

TIP OF THE MONTH:

Serving a 10-Day Repeat Violation Notice Following a 30-Day with Cause Notice By Jim Straub, Oregon Rental Housing Association Legislative Director

There's a little known provision of Oregon Landlord-Tenant Law that can help you shut down those loud tenants, along with a host of other rental agreement violations, for good. Did you know that if you serve a 30-Day with Cause Notice and your tenants repeat the same violation during the 14-day remedy period, you can serve a 10-Day Repeat Violation Notice that cannot be cured by the tenants? This means that they leave at the end of the notice period, no matter what. No excuses, no remedies, no "I'll do better next time." Just out of your rental unit.

I see these notices used especially when tenants are having repeated loud parties, garbage is piling up and becoming a health hazard, when a tenant won't let a realtor or repair personnel have access to the unit, or the grass has grown prairie high. I'm sure you can think of other instances. I'm often asked by members, especially those trying to sell their rental property or by realtors, if we can change Oregon Landlord-Tenant Law surrounding property sales. Most often, this request is generated after current tenants refuse access to the rental property to prospective buyers, realtors, appraisers, etc. Many ORHA members don't realize this situation is can also be remedied by the 10-Day Repeat Violation Notice.

For the purpose of explaining this process, let's take the easiest example – a situation involving loud parties.

The neighbors have complained. You've called and talked to your tenants, maybe even sent a written warning. The loud partying continues and you finally take legally-binding action – you serve a 30-Day with Cause Notice. This gives them 14 days to remedy or "cure" the situation or they must vacate at the end of 30 days. In this case, the cure would be to put a permanent stop to the loud partying.

In the past, there was ambiguity about what happened if the tenants continued to party for the first 13 days of the notice period and then on the 14th day, still within the notice cure period available to them, quieted down. Was the notice cured? Did they have to vacate? Technically, they could argue that they cured the problem within the 14 day period available to them. The Legislature has since clarified this issue and confirmed that, in this case, if your tenants party at any time during the 14 day cure period, they have failed to remedy the 30-Day with Cause Notice.

A 10-Day Repeat Violation Notice during the cure period takes this one step further. Because it's a notice that cannot be cured, there is nothing for the tenants to argue if the case goes to court. They've violated the rental agreement. You gave them a 30-Day with Cause Notice. As long as the same violation repeats during that 14-day cure period, then you should serve the

10-Day Repeat Violation Notice. You simply note that they have repeated a violation (in this case, partying) within six months of having received the 30-Day with Cause Notice.

The one caveat is that the designated termination date for the 10-Day Repeat Violation Notice must be “no earlier than the designated termination date stated in the previously given notice.” (ORS 90.392 (5)(a)) So, let’s say you serve a 30-Day with Cause Notice that expires on December 31st. During the 14-day cure period, there is yet another party and you serve a 10-Day Repeat Violation Notice. Normally the 10-Day notice would have a termination date at the end of the 10 days. However, that termination date would be *prior* to the end of the previously given (30-Day with Cause) notice. So, you would serve the 10-Day Repeat Violation Notice with a termination date no earlier than the previously given notice, which in this case would be December 31st. Yes, that means the termination date of the Repeat Violation Notice is extended from a mere 10 days until December 31st. However, because the notice cannot be remedied, you are certain the tenants must vacate no later than December 31st and, if they don’t, you can begin eviction proceedings with a notice that is a slam dunk.

One word of caution, though. If you do find yourself at court holding a Repeat Violation Notice, make sure you can back it up. Although this is a no-remedy notice and technically, should not be able to be argued, the tenants could still show up at court alleging they didn’t engage in the behavior for which you filed the notice. If it’s parties, make sure you heard it yourself or, if a neighbor complained, be sure you noted the date and time you talked to them or, better yet, have them available to testify. If you’re talking about property conditions like garbage or the lawn, be sure to have photographs if possible. Anything you can use to prove your case should be at hand.

Finally, some members put up with repeat rental agreement violations this time of year because they’re afraid of having a vacant unit over the winter. While I can understand your concern, remember that if you’re operating under a Fixed-Term Lease, you can still enforce the terms of your lease after a 10-Day Repeat Violation Notice. That means that if the tenant was removed from the property based on their own behavior, the rental agreement violation, you can charge the lease breakage fee, rent until you re-rent the unit, or rent until the end of the lease, whichever is applicable to your situation.