2013 OREGON LEGISLATIVE ROUND-UP

THE LANDLORD-TENANT COALITION OMNIBUS BILL

By Jim Straub, ORHA Legislative Director

The 2013 Oregon legislative session was, by and large, a successful one for landlords with a significant portion of the ORHA's legislative goals met. As usual, the Landlord-Tenant Coalition's omnibus bill (Senate Bill 91) passed the Legislature with flying colors and widespread support from both sides of the aisle. We also saw the passage with mixed support from landlords of the Housing Choice Act of 2013, also known as the "Section 8 bill" (House Bill 2639), which includes federal rent subsidies and other local, state, and federal assistance under state protected source of income and will take effect July 1, 2014. (The ORHA Board of Directors voted to remain neutral on this bill after Speaker of the House Tina Kotek granted us the majority of the concessions we asked for.) We will address in detail the Housing Choice Act of 2013 a legislative update in the near future, but it's not as bad as you might think.

Today, we examine Senate Bill 91, the Landlord-Tenant Coalition omnibus bill, in more detail. Taking effect January 1, 2014, as an omnibus bill, this new law has many components. We'll tackle them one at a time.

Renters' Insurance *(SB 91, Sections 2 & 6)*

Senate Bill 91 allows landlords to require their tenants to obtain renters' insurance under certain circumstances. Landlords may require renters' insurance in an amount not to exceed $100,000 per occurrence or the amount customary in the rental area, whichever is greater. (For instance, landlords in the metro Portland area might customarily expect higher renters' insurance limits than other rural areas of the state.) This $100,000 limit was negotiated by tenant advocates in the coalition who were concerned about insurance affordability for tenants who, if they were unable to afford insurance in the amount required by area landlords, could effectively be priced out of a rental market. The allowance in the law for higher customary amounts required by landlords in some areas was the concession negotiated by landlord advocates.

Disclosure of renters' insurance requirements must be made to tenants prior to the beginning of the tenancy (the bill specifically amends application screening law to require the disclosure of any renters' insurance requirements during the application process), and the requirements must be included in rental agreement. Landlords may require documentation of insurance be produced by tenants prior to taking occupancy of a rental. In the case of existing tenants, landlords may institute a new renters' insurance requirement during an existing month-to-month tenancy (in which case a landlord would give a 30 day notice of change of terms). If the existing tenant does not comply with the new renters' insurance requirement, a landlord may serve a notice of termination, but the tenant may cure the notice by obtaining the required insurance. Furthermore, landlords may require that tenants periodically produce documentation that their renters' insurance is current and in effect.

In order to require renters' insurance, landlords must obtain their own liability insurance for those rentals and must produce documentation of that insurance to the tenants upon request. If renters' insurance is required, the disclosure of the landlord's insurance requirement and accompanying documentation obligations (such as advising tenants that landlords must also produce proof of insurance upon request) must also be included in the rental agreement. Although either party may request insurance documentation from the other, the law makes it clear that neither landlords nor tenants may "harass" each other for insurance documentation (making unreasonable requests for documentation too often, for example).

At the request of tenant advocates to prevent potential abuse, landlords cannot require their tenants to obtain insurance through a particular company (so we recommend not even referring tenants to particular companies, lest you be accused of steering them), and landlords cannot demand to be made Additional Insureds to their tenants' policies. (Landlords may and should, however, ask to be added to the tenant's policy as an Interested Party, where the insurance company will notify the landlord if the policy becomes inactive due to non-payment of premiums or cancellation.) Additionally, landlords cannot demand that tenants waive their insurance subrogation rights.

The law also specifies the circumstances in which landlords may make claims against their tenants' insurance companies. A landlord may make claim against a tenant's insurance policy only if: 1) the tenant is legally liable for the damages claimed (or the landlord reasonably believes the tenant is responsible), 2) damages are beyond normal wear/tear, 3) the claim is greater than the amount of the security deposit held by the landlord, and 4) the landlord provides a copy of the claim to the tenant at the time it is filed. If a landlord knowingly files a frivolous claim (or one that doesn't comply with the above-referenced requirements), the tenant may be awarded actual damages plus $500.

Finally, landlords cannot require renters' insurance if a tenant's household income is equal to or less than 50% of area median income or if the property is federally subsidized or receives certain blocks grants. This probably, though not necessarily, means that you may not be able to require renters' insurance for properties where your tenant receives Section 8. When in doubt, always confirm whether your tenant's income equals or falls below your property's area median income. We know this is confusing. ORHA is currently determining the best way to find that information, and we will let members know well before the law goes into effect on January 1, 2014.

