Client Name: Date:

Client is :  Landlord  Tenant

Type of Problem:  Eviction  Lawsuit for Rent  Retaliation

  Lockout  Seizure of Property  Discrimination

  Deposit  Condition of Dwelling  Application

  Abandoned Property  Parking/Towing  Other

# FACT GATHERING

Tenant: Name

 Address

 E-mail

 Phone (H) (W)

Landlord: Name

(Owner or Address

Management Co.) E-mail

 Phone (H) (W)

Manager: Name

 Address

 E-mail

 Phone (H) (W)

 On Site?  Yes  No

Property Address:

Rental agreement start date: Rental agreement end date:

Move-in date: Move-out date:

ORS 90.147 possession-to-tenant date: ORS 90.147 possession-to-landlord date:

Type of Dwelling:  Apartment  House  Hotel/Motel \_\_Farm \_\_ Room

  Drug & Alcohol Free Housing  Recreational vehicle (ORS 90.100,.120,.230)

  Mfg'd or floating home (see below) \_\_ Subsidized (see below)

Rent is $ due on the of each  month [or]  week

Is there a written rental agreement? (ORS 90.220)  Yes  No

 Did the landlord give a copy to tenant?  Yes  No

Copy is:  attached  at home  lost

Is late charge authorized by rental agreement? (ORS 90.260)  Yes  No

Late charge of $ if paid after the .

Has rent changed?  Yes  No

If yes, rent was $ until , .

Was 90 day notice of increase given? (ORS 90.220)  Yes  No

Did notice contain all info required under ORS 90.220?  Yes  No

Did the tenant sign or receive any other papers, such as rules?  Yes  No

Copy is:  attached  at home  lost

 Describe any other papers.

Describe any oral agreements, and dates.

**IS OCCUPANT A TENANT?**

ORS 105.005 (ejectment) versus ORS 105.105 (eviction)

Did parties agree on premises, term and rent?

Is this a family arrangement? *State v. Nolen*, 244 Or App 635 (2011)

# IF A TENANCY, DOES THE ORLTA APPLY?

Does occupant maintain a household? (90.100 "Dwelling unit")

Does occupant have right to exclude others? (90.100 "Tenant")

Does occupant hold under a rental agreement? (90.115)

Does an exclusion apply? (90.110)

Who is the tenant? (90.100 “tenant,” “person,” “organization,” “common interest”)

# SUBSIDIZED HOUSING

If dwelling is subsidized housing, what subsidies are involved?

 Check http://www.oregon.gov/ohcs/Pages/research-multifamily-housing-inventory-data.aspx

 Section 8 project-based housing (24 CFR chapters 880 - 891)

 Section 42 housing, see IRC 42(h)(6)(E)(ii)

 Section 8 voucher (24 CFR 982)

Is landlord:  Housing Authority  Non-Profit  For-profit Entity  Individual

# ORLTA EVICTIONS

Review: Is this a tenancy subject to the ORLTA?

Has written notice of termination been given ?  Yes  No

 How served (90.155):

  Delivered to tenant (date )

  “First class” (per 90.100) mail (mailing date: \_\_\_\_\_\_\_\_\_\_\_ postmark date: )

 (3 days added: Yes No)

  Attachment of notice (date ) and mail (postmark date )

 Attachment and Mail authorized by rental agreement, for both landlord and tenant?

 Yes No

Location for tenant to attach designated with particularity, e.g., “the door beneath the 'Rental Office' sign at 123 Euster St., Pugwash OR)?

Reasonably located in relation to the tenant?

Available at all hours? (Not within a building locked at night)

Notice is:  attached  at home  lost

Envelope notice came in (with postmark) is:  attached  at home  lost

If notice is for cause, what is tenant’s explanation:

Effective date of termination:

Does notice specify termination date? \_\_Yes \_\_No ((E.g., February 12, 2018)

Does notice also specify time? \_\_Yes \_\_No (ORS 90.394 (rent); .396 (outrage) (E.g., 12:01 a.m.)

Does it give enough time from date of service with ORS 90.155 extensions?  Yes  No

Has tenant discussed notice with landlord?  Yes  No

 Describe discussion:

Does notice content comply with statute (ORS 90.392, 90.394, 90.396, 90.398, and 90.403; 90.380(5), 90.405, 90.427, 90.429, 90.630 or 90.632)?  Yes  No

 If no, describe why:

If the tenancy is month-to-month and every tenant has lived there at least a year, is the landlord’s no-cause notice for at least 60 days, not just 30? (ORS 90.427)? City of Portland, Bend, Milwaukie, 90 days?

