

Mind Your Business – Tia’s Tips for Better Rental Management
Tenant Non-Compliance: *Enforcing the terms of your lease*
By Tia Politi, Lane ROA President

I often say that my experience as a mom has helped me in my career as a property manager - I sometimes feel as though I am responsible for parenting dozens of unruly teenagers. In my experience, educating residents about their lease requirements and what it means to be good neighbors regularly becomes part of my job as a landlord, and likely yours as well. Some residents just need some boundaries and guidance or help working through issues, others are self-centered and unaware of the impacts of their behavior on those around them, but can be brought around, and some just don't seem to care.

Most of the calls received on the ROA Helpline have to do with tenants violating the terms of their rental agreement. Offenses range from loud parties, unpaid rent or late fees, or excess personal property, to unauthorized animals or occupants, or lack of care of the property in some fashion. Unfortunately, some rental owners turn a blind eye to their tenants' behavior in order to avoid confrontation, or over concerns related to an unplanned vacancy. ~~If you cannot deal calmly, directly, and firmly with your residents and set clear boundaries for accepted behavior, they will run roughshod over you and your rental unit. Not only will your property suffer, but so will your self-esteem as you realize they have the upper hand and you are too wimpy to address any issues.~~ This can lead to waiver if you have been aware of a violation but have chosen to turn a blind eye for three rental periods or longer. Also, Eugene's Social Host Ordinance can and will impose financial penalties upon you if you ignore your tenants' bad behavior. If you struggle with this part of rental ownership, you would be well-advised to hire a property manager. The same is true if you are a hot-head. No good ever comes of venting your spleen to tenants - your rage can and will create much bigger problems than the ones you're trying to solve.

When I become aware of a tenant non-compliance issue, I have a four-step process for bringing them back into compliance or getting them to move on. First, is the friendly phone call that goes something like, "Hi, this is Tia. I'm calling to let you know that I received a report from the police that they had responded to a neighbor complaint regarding a loud, obnoxious party at your residence last night. I would like to remind you that while you are entitled to have friends over and celebrate, you are not allowed to disturb the peaceful enjoyment of your neighbors. Should this behavior continue, I will take progressive action up to and including termination of your tenancy. I'm hoping that won't be necessary, but I want you to know the risks involved should you choose to continue this behavior." In most cases, and with reasonable residents, that is the only action necessary. I do make a note in the tenants' file that I made the call.

Upon a second confirmed incident my next step is to send a written Warning Notice, **Notice of Non-Compliance – ORHA form #35**. This becomes part of the tenant's rental record. This is also the step required before you are legally permitted to charge a tenant a non-compliance fee for certain lease violations including failure to clean up pet waste or trash, parking violations or improper use of a vehicle, late payments of utility bills or other service charges, smoking in a non-smoking area, and unauthorized pets.

If there is a third similar violation, I either assess and bill the tenant the allowable non-compliance fee (if allowed by law) or send a 30/14 – **Notice of Termination with Cause – ORHA form #38**. Notice I used the word 'or,' that's because a landlord may not charge a non-compliance fee and terminate a tenancy

for the same offense. You must choose one or the other at the time of the violation. You can, however, subsequently terminate the tenancy for failure to pay the fee, but I digress. A 30/14 is still a curable notice, but if not cured will result in termination of the tenancy. If cured within the time frame specified, or the notice expires with no further violations of that same nature, then the notice hangs out in limbo for six months. If the tenants repeat the same or substantially the same behavior within six months of the origination date of the 30/14, I can then issue a **10-day Repeat Violation Notice – ORHA form #7**, for which there is no cure allowed.

When I send that 30/14, I include a letter that informs the tenants of the permanent consequences of a repeat performance and includes a statement like, “It is my sincere hope that you will not make me take this final step resulting in termination of your tenancy.” It is a reminder that this situation is completely within their control, not mine, and that this is truly their final chance to stop. When I have tenants in a fixed-term lease, I also remind them that termination under the notice does not relieve them (or their co-signers) from liability for either a lease-break fee or actual damages under the terms of their lease. With college students in particular, this really seems to get their attention as they suddenly realize that they could be without housing AND still have their parents be on the hook for their current lease.

One other thing to remember when evicting or assessing fines against problem residents, is that we all have the right of due process. When you are taking legal action against another party, (and notices are legal documents that could eventually be presented as evidence in a court proceeding) you had better have evidence of your claim in case you end up in a courtroom with a tenant who is denying the violation. In civil matters the Plaintiff bears the burden of proof by a preponderance of the evidence. I have had issues with neighbors who like to complain but can’t be bothered to document properly or indicate they are not willing to call police or testify in court should it come to that. Remember, to prevail in court you need proof: photos, videos, police reports, credible witness testimony, or your own testimony of what you’ve witnessed. And if you proceed to evict on a repeat violation notice you need evidence to prove both the original 30/14 and the subsequent Repeat Violation notices were valid, and that the repeat violation happened within six months of the effective date of the original notice. The repeat violation must be the same or substantially the same to utilize this option.

Since the passage of SB 608 limiting landlords’ right to terminate a tenancy, a lease can be terminated should the tenant commit three lease violations (including nonpayment of rent) within the preceding year. Each violation must be documented, and at the time the violation occurs, the landlord must send a written warning notice, **Notice of Non-Compliance – ORHA form #35**, stating the violation, the number of violations committed within the preceding year, and that the lease may be terminated if the tenant commits three or more separate violations within that year. The termination date after the third violation requires a minimum 90-day written notice that expires either at the lease-end date or the date of the termination notice, whichever is later, **Notice of Nonrenewal of Lease – ORHA form #5B**. If your tenant commits the third violation one month before the lease expires, and you send the final Notice of Non-Compliance, the termination date on the Notice of Nonrenewal of Lease will be two months after lease expiration. You must also calculate your time correctly based on your method of service. If you aren’t sure, just add a few days or call the Helpline for guidance. And if you hadn’t sent the required written warning notices, you don’t get to terminate the lease, so it’s more important than ever to document and follow-up on violations. The form has been updated to include the required language, so if you’re using old forms, either handwrite in the required language or purge those and buy new ones.

While you can’t always fix what’s wrong with your tenant’s behavior, most of the time you can have the desired impact. You set the tone of the relationship, so maintain a friendly yet business-like demeanor

but keep the ball in their court. And remember, once you start down the slippery slope of non-compliance, it's almost impossible to get back up that hill, so don't let it happen. You don't have to be nasty or rude, but once you start allowing even minor violations to slide you've lost control over your asset.

This column offers general suggestions only and is no substitute for professional legal counsel. Please consult an attorney for advice related to your specific situation.