

RESIDENTIAL LANDLORD-TENANT FORM (NOT IN PARK OR MOORAGE)

Client Name: _____

Date: _____

Client is: Landlord Tenant

Type of Problem: Eviction Lawsuit for Rent Retaliation
 Lockout Seizure of Property

Discrimination: Deposit Condition of Dwelling Application
 Abandoned Property Parking/Towing Other _____

FACT GATHERING

Tenant: Name _____
 Address _____
 Email _____
 Phone (H) _____ (W) _____

Landlord: Name _____
(Owner or Address _____
Management Co.) Email _____
 Phone (H) _____ (W) _____

Manager: Name _____
 Address _____
 Email _____
 Phone (H) _____ (W) _____

On Site? Yes No

Property Address: _____

Rental agreement start date: Rental agreement end date:
Move-in date: Move-out date:
ORS 90.147 possession-to-tenant date: ORS 90.147 possession-to-landlord date:

Type of Dwelling: Apartment House Hotel/Motel __ Farm __ Room
 Drug & Alcohol Free Housing Recreational vehicle (ORS 90.100,.120,.230)
 Mfg'd or floating home (see below) __ Subsidized (see below)

Rent is \$ _____ due on the _____ of each month [or] week

Is there a written rental agreement? (ORS 90.220) Yes No
Did the landlord give a copy to tenant? Yes No

Copy is: attached at home lost

Is late charge authorized by rental agreement? (ORS 90.260) Yes No

Late charge of \$ _____ if paid after the _____

Has rent changed? Yes No

If yes, rent was \$ _____ until _____, _____.

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Was 90 day notice of increase given? (ORS 90.220) Yes No

Did notice contain all info required under ORS 90.220? Yes No

Did the tenant sign or receive any other papers, such as rules? Yes No

Copy is: attached at home lost

Describe any other papers. _____

Describe any oral agreements, and dates. _____

IS OCCUPANT A TENANT?

ORS 105.005 (ejectment) versus ORS 105.105 (eviction)

Did parties agree on premises, term and rent? Yes No

Is this a family arrangement? *State v. Nolen*, 244 Or App 635 (2011) Yes No

IF A TENANCY, DOES THE ORLTA APPLY?

Does occupant maintain a household? (90.100 "Dwelling unit") Yes No

Does occupant have right to exclude others? (90.100 "Tenant") Yes No

Does occupant hold under a rental agreement? (90.115) Yes No

Does an exclusion apply? (90.110) Yes No

Who is the tenant? (90.100 "tenant," "person," "organization," "common interest") _____

SUBSIDIZED HOUSING

If dwelling is subsidized housing, what subsidies are involved?

- Check <http://www.oregon.gov/ohcs/Pages/research-multifamily-housing-inventory-data.aspx>
- Section 8 project-based housing (24 CFR chapters 880 - 891)
- Section 42 housing, see IRC 42(h)(6)(E)(ii)
- Section 8 voucher (24 CFR 982)

Is landlord: Housing Authority Non-Profit For-profit Entity Individual

ORLTA EVICTIONS

Review: Is this a tenancy subject to the ORLTA?

Has written notice of termination been given ? Yes No

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How served (90.155):

- Delivered to tenant (date _____)
- "First class" (per 90.100) mail (mailing date: _____ postmark date: _____)
(3 days added: Yes No)

Attachment of notice (date _____) and mail (postmark date _____)

Attachment and Mail authorized by rental agreement, for both landlord and tenant?

Yes No

Location for tenant to attach designated with particularity, e.g., "the door beneath the 'Rental Office' sign at 123 Euster St., Pugwash OR)? _____

Reasonably located in relation to the tenant? _____

Available at all hours? (Not within a building locked at night) _____

Notice is: attached at home lost

Envelope notice came in (with postmark) is: attached at home lost

If notice is for cause, what is tenant's explanation:

Effective date of termination: _____

Does notice specify termination date? __Yes __No ((E.g., February 12, 2021)

Does notice also specify time? __Yes __No (ORS 90.394 (rent); .396 (outrage) (E.g., 12:01 a.m.)

