

A Tenant's Guide To Recovery of Security Deposits Oregon

©2006 by Eric E. Willison and Andrew J. Ruzicho, II

all rights reserved

Disclaimer:

Please understand that by ordering/purchasing this kit, you are not retaining a lawyer for legal advice, nor are you retaining the services of either Andrew J. Ruzicho II nor Eric E. Willison. This kit is provided to you for informational purposes only. The authors of this work are not lawyers certified to practice in Oregon. Further, please understand that the information in this kit is specific to the State of Oregon, and that the laws of other states may vary quite a bit from Oregon's laws. Using this kit to file a case outside of Oregon is a bad idea.

Nothing in this kit is a substitute for retaining an attorney to work on your case. It is recommended that you seek out an attorney rather than trying to perform a lawsuit yourself. However, if you cannot find an attorney to work for you, then the information herein may be of some assistance to you regarding proceeding with such an action and the format for filing a case. The information contained herein can also help you better understand your case so that you can discuss the matter more efficiently and intelligently with your attorney.

Chapter 1

I. Introduction to the Law

A. Two Sources of Law: Common Law and Statutes

There are two sources of law in any state, common law and statutory law. We all know what statutory law is. That is when the legislature gets together and enacts a statute for all residents of the state to obey. But before there is a statute covering a certain area though, there is the common law. Common law refers to court decisions covering that situation. In the absence of statutory guidance, courts tend to follow what other courts have already decided. They do this for reasons of consistency.

Before there was any specific statute in Oregon covering the subject of landlord tenant law, there were cases which determined the rights of landlords and tenants. The earliest cases were in keeping with the holdings of most other states not having landlord tenant laws. Those holdings determined that the tenant had almost no rights, and the landlord called almost all of the shots. The landlord could impose any conditions he wanted to upon the tenant by way of the lease agreement. If the tenant signed the lease

agreement, then that was that and the tenant had to live with it.

For instance, if the lease contained no duty on the part of the landlord to repair the rented premises, and the furnace went out in January, then the tenant would be liable for repairing or replacing the furnace. There is an old case (not from Oregon, but it will serve to illustrate the example) where the judge wrote that there “is nothing at common law to prevent a landlord from renting a tumble-down house.” The way the courts used to look at it, nobody was holding a gun to the tenant’s head and forcing him to sign the lease agreement. If the parties intended that the landlord fix things, then they could have written that into the agreement.

Under the common law, if you placed a security deposit with the landlord, and the landlord did not return it, then you would have to sue for breach of contract. This would involve hiring a lawyer, going to court, winning, and then collecting upon the judgment you recovered. If your security deposit was for only \$750.00, you would very likely spend more in attorney’s fees and lost time than you were likely to recover. Landlords knew all about this, and tended to keep security deposits, knowing that few people would sue out of principle.

B. Implied Warranties

But as the law evolved, courts began to realize that many tenants were unsophisticated people. Some folks have trouble just reading, much less reading a contract with its \$64.00 words like “promissory,” “covenant,” and “estoppel.” Many courts also saw it as unfair that a tenant would have to pay to buy a new furnace for a landlord since the law of fixtures dictates that the tenant could not take the furnace with him when he left.

When a court looks at a contract, it construes the contract in accordance with the plain meaning of the terms, in order to get to what the parties to that contract actually meant to agree upon. Courts have a lot of discretionary power when doing this, and courts in Oregon started to use that discretionary power to imply certain terms into certain contracts, such as residential rental contracts. I use the word “imply” but I should actually say “pretend.”

What the courts will do is pretend that there is a clause in the residential rental agreement whereby the landlord promises that he will put and keep the rented premises in a fit and habitable condition for the tenant. This is called an “implied warranty of habitability.” This gave the tenants the right to claim that the landlord had breached an implied warranty of habitability if he refused to effectively fix a problem around the rented premises.

C. Enactment of the Landlord Tenant Statute

Also in 1973, the Oregon Legislature enacted the Oregon Landlord Tenant Act. Many states in the US have adopted laws which cover the return of security deposits. Many, like Ohio Revised Code Section 5321.16, mandate double damages and attorneys

fees if a tenant shows the court that he gave the landlord written notice of his forwarding address and that the landlord failed to return the deposit. Unfortunately for Oregon tenants, the Legislature enacted a statute dealing with security deposits and their return which awards only the deposit plus \$100.00 if the tenant is successful in showing a wrongful withholding of the deposit.

