Landlord Tenant Coalition Meetings Continue in Anticipation of the 2013 Oregon Legislative Session

Our third Landlord Tenant Coalition meeting was held on July 10th in anticipation of the upcoming Oregon Legislative Session which begins January 14th. Again in attendance were representatives of Lane County Legal Aid, Community Alliance of Tenants, Rental Housing Association of Greater Portland, City of Corvallis, Oregon Rental Housing Association, Legal Aid Services of Oregon, Oregon Law Center, Metro Multifamily Housing Association, and a few private parties. Our work to compile a Landlord-Tenant Omnibus Bill continues.

Tenant advocates put forward the issue of evictions (otherwise known as FED's) and the fact that if an FED is filed against a tenant, then later dismissed or even won by that tenant, it still remains on the tenant's record as an FED against them. Oregon landlord tenant law prohibits landlords from using a prior eviction on record as the sole reason for denying an application, but tenant advocates point out that many landlords continue to use a prior eviction filing, regardless of the outcome, as a reason for application denial. Sometimes this is because the landlord denies applications from applicants who have an eviction on record, even if was dismissed or resolved in a manner favorable to the tenant. Other times, landlords don't even realize the eviction was dismissed or resolved favorably to the tenant – they simply see an eviction noted and read no further. In any case, tenant advocates believe there should be a way to either expunge the court record if the FED filing results in a dismissal or a ruling favorable to the tenant or, at the very least, set some kind of time frame for when the action could be removed from the record (similar to bankruptcies, which are generally removed after 10 years). Timeframes to expunge the record were suggested from three to ten years, and the topic remains under discussion. As usual, I would ask all interested landlords and ORHA members to contact their local organization's ORHA legislative contact to express your thoughts and recommendations on this issue.

Landlord representatives put forward the issue of requiring tenants to obtain renters' insurance and clarifying under landlord tenant law that this is not a fee. One landlord representative had just returned from the National Apartment Association's conference and reported that there is a national movement underway by landlords to require renters' insurance. The coalition is willing to consider this topic further, and Metro Multifamily Housing Association will present proposed draft language to be included in the omnibus bill at our next coalition meeting on August 7th.

As I noted in my last update, Section 8 protections continue to be on the table in preparation for the upcoming legislative session. We understand now that Oregon State Representative Tina Kotek is pursuing Section 8 protections that could potentially include participation in the Section 8 program as protected "source of income". In other words, Oregon landlord tenant law already provides that landlords cannot discriminate against a tenant's source of income, with income from the Section 8 program as the only exception. Currently, because participation in the Section 8 program is voluntary for landlords, Oregon landlord tenant law doesn't require landlords to accept this source of income. If Oregon landlord tenant law is changed to include Section 8 funds as a protected source of income, landlords may no longer have the option to opt-out. We understand Ms. Kotek may bring this issue to the landlord tenant coalition or she may simply take this straight to the legislature (not as a part of the omnibus bill). As always, we'll keep you updated and encourage you to voice your thoughts on this issue.

Please feel free to contact your local chapter of the Oregon Rental Housing Association to provide feedback about these issues. I look forward to considering all ORHA members' feedback in preparation for future Coalition meetings.

Finally, don't forget , the State of Oregon's official webpage has a wealth of information on their Legislature's website. Just log-on to www.oregon.gov and click on the "Legislature" link. From there, the link "Contact information and answers to frequently asked questions" is especially informative. On both pages, you'll find facts about the makeup of the Legislature, a calendar of events, a district map, how to find and/or write your legislator, and even a kids' page.

Private to ROA President's via email:

A Klamath Falls area ROA member had questions for me about whether applicants could be required to pass a drug test prior to taking occupancy and then randomly retested during the tenancy. I brought this issue up at the coalition meeting. Surprisingly, Attorney John Van Landingham (a tenant advocate at Lane County Legal Aid) believes that this is legal. Unsurprisingly, he had extremely strong caveats about this. It is legal, but there are so many potential hazards and liabilities to the landlord that the benefits surely do not outweigh the potential exposures to a landlord who insisted on drug testing.

Because drug testing during the application process does not fall under the type of items for which you can charge an application fee, the drug testing would have to be done at the landlord's expense. Of course, like everything done during the application process and subsequent tenancies, it would have to be applied to everyone, across the board, so you couldn't require it of some applicants and not others ("no exceptions"). Landlords would have to explicitly instruct the testing company NOT to test for prescription drugs and, if those drugs inadvertently show up in the test, NOT to disclose them to the landlord. Attorney Van Landingham suggests testing only for illegal substances. This, however, brought up the discussion of medical marijuana.

While it is now legal for landlords to refuse to allow legal medical marijuana on their premises, qualified tenants do have the right to use medical marijuana off premises. This would, however, show up on a drug test that tested broadly for marijuana. So, if a landlord tested for marijuana and denied an application because of a positive test, it could put the applicant in a position where they would have to disclose their legal use of medical marijuana to a landlord who had no legal right to obtain this information. Therefore, it was suggested that a landlord screen for illegal drugs only and not include marijuana in this list.

A landlord would have to make the decision about whether drug testing at this expense and under these circumstances would be beneficial and worth their potential liability exposure. I would hazard to say no.