Is the tenant terminating due to military duty? (ORS 90.472, 90.475)  Yes  No

Is domestic violence involved? (ORS 90.445 to 90.459)  Yes  No

 Is landlord treating differently a tenant or applicant who is a

 victim of domestic violence? (ORS 90.449)  Yes  No

 Is there a restraining order, other verification, or ouster order?  Yes  No

 Is there a co-tenant/abuser who is being excluded?  Yes  No

If early release, are there any remaining tenants:  Yes  No

Is landlord evicting only the abuser? (ORS 90.445, 105.128)  Yes  No

If eviction is for closure of a facility, has the landlord provided the

 required notice and payments? (ORS 90.645; OAR 813.065)  Yes  No

 if this eviction is a result of a condominium conversion, has the landlord

 given the notice and offer to sell? (ORS 90.490, 90.493, 100.305)  Yes  No

Is this a termination of a tenancy in a Group Recovery Home?

 (ORS 90.440)  Yes  No

If this is a post-advertisement-and-sale-foreclosure eviction of a tenant (as opposed to the owner), has the purchaser given sufficient notice under ORS 86.745?

# Forcible Entry and Detainer

FED filed after notice's termination date, as extended by 18.010?  Yes  No

Served by the next judicial day? (105.135)?:  Yes  No

Copy of notice attached to complaint (105.124)?  Yes  No

Identical to one given tenant earlier?  Yes  No

Date of first FED appearance:

Is first appearance at least 7 days after judicial day following date complaint filed? (ORS 105.135, but see *Balboa v. Patrick*, 351 Or 205 (2011).

**Non-Payment Eviction (ORS 90.394)**

Behind in rent?  Yes  No

 $ Amount owed

 Does the notice specify the amount owed?  Yes  No

 Amount and date of last payment; review payment history

 # of payments behind

 Has landlord allocated payments correctly (90.220)?

 Does the notice claim amounts other than rent?  Yes  No

 If yes, what?

 Does the notice specify both a due date and time?  Yes  No

 Receipts:  attached  at home  lost  not provided

Reasons for nonpayment:  Lack of funds

  Dwelling unit in bad condition (describe in Habitability section)

  Landlord refused to accept rent (if yes, describe what

 happened and when)

  Other:

Does tenant already have rent money to pay right now?  Yes  No

 How much? $

 Deposit into Trust Account? (Danger: *In re Williams*, 314 Or 530 (1992))  Yes  No

 If no money now, when?

Is there a dispute over amount of rent due?  Yes  No

Does the notice include charges other than rent? ORS 90.260(6)(late fee); .302(5)(fees); .315(4)(d)(utilities)  Yes  No

Has tenant made partial payments?  Yes  No

|  |  |  |  |
| --- | --- | --- | --- |
| DATE OF PARTIAL PAYMENT |  AMOUNT |  METHOD OF PAYMENT |  ORS 90.417(4) AGREEMENT MADE? |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Did landlord return any money? (ORS 90.412(3))  Yes  No

 If yes, when, and how many days after receipt? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Is there a waiver due to landlord’s acceptance of partial payment?

 (ORS 90.417)  Yes  No

# CURE/WAIVER

If eviction is for cause other than nonpayment, has landlord waived breach?  Yes  No

 (ORS 90.412, 90.414)

 How:

 When:

Cure of eviction cause? (ORS 90.392; 90.630 for mobile home parks and marinas)

 How:

 When:

 Does the notice describe a cure? Does notice demand a particular cure?

 Deadline for cure:

# HABITABILITY

Within the last year (ORS 12.125 limitation), did the apartment or house lack any repair item under 90.320? Or did the space in a facility lack any item under ORS 90.730? If yes on any item, from when to when?

Did the dwelling lack any unlisted item of similar importance? *Bellikka v. Green*, 306 Or 630 (1988).

Complaints to landlord:

|  |  |  |  |
| --- | --- | --- | --- |
| DATE OF COMPLAINT TO LANDLORD | WRITTEN OR ORAL? | PROBLEM | LANDLORD’S RESPONSE |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Did landlord know or should landlord have known about the problem?

 ORS 90.360  Yes  No

 If yes, why:

Did public fire, health or housing inspector check out dwelling?

If yes, is there a written report? Copy?  Yes  No

Did tenant or tenant’s guest cause the problem?  Yes  No

 ORS 90.360(5) Describe:

Did tenant invoke repair-and-deduct procedure, ORS 90.368?  Yes  No

Is the dwelling unsafe or unfit to occupy due to the problem? ORS 90.365(1)(c)  Yes  No

 Describe:

Has a government agency posted the dwelling as unsafe or unfit to occupy?  Yes  No

 (ORS 90.380) Attach copy of the notice?

