want to sue the landlord in district court seeking an order forcing repairs, damages for reduced rental value and destroyed property, attorneys fees and court costs. You should have a lawyer to file this kind of case.

You may want to call building inspectors, health inspectors, fire inspectors or neighborhood mediation. Call the legal services office to find out whether these are available in your area and whether it is a good idea to call them.

You may want to sue the landlord in small claims court 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's failure to make repairs 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 11. ORS 90.360(2)

29. May I withhold rent?

First, follow the steps listed under Question 28, including making a demand for repairs, writing a letter and calling an inspector. If this does not work, you may consider withholding rent to force repairs as an alternative to going to court. Call legal services to find out if it is a good idea in your case.

It is legal for a tenant to withhold all or part of the rent to force repairs when there is serious need for repairs and the landlord refuses to make repairs. **BUT YOU SHOULD TALK TO A LAWYER BEFORE WITHHOLDING RENT!**

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. Call the legal services office to talk about whether to withhold rent and how much.

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, 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 notice and file an eviction case against you in court. If the landlord files an eviction case against you, this could create a black mark on your credit record whether you win or lose the case. Call the legal services office to talk about it before withholding rent. When the landlord files the eviction case against you, you must be ready to pay the rent into court, file an answer describing the serious need for repairs and then go to court to prove that there were serious problems that the landlord did not fix after receiving notice.

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. ORS 90.370

30. 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 28. Then call the legal services office. Do not use repair and deduct without first talking to the legal services office.

WE USUALLY TELL OUR CLIENTS NOT TO USE THE REPAIR AND DEDUCT SECTION BECAUSE IT WAIVES THE RIGHT TO SUE FOR DAMAGES AND THERE ARE TOO MANY RULES THAT MUST BE FOLLOWED EXACTLY.

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

1) You must notify the landlord in writing before you have something fixed. Sample Letter 2. If you cannot reach the landlord in an extreme emergency, you can take the necessary steps and then notify the landlord. Sample Letter 4. This might include repairing a broken pipe if you cannot turn off the running water. 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 \$200.
- 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." Unfortunately, there is no list of what is an "essential service." The courts have said that they will decide with each case. It **probably** includes heat, hot and cold running water, electricity, cooking appliance or refrigerator supplied by the landlord and any other utility services necessary for heating, cooking or sanitation. It probably includes any condition which seriously affects health, sanitation, safety or shelter from the elements. If you want to ask whether the problem is an "essential service," call the legal services office.
- 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.
- 6) The landlord must have **deliberately refused** or have been **grossly negligent** in failing to supply an "essential service."

ORS 90.365(3)

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

Yes. You must follow all the rules listed under Question 30. The landlord might try to evict you for not paying 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 create a black mark on your credit record even if you win the case in court.

32. 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 was very dangerous.

MOVING OUT

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

If you are renting **month-to-month**, you must notify your landlord in writing 30 days (33 days if by mail) before the day you move. See Sample Letter 6. Your landlord may agree to accept a shorter notice without penalty to you. Get the agreement in writing. ORS 90.900(2)

If you are renting **week-to-week**, you must notify your landlord in writing 10 days (13 days if by mail) before the day you move. ORS 90.900(1)

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. ORS 90.900

If you have a lease, read the lease carefully to see if the lease requires written notice before you move.

34. 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. 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, the landlord must make reasonable efforts to find a new tenant and you should not pay for any time that a new tenant is living in the unit.

35. 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?

No. If it is clear that the money you paid was for rent (and not a security deposit or some other kind of fee), the landlord must use this money for the last month's rent when you give a 30-day notice that you are moving. If your landlord raises your rent after you move in, the landlord can also raise the amount of money that you pay in for the last month's rent. But to do this, the landlord has to give you a 30-day written notice. A landlord

can't just ask you to pay the rent increase at the time you give your move-out notice.

36. 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 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 lawyer for information about your rights in these cases. ORS 90.380

37. 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 not clean the rental unit, the landlord usually keeps the deposit.

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, 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 20 for information about refunds of deposits.