Does it give enough time from date of service with ORS 90.155 extensions? Yes No

Has tenant discussed notice with landlord? Yes No

Describe discussion: _____

Does notice content comply with statute (ORS 90.392, 90.394, 90.396, 90.398, and 90.403; 90.380(5), 90.405, 90.427, 90.429, 90.630 or 90.632)? Yes No

If no, describe why: _____

If the tenancy is month-to-month and every tenant has lived there at least a year, is the landlord's no-cause notice for at least 60 days, not just 30? (ORS 90.427)? City of Portland, Bend, Milwaukie, 90 days? Yes No

Is the tenant terminating due to military duty? (ORS 90.472, 90.475) Yes No

Is domestic violence involved? (ORS 90.445 to 90.459) Yes No

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Is landlord treating differently a tenant or applicant who is a victim of domestic violence? (ORS 90.449) Yes No

Is there a restraining order, other verification, or ouster order? Yes No

Is there a co-tenant/abuser who is being excluded? Yes No

If early release, are there any remaining tenants: Yes No

Is landlord evicting only the abuser? (ORS 90.445, 105.128) Yes No

If eviction is for closure of a facility, has the landlord provided the required notice and payments? (ORS 90.645; OAR 813.065) Yes No

If this eviction is a result of a condominium conversion, has the landlord given the notice and offer to sell? (ORS 90.490, 90.493, 100.305) Yes No

Is this a termination of a tenancy in a Group Recovery Home? (ORS 90.440) Yes No

If this is a post-advertisement-and-sale-foreclosure eviction of a tenant (as opposed to the owner), has the purchaser given sufficient notice under ORS 86.745?

Does the notice contain the information to veterans required under ORS 90.391? Yes No

Portland only: Has the landlord provided the tenant with a rental history form within five business days of issuing the termination notice? (PCC 30.01.087 F) Yes No

COVID-19 – through February 2022: If the termination notice is for non-payment, does it include the additional notice language required by SB 278? Yes No

COVID-19 – through February 2022: If the termination notice is for non-payment, has the tenant provided the landlord with documentation of an application for rent assistance? (SB 278) Yes No

COVID-19 – through February 2022: If the termination notice is for non-payment, did the non-payment arise between April 1, 2020 and June 30, 2021? (SB 282) Yes No

Forcible Entry and Detainer

FED filed after notice's termination date, as extended by 18.010? Yes No

Served by the next judicial day? (105.135)? Yes No

Copy of notice attached to complaint (105.124)? Yes No

Identical to one given tenant earlier? Yes No

Date of first FED appearance: _____

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Is first appearance at least 7 days after judicial day following date complaint filed? (ORS 105.135, but see *Balboa v. Patrick*, 351 Or 205 (2011)). Yes No

Non-Payment Eviction (ORS 90.394)

Behind in rent? Yes No

\$_____ Amount owed

Does the notice specify the amount owed? Yes No

_____ Amount and date of last payment; review payment history

_____ # of payments behind

Has landlord allocated payments correctly (90.220)? Yes No

Does the notice claim amounts other than rent? Yes No
If yes, what? _____

Does the notice specify both a due date and time? Yes No

Receipts: attached at home lost not provided

Reasons for nonpayment: Lack of funds
 Dwelling unit in bad condition (describe in Habitability section)
 Landlord refused to accept rent (if yes, describe what happened and when) _____

Other: _____

Does tenant already have rent money to pay right now? Yes No

How much? \$_____

Deposit into Trust Account? (Danger: *In re Williams*, 314 Or 530 (1992)) Yes No

If no money now, when? _____

Is there a dispute over amount of rent due? Yes No

Does the notice include charges other than rent? (ORS 90.260(6) (late fee); .302(5)(fees); .315(4)(d)(utilities)) Yes No

Has tenant made partial payments? Yes No

DATE OF PARTIAL PAYMENT	AMOUNT	METHOD OF PAYMENT	ORS 90.417(4) AGREEMENT MADE?

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Did landlord return any money? (ORS 90.412(3)) Yes No
 If yes, when, and how many days after receipt? _____

Is there a waiver due to landlord's acceptance of partial payment? (ORS 90.417) Yes No

CURE/WAIVER

If eviction is for cause other than nonpayment, has landlord waived breach? (ORS 90.412, 90.414) Yes No

How: _____
 When: _____

Cure of eviction cause? (ORS 90.392; 90.630 for mobile home parks and marinas)

How: _____
 When: _____

Does the notice describe a cure? Does notice demand a particular cure?
 Deadline for cure: _____

HABITABILITY

Within the last year (ORS 12.125 limitation), did the apartment or house lack any repair item under 90.320? Yes No

Or did the space in a facility lack any item under ORS 90.730? If yes on any item, from when to when? Yes No

Did the dwelling lack any unlisted item of similar importance? *Bellikka v. Green*, 306 Or 630 (1988). Yes No

Complaints to landlord:

DATE OF COMPLAINT TO LANDLORD	WRITTEN OR ORAL?	PROBLEM	LANDLORD'S RESPONSE

Did landlord know or should landlord have known about the problem? (ORS 90.360) Yes No

If yes, why: _____

Did public fire, health or housing inspector check out dwelling? Yes No

If yes, is there a written report? Copy? Yes No

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Did tenant or tenant’s guest cause the problem? Yes No
ORS 90.360(5) Describe: _____