Did landlord disclose the subject of the posting at start of tenancy?

 (ORS 90.380(3)(c))  Yes  No

Has tenant negligently damaged the dwelling or premises? (ORS 90.360(4))  Yes  No

 Describe:

Has tenant denied landlord access to make repairs? (ORS 90.322)  Yes  No

 If yes, describe what happened and why:

**DEPOSITS/FEES**

Are deposits, prepaid rent, or fees involved? Are they authorized by law, and
described in a writing? Attach a copy. (ORS 90.300, 90.302)  Yes  No

**Deposits, ORS 90.300**

Describe any deposits charged: amount, purpose, date paid

Date by which both tenancy had terminated and possession returned to landlord: \_\_\_\_\_\_\_\_\_\_\_

Did landlord refund by 31st day afterward?  Yes  No Amount?

Did landlord account by 31st day afterward?

By personal delivery or by first-class mail as defined in ORS 90.100?

If late, then when?

Have deposits or prepaid rent been garnished? (ORS 18.618)

 If yes, by whom and when

**Fees, ORS 90.302**

Did landlord charged any one-time, up front fees?  Yes  No Describe:

 Is tenant within one-year (12.125) of paying the fee?  Yes  No

Has landlord charged any noncompliance fees?  Yes  No Describe:

**Both**

Has landlord charged any pet deposits or fees for service or companion animals?  Yes  No

Describe:

Distraint:  Is landlord holding any property of the tenant? (ORS 90.420, 105.112)

 ATTACH A LIST OF ITEMS AND THEIR VALUE

  Has the tenant demanded the return of the property? When?

 Was the demand in writing?  Yes  No

 Landlord’s reason or response:

Parking/towing: Has landlord had tenant’s car towed? Without notice?  Yes  No

 (ORS 90.485 and further statutes cited there)

 If yes, when? Landlord’s reason?

**DEFENSES/COUNTERCLAIMS/ACTIONS**

Defenses/Counterclaims against landlord (describe):

 Defense: Protected class

 Discrimination Describe the landlord’s discriminatory conduct:

 (ORS 90.390;

 ORS 105.132)

 Defense and

 Counterclaim: Protected conduct

 Retaliation

 (ORS 90.385, *Elk* Did tenant make complaint in an unreasonable manner?  Yes  No

 *Cr'k*, 353 Or 565 (2013) Describe:

 Counterclaim: Has the landlord entered the dwelling or premises without tenant’s

 Abuse of access permission or without notice?  Yes  No

 (ORS 90.322) If yes, when:

 Landlord’s reason (emergency, etc.):

 Was anything damaged?  Yes  No

 What:

Other Counterclaims and Actions:

 Lockout/utility shutoff or threat (ORS 90.375)

 Utilities/services benefiting landlord or other tenants not disclosed when tenancy starts, ORS 90.315. (One-year statute of limitations, ORS 12.125 begins second day of tenancy.)

* Failure to disclose foreclosure (ORS 90.310)
* Improper utility or service charge (ORS 90.315)
* Application denial (ORS 90.304, 90.390) or applicant screening charge issue (ORS 90.295)

 Unlawful debt collection practice (See *Hoffer* *v. Szumski*, 129 Or App 7 (1994) and discussion below.

 Miscellaneous sales practices violating the Unlawful Trade Practices Act (describe any misrepresentations by the landlord; unreasonable rejection of a prospective manufactured dwelling purchaser in a facility, ORS 90.680; false representations about insurance or warranty by dealer,
ORS 646.648).

|  |  |  |
| --- | --- | --- |
|  Date |  Nature of Misrepresentation/Rejection |  Oral or Written |
|  |  |  |
|  |  |  |
|  |  |  |

NOTE: See UTPA discussion at end of this form.

Landlord failure to give written notice that unit is in a 100-year flood plain (90.228)

# POST-EVICTION

Was there a judgment or order by stipulation?  Yes  No

If so, did the judgment or order include only the items listed in ORS 105.146(2)?  Yes  No

Did one party fail to comply? (ORS 105.146 - 105.149)  Yes  No

 Describe the noncompliance

 Describe any excuse or defense to the noncompliance

Notice of Restitution given? ORS 105.161  Yes  No

 Deadline to move out:

Have 60 days passed since judgment (ORS 105.159) or 30 days since writ of

 execution? ORS 105.161?  Yes  No

Abandoned property (ORS 90.425, 90.675)  Yes  No

Signs that the tenant has abandoned or relinquished the premises:

Notice of abandoned property given?  Yes  No

 Date:

Notice waived? (If yes, attach copy of agreement)  Yes  No

Describe the abandoned property or attach list:

 Where stored:

Does the abandoned property include a manufactured dwelling or floating home?  Yes  No

If yes, notice given to any lien holder or owner?  Yes  No

Has government posted the dwelling for methamphetamine? ORS 90.425(23)  Yes  No

If abandoned by death of a tenant living alone, has the landlord notified personal

 representative and State Lands, etc? (ORS 90.425)  Yes  No

# MANUFACTURED AND FLOATING HOMES IN "FACILITIES"

Does the space tenant own the home?

