

## TIP OF THE MONTH:

### Can You Trespass on Your Own Rental Property?

By Jim Straub, Oregon Rental Housing Association Legislative Director

As I look back over calls to our Helpline, one topic sticks out more than any other: the lack of proper notice to tenants by landlords. Whether it's a notice for non-payment of rent, a 30 or 60-day notice to vacate, or a notice to inspect or repair your rental property, I can't tell you how many times landlords are still putting the cart before the horse. You want to take some action (make them pay rent, see if they've vacated the property on time, or just take a look at your rental property) but you simply do not give your tenants the proper notice to which they are legally entitled. Remember, even if the tenants have done something wrong, that doesn't give you an affirmative right to shirk your legal responsibilities which usually include giving a notice *before* taking some action.

Now, you may think I've started this article off a little harshly. If so, I do so for a reason. It's because the penalties are even harsher. If you fail to give proper notice for non-payment of rent, for instance, you can lose your eviction case at court. If you want to enter your rental property, either to check if someone has vacated or to do an inspection, and you fail to give 24 hours notice (or worse, the tenant denies you entry and you enter the property anyway), things can get much worse quickly. Do you know why? Because you're illegally trespassing. Yes, on your own rental property.

This is because your tenants have been given legal possession of the rental property by you. Now, you may not believe they are entitled to possession any longer because they haven't paid rent, a notice to vacate is up or you've given them a 24 hour notice to enter, so they should let you in. However, until you have served the proper notice, filed the proper legal paperwork with the courts and a judge has legally awarded you possession, your tenants may well still be in *legal* possession of the property. What does that mean? That means that even if the tenants are in the wrong and *should* be off the property, you could be the one legally trespassing.

Let's take a real example. Your tenants haven't paid rent in four months. You've been out of the country and haven't paid it much attention but now you're back and, boy, are you mad. Rather than serving a 72-hour notice for non-payment of rent and then filing an eviction, you drive over to your rental property. When you walk up to the house, you hear sounds from the backyard, open the side gate, barge into the backyard and have a heated argument with your tenants who are kicking back with cold beer. The tenants demand that you leave. You demand *they* leave because they haven't paid rent in months. Who's right? The tenants, of course. You've actually broken two laws: 1) you have no right to enter the back yard without proper notice, and 2) even with notice, you must leave the property when asked to do so by the tenants. That's because without a judgment stating otherwise, they, not you are in legal possession of the property. After several requests to leave the property are unheeded by you,

the tenants call the police. Guess what happens. You are criminally cited for trespass and are escorted from your own property by uniformed police officers.

Think this is an extreme example? Well, I'm here to tell you that this (under slightly different circumstances) happened not just once but to TWO different people I spoke with. In one case, the landlord simply walked onto his property without proper notice and refused the tenants' request to leave. This landlord was cited, escorted off the property and had to pay a fine. The second case was a realtor who had properly served a 24 Hour Notice to Enter and then wrongly assumed he could enter the property, even after the tenants said no. This is an extremely common mistake made by landlords and especially by realtors and contractors. When you're in a sales situation and time is of the essence, it's easy to assume that your right to show the property to prospective buyers, contractors or appraisers after serving a 24 Hour Notice to Enter should trump the right of the tenants to deny access to the landlord, manager or realtor. This is never, ever the case. After this realtor started arguing his case with the police called by the tenants and continued to refuse to leave, the realtor was actually ARRESTED, taken to jail and booked for criminal trespass on his own rental property.

You do have rights to require your tenants to ultimately provide you reasonable entry to your property but, like most everything governed by landlord-tenant law, it involves a process of legal notices and perhaps even the court system. The fact that you own the property never supersedes landlord-tenant law. And the police? They'll remind you of this fact by slapping handcuffs on you. Don't learn this lesson the hard way.

In both cases, these folks incorrectly believed they had the right to enter their own rental property and that the tenants could not deny access to them. Do not make this same mistake. Give proper notice and if you are asked to leave, do so unless you are certain you have the legal right to be there on the property. When in doubt, leave anyway.

Of course, it's not only important that you give notice prior to entering your property but that the notice be completed and served correctly. The second biggest mistake I've heard regarding notices was in regard to post-and-mail. Remember that first-class mail and personal service are the only methods of serving a notice that are provided to landlords by Oregon Landlord-Tenant Law. Post-and-mail, the style of service that I think many landlords think of when they think of serving notices, is only available to you if you have included it in your rental agreement. In order to post a copy of a notice on the rental property's front door and then mail an identical copy first-class mail that same day, you must have language permitting post-and-mail in your rental agreement, and you must list a physical place of service where tenants may post-and-mail notices to you if they choose. If you have left this space blank, you CANNOT post-and-mail to your tenants because you have given them no place to post-and-mail to you. If your contract does not include post-and-mail at all, then your only service options are first-class mail and personal service.