Did tenant invoke repair-and-deduct procedure, ORS 90.368? Yes No

Is the dwelling unsafe or unfit to occupy due to the problem? ORS 90.365(1)(c) Yes No
Describe: _____

Has a government agency posted the dwelling as unsafe or unfit to occupy? (ORS 90.380) Yes No
Attach copy of the notice? Yes No

Did landlord disclose the subject of the posting at start of tenancy? (ORS 90.380(3)(c)) Yes No

Has tenant negligently damaged the dwelling or premises? (ORS 90.360(4)) Yes No
Describe: _____

Has tenant denied landlord access to make repairs? (ORS 90.322) Yes No
If yes, describe what happened and why: _____

DEPOSITS/FEEES

Are deposits, prepaid rent, or fees involved? Yes No
Are they authorized by law, and described in a writing? (ORS 90.300, 90.302). Attach a copy. Yes No

Deposits, ORS 90.300

Describe any deposits charged: amount, purpose, date paid

Date by which both tenancy had terminated and possession returned to landlord: _____

Did landlord refund by 31st day afterward? Yes No Amount? _____

Did landlord account by 31st day afterward? _____

By personal delivery or by first-class mail as defined in ORS 90.100? Yes No
If late, then when? _____

Have deposits or prepaid rent been garnished? (ORS 18.618) Yes No
If yes, by whom and when _____

Portland only: If landlord is withholding any part of the deposit, did landlord include with the written accounting a written notice of tenant’s deposit rights under PCC 30.01.087? Yes No

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Fees (ORS 90.302)

Did landlord charge any one-time, up front fees? Yes No
Describe: _____

Is tenant within one-year (12.125) of paying the fee? Yes No

Has landlord charged any noncompliance fees? Yes No
Describe: _____

Both

Has landlord charged any pet deposits or fees for service or companion animals? Yes No
Describe: _____

Distrain: Is landlord holding any property of the tenant? (ORS 90.420, 105.112)
ATTACH A LIST OF ITEMS AND THEIR VALUE
 Has the tenant demanded the return of the property? When? _____
Was the demand in writing? Yes No
Landlord's reason or response: _____

Parking/towing: Has landlord had tenant's car towed? Without notice? Yes No
(ORS 90.485 and further statutes cited there)
If yes, when? _____ Landlord's reason? _____

DEFENSES/COUNTERCLAIMS/ACTIONS

Defenses/Counterclaims against landlord (describe): _____

Defense: Protected class _____
Discrimination Describe the landlord's discriminatory conduct: _____
(ORS 90.390; _____
ORS 105.132) _____

Defense and Counterclaim: Protected conduct _____
Retaliation _____
(ORS 90.385, *Elk* Did tenant make complaint in an unreasonable manner?
Cr'k, 353 Or 565 Yes No
(2013) Describe: _____

Counterclaim: Has the landlord entered the dwelling or premises without tenant's
Abuse of access permission or without notice? Yes No
(ORS 90.322) If yes, when: _____
Landlord's reason (emergency, etc.): _____
Was anything damaged? Yes No
What: _____

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Other Counterclaims and Actions:

- Lockout/utility shutoff or threat (ORS 90.375)
- Utilities/services benefiting landlord or other tenants not disclosed when tenancy starts, ORS 90.315. (One-year statute of limitations, ORS 12.125 begins second day of tenancy.)
- Failure to disclose foreclosure (ORS 90.310)
- Improper utility or service charge (ORS 90.315)
- Application denial (ORS 90.304, 90.390) or applicant screening charge issue (ORS 90.295)
- Unlawful debt collection practice (See *Hoffer v. Szumski*, 129 Or App 7 (1994) and discussion below.
- Miscellaneous sales practices violating the Unlawful Trade Practices Act (describe any misrepresentations by the landlord; unreasonable rejection of a prospective manufactured dwelling purchaser in a facility, ORS 90.680; false representations about insurance or warranty by dealer, ORS 646.648).

Date	Nature of Misrepresentation/Rejection	Oral or Written

NOTE: See UTPA discussion at end of this form.

Landlord failure to give written notice that unit is in a 100-year flood plain (90.228) Yes No

POST-EVICTION

Was there a judgment or order by stipulation? Yes No

If so, did the judgment or order include only the items listed in ORS 105.146(2)? Yes No

Did one party fail to comply? (ORS 105.146 - 105.149) Yes No

Describe the noncompliance _____

Describe any excuse or defense to the noncompliance _____

Notice of Restitution given? ORS 105.161 Yes No

Deadline to move out: _____

Have 60 days passed since judgment (ORS 105.159) or 30 days since writ of execution? ORS 105.161? Yes No

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Abandoned property (ORS 90.425, 90.675) Yes No
Signs that the tenant has abandoned or relinquished the premises: _____

