

ORCA TALES



March 2009

“We can tell you more about them than their mother”

Volume 16 Issue 03

LEGAL OPINION:

Q. *I have a tenant with a one year lease who left early after eight months. What can I do to cover my lost rent and expenses? It seems to me that leases only benefit the tenant, and that the landlord always gets stuck.*

A. As in most cases, the first place you want to look to answer this question is the Residential Landlord Tenant Act (RLTA), RCW 59.18.310 defines abandonment of property and sets forth the landlord's rights and obligations. This statute states: “When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following: (a) the entire rent due for the remainder of the term; or (b) all rent accrued during the period reasonably necessary to re-rent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in re-renting the premises together with statutory court costs and reasonable attorneys' fees.”

From this statute, we can determine several legal principles. First, the maximum amount of the tenant's obligation is the total amount of the rent for the balance of the lease term. Because your tenant left with four months to go on the lease, if the rent is \$600 per month, the maximum liability of the tenant is \$2400. That is to say, even if your actual losses for rent (this does not limit any rights you may have to proceed against the tenant as a result of property damage) and out-of-pocket expenses to re-rent exceed \$2400, this is the maximum liability of the tenant.

Looking at a couple of scenarios, let's say that you advertise the rental in the paper twice (at a cost of \$25 each time), and you re-rent the apartment after 45 days of lost rent. Using the \$600 monthly rental figure, the tenant owes you \$950. It would be different if the tenant moved out during a slow time (say right before Christmas) and you were only able to rent the apartment for \$550 per month (again losing 45 days rent). The tenant would be liable for \$1075 calculated as follows: \$900 for the time the unit was vacant, \$50 for advertising and \$125 for the difference between the original rental amount and the rent received for the balance of the lease term. In essence, you are entitled to be made whole so that you are in the same financial position as you would have been had the tenant fulfilled the full lease term.

A final question is whether you can impose a penalty for the time and hassle of showing the apartment to a replacement tenant. There is no provision in the RLTA to recover anything other than actual out-of-pocket expenses (i.e. actual cost incurred in re-renting). Nonetheless, many landlords do include lease breakage fees in their rental agreements. For example, the lease may contain language which states that the tenant will pay a \$200 penalty for the cost of showing the apartment, document preparation, etc.

Landlords contemplating using such language should: 1) recognize that a court may declare such clause void as being outside the charges authorized by RCW 59.18.310; 2) make certain that any language like this does not constitute a penalty (i.e. a \$1000 charge would be much more likely to be deemed void; and 3) carefully draft the language so that it does not constitute a waiver of the landlord's rights under RCW 59.18.310. If the clause states that there is a \$250 lease breakage fee (without specifying that this is just to cover the cost of showing), a court may determine that this is a liquidated damages clause and that the landlord is waiving their rights under RCW 59.18.310. Any language of this type should be drafted by an attorney experienced in residential landlord-tenant matters.

**Article written by Attorney Christopher Benis, 206-448-0402, of Harrison, Benis & Spence, LLP. This column does not constitute legal advice. Specific problems require specific solutions.*

FAIR HOUSING Q & A

What is “Section 8” and how does the program work?

The Section 8 program, also known as the Housing Choice Voucher Program, assists low-income families, the elderly and those with disabilities to afford housing in the private housing market. The program, administered by local housing authorities, helps low-income households by paying a portion of a unit's rental cost.



The Section 8 program works with thousands of housing providers in Washington. Participating housing providers can utilize their standard screening and resident-selection procedures and may evict Section 8-assisted residents if they violate the lease.

When a Section 8 resident locates an available rental house or apartment, the Housing Authority inspects the dwelling to ensure that it meets an acceptable level of health and safety. When the residence passes inspection, a contract and one-year lease are signed and rent payments begin. The Housing Authority pays their portion of the rent directly to the housing provider each month, and the resident pays his or her portion of the rent to equal the total rent charged for that unit.

The resident is expected to comply with the lease and program requirements, to pay rent on time, and to maintain the apartment in good condition. The housing provider is expected to provide services according to the lease and to maintain the apartment in a decent, safe and sanitary manner throughout the duration of the tenancy.

Although local Section 8 programs share many basic features, you should consult with your local Housing Authority to learn more about its administration of the program.

Do we have to rent to someone with a Section 8 voucher?

If applicants are qualified, it doesn't make a good business sense to turn them away just because they have a section 8 voucher.

In the City of Seattle, City of Bellevue, and unincorporated King County, fair housing laws protect those who participate in the Section 8 program, who cannot be denied rental just because they have a Housing Choice Voucher.

Can we affirmatively market to Section 8 voucher holders?

It is okay to market for Section 8 Program participants. Indicating that this group is welcome in a community does not deny any other protected class the opportunity to apply for housing.

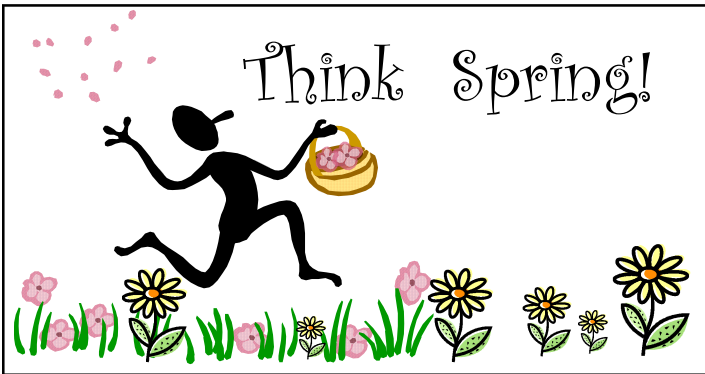
We only offer six-month leases and we require that applicants make three times the monthly rental amount, so can we turn voucher holders away?