THE LANDLORD WANTS YOU TO LEAVE; EVICTION

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

The landlord *must* go to court to force you to leave. The landlord cannot change the locks, shut off the utilities, remove your furniture or take any other action outside the courthouse to force you to move.

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

- The tenant can move and return the keys to the landlord;
- The tenant can move away abandoning the unit without telling anyone of plans to come back; or
- The landlord can go to court and get an order, after a hearing, to have the sheriff force the tenant to move out.

39. 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 call the legal services 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. Call the legal services office.

If your landlord unlawfully changes the locks, shuts off the power 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 24 for information about additional rights that you have if the landlord doesn't pay utility bills that the landlord is supposed to pay.

40. 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 first gives 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 46 and 47 for information on what happens in court.

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

No-Cause

If you rent month-to-month, your landlord may give you a 30-day notice (33 days if mailed) to leave without giving a reason. **If you rent week-to-week**, a no-cause eviction notice can be given after 10 days (13 days if mailed). ORS 90.900(2)

But, a landlord cannot retaliate or discriminate as explained under Questions 4, 5 and 7. If you live in a mobile home park or any kind of federally subsidized housing, the landlord must use a for-cause eviction notice. (See below.)

For-Cause

If you rent month-to-month, your landlord may give you a 30-day notice (33 days if mailed) for cause with the opportunity to fix the problem within 14 days. If you correct the problem listed as the cause within 14 days, then you may stay.

ORS 90.400(1)

If you cause the same problem within six months after receiving a 30-day notice for cause with a 14-day opportunity to fix the problem, the landlord may give a 10-day notice (13 days if mailed) without any time to fix the problem. ORS 90.400(1)

If you rent week-to-week, a for-cause eviction notice may be given after 7 days, 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 any time to fix the problem. ORS 90.400(1)

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

Late Rent

If you rent month-to-month and are more than 7 days late in paying rent, the landlord can give you a 72-hour notice to pay or move. (If you rent week-to-week, the notice can be given if your rent is more than 4 days late.) 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.

ORS 90.400(2)

Personal Injury, Threats, Substantial Damage

If you, your pet, or someone in your control: 1) inflicts substantial personal injury upon the landlord, other tenants, neighbors, or others on the premises by permission; or 2) threatens immediately to inflict personal injury upon the landlord or other tenants; 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 90.400(3)

Extremely Outrageous Acts

The landlord may give you a 24-hour notice (add 3 days if mailed and not posted) if you or someone in your control commits an act that is outrageous in the extreme on, or very near, the premises. "Outrageous acts" include (but aren't limited to) drug manufacturing or delivery, gambling, prostitution activity, burglary, or intimidation. ORS 90.400(3)

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 90.400(3)

Employee Termination

If you live in a place as part of your employment in or around the rental building (for example, a resident manager), you can be given a 24-hour eviction notice (add 3 days if mailed and not posted). If you receive this kind of notice, you should contact a lawyer. ORS 90.110

Note: Farmworkers, who work in fields and not in and around the rental buildings, may not be evicted with a 24-hour notice.

If you live in federally subsidized housing, you have additional rights. See Question 8.

42. How does a landlord give an eviction notice?

The landlord must hand-deliver the eviction notice, mail it to your address, or, in some cases, 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 mailed to you**, the landlord must add 3 days to length of notice time and state in the notice that three days have been added for mailing. **If it is posted and mailed** (24-hour and 72-hour notices where the written rental agreement allows this kind of service), the notice starts to run when the landlord mails the notice.

All eviction notices must be in writing.

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

If the landlord accepted part of the rent on the second day of the month or later, the landlord may not evict you during that 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 eviction notice, it is even harder for the landlord to evict you. Call the legal services office in either case if the landlord files for eviction. ORS 90.415(3)

44. 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 41 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 4 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 5th 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.) ORS 105.120

45. 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 less than 7 days away in most counties. Call the legal services office as soon as you get the papers. Tell the person answering the phone that you have court papers.

46. 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, you can:

- 1) Ask the judge to dismiss the case if the landlord does not show up;
- 2) Tell the judge you will move out right away;
- 3) Talk to the landlord and ask him or her to give you time to move;
- 4) Ask the judge for a little time to move; or
- 5) Ask the judge for a trial if you have a defense. See Page 24 for information about defenses.

