



Tenants' rights in a disaster

Emily Rena-Dozier
Oregon Law Center State Support Unit
October 19, 2020

**Oregon
Law Center**
WORKING TOGETHER TO ACHIEVE JUSTICE FOR LOW INCOME OREGONIANS



Overview

- Overview of a tenancy
- Landlord/ tenant issues in a disaster
- Common legal issues following a disaster
- Overview of eviction moratoriums

Introduction

- Oregon's wildfires have pushed landlord/tenant law into new areas
- Enormous need for accurate information for tenants
- Goals of presentation:
 - Very basic grounding in landlord/tenant law
 - Legal issues that arise after a disaster
 - Overview of current restrictions on eviction

- Rental agreements
- Landlord habitability/ repair obligations
- Tenancy terminations
- Evictions
- Security deposit issues
- Special issues in manufactured home tenancies

Overview of a tenancy in Oregon

Rental agreements

- Tenancies in Oregon may be week to week, month to month, or fixed term (usually one year)
 - Fixed term and month to month most common
- Fixed term tenancy cannot be terminated without cause
 - Landlord cannot refuse to renew tenancy without cause after the first year
- Month to month tenancy may be terminated by landlord without cause in the first year
 - After the first year, landlord may not terminate without cause
- Tenant may terminate month to month tenancy at any time without cause
 - 30 days' written notice required



Terms and conditions of rental agreements

- Rental agreements may be written or oral — ORS 90.100(38)
 - Exception: week to week tenancies and tenancies for RVs must be in writing — ORS 90.100(52); 90.230
- In rural areas, informal or oral rental agreements are more common
 - Existence of rental agreement most easily established by records of rent payment
 - Although payment of rent is not required for a tenancy to exist
- If no term is specified, default term for rental agreement is month to month
- Rental agreement may not require tenant to waive any rights under Oregon law

Landlord's habitability requirements

- ▶ Landlords are required to maintain rentals to a minimum standard of habitability — ORS 90.320
 - ▶ This obligation cannot be waived
- ▶ If a landlord fails to maintain or repair a dwelling, tenant has several options
 - ▶ Give written notice that if repair is not made, tenant will terminate rental agreement — ORS 90.360(1)
 - ▶ More common — notify landlord of intent to deduct from rent to cover reduced rental value
 - ▶ If habitability problem affects health/ safety, tenant may give written notice and then seek alternative housing, deducting cost from rent — 90.365
 - ▶ If minor repair that can be done for less than \$300, tenant may give written notice, pay for the repair, and deduct cost from rent

- Month to month:
 - Tenant may terminate at any time without cause
 - Landlord may terminate without cause in first year, not after
- Fixed term:
 - Neither landlord nor tenant may terminate without cause
 - Tenant may terminate if landlord fails to remedy habitability problem, or if DV occurs
 - Landlord may terminate if tenant violates rental agreement
 - Under normal circumstances, landlord may terminate if tenant does not pay rent, but not currently (more information on that to come)

Tenancy terminations



Special circumstances for termination when health/ safety impacted

- If a governmental agency has declared that a rental is unsafe and unlawful to occupy, either landlord or tenant may immediately terminate rental agreement — ORS 90.380
- This is only permitted if there is an official governmental declaration
- Tenant may terminate immediately, with written or oral notice
- Landlord may terminate with 24 hours' written notice
- If termination occurs under 90.380, landlord must refund remainder of rent and return security deposit within 14 days
- Tenant can recover twice the unpaid amount if landlord fails to do so

Evictions

- If a tenant does not move out after the landlord issues a termination notice, landlord may file an eviction complaint in court
- Landlord may NOT attempt to remove tenant without court order
 - Includes lockouts, utility shutoffs, physical removal
 - Subject to two months' rent penalty and/ or injunctive relief, ORS 90.375
- Currently, evictions for nonpayment (most common) are prohibited by Executive Order 20-56
 - As are evictions without cause



Questions about
tenancies?




