ORHA LEGISLATIVE UPDATE:
The Landlord-Tenant Coalition Reaches Agreement on an Omnibus Bill for the 2015 Legislative Session

By Jim Straub, ORHA Legislative Director

I am pleased to announce that the Oregon Legislative Landlord-Tenant Coalition has reached agreement on an omnibus bill for the 2015 Oregon Legislative Session, which convened on February 2nd. The coalition will next work with Oregon Legislative Counsel to develop the final language for the bill, which is now called Senate Bill (SB)390. Stay tuned to future ORHA newsletters for updates as our bill moves through the Legislative Assembly.

This year's coalition bill is comprised of seven major issues. The main thrust during our coalition negotiations for landlord advocates this year was protecting landlords' financial options while holding tenants accountable for their actions. A major theme for tenant advocates was the fact that although landlords are prohibited from certain actions under Oregon landlord-tenant law, some areas of the law do not include penalties for landlords who violate those statutes. As such, there are examples of "bad actor" landlords across the state who violate landlord-tenant law without fear of penalties. Some portions of our omnibus bill attempt to address this issue.

Here are the seven issues addressed by the 2015 coalition omnibus bill:

- *Municipal Fees and Utilities Pass-Through to Tenants.* This portion of the bill allows landlords to pass "public services charges" through to their tenants under certain circumstances. As identified in the draft bill, a "public service charge" means:

  "…a charge imposed on a landlord by a utility or service provider on behalf of the provider or on behalf of a local government or imposed on a landlord by a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space. "Public service charge" does not include real property or income taxes or business license or dwelling inspection fees."

  In order to pass through these charges, a landlord must bill a tenant in writing within 30 days of receipt of the provider's bill, must clearly itemize the charges, include a copy or make the provider's bill available for review by the tenant (including by electronic means, if allowed by a rental agreement), give the tenant no less than 30 days to pay

the landlord after delivery of the bill to the tenant, and a landlord may not make a tenant liable for a public service charge billed to a previous tenant.

Landlords must include the authority for this pass-through in their written rental agreements, and landlords may amend a rental agreement for a month to month tenancy upon 60 days written notice to impose a public service charge which has recently been adopted by a utility or service provider or local government.

- *Allocation of Tenant Payments (Or the Order In Which Tenants' Payments Are Applied To Amounts Due To Landlords).* Regardless of whether written rental agreements contain a provision about the order in which tenants' payments will be applied, the coalition bill provides that a landlord:

  "…shall apply tenant payments in the following order:
  (A) Outstanding rent from prior months;
  (B) Rent for the current month;
  (C) Utility or service charges;
  (D) Late rent charges; and
  (E) Damage claims and any other fees or claims owed by the tenant."

  This provision does not apply to manufactured home parks. If this omnibus bill passes as we propose, this provision will become effective for month to month (and week to week) tenancies on January 1, 2016, and for fixed term tenancies entered or renewed after January 1, 2016.

- *Landlords Who Knowingly Rent Unsafe/Illegal Dwelling Units.* This provision states that:

  "A landlord shall at all times during the tenancy maintain a secondary escape route through a window or emergency exit that conforms to applicable law for all designated bedrooms and sleeping places in the dwelling unit."

  This requirement is set forth here apart (but in addition to) the habitability statutes of 90.320. Dealing with landlords who violate this safety provision here allowed us to set specific requirements and penalties for landlord bad actors that are additional to habitability requirements. This provision was included in the bill in large part as a response to landlords in Portland, Corvallis and Eugene who knowingly rented their units over and over, even after being warned that their properties lacked safe egress in case of fire and violated safety laws. This is often seen, for example, with converted basements in campus area rentals.

  If a landlord violates this requirement, the tenant may terminate the tenancy with 72 hours' notice, may recover actual damages incurred by the tenant as a result of the

noncompliance, and additionally as penalty may recover from the landlord twice the actual damages or twice the monthly rent, whichever is greater. The landlord may cure the violation within the 72 hours and, if so, the tenancy does not terminate. Penalties do not apply if the noncompliance is caused by the tenant. (For instance, unbeknownst to the landlord, the tenant painted a window shut, which would otherwise have served as the secondary escape route.)

I should note, though, that because we are talking about instances where the landlord has provided no secondary escape route, curing within 72 hours may be a difficult proposition. As such, all landlords should always ensure that their rentals have secondary escape routes before a rental agreement is ever signed.

- *Naming Landlords as 'Interested Parties' on Tenants' Renters' Insurance Policies.* If a landlord legally requires renters' insurance for a property, current landlord-tenant law allows the landlord to require proof of insurance from the tenant. A problem can arise if, after initially providing proof of insurance, the tenant then cancels the insurance (or the insurance company cancels it for lack of payment) without notifying the landlord. To address this concern, ORHA requested that our omnibus bill allow landlords to require that tenants name them as "Interested Parties" on their renters' insurance. As an Interested Party, a landlord is entitled to notification directly from the insurance company if a policy is cancelled, non-renewed, the amount of policy coverage is reduced, or the landlord is removed as an Interested Party. In that case, armed with this knowledge, a landlord would be able to serve a with-cause notice to require the tenant to reinstate their insurance as previously agreed.