<u>Screening Applications – Prior FED/evictions</u> *(Section 3)*

Tenant advocates have long complained that unscrupulous landlords have held prior FED/evictions against applicants during the screening process, even if the FED/evictions were dismissed by the court (without a finding in favor of the landlord) or even in cases where the tenants won the FED/eviction. This law clarifies that landlords cannot consider prior FED/evictions during the application process if: 1) the FED/eviction was dismissed or a

judgment was made in favor of applicant prior to submission of current application. (Thus, landlords may consider FED/evictions which are still pending at time the current application was submitted), and 2) landlords may not consider FED/eviction judgments made against the applicant that occurred five years or more prior to submission of application.

So, at first glance, it appears that if your applicant has an FED/eviction judgment against him that occurred five years or more before they filed an application with you, then a landlord must completely ignore the FED/eviction. Fortunately, that's not quite right. While the law specifically prohibits landlords from denying an application based on the FED/eviction, it does not prevent us from denying applications based on poor rental references. So, as you would with any FED/eviction that you turn up while processing an application, you are going to want to contact the landlord who filed the FED/eviction and obtain a rental reference from them. (Applicant didn't list this landlord as a reference? Be sure to obtain the contact information for the FED/eviction landlord from the court records.) If this landlord gives you a poor rental reference for your applicant, you may deny the application based on the poor rental reference, just not the simple fact that there was an eviction.

Screening Applications – Criminal Arrest History and Conviction History *(Section 3)*

This law makes completely clear that while processing applications, landlords cannot consider prior arrest history if the arrest(s) did not result in a conviction. (There is no ambiguity here, and frankly, this just makes sense. In the United States you are innocent until proven guilty, and a simple arrest does not prove guilt.) However, this provision does not apply if the charges for the arrest were not dismissed at the time of the application was made. In those instances where the arrest is pending and unresolved, there is nothing in this bill that prevents landlords from taking those arrests under consideration.

With regard to considering past charging history or criminal convictions while processing applications, landlords MAY consider criminal convictions or the applicant's charging history if the conviction or charge is for conduct that is: 1) drug-related crimes, 2) person crimes, 3) sex offenses, 4) crimes involving financial fraud, including identity theft and forgery, and 5) any other crime if the conduct for which the applicant was convicted or charged is of a nature that would adversely affect the property of the landlord or a tenant or the health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent. So, while any other crimes that do not fit into this list are probably unrelated to the landlord-tenant relationship and, therefore, should not be considered, be very thorough in your review of any crimes listed. Look closely to determine whether those crimes fit into category #5 and may affect your property, yourself, or the other tenants. If so, then those crimes do fit into the categories which you may consider during your application process.

To reiterate, item #5 means anything that you can reasonably relate to your individual property, yourself and your tenants. So let's be clear – this provision of the law is not as restrictive as it seems. Different landlords set different standards for which they screen applications – some landlords hold some criminal history to be more problematic than other

landlords do. (Let's use DUI convictions, for instance. Some landlords feel strongly against them and screen applications for DUI. Some landlords feel it doesn't impact their rentals and ignore them completely.) This law doesn't change your ability to set those screening standards if you can reasonably and in good-faith relate your screening standards to the provisions of item #5. If you have been careful to screen your applications for criminal background as it relates to the landlord-tenant relationship, this law is probably not going to change your screening options much, if at all.

Non-Compliance Fees *(Section 8)*

During our negotiations with tenant advocates, landlords made some reasonable concessions surrounding renters' insurance and the screening process. Tenant advocates, in turn, met our demands to return some non-compliance fees to the list of fees which landlords may charge tenants who are not in compliance with their rental agreements.

Non-compliance fees must be in the landlords' written rules, policies or rental agreements, and must be disclosed to tenants. (This just makes sense – you must let tenants know the possible penalty for behavior in violation of the rules or contract. This will, we hope, be a disincentive against poor behavior.) With this bill, the following non-compliance fees may be assessed by landlords for violations of written rules, policies or rental agreements for: *(items 1-5 are currently allowed)* 1) late payment of utility or service charge, 2) failure to clean up pet waste from a part of the premises other than dwelling unit, 3) failure to clean up garbage, rubbish or waste from a part of the premises other than dwelling unit, 4) parking violations, 5) improper use of vehicles on the premises, *(items 6-7 are newly returned under this law to the list of fees permitted):* 6) smoking in clearly designated non-smoking unit or area of premises, and 7) unauthorized pets capable of causing damage to persons or property. (Other non-compliance fees remain legal, such as late payment of rent fees, returned check fees, and smoke alarm/carbon monoxide alarm tampering fees.)