So what does all this have to do with the wildfires??

- Nothing in Oregon law that specifically addresses this situation
- Working to apply legal principles from other contexts to this situation
- None of these issues have been litigated, so everyone's feeling their way
- The following info represents our best guess for how courts would decide these issues


Landlord/ tenant issues in a disaster

- Destruction of unit/ space
- Damage of unit/ space
- Tenancy termination based on governmental declaration
- Tenancy termination by tenant
- Tenant termination by landlord
- Rent withholding
- Deposit/ rent return



What happens if a rental was destroyed?

- If a rental unit is completely destroyed, the tenancy terminates as of the date the unit was destroyed
 - Unless there is a provision to the contrary in a rental agreement
- Landlord must return tenant's security deposit within 31 days of the date the unit was destroyed
- Landlord must also refund remainder of rent for the rental period
 - Rent is typically prorated by dividing the month's rent by 30 days, or a year's rent by 365 days
- Tenant cannot require landlord to repair/ replace unit to allow for ongoing tenancy




What happens if the rental was only damaged?

- If the rental was damaged, but not destroyed, the tenancy still exists
- Landlord must repair unit to return to habitability
- Tenant may deduct from rent to account for reduced rental value until repairs are complete
 - Tenant should notify landlord in writing of intent to deduct
- If unit is so badly damaged it can't be occupied, tenant may use rent to pay for alternate housing
 - Must notify landlord in writing
- Tenant also has option to terminate the rental agreement
 - Must give written notice to landlord



Important note on “written notice”

- The landlord tenant act defines written notice as either personally served, or served by first class mail
- Notice by email, text, or other methods can supplement written notice, but cannot replace it
- Tenants should always be advised to communicate with landlord in writing (by letter) and to keep copies of correspondence
 - Can send letters by email or other methods in addition




What if the rental is unsafe to occupy?

- If a **governmental agency** has posted a written notice on the rental stating that it is unsafe and unlawful to occupy, either landlord or tenant may immediately terminate the rental agreement — ORS 90.380
- This is only permitted if an agency has made this determination — not up to landlord or tenant to decide
- Tenant may terminate immediately with actual notice — tenant should still give written notice to confirm
- Landlord may terminate with 24 hours' written notice
 - Must return deposit and remainder of rent with 14 days
 - Tenant may recover double damages if landlord fails to return



How should a tenant terminate their rental agreement?

- If the rental was destroyed, the tenancy is over.
 - Tenant should confirm in writing with landlord & provide address for return of security deposit and rent within 31 days
- If the rental was damaged, but not destroyed, tenant may:
 - Give 30 days' written notice to terminate month to month tenancy without cause, OR
 - Notify landlord in writing that if repairs are not made within 7 days (if affecting health/ safety) or 30 days (all other repairs), tenancy will terminate — ORS 90.360(1)
 - Tenant may use this method to terminate month to month or fixed term tenancy




Can a landlord terminate the rental agreement?

- If the rental was destroyed, the tenancy is over
- If the rental was damaged but not destroyed, landlord is obligated to repair the damage and continue the tenancy
 - Unless governmental agency has declared the unit unsafe
- Until the end of December, landlord may not terminate a month to month tenancy without cause, even to make repairs
 - Landlord may only terminate if has sold the rental to someone who intends to move into it, or landlord intends to move in to the rental

- If a unit is damaged, but tenant can still live in it, tenant may deduct from the rent to cover reduced rental value — ORS 90.360(2)
- Tenant should notify landlord of intention to deduct in writing
- If unit lacks essential services — plumbing, electricity, refrigeration, functional doors, windows, or roof — tenant may use rent to cover alternative housing
 - Must notify landlord in writing ahead of time, ORS 90.365

Rent withholding



What about rent during a mandatory evacuation?