Now or in the past, are or were there four or more home spaces?  Yes  No

Was the owner's purpose for at least four spaces to rent them out?

Were floating-home spaces contiguous and transferrable as a single unit?

Did landlord ever close the park under ORS 90.645 or 90.671?

**Note: Where the owner of a manufactured dwelling or floating home rents a space in a park or marina (a "facility") the tenancy is treated differently from apartment occupancy in many ways. 90.505-90.875. The questions above relate to definitions in ORS 90.100 for "facility," "manufactured dwelling park," and "marina," so the practitioner can determine under ORS 90.120 and .505 whether ORS 90.510 et seq. apply. Despite the implication of the questions, no reported case has said whether a park or moorage can lose its character as such without a closure under ORS 90.645 (park) or .671 (marina).**

 What year was manufactured dwelling built?

 Is there a lender or lien holder on the dwelling or home?  Yes  No

 If yes, name and address:

Has the manufactured dwelling park or floating home marina landlord registered with the state and completed the required training in ORS 90.732 and .734?

***Unlawful Trade Practices Act***

**By Craig Colby**

The core purpose of the UTPA is to discourage fraudulent conduct in the formation of consumer contracts. Its original provisions prohibited various tricks used to lure consumers into transactions, but the act did not try to regulate the conduct of the merchant who simply defaulted on a contract.

Also in its original provisions, the UTPA applied only to the formation of contracts for "goods and services." When the act was being enlarged in 1977 to encompass the formation of real-estate contracts, a May 10, 1977 memorandum from Chief Counsel, Consumer Protection Division, to the House Committee on Business and Consumer Affairs said, "The law also does not include all things covered under the residential landlord-tenant law. \* \* \* There is landlord-tenant law already on the books, and since the Consumer Protection Division of the Department of Justice normally does not act in the area of residential landlord-tenant, extension of jurisdiction over residential landlord-tenant is not needed at this time." Accordingly the legislature provided, "As used in ORS 646.605 to 646.652: \* \* \* real estate does not cover conduct covered by ORS Chapter 90."

Much of the UTPA regulates conduct in connection with sale or lease of "real estate, goods or services," and in my view that much of the UTPA does not apply to residential landlords. On the other hand, the legislature has used the UTPA as a dumping ground for miscellaneous regulations, including unlawful debt collection practices, that might well catch up residential landlords. My purpose here is not to list them -- they change every biennium -- but just to warn the practitioner that core provisions of the UTPA may not apply.

*Hoffer v. Szumski*, 129 Or App 7, 877 P2d 128 (1994) controls, or doesn't. It arose from a residential FED where the trial court had dismissed tenant's UTPA counterclaim as "outside the purview" of an FED. On appeal landlord conceded that the trial judge was wrong. In a short discussion agreeing with landlord, the Court of Appeals truncated the front of what is now ORS 646.638(7) to, ""[I]n any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, such purchaser or lessee may assert any counterclaim the purchaser or lessee has arising out of a violation of [the UTPA]." Based on the partial quotation the Court determined that counterclaims would lie.

Actually, the statute begins now and, with subsection numbers updated, began then, "(7) Notwithstanding subsection (6) of this section, in any action \* \* \*." The referenced subsection (6) sets a one-year statute of limitations. Thus the full language extends the limitations period if the merchant starts the fight, but does not overturn general rules concerning FED procedures.

The landlord in *Hoffer* conceded error on the jurisdictional question but sought to justify the trial court's dismissal of the UTPA claim on the ground that tenant had failed to state a claim. Presumably landlord argued that the act's definition of "real estate" denied tenant's coverage by the part of the UTPA the tenant had invoked. The Court's opinion noted this argument of the landlord but did not respond to it. Perhaps the court reached and rejected the argument; perhaps it thought landlord hadn't preserved it; perhaps the court deemed it patently irrelevant. Some lawyers believe that because landlord lost on appeal *Hoffer* must have decided generally that tenants may rely on the entire UTPA, at least for matters not explicitly regulated by the ORLTA. I suggest caution.

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