ORS 90.100(35) mandates that a “Security deposit” means a refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement. “Security deposit” does not include a fee. There is no minimum or maximum security deposit that the landlord can require. That is up to the tenant and the landlord to negotiate.

For many years, there was no requirement that the landlord put the deposit into an interest bearing account for the benefit of the tenant. But in 1989, the Legislature enacted ORS 458.350. This statute requires professional property managers (those who are licensed as such and not just individual property owners looking to rent out their places) to put deposits into interest-generating accounts, unless the parties agree otherwise. However, the interest does not go to the tenant, but rather goes to fund low-income housing through the Oregon Housing and Community Services Department.

1. Text of the Statute

Directly below, I will reprint the text of Oregon Revised Statute 90.300. It’s a bit hard to read, but don’t worry. I will break the statute up into its three component parts and then give you a plain English version of what each says, and go through some of the important cases interpreting the statute. I will put the text of the statute in this sort of type, and the text of my explanation in this normal sort of type.

a. Screening Charges Statute

90.295 Applicant screening charge; limitations; notice upon denial of tenancy; refund; remedies.

(1) A landlord may require payment of an applicant screening charge solely to cover the costs of obtaining information about an applicant as the landlord processes the application for a rental agreement. This activity is known as screening, and includes but is not limited to checking references and obtaining a consumer credit report or tenant screening report. The landlord must provide the applicant with a receipt for any applicant screening charge.

What this statute tells us is that the State of Oregon has put limits on how much a landlord can charge a tenant to perform a screening of the tenant’s application to rent

with him. When you are looking to rent a place from a landlord, you are asking him to entrust you with possession of a very expensive asset, the real estate. Before such entrustment, the landlords typically wish to get a good view of your credit and history and background. They want to see if you have ever been evicted before, and how often. They want to see if you have a criminal record. They want to see if you owe a lot of money to a lot of different people which might someday prevent you from paying your rent.

All of this costs money to check on, so some charges for it are justified. But in the past, landlords have taken advantage of this and tried to make money off the application process. Thus we see that the Oregon Legislature enacted Oregon Revised Code Section 90.295. It allows the landlord to charge a fee to conduct the screening, but mandates that the landlord provide a receipt for this service to the tenant. ORS 90.295(1).

(2) The amount of any applicant screening charge shall not be greater than the landlord's average actual cost of screening applicants. Actual costs may include the cost of using a tenant screening company or a consumer credit reporting agency, and may include the reasonable value of any time spent by the landlord or the landlord's agents in otherwise obtaining information on applicants. In any case, the applicant screening charge may not be greater than the customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening.

The law also requires that the landlord charge the tenant no more than his average actual cost for conducting the background search. ORS 90.295(2).

(3) A landlord may not require payment of an applicant screening charge unless prior to accepting the payment the landlord:

(a) Adopts written screening or admission criteria;

(b) Gives written notice to the applicant of:

(A) The amount of the applicant screening charge;

(B) The landlords screening or admission criteria;

(C) The process that the landlord typically will follow in screening the applicant, including whether the landlord uses a tenant screening company, credit reports, public records or criminal records or contacts employers, landlords or other references; and

(D) The applicants rights to dispute the accuracy of any information provided to the landlord by a screening company or credit reporting agency; and

(c) Gives actual notice to the applicant of an estimate, made to the best of the landlords ability at that time, of the approximate number of rental units of the type, and in the area, sought by the applicant that are, or within a reasonable future time will be, available to rent from that landlord. The estimate shall include the approximate number of applications previously accepted and remaining under consideration for those units. A good faith error by a landlord in making an estimate under this paragraph does not provide grounds for a claim under subsection (8) of this section.

If the landlord is going to charge a screening fee, he must have a set criteria for the screening charge. This means that the landlord must have a consistent procedure he applies to tenants he screens. So he can't screen some tenants a little bit and screen others a lot. He must have an established screening plan and he must follow it where you are concerned.

Further, the landlord must give you written notice of how much the screening charge is going to be, what he will be looking for in the screening process, what the screening procedure consists of, the fact that you have a right to dispute any inaccurate information which the screening process reveals to the landlord, and a good faith estimate of how much unrented property that landlord has in the area.