- Many tenants were required to leave their homes during mandatory evacuation orders
- Law is not clear whether landlords must forgive rent during period that tenant was unable to access their homes
- Best option for tenants is to apply for FEMA funds to reimburse for costs of lodging during evacuation period

Security deposit return

- If rental was destroyed, or if a governmental agency has declared the unit unsafe to occupy, landlord must return **entire security deposit**
- If unit was damaged, and tenant terminates rental agreement, landlord must return security deposit within 31 days — ORS 90.300
- Tenant should be sure to provide address for landlord to return
- Tenant may recover twice the deposit if landlord fails to return



Questions about
disaster issues??






Eviction moratoriums

- Currently, landlords are not allowed to terminate rental agreements or evict for nonpayment of rent — Executive Order 20-56
 - Also may not terminate/ evict without cause
 - Unless landlord has sold unit to someone moving in, or landlord or a family member intends to move in
 - Must provide 90 days' notice of termination
- Previous moratorium — HB 4213 — ran from April 1 to September 30
 - Also prohibited termination/ eviction for nonpayment or without cause
 - Allows tenants until March 31, 2021, to pay rent that built up between April and September



Local protections

- Multnomah County and City of Portland have broader moratorium in place
- Prohibits terminations without cause for landlord move-in
- Allows a grace period to pay back rent that builds up between October and December



Federal moratorium: CDC Order

- Much more limited than Oregon's moratorium
- Requires tenants to sign declaration under penalty of perjury to be covered
- Will apply only to tenants who owe rent from before April 1, 2020, when Oregon's moratorium was put into place
- May apply to terminations without cause



Questions about
eviction moratoriums ??





Emily Rena-Dozier
Oregon Law Center State Support Unit
erena-dozier@oregonlawcenter.org



Oregon
Law Center
WORKING TOGETHER TO ACHIEVE JUSTICE FOR LOW INCOME OREGONIANS

Frequently Asked Questions for Tenants After the Oregon Wildfires

1. What should I do if my home was completely destroyed by the fire?

“Completely destroyed” means there is no part of the building left that a person could live in. If the home you rent was **completely destroyed**, then your rental agreement should end unless you and your landlord agree otherwise, or something in your rental agreement says something different.

If you want your rental agreement to end, you should contact your landlord in writing as soon as possible. Ask your landlord to confirm in writing that your rental agreement has ended because of the fire. Your landlord should return your security deposit and the remaining rent that you paid for the month of September. Include an address where the landlord can send the deposit and remaining rent.

If you are not able to contact your landlord, or if the landlord will not confirm that your tenancy is over, you should take photos to show that your home has been destroyed. **Don’t go to your home unless it’s safe to do so.** If your landlord says that your rental agreement did not end, even though the home is destroyed, **you do not have to pay any rent to the landlord.** If you need legal help, go to OregonLawHelp.org and look for the legal aid office in the county where you’re currently located.

If you do **not** want your rental agreement to end, you should contact your landlord in writing and ask if they plan to rebuild or replace your home. You should also confirm in writing that you will not have to pay rent until you can move back in. It may take a long time for the landlord to be able to rebuild the home, so you should be prepared for your landlord to say that the rental agreement is over.

It’s always best to communicate with your landlord in writing. You can mail letters to your landlord, but you might also want to send copies of the letters that you send by email or text, if you know your landlord’s contact information. Keep copies of any communication that you send to your landlord.

2. What if my home was damaged by the fire, but wasn’t completely destroyed?

First, be sure to wait until it’s safe for you to return home. Once you’re able to return home, gather any documents that relate to your rental. This could include your rental agreement, rent receipts, utility bills, and insurance documents. Take pictures of the condition of the home. **If a government agency has put a notice on your door that says your home is not safe to live in**, do not go inside. Take a picture of the notice, if possible.