In order to access the seven non-compliance fees referenced above, a landlord must give a written warning notice of the initial non-compliance violation which includes the possible fees if the same or similar violation occurs within one year. Within one year of initial warning notice, landlords may assess a $50 non-compliance fee for a second same or similar violation, and a $50 non-compliance fee plus 5% of the current rent amount for subsequent same or similar violations. So, if you have a property that rents for a $1,000 and your tenant commits the same or similar non-compliance violations within one year (repeated parking on the lawn, for instance), the first time you warn them. The second time within one year, you assess a $50 non-compliance fee. Each violation thereafter within the year merits a $100 non-compliance fee ($50 plus 5% of rent - $50+$50). One warning on this. You can assess a non-compliance fee or you can evict for non-compliance, but you can't do both.

Temporary Occupants *(Section 5)*

This law clarifies that a written temporary occupancy agreement may be made between a landlord, tenant & temporary occupant. It specifically delineates that temporary occupants do not have tenancy rights. Their temporary occupancy agreement may be terminated by the tenant at any time without cause and by the landlord only for cause for material violation of the agreement (with no right of the temporary occupant to cure the violation). No written notice of termination to the temporary occupant is required. A landlord may screen the temporary occupant for conduct and criminal record, but cannot screen for credit history or income. A tenancy cannot consist of one sole temporary occupant so, if the tenant vacates, the temporary occupant cannot stay on and basically become the tenant.

One of the provisions most helpful to landlords states that a temporary occupant will be treated as squatter if he doesn't leave the premises after a temporary occupancy agreement is terminated as noted above. This is tremendously important to landlords. This is because temporary occupants that have refused to leave the premises when required have been able to create quasi-tenancy situations that, when landlords have tried to remove them, local police have considered a civil, not criminal, matter. That can mean you end up going through the evictions process to remove the temporary occupant. We hope that with the passage of this bill, temporary occupants legally designed as squatters will be viewed as criminal trespassers by local police and will be removed as a criminal offense (potentially saving landlords that eviction). We'll have to see how individual police departments respond as this law goes into effect.

Security Deposits *(Section 7)*

This provision clarifies that landlords may claim from security deposits only amounts reasonably necessary. Specifically, damages for which a landlord may recover include: 1) costs associated with carpet that was *cleaned or replaced after the previous tenancy* or the most recent significant use of the carpet and before the tenant took possession, and 2) loss of use of the dwelling unit during the performance of necessary cleaning or repairs, *for which the tenant is responsible* if the cleaning or repairs are performed in a timely manner.

Smoke Alarms/Carbon Monoxide Alarms *(Sections 8 & 9)*

A landlord may charge a tenant up to $250 unless the State Fire Marshal assesses the tenant a civil penalty for the conduct (tampering with smoke alarm). A landlord must provide a carbon monoxide alarm within a structure that contains a carbon monoxide source and the dwelling unit is connected to the room in which the carbon monoxide source is located by a door, ductwork or a ventilation shaft.

So this law confirms the $250 fee that most landlords were already including in their rental agreements, clarifies that landlords cannot charge this fee if the State Fire Marshall assesses a civil penalty, and confirms what most landlords had already been doing in practice – installing carbon monoxide alarms only for those units which are connected to a carbon monoxide sources by a door, ductwork or ventilation shaft.

Foreclosure *(Section 10)*

The law provides that a tenant may give their landlord 60 day notice to vacate regardless of the duration of a fixed-term lease if they are notified that the rental is in foreclosure. Landlords have 30 days after the receive notice from their tenants to prove the property is no longer in foreclosure, if applicable. (Tenants in month-to-month rental agreements still have the option of giving their landlord a 30 day notice to vacate.)

Various Housekeeping Provisions

The first provision clarifies when some notices begin or end. For daily notices, a notice ends at midnight of the end of the last day of the notice. For hourly notices that are posted-and-mailed, this clarifies that the notices begin at 11:59 pm of the day they are posted-and-mailed. (Hourly notices that are personally served still begin at the time they are served.) – *(Section 4)*

It is confirmed that landlords may charge tenants for the cost to replace keys lost by tenants, and that landlords may pass through to the tenant any processing fees charged to the landlord by a credit card company for processing rent and other payments by the tenant. In order to pass these fees along, however, landlords must also allow tenants to pay in cash or by check. – *(Section 8)*

The new law further confirms that a landlord is responsible for abandoned property and shall store, sell or dispose of abandoned personal property as provided by law. This includes the provision that landlords must give abandoned property notices prior to storing, selling or disposing of abandoned property. – *(Sections 12 & 13)*