Notice of abandoned property given? Yes No
Date: _____

Notice waived? (If yes, attach copy of agreement) Yes No

Describe the abandoned property or attach list: _____
Where stored: _____

Does the abandoned property include a manufactured dwelling or floating home? Yes No

If yes, notice given to any lien holder or owner? Yes No

Has government posted the dwelling for methamphetamine? ORS 90.425(23) Yes No

If abandoned by death of a tenant living alone, has the landlord notified personal representative and State Lands, etc? (ORS 90.425) Yes No

Is tenant eligible to expunge the eviction case? (ORS 105.163, SB 282 section 9) Yes No

MANUFACTURED AND FLOATING HOMES IN "FACILITIES"

Does the space tenant own the home? Yes No

Now or in the past, are or were there four or more home spaces? Yes No

Was the owner's purpose for at least four spaces to rent them out? Yes No

Were floating-home spaces contiguous and transferrable as a single unit? Yes No

Did landlord ever close the park under ORS 90.645 or 90.671? Yes No

Note: Where the owner of a manufactured dwelling or floating home rents a space in a park or marina (a "facility") the tenancy is treated differently from apartment occupancy in many ways. 90.505-90.875. The questions above relate to definitions in ORS 90.100 for "facility," "manufactured dwelling park," and "marina," so the practitioner can determine under ORS 90.120 and .505 whether ORS 90.510 et seq. apply. Despite the implication of the questions, no reported case has said whether a park or moorage can lose its character as such without a closure under ORS 90.645 (park) or .671 (marina).

What year was manufactured dwelling built? _____

Is there a lender or lien holder on the dwelling or home? Yes No
If yes, name and address: _____

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Has the manufactured dwelling park or floating home marina landlord registered with the state and completed the required training in ORS 90.732 and .734? Yes No

Unlawful Trade Practices Act **By Craig Colby**

The core purpose of the UTPA is to discourage fraudulent conduct in the formation of consumer contracts. Its original provisions prohibited various tricks used to lure consumers into transactions, but the act did not try to regulate the conduct of the merchant who simply defaulted on a contract.

Also in its original provisions, the UTPA applied only to the formation of contracts for "goods and services." When the act was being enlarged in 1977 to encompass the formation of real-estate contracts, a May 10, 1977 memorandum from Chief Counsel, Consumer Protection Division, to the House Committee on Business and Consumer Affairs said, "The law also does not include all things covered under the residential landlord-tenant law. * * * There is landlord-tenant law already on the books, and since the Consumer Protection Division of the Department of Justice normally does not act in the area of residential landlord-tenant, extension of jurisdiction over residential landlord-tenant is not needed at this time." Accordingly the legislature provided, "As used in ORS 646.605 to 646.652: * * * real estate does not cover conduct covered by ORS Chapter 90."

Much of the UTPA regulates conduct in connection with sale or lease of "real estate, goods or services," and in my view that much of the UTPA does not apply to residential landlords. On the other hand, the legislature has used the UTPA as a dumping ground for miscellaneous regulations, including unlawful debt collection practices, that might well catch up residential landlords. My purpose here is not to list them -- they change every biennium -- but just to warn the practitioner that core provisions of the UTPA may not apply.

Hoffer v. Szumski, 129 Or App 7, 877 P2d 128 (1994) controls, or doesn't. It arose from a residential FED where the trial court had dismissed tenant's UTPA counterclaim as "outside the purview" of an FED. On appeal landlord conceded that the trial judge was wrong. In a short discussion agreeing with landlord, the Court of Appeals truncated the front of what is now ORS 646.638(7) to, "[I]n any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, such purchaser or lessee may assert any counterclaim the purchaser or lessee has arising out of a violation of [the UTPA]." Based on the partial quotation the Court determined that counterclaims would lie.

Actually, the statute begins now and, with subsection numbers updated, began then, "(7) Notwithstanding subsection (6) of this section, in any action * * *." The referenced subsection (6) sets a one-year statute of limitations. Thus the full language extends the limitations period if the merchant starts the fight, but does not overturn general rules concerning FED procedures.

The landlord in *Hoffer* conceded error on the jurisdictional question but sought to justify the trial court's dismissal of the UTPA claim on the ground that tenant had failed to state a claim. Presumably landlord argued that the act's definition of "real estate" denied tenant's coverage by the part of the UTPA the tenant had invoked. The Court's opinion noted this argument of the landlord but did not respond to it. Perhaps the court reached and rejected the argument; perhaps it thought landlord hadn't preserved it; perhaps the court deemed it patently irrelevant. Some lawyers believe that because landlord lost on appeal *Hoffer* must have decided generally

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that tenants may rely on the entire UTPA, at least for matters not explicitly regulated by the ORLTA. I suggest caution.

IMPORTANT NOTICES

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