If your home was damaged, but not destroyed, contact your landlord **in writing** as soon as possible. List the parts of your home that need to be repaired, and include pictures, if possible. Ask your landlord if they intend to repair your home, and when they plan to begin. If the damage to the home reduces its rental value, you can also tell the landlord that you plan to deduct part of the rent to cover the reduced rental value. For example, you might deduct part of the rent if one of the bedrooms in your house can’t be used, or if your rental agreement included a garage, but the garage is now destroyed.

If your home is so badly damaged that it's not safe for you to live in it (for example, if there is no running water, or if the roof is damaged), tell your landlord that until the repairs are complete, you will not be paying rent, but will be using your rent money to pay for housing and living expenses elsewhere. Also tell your landlord that you do not intend to abandon your home. Include a way for the landlord to contact you about the repairs.

If a government agency has put a notice on your door that says your home is not safe or lawful to live in, you have the right to end your rental agreement right away. If you want to end your tenancy, tell your landlord, in writing. If a government agency has put a notice on your door that says your home is not safe or lawful to live in, your landlord has the right to end your tenancy by giving you a 24 hour written notice. Your landlord has 14 days from the day that the tenancy ends to return your security deposit (including last month's rent, if you paid that in advance) and all of the rent for the remainder of the month.

If your landlord does not return your deposit and the remainder of the rent, you have a claim against your landlord for two times the money that the landlord owed you.

3. What should I do if I have a subsidized tenancy?

If you rented your home with the rental assistance (like HUD "Section 8" or "VASH"), you should still follow the advice above. In addition, contact your housing caseworker, **in writing**, immediately. If your tenancy has ended, either because the home was destroyed or an agency said it was unsafe to live in, you need to tell your caseworker. You have a right to a new voucher to rent another place. If you've had your voucher for longer than a year, you can transfer it (called "porting") to anywhere else in the United States. If you want to move away and have **not** had your voucher for a year, ask your housing caseworker if they will make an exception and let you "port" sooner, because of the fires.

Usually, tenants have 60 days to find a new home to rent with their voucher. Because of the fires, this might be difficult for many. You can request an extension on your voucher if you need more time, but it's very important that you let your caseworker know, **in writing**, that you are trying but cannot find a new place, *before* the 60-day deadline.

If your housing caseworker will not give you a moving voucher, or if they will not extend the time for you to keep your voucher, or for other issues with your subsidized housing, you should go to OregonLawHelp.org and look for the legal aid office near you.

4. I owned a manufactured home and rented a space in a park. My home was completely destroyed in the fire. What do I do?

Legal Aid/Oregon Law Center has prepared a separate info page on issues with manufactured homes. That, and more information about your rights, including insurance matters and other issues, is available at OregonLawHelp.org.

5. I rented a manufactured home in a park. What should I do?

If you rented a manufactured home that you did not own, your rights are the same as other renters.

Information for Renters Affected by Oregon Wildfires

If you rented an apartment, a house, or space for a manufactured home and your housing was affected by the wildfire, this information is for you. More information about how to get help is available at wildfire.oregon.gov and at OregonLawHelp.org.

STEP 1: MAKE SURE THAT YOU'RE SOMEWHERE SAFE.

Find shelters near you at redcross.org, or call the Red Cross at 800-733-2767. Shelters are open to anyone. **There are no income or citizenship requirements for emergency shelter.**

STEP 2: GATHER YOUR INFORMATION.

Gather your ID, any documents you have that show where you were living before the fire, and any proof of your status as a renter. A copy of a rental agreement is best, but you can also use a receipt for your rent, a utility bill in your name, or a letter or email from your landlord or property manager. If you have renter's insurance, you should also contact your insurer for information about what your insurance will cover. You can use your renter's insurance policy as proof of your residence and your status as a renter.

It's also important to hold onto receipts or other proof of payment for things you buy while you're in shelter — like food, water, or clothing.

STEP 3: WHAT KIND OF HELP CAN I GET?