Finally, the law clarifies that rent means any payment to be made to the landlord under the rental agreement, periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit to the exclusion of others and to use the premises. The key here is "use of premises". Although I haven't heard from any ORHA members that this issue has come up for them, apparently there have been instances around the state where landlords and tenants have needed to clarify that rent pays for the land that accompanies the premises (unless explicitly excluded in the rental agreement) and not for just the premises itself. – *(Section 13)*

In Summary

We at ORHA feel very positive about the gains made on landlords' behalf this legislative session in general and in the Landlord-Tenant Coalition in particular. At the end of this article, you will find a complete list of the 2013 ORHA priorities compiled at the annual Legislative Planning Session which took place in Bend prior to the beginning of Landlord-Tenant Coalition negotiations in June, 2012. Please review this list carefully, as our next ORHA Legislative Planning Session takes place in Bend this September 21st. If you see something on our priority

list from last session which you believe should be revisited next session or have ideas for next session's new priorities, please contact your local rental owners' association representatives and make your voice heard. Your representatives at the upcoming Legislative Planning Session vote on the list of priorities upon which our future negotiations will be based. It's imperative that your representatives understand your local priorities and can act on your behalf on an informed basis.

Look for more information in future newsletters about ORHA workshops to sharpen your skills and improve your understanding of how our legislative session's new laws will affect your business. There are ambiguities about how this new law will be applied in individual situations, and ORHA will address these ambiguities is greater detail in our Legislative Update workshops.

2013 LEGISLATIVE PRIORITIES

High Priorities:

- Amend statute of limitations to allow for up to five years to pursue collections (from current one year). – *This was originally proposed because it can be difficult can locate someone within one year and serve them with paperwork. However, we have since identified alternative service methods which address our concerns and, thus, this priority was set aside in favor of others.*
- Campus-area – disturbing quiet enjoyment (noise & blight). – *addressed locally rather than statewide.*
- Amend statute to allow landlord to collect actual collection costs if debt is turned over to a collection agency. – *was accomplished by adding the specific legal language to ORHA rental agreement forms.*
- Amend statute to disallow utility companies' ability to pursue landlords for the cost of unpaid utility bills when tenants move-out, *or* amend statute to require that utilities notify landlords if tenants fall behind on their utility bills while tenant is still resident in the rental property and the landlord has time to send notice. – *Neither tenant not landlord advocates are happy with the status quo here. However, it was determined that this is essentially a contractual law issue and not the purview of ORS 90/landlord-tenant law. Each utility has different standards and those specifics are buried in their contracts with utility customers. Unfortunately, many of the utilities have monopolies for services, and we do not have any real leverage to negotiate this issue directly with the utility companies. We urge you to continue to complain about this issue to the Oregon Department of Justice.*

Medium Priorities:

- Housekeeping issue – time/date post-and-mail notices. 11:59 pm v. assumed midnight time. – *accomplished 2013 Legislative Session.*

- Amend statute to allow non-compliance fee for sneaking in pets & other non-compliances - *accomplished 2013 Legislative Session.*
- Amend statute to either: BOTH landlord and tenant are obligated to provide 60 days' notice to vacate when tenant has been in rental at least one year, OR NEITHER landlord nor tenant are obligated to 60 days' notice. – *Tenant advocates at this legislative session felt that this issue was non-negotiable.*

Other Priorities:

- Amend statutes to better define aid animal. – *politically explosive, negotiations did not move forward.*
- Amend statute to allow a bond in lieu of security deposit and clarify: 1) that this is not a fee, 2) does it have to be accounted for in a final accounting, and 3) who follows up to make sure tenants renew the bond for the duration of the tenancy? - *This issue was tied up in litigation during the 2013 Legislative Session.*
- Clarify statute to say that carpet cleaning "immediately before" tenant moves in specifically includes carpet cleaning done after last tenant vacates and prior to current tenant taking possession. - *accomplished 2013 Legislative Session.*
- Create statute to require renters' insurance. - *accomplished 2013 Legislative Session.*
- Amend statute to allow the service of FED paperwork until "end of day - 11:59 pm" instead of the "end of the court day"- *not addressed.*
- Amend statute to allow for the actual costs (including restitution, writ, service fees, sheriff lockout) to be added to original FED judgment for possession. - *not addressed.*
- Create statute to allow landlord to pass along mandatory fees/costs (such as Rental Housing Code and other municipal fees) to tenants through disclosure and inclusion in rental agreement. - *not addressed.*
- Create statute that holds one landlord harmless from another when providing rental references with proper authorization from applicant. - *not addressed.*
- Create statute to provide that all new statutes or amendments will apply only from date of mandated change forward and not retroactively – in other words, new statutes and/or changes will have no statutory authority on all rental agreements in effect prior to changes. - *not addressed.*
- Amend statutes to clarify definition of "emergency access" in occupied units. - *not addressed.*