There is no requirement that a housing provider waive its standard rental policies for everybody. A housing provider can choose to offer one-year leases only for Section 8 voucher holders. After the initial year, the housing provider can generally elect to continue the tenancy on a month-to-month basis or sign another lease for 3, 6, 9, or 12-months.

Also, it does not make sense to apply a “three times the rent” income standard to a Section 8 participant, who will be responsible for the full rent amount. It would be more reasonable to require Section 8 participants to make three times the rent amount of their portion of the rent.

In the City of Seattle, City of Bellevue, and unincorporated King County, those who participate in the Section 8 Program are protected against discrimination. In these areas, someone cannot be refused rental just because they have a Section 8 voucher. The Section 8 program involves an initial one-year lease, so a housing provider must waive a six-month lease limit for voucher holders in these jurisdictions.

**Continued on the back of this newsletter...*



Small Businesses Hurt Most by Washington B&O Tax

The business community has complained for years about the Business and Occupation tax, and now it has data to back up those assertions.

The Washington Policy Center recently released a report about the tax, which is collected from a company's gross receipts, concluding that it is an unfair way of collecting revenue. What's worse, according to the report, is that it disproportionately harms small businesses, because the larger companies have more resources to devote to tax preparation. It estimates that the state B & O tax, when converted into the more commonly used corporate income tax, creates the second-highest business tax rate in the nation. The report was written by Carl Gipson, director of the Center for Small Business within the organization.

The policy center, which is a non-profit, non-partisan research organization, recommends lowering the overall rate across all regions, make B & O more transparent to consumers and businesses as well as create better incentives for new businesses.

Sounds logical, but as many business people have learned, sensible solutions can also mean hard choices for politicians. During the fiscal year 2007, the Department of Revenue estimated business owners paid about \$2.6 billion in B & O tax, about 13 percent of total state revenues, according to the report. If the state were to start chipping away at that funding, it would either have to find another way to get back that lost revenue or make budget cuts. It's never popular to raise taxes on residents or chop programs in a slowing economy, so small businesses continue to shoulder more than their share of the tax burden.

You can see this B & O problem magnified on a local level. Bellingham has its own B & O tax, while other parts of the county do not. A Slew of businesses have been moving out of Bellingham in recent years, finding themselves in new buildings just north of the city limits or in Ferndale. More are sure to follow, particularly if the big box stores in the Cordata area are serious about relocating in Ferndale. Last month, for example, it was reported that Costco was looking at property near Slater Road. There may be other reasons given for companies leaving Bellingham, but I'm sure the B & O tax is definitely a factor, based on how often I hear from business owners about the damage it does to the bottom line.

If this is happening on the local level, it's probably happening on the state level as companies ponder whether to enter the Washington market.

So why is the B & O tax so unfair? Part of the problem is the way it is implemented, according to the report. It creates pyramiding – a process that taxes the production of a product multiple times before it reaches the consumer, a raising the retail price. The report uses a log as an example. It is taxed at a mill, then is taxed again when it goes to a contractor then again for the consumer when they buy a house that was built with that log.

Article written by: *Dave Gallagher, The Bellingham Herald*

Can we increase our rent amounts to match the maximum amount allowed on a new applicant's voucher?

Housing providers can only request a rent amount equal to that of their other rentals. A Section 8 unit cannot be charged more than is charged for all other similar rentals. If this is an owner's only rental, then the owner may charge an amount equal to other similar rentals in the area. The Housing Authority will perform a "rent reasonableness" test prior to approving the unit, and will not approve a unit who's rent exceeds the comparable figures.

If market rates go up, can we raise the rent for a current resident with a voucher?

A housing provider has the right to request an increase in rent at the end of each lease term. As with the initial rent, the Housing Authority will perform a "rent reasonable" test prior to approving the rent and will not allow rents outside the comparable figures.

ORCA ♦ WISDOM ♦

Once in a while you will stumble upon the truth, but most of us manage to pick ourselves up and hurry along as if nothing has happened.

A Safety Check List for Apartments

Check Out Your Apartment

Does your –

- *Entry door have a deadbolt lock and a peephole?
- *Sliding glass door or sliding windows have a wooden rod in the tracks it can't be opened and pins in the overhead frame so it can't be lifted out?
- *Landlord or building manager tightly control all keys?

Check Out Your Building

- *Is there some kind of control over who enters and leaves the building? (Cameras, desk clerk, etc.)
- *Are walkways, entrances, parking areas, elevators, hallways, stairways, laundry rooms and storage areas well-lighted, 24-hours a day?
- *Are fire stairs locked from the stairwell side above the ground floor, so you can exit but no one can enter?
- *Are mailboxes in a well-traveled, well-lighted area and do they have good locks?
- *Are things well maintained – are burnt out lights fixed properly and promptly, shrubs kept trimmed and trash removed promptly?



Check Out Your Neighbors

- *Get to know your neighbors. Join or organize an Apartment Watch group so neighbors can look out for and help each other.
- *If you live in a large building or complex, think about a resident patrol that watches for crime around the building, provides escort services for the elderly and handicapped, and monitors comings and goings in the lobby or entrances/exits to the site.
- *Work with the owner/manager to sponsor social events for residents – a Sunday breakfast, BBQ, a picnic, pool party, National Night Out or a holiday party.
- *Look beyond problems to root causes – does your building need a better playground, a social evening for teens, a resident association, new landscaping, a basketball hoop, etc.? Work with the owner/manager for changes that make everyone proud of where they live.