If you live in one of these counties, you qualify for individual financial help from FEMA, the U.S. agency in charge of disaster relief:

- Clackamas
- Douglas
- Jackson
- Klamath
- Lane
- Lincoln
- Linn
- Marion

FEMA can help with money to pay for substitute housing, to replace property that was lost or destroyed in the fire, or for medical expenses. FEMA may also be able to provide temporary housing in some areas.

To get money from FEMA, you will need to be able to show that someone in your household is a U.S. citizen or lawful permanent resident (LPR or green card, or other legal status, including asylee or refugee), and have a Social Security number for that person. You will also need the following:

- Social Security Number (SSN) or the SSN of a minor child in the household who is a U.S. Citizen, Non-Citizen National or is otherwise Qualified
- Annual Household Income

- Contact Information (phone number, mailing address, email address*, and damaged home address)
- Insurance Information, if any (coverage, insurance company name, etc.)

*Note: Provide an email address if you want to review your registration status online. Otherwise, you will be required to contact FEMA for any updates to your registration.

If you live in one of the above counties, and someone in your household is a U.S. citizen or LPR, you can start your request for help from FEMA right now, by calling 800-621-3362, or by going online to DisasterAssistance.gov. There's also a FEMA mobile app for your phone or mobile device, just search for FEMA in your device's app store.

For those people concerned about a public charge test (people who are applying to become LPRs), emergency assistance doesn't count in a public charge test. You do not need to worry about this when accessing emergency benefits due to wildfires.

The deadline to apply for FEMA relief is November 14, 2020.

For more information and help about applying for FEMA assistance, or to appeal a denial of assistance, please go to OregonLawHelp.org.

STEP 4: WHAT IF I DON'T QUALIFY FOR FEMA ASSISTANCE?

Oregon is working on gathering resources for help for people who aren't eligible for FEMA. Please keep checking back to OregonLawHelp.org for more information as it becomes available.

EVICTON MORATORIUM EXTENDED

The Governor has issued a new Executive Order, ensuring that Oregon renters are protected from eviction until December 31, 2020. **Landlords cannot evict tenants for nonpayment during this time.** Landlords also cannot use most kinds of no-cause notices until the end of the moratorium.

Landlords cannot charge late fees or other charges based on nonpayment of rent between April 1 and December 31, 2020. Landlords cannot report nonpayment of rent or fees to credit agencies. Landlords also cannot give notices of termination without cause (unless the landlord has sold the property or intends to move into the property) or file for an eviction based on a termination without cause between April 1 and December 31.

Tenants continue to have a grace period (until March 31, 2021) to pay back rent that came due between April 1, 2020 and September 30, 2020. **The grace period does not apply to rent that came due between October 1, 2020, and December 31, 2020.** Unless a new law is passed between now and the end of December, that rent will have to be paid all at once in January.

This Executive Order applies everywhere in Oregon.

Until December 31, 2020, no landlord in Oregon is allowed to do any of the following:

- Give a termination notice for nonpayment of rent, fees, utilities, or other charges
- Charge a late fee or penalty for nonpayment
- Give a termination notice without cause (unless the landlord has sold the rental to someone who plans to move in, or the landlord intends to move in to the rental or move a family member into the rental)
- Start an eviction case based on nonpayment
- Start an eviction case based on a termination without cause
- File for noncompliance with a stipulated agreement in eviction court if the eviction was based on nonpayment or a termination without cause
- Report a tenant to a credit agency for nonpayment of rent or a late fee
- Threaten to do any of these things

Tenants do NOT need to file a declaration in order to qualify for this relief. Any rent that came due between April 1, 2020, and September 30, 2020, must be paid by **March 31, 2021**. Starting on January 1, 2021, tenants need to pay their rent each month under the terms of the rental agreement. But tenants still have until the end of March, 2021, to pay back rent that built up between April and October.

