

ORCA TALES

September 2007 "We can tell you more about them than their mother" Volume 14 Issue 09

CLEAN UP or GET OUT

A resident who lets trash and debris accumulate in an apartment can damage the unit and create a health hazard in your community. The apartment's carpet and floors may end up so soiled that they must be replaced. Other residents may complain about foul odors or insect infestations. And you could get hit with housing violations for problems caused by the filth.

You don't have to sit by and let an inconsiderate resident ruin one of your apartments or your community's reputation. Many leases include clauses requiring residents to keep their apartments clean. And several recent court decisions show that you can evict residents who ignore their leases, create a health hazard, and refuse to clean up their act.

Of course, eviction is usually a last resort. Unless the trash accumulation has reached emergency proportions - requiring that you immediately go to court - you can first try to resolve the matter by sending two warning letters to residents, suggest New York attorney Sherwin Belkin. You may get sloppy residents to clean up and save yourself the expense and hassle of going to court, and, if you must go to court, you can use copies of your letters to show your good faith in trying to resolve the matter.

Courts have backed up owners when residents violated their leases and created squalid conditions in the apartments. In one case, an Ohio owner sued to evict a resident who had failed to keep his apartment clean and hadn't removed trash "in a clean and safe manner", in violation to two lease clauses. The owner's representative had inspected the premises once, found the apartment to be a mess, and warned the resident to clean up. Another inspection a month later showed that the unsanitary conditions continued. The court ruled that the resident had violated his lease and ordered the eviction.

In another case, a New York owner sued to evict two residents who had allowed a dangerous amount of trash and debris to accumulate in their apartment. The unit was filled with boxes, bags, papers, garbage, rubbish, excess furniture and clothes, rotten food, and excrement. The residents agreed to clean up the mess. But after removing 50 bags of trash, they stopped cleaning. They wouldn't let the owner inside the unit to finish the job. The court ruled that the owner could evict the resident, noting that the "apartment conditions posed a safety hazard both to the residents themselves and the building generally".

Send warning letters before you take formal action, says Belkin. For the first letter, tell the resident that he's keeping his apartment in an unsanitary condition and that this condition violates his lease. Ask the resident to call you to discuss what can be done to remedy the situation.

**Continued on back of this newsletter.*

SECURITY DEPOSIT

When landlords can keep the deposit, and when it must be returned.

The lease should clearly set out the requirements for the tenant's security deposit. A security deposit is almost always a good idea when you rent an apartment or residence. This deposit is designed to ensure that the tenant lives up to the promises made in the lease agreement. If the tenant breaks the lease or causes excessive damage to the rental unit, the landlord can use the deposit to offset the additional costs that result.

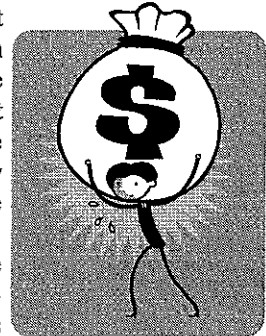
It's important to note that the security deposit is not intended to serve as a substitute for rent. Many tenants think that they can skip their last month's rent payment and have the landlord use the security deposit as compensation. In fact, some state laws actually prohibit a landlord from applying a security deposit toward unpaid rent.

State laws that regulate security deposits in residential rental agreements vary so widely that it's impossible to describe them all in detail here. In general, however, these laws regulate the maximum amount that can be charged as a security deposit, and they can also restrict the landlord's use of the deposit. For example, most states require that security deposits be placed in escrow, and some states require the landlord to place the deposit in an interest bearing bank account, and pay the interest to the tenant. When the tenant moves out, the landlord is required to either return the deposit within a specified period of time (such as 30 days) or notify the tenant in writing why all or some of the deposit is being withheld. The landlord may be legally required to provide the former tenant with an itemized list of the damage claimed.

If a former tenant disputes the damage claim, a trip to court may be required to settle the matter.

In many states, small claims court will be the court with jurisdiction over a security deposit dispute. If the court finds that the landlord was not justified in keeping the deposit, some states can require the landlord to pay a sum equal to two or three times the actual amount of the deposit.