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 23. There will be a filing fee in court. **If you cannot afford the filing fee, ask the judge for a fee 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 post a three-day notice. See Question 49.

47. 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 25.

At the trial you will need to prove the defenses listed in your answer. **Ask to have the trial recorded.** 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 25. Be sure to get to court on time. Stay calm and be polite to the judge and the landlord.

If you have a lawyer and win, the judge will order the landlord to pay your attorney fees. If the landlord has a lawyer and you ask for a trial and lose, the judge may order you to pay for the landlord's attorney fees. If you do not have much income or property, state law may protect you against this order. See Question 55.

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

Yes, but you should try to talk to legal services 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 23 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 47 for information about trials. You should call legal services before going to the trial if you have not already talked to them.

49. 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 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 post a three-day notice on your door. If you don't move out by the end of the three days, the sheriff will come back and require you to leave while the landlord changes the locks.

50. 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 challenge your eviction in a trial and lose, you may be asked to pay your landlord's attorney fees and court costs. Even if the landlord wins a judgment for back rent or for attorneys fees and costs, your income might be exempt. See Question 55.

51. 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. If you do not pay in 72 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. 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 three-day card on your door. You will have three days to move. If you do not move within three days, the sheriff will return and require you to leave while the landlord changes the locks.

52. 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 5.) It is not illegal to evict a family for nonpayment of rent or other legal reasons. If you have to move and you are low income, you may be able to get special priority on the waiting lists for federally subsidized housing. (See Question 9.) You should also call the state welfare agency to see if you can get an emergency grant to help pay for moving. Call the legal services office if you have trouble getting Emergency Assistance. You can also call local charities and churches to find out whether any agency has money or housing.

GETTING YOUR THINGS BACK

53. 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 send a 15-day written notice of abandoned property that asks you to pick up your things. This notice (marked "please forward" on the envelope) must be sent to your last known address, any post office box that you have that the landlord knows about, and to your most recent forwarding address. You should call or write to your landlord to pick up your things as soon as possible during the 15-day period. If you were evicted, the landlord must give you your things without forcing you to pay before giving you the property. The landlord can add the boxing and storage costs to the FED judgment. ORS 90.425

If you cannot pick up your things during the first 15-day notice period, you can write a response to the landlord during this first 15-day period and set a date to pick up your things. The landlord must receive your letter during the 15 days and you must pick up your things no later than 15 days after that. ORS 90.425

Take everything with you when you leave if you can. If you cannot, at least box your things to avoid breakage. 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 remove your things in a moving van. 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 26.) It is unusual for the landlord to use a moving van company because it is very expensive.

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

If your landlord has your things after a legal eviction, the landlord must return them within the 15-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 the judgment and try to collect it later. If you missed the 15-day notice deadline and the landlord gave the proper notice, then the landlord can sell your things at a reasonable sale to pay for the notice, boxing, storage, sale and unpaid rent. Call the legal services 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.

If your landlord paid the sheriff to remove your things in a moving van 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 26 for information on how to file a claim of exemption.

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

If the landlord will not give back your property during the notice period, you can sue the landlord in District Court to recover the things you left behind. In this type of case, the landlord loses the right to sue for unpaid rent and other damages if he or she wrongfully refuses to return your property. Be sure to ask the court clerk for a fee deferral form if you cannot afford the filing fee. 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.

56. 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 27 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 26.

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 attorneys 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.

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 27 and 28).

(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).

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)

NOTICE OF REPAIR AND DEDUCT FOR ESSENTIAL SERVICES

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 30 and 31.) You may only deduct up to \$200 unless you and your landlord agree to more.

NOTE: Your other option is to sue your landlord asking for damages and an order requiring the landlord to make repairs. **If you choose the repair and deduct option you cannot sue for the same violation.**

(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 \$200 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), which I think is a reasonable time given the situation, I will get the work done by a professional and make the proper deduction from my rent.

Sincerely,

(your name and address)

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 30 and 31 and Sample Letter 2). Include a copy of the receipt for repairs in the letter. Keep the original of the receipt.