Remember, starting on January 1, 2021, a landlord can evict a tenant for not paying rent under the terms of the rental agreement, but cannot evict a tenant for not paying any rent that was deferred **between April 1 and September 30**. Starting on January 1, 2021, a landlord **can evict** for unpaid rent that came due between October 1 and December 31.

Renters' obligations under the new law

Under the new law, a landlord can give the tenant a notice saying how much rent the tenant owes and will have to pay back by March 31, 2021.

Starting October 1, 2020 a landlord can also give a notice to the tenant requiring that the tenant tell the landlord within 14 days if the tenant plans to use the six-month grace period to pay back any rent owing.

- **It is extremely important that tenants respond to this notice.**
- Tenants can use the six-month grace period to pay back rent that came due from April 1, 2020, to September 30, 2020, but **cannot use the grace period for rent due from October 1, 2020 to December 31, 2020.**
- If a tenant does not tell the landlord that they plan to use the six-month grace period to pay back the deferred rent, the landlord can charge the tenant half a month's rent as a penalty.

Tenants can notify their landlord that they plan to use the six-month grace period by text, email, letter, or verbally. But tenants should be sure to keep a record of all of their communications with their landlords about their rent repayments.

FREQUENTLY ASKED QUESTIONS:

- Is a landlord allowed to give a tenant a notice saying that the tenant owes rent?
 - **YES.** A landlord is allowed to tell the tenant how much rent the tenant owes. But the landlord is not allowed to say that the landlord intends to evict for nonpayment of the rent that's owed until after December 31, 2020.
- Are a landlord and a tenant allowed to work out a payment plan to cover back rent?
 - **Yes.** A landlord and a tenant can come to an agreed repayment plan, but a tenant is not required to enter into any kind of payment plan. A tenant is only required to tell the landlord that they plan on paying back rent during the six-month grace period, and to pay back all of the rent that's owed on or before March 31, 2021. **Remember** that rent that comes due from October 1, 2020 to December 31, 2020 is **not eligible** for the grace period and must be paid in January.
- Can a landlord evict a tenant for nonpayment after December 31, 2020?
 - **Yes,** but only for rent that is due for October of 2020 or later. But a landlord cannot give a notice of termination or file for eviction based on rent that came due between April and September of 2020.

- What if the first year of my tenancy was up during one of the eviction moratoriums? Is a landlord allowed to give a no-cause termination notice?
 - **Yes.** If the first year of your tenancy ends (or ended) between April 1 and December 31, a landlord is allowed to give a no-cause notice of termination by January 30, 2021. If you and everyone else in your household had already lived in your place for a year before April 1, 2020, then the landlord is not allowed to give a no-cause termination unless the landlord has sold the place to someone who plans to move in, the landlord lives on the same property in a duplex or ADU (or you live on the same property as the landlord in a duplex or ADU), or the landlord plans to demolish or remodel the property.
- Can a landlord give me a notice of termination for cause, or file for eviction based on a notice for cause?
 - **Yes.** The new law only covers evictions for nonpayment of rent or no cause terminations. A landlord is still allowed to give a tenant a notice based on a violation of the rental agreement.
- What should I do if the landlord violates the new law?
 - You can tell the landlord in writing that you think they are violating the law.
 - You can contact the Oregon Law Center or Legal Aid Services of Oregon. You can find your local office here: <https://oregonlawhelp.org//resource/oregon-legal-aid-offices>
 - You can contact the Community Alliance of Tenants: <https://www.oregoncat.org/>
 - You can contact the Oregon State Bar's lawyer referral service: <https://www.osbar.org/public/ris/>

This information is changing very quickly. More information about housing issues related to the COVID-19 outbreak is available at OregonRentersRights.org and at oregonlawhelp.org/classroom/public-health-and-coronavirus-covid-19/housing-protections

If you would like to talk to an attorney about your rights, you can find contact information for a legal aid office near you at <https://oregonlawhelp.org/find-legal-help>.