Besides a security deposit, some landlords also charge a non-refundable cleaning deposit. This deposit is used to cover the cost of painting, carpet cleaning and other expenses the landlord will incur when the tenant leaves. If the landlord accepts pets, a pet deposit may also be required to cover the expense of removing pet stains and odors from the rental unit when the tenant moves out.



**Continued from front page of newsletter.*

When the resident calls, explain why you think there's a problem - for example, that foul odors are coming from the apartment and other residents are complaining. Try to get the resident to agree to clean the apartment by a certain date. Ask the resident to give you access to the apartment to inspect it after the cleanup. If you can resolve the matter this way, there's no need to send a second letter.

If the resident ignores your first letter, or calls you but won't clean the apartment, send a second letter, says Belkin. Quote lease provisions that are being violated. Check to see if your locality has a health code or cleanliness law that the resident is violating. If it does, tell the resident that he's violating the law and state which section. Give the resident a deadline for cleaning up and state that if the apartment isn't cleaned by that date, you'll be forced to take legal action. Ask the resident for access to inspect the apartment after it has been cleaned up.

Get help for elderly or disabled residents. If you're dealing with elderly or disabled residents who aren't capable of cleaning, try contacting their relatives or close friends for help, says Belkin.

Check a resident's lease application to see if an emergency telephone number or next of kin is listed. You can also check for a government agency in your area that deals with senior citizens and contact this agency for help.

**Reprinted from Onsite Magazine.*

A Word of Sincere Thanks...

"Thank you Retha! You did a fantastic job of helping secure a tenant for our home in Bothell. We appreciate the work Orca does for us and continue to be amazed at how quickly you are able to turn these details around!"

- Jen Casey

"Thank you ORCA staff (especially TJ) for your help today! I have faxed the paperwork that I understand is needed to establish an account. When we establish a Federal Tax ID number I will send it and upgrade our account status."

- Jeri Smith with Smith Family Enterprises

Dear Clients,

Thank you for sending in the new compliance documents. If we have not visited your site yet, you will soon be receiving a call from us. Our site visits (required by the Fair Credit Reporting Act) have been fantastic! Meeting everyone and seeing the site you manage has been most enjoyable.

Again, thank you to all of our clients and everyone in between for helping us with the FCRA Compliance! You are the best!!

Sincerely,

Rebekah Near and the Orca pod.

Should an Eviction Always Disqualify an Applicant?

The unit has been vacant for a while and you are anxious to get a new tenant, yet not sure how much leeway to give to an applicant with a previous eviction on his/her record. It is, at rock bottom, a personal decision, but there are times you may want to consider exceptions to the usual "No way, ever" initial response. If a landlord rents to modest- or low-income tenants, coming across a previous eviction will happen.

There can be many reasons for those evictions, some that will absolutely disqualify them from renting from you, and some reasons that just mean they had some hard luck and will probably not be evicted again. In a slow rental market, you might want to consider renting to applicants who have been evicted, but use some clear guidelines and stick to them. You need to make it clear from the start that even though an eviction will not absolutely disqualify them from renting from you, that you need to know the reasons for the eviction that made it impossible for them to pay the rent, that you will check out information, and that you will still require the rent for your unit must be paid on time and in full.

On the screening form or rental application, ask if there have been previous evictions and the reason. And verify that information, of course. Be very careful to satisfy yourself that the applicant is telling the truth without "forgetting" part of the story or embellishments. Sometimes, people really do learn lessons; other times there has been no change except that they have become better at relating a sad story to win sympathy. Bad tenants always have an excuse and, sometimes, a personable or charming presence. There are some circumstances that may possibly be reasons you would consider renting to them but, again, you are the only one to decide if you can give credence to the reasons.

There are some reasons for eviction that a landlord would keep as criteria for not renting to an applicant: damage to unit, filthy or badly unkempt unit, gang activity, drug activity, disturbance to neighbors, leaving children unsupervised. And it may be an important requirement for you to have a good reference from a landlord they rented from after their eviction to show that there has been actual changes in their circumstances. Whatever your guidelines and criteria, be sure to write them out, keep them in your landlord records, and above all - be consistent!

ORCA ♦ WISDOM ♦

**All that is gold does not glitter;
Not all of those that wonder
are lost.**