  The landlord cannot require a tenant to name them as an "Additional Insured" (which grants additional policy rights not granted to Interested Parties). Landlords who require renters' insurance must also add disclosures to their rental agreements which summarize the instances when it is not legal to require renters' insurance, and landlords who knowingly require renters' insurance when it would be illegal to do so face a penalty of actual damages of the tenant or $250, whichever is greater.

- *Damage Caused to Dwelling Unit by "Uninvited Guests" or Third Parties.* The coalition has struggled with the issue of tenants' guests for the last two coalition sessions. This is a difficult issue to define and regulate. Who is considered a guest and when? When does someone stop being a guest? A tenant is responsible for their guest's behavior, but what happens when the guest causes damage? Did the tenant ask the guest to leave before the damage occurred and was the person who caused the damage, therefore, no longer an invited guest? How does one prove the exact moment when the person was no longer invited? What about damage as the result of domestic violence? This is a complicated issue.

This coalition session, landlord and tenant advocates worked hard to compromise on bill language that would clarify situations that are challenging for both landlords and tenants. There has been much discussion around the state about whether landlords can hold tenants responsible for damage in domestic violence situations and for acts of God. Tenant advocates argue that landlords risk Fair Housing lawsuits when billing tenants who maintain they are domestic violence victims for damages caused during a domestic violence dispute. Landlord advocates argue that it is unreasonable to put landlords in the position of being arbiters with the responsibility of determining whether their tenant was, in fact, a domestic violence victim and whether the damage occurred during a domestic violence dispute. ORHA held that if tenant victims wanted to the relieved of the responsibility of paying for damages, they must be willing to provide some verification of the domestic violence altercation from a qualified third party.

The coalition was able to reach compromise by agreeing that domestic violence victims would not be held responsible for the damage caused by their perpetrators, provided they provide the landlord with some verification of domestic violence, thus removing the landlord from being judge and jury in the situation. The coalition agreed to mirror the verification which a landlord may require with the same verification requested from tenants who wish to break a rental agreement early as a result of domestic violence, as provided for by ORS 90.453.

Specifically, this provision of the bill says:

"A tenant is not responsible for damage resulting from Acts of God or from conduct by a perpetrator related to domestic violence, sexual assault or stalking. With regard to damage resulting from conduct by a perpetrator related to domestic violence, sexual assault or stalking, a landlord may require a tenant to provide verification that the tenant or a member of the tenant's household is victim of domestic violence, sexual assault or stalking as provided by ORS 90.453."

Look for further issues related to guests, including damage done by third-parties not involving domestic violence situations, to be considered by the coalition during future legislative sessions.

- *Homeowners Association (HOA) and Condominium Owners Association (COA) Fees Passed-Through to Tenants Upon Move-In/Move-Out*. As long as certain HOA and COA fees are described in the written rental agreement at the commencement of the tenancy and the landlord gives the tenant a copy of the assessment bill from the association prior to or when the landlord bills the tenant, this provision of the coalition bill allows landlords to pass-through to tenants:

"…expenses charged by the association to anyone who moves into or out of a unit within the association."

If a landlord charges a tenant a fee in violation of this section:

"The tenant may recover from the landlord a penalty equal to twice the actual damages of the tenant or $300, whichever is greater."

- *Unauthorized Pet Fees.* This provision of the coalition bill increases the noncompliance penalties for an unauthorized pet to one warning, followed by $250 noncompliance fee for any second or subsequent violations. A landlord must give the tenant 48 hours after the required warning to remove the unauthorized pet before the noncompliance fee may be assessed. This is an increase from the current $50 for a second violation and $50 plus 5% of the rent payment for each subsequent violation currently permitted by landlord-tenant law.

  A penalty for landlords who charge non-compliance fees in violation of the law (not including late fees, dishonored check fees, smoke alarm/carbon monoxide tampering fees, or lease breakage fees) is included and is the same as HOA/COA penalties:

  "The tenant may recover from the landlord a penalty equal to twice the actual damages of the tenant or $300, whichever is greater."

ORHA introduced to the coalition two additional issues: 30/60 Day Notice to Vacate parity between landlords and tenants, and assistance animals. Both of these issues are quite divisive, and we were unable to reach agreement on inclusion of these issues into the 2015 coalition omnibus bill. Look for ORHA to potentially reintroduce these topics again to the coalition during future legislative sessions.

Look for further developments about our omnibus bill SB 390 and the entire Oregon Legislature in future ORHA newsletters and online at www.oregonlegislature.gov.

~ Jim Straub, ORHA Legislative Director