(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)

ESSENTIAL SERVICE REPAIR IN AN EMERGENCY

This is a sample letter to send to your landlord when you make essential service repairs in an emergency. Try to send this letter before you have the actual repair done, if at all possible. (See Question 30 and 31.) 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 but could not reach you so I (am having) or (had) the repairs made by (repair person). 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)

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 27, 28 and 29). You can also go to court and get an order requiring the landlord to make repairs without waiting for the landlord to evict. A lawyer will probably be needed 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.

(date)

Dear (landlord's name):

Since moving in on (date), we have discussed needed repairs on numerous 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)

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 33, 34 and 35).

(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)

REQUEST FOR RETURN OF DEPOSIT AFTER 30 DAYS

This is a sample letter to send to your landlord if you moved out more than 30 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. (Question 20).

(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 30 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 [not shown] to record the contents and condition of your place when you move in and before moving out. If you mark anything as being either 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.

HOW TO USE A FORM ANSWER IN AN EVICTION [form not shown]

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 which 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.** You cannot use this answer form to request money owed to you by the landlord. For that you need to go to Small Claims Court or to 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 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

- Repairs needed (See Questions 27, 28)
- 72-hour nonpayment of rent Bad notice (41)
- Other landlord violations: lockout (39),
- illegal entry (25), waiver (43, 44), etc.;
- 10-day notice/no cause (week-to-week) Retaliation (26)
- 30-day notice/no cause (month-to-month) Bad notice (41)
- Discrimination (4,5,6,7)
- 30-day notice/for cause with 14 days to cure Bad notice (41)
- 10-day (pet violation); Landlord's complaints untrue
- 24-hour (outrageous conduct, personal injury, substantial damage)

How do I fill out the form answer?

There is a sample of the form answer on Page 22 of this booklet [not shown in electronic version]. 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 legal services or a private lawyer for advice on how to fill out the form answer. Even if the legal services 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 22 of this booklet.

Repair Problems - Under Question 27 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 \$200 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 \$50 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.

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 26 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 41 and 42 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 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 43 and 44 for more information on waiver.

Discrimination - If the notice or eviction is discrimination, you should write the word "discrimination" under "Other Defenses" and describe what happened. See Questions 4 -- 7 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 39.

Unlawful entry - If the landlord or someone working for the landlord came into your home without your permission or without a 24 hours' notice in advance, except for an emergency, 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 25.

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 cancelled 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 27 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 27 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 can 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?

You must file the claim within 90 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 27 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.
- 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

1. Amount of Exempt Earnings

Dates	Disposable Income
October 1, 1991 - June 30, 1992	\$150 per week
July 1, 1992 - June 30 1993	\$160 per week
After July 1, 1993	\$170 per week
(or 75% of disposable wages, whichever is more.)	

2. Social security (including SSI).

3. Public assistance (welfare).

4. Unemployment benefits.

5. Disability benefits.

6. Workers' compensation benefits.

7. Exempt wages, social security, welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

8. Spousal support, child support, or other support if necessary to support you or your dependents.

9. A house or mobile home and land you own up to \$15,000 (\$20,000 if more than 1 owner owes the debt). A mobile home or houseboat you live in with no land owned up to \$13,000 (\$18,000 if more than one owner owes the debt). Includes proceeds from sale for (1) year.

10. Household goods, furniture, radios, 1 television set, and utensils to \$1,450.

11.* Automobile, truck, trailer or other vehicle to \$1,200.

12. Tools, implements, apparatus, team, harness or library necessary to carry on your occupation to \$750. Food for such team for 60 days.

13.* Books, pictures and musical instruments to \$300.

14.* Clothing, jewelry and other personal items to \$900.

15. Domestic animals and poultry for family use to \$1,000 and their food for 60 days.

16. Provisions (food) and fuel for your family for 60 days.

17. One rifle or shotgun and one pistol.

18. Public or private pensions.

19. Veterans benefits and loans.
20. Medical assistance benefits.
21. Health insurance proceeds and disability proceeds of life insurance policies.
22. Cash surrender value of life insurance policies not payable to your estate.
23. Federal annuities.
24. Other annuities to \$250 per month, excess over \$250 per month subject to same exemption as wage.
25. Professionally prescribed health aids for you or your dependents.
- 26.* Oregon renter's and homeowner's tax refund.
- 27.* Your right to receive, or property traceable to:
 - a. An award under any crime victim reparation law.
 - b. A payment, not exceeding \$7,500, on account of personal bodily injury, not including emotional pain and suffering or compensation for actual monetary loss, of you or an individual of whom you are a dependent.
 - 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.
28. Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
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.

RESOURCE SECTION

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)

926-8678

Oregon Legal Services
425 2nd Ave. SW, Ste 102
Albany, OR 97321-2262

Bend Regional Office

(Jefferson, Crook, Deschutes)

385-6944

Oregon Legal Services
123 NW Kearney Ave.
Bend, OR 97701-4547

Center for NonProfit Legal Services

(Jackson)

779-7291

225 W Main
P.O. Box 1586
Medford, OR 97501

Columbia County Volunteer Lawyers

(Columbia)

397-1628

P.O. Box 1400
St. Helens, OR 97051

Coos Bay Regional Office

(Coos, Curry, Western Douglas)

269-1226

Oregon Legal Services
295 S Tenth

P.O. Box 1098
Coos Bay, OR 97420-0241

Farmworker Office

(Mid-Willamette Valley farmworkers)

981-5291

Oregon Legal Services
397 N First Street
Woodburn, OR 97071-4623

Grants Pass Regional Office

(Josephine)

476-1058

Oregon Legal Services
207 SW "G", Suite C
Grants Pass, OR 97526-3133

Hillsboro Regional Office

(Washington, Columbia, Tillamook, Clatsop)

648-7163

Oregon Legal Services
230 NE Second, Suite A
Hillsboro, OR 97124-3011

Klamath Falls Regional Office (Klamath, Lake)**884-7709**

Oregon Legal Services
136 N. 3rd, Suite A
Klamath Falls, OR 97601-6316

Lane County Legal Aid

(Lane)

342-6056

376 East 11th St.
Eugene, OR 97401

Lincoln County Office

(Lincoln)

265-5305

Oregon Legal Services
127 SW Nye
P.O. Box 1969
Newport, OR 97365-0132

Marion-Polk Legal Aid

(Marion, Polk)

581-5265

1655 State Street
Salem, OR 97301

McMinnville Office

(Yamhill)

472-9561

Oregon Legal Services
720 East Third
P.O. Box 141
McMinnville, OR 97128

Multnomah Co. Legal Aid

(Multnomah)

224-4086

310 SW Fourth Ave
900 Board of Trade Building
Portland, OR 97204

Native American Program

(assistance to tribal governments)

223-9483

Oregon Legal Services
917 SW Oak, Suite 410
Portland, OR 97205-2829

Ontario Regional Office

(Malheur, Harney, Grant, Baker)

889-3121

Oregon Legal Services
772 N Oregon Street

Ontario, OR 97914-1727

Oregon City Regional Office

(Clackamas)

655-2518

Oregon Legal Services

421 High Street, Suite 110

Oregon City, OR 97045-2249

Pendleton Regional Office

(Gilliam, Hood River, Morrow, Sherman, Umatilla, Union, Wallowa,
Wasco)

276-6685

Oregon Legal Services

365 SE Third Street

P.O. Box 1327

Pendleton, OR 97801-0260

Roseburg Regional Office

(Douglas, Josephine)

673-1181

Oregon Legal Services

1000 SE Stephens

P.O. Box 219

Roseburg, OR 97470-0039

Other Organizations

Lawyer Referral Service

Oregon State Bar

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 for the first meeting with the lawyer.

Tel-Law Tape Library

620-3000 in Portland, or

1-800-452-4776 toll free in Oregon

Tel-Law is a collection of tape-recorded messages on legal topics. You can get a list of all the topics from the Oregon State Bar, P.O. Box 1689, Lake Oswego, OR 97035-0889. Their landlord/tenant tapes are:

7016 - Rights and Duties of Tenants

7017 - Rights and Duties of Landlords