

**Enrolled Senate Bill 390**

Relating to residential landlord-tenant law; creating new provisions; and amending ORS 90.155, 90.160, 90.220, 90.222, 90.302, 90.315, 90.325, 90.412, 90.453 and 105.159.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. ORS 90.160 is amended to read**

90.160. (1) Notwithstanding ORCP 10 and not including the seven-day and four-day waiting periods provided in ORS 90.394, where there are references in this chapter to periods and notices based on a number of days, those days shall be calculated by consecutive calendar days, not including the initial day of service, but including the last day until [*the end of that last day at 12 midnight*] **11:59 p.m.** Where there are references in this chapter to periods or notices based on a number of hours, those hours shall be calculated in consecutive clock hours, beginning immediately upon service.

(2) Notwithstanding subsection (1) of this section, for 72-hour or 144-hour nonpayment notices under ORS 90.394 that are served pursuant to ORS 90.155 (1)(c), the time period described in subsection (1) of this section begins at 11:59 p.m. the day the notice is both mailed and attached to the premises. The time period shall end 72 hours or 144 hours, as the case may be, after the time started to run at 11:59 p.m.

**SECTION 2. ORS 105.159 is amended to read**

105.159. (1) Notwithstanding ORCP 10, the four-day period specified in ORS 105.151 (2) shall:

(a) Commence at 12:01 a.m. on the day [*following*] **after** mailing and service of the notice of restitution pursuant to ORS 105.158, including a Saturday or a Sunday or other legal holiday; and

(b) End [*on the fourth calendar day following*] **at 11:59 p.m. on the fourth calendar day after** the mailing and service except that if the fourth day is a Saturday or a Sunday or other legal holiday, the period shall end at [*12 midnight of the day*] **11:59 p.m. on the day** preceding the next judicial day.

(2) Except as provided in subsection (3) of this section, at any time after the expiration of the period provided in the notice of restitution, the plaintiff may request that the clerk of the court issue a writ of execution of judgment of restitution directing the sheriff to enforce the judgment of restitution by returning possession of the premises to the plaintiff. [*Following*] **After** payment of any required fees, the clerk shall issue the writ in substantially the form provided by ORS 105.156.

(3) Unless the judgment otherwise provides, the clerk may not issue a notice of restitution or a writ of execution of judgment of restitution more than 60 days after the judgment is entered or after any date for possession as specified in the judgment, whichever is later.

**SECTION 3. ORS 90.302 is amended to read**

90.302. (1) A landlord may not charge a fee at the beginning of the tenancy for an anticipated landlord expense and may not require the payment of any fee except as provided in this section. A fee must be described in a written rental agreement.

(2) A landlord may charge a tenant a fee for each occurrence of the following:

(a) A late rent payment, pursuant to ORS 90.260.

(b) A dishonored check, pursuant to ORS 30.701 (5). The amount of the fee may not exceed the amount described in ORS 30.701 (5) plus any amount that a bank has charged the landlord for processing the dishonored check.

(c) Removal or tampering with a properly functioning smoke alarm, smoke detector or carbon monoxide alarm, as provided in ORS 90.325 (2). The landlord may charge a fee of up to \$250 unless the State Fire Marshal assesses the tenant a civil penalty for the conduct under ORS 479.990 or under ORS 105.836 to 105.842 and 476.725.

(d) The violation of a written pet agreement or of a rule relating to pets in a facility, pursuant to ORS 90.530.

(e) The abandonment or relinquishment of a dwelling unit during a fixed term tenancy without cause. The fee may not exceed one and one-half times the monthly rent. A landlord may not assess a fee under this paragraph if the abandonment or relinquishment is pursuant to ORS 90.453 (2), 90.472 or 90.475. If the landlord assesses a fee under this paragraph:

(A) The landlord may not recover unpaid rent for any period of the fixed term tenancy beyond the date that the landlord knew or reasonably should have known of the abandonment or relinquishment;

(B) The landlord may not recover damages related to the cost of renting the dwelling unit to a new tenant; and

(C) ORS 90.410 (3) does not apply to the abandonment or relinquishment.

(3)(a) A landlord may charge a tenant a fee under this subsection for a second noncompliance or for a subsequent noncompliance with written rules or policies that describe the prohibited conduct and the fee for a second noncompliance, and for any third or subsequent noncompliance, that occurs within one year after a written warning notice described in subparagraph (A) of this paragraph. **Except as provided in paragraph (b)(H) of this subsection**, the fee may not exceed \$50 for the second noncompliance within one year after the warning notice for the same or a similar noncompliance or \$50 plus five percent of the rent payment for the current rental period for a third or subsequent noncompliance within one year after the warning notice for the same or a similar noncompliance. The landlord:

(A) Shall give a tenant a written warning notice that describes:

(i) A specific noncompliance before charging a fee for a second or subsequent noncompliance for the same or similar conduct; and

(ii) The amount of the fee for a second noncompliance, and for any subsequent noncompliance, that occurs within one year after the warning notice.

(B) Shall give a tenant a written notice describing the noncompliance when assessing a fee for a second or subsequent noncompliance that occurs within one year after the warning notice.

(C) Shall give a warning notice for a noncompliance or assess a fee for a second or subsequent noncompliance within 30 days after the act constituting noncompliance.

(D) May terminate a tenancy for a noncompliance consistent with this chapter instead of assessing a fee under this subsection, but may not assess a fee and terminate a tenancy for the same noncompliance.

(E) May not deduct a fee assessed pursuant to this subsection from a rent payment for the current or a subsequent rental period.

(b) A landlord may charge a tenant a fee for occurrences of noncompliance with written rules or policies as provided in paragraph (a) of this subsection for the following types of noncompliance:

(A) The late payment of a utility or service charge that the tenant owes the landlord as described in ORS 90.315.

(B) Failure to clean up pet waste from a part of the premises other than the dwelling unit.

**(C) Failure to clean up the waste of a service animal or a companion animal from a part of the premises other than the dwelling unit.**

[(C)] **(D)** Failure to clean up garbage, rubbish and other waste from a part of the premises other than the dwelling unit.

[(D)] **(E)** Parking violations.

[(E)] **(F)** The improper use of vehicles within the premises.

[(F)] **(G)** Smoking in a clearly designated nonsmoking unit or area of the premises.

[(G)] **(H)** Keeping on the premises an unauthorized pet capable of causing damage to persons or property, as described in ORS 90.405. **The fee for a second or any subsequent noncompliance under this subparagraph may not exceed \$250. A landlord may not assess this fee before 48 hours after the required warning notice to the tenant.**

(4) A landlord may not be required to account for or return to the tenant any fee.

(5) Except as provided in subsection (2)(e) of this section, a landlord may not charge a tenant any form of liquidated damages, however designated.

(6) Nonpayment of a fee is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394, but is grounds for termination of a rental agreement for cause under ORS 90.392 or 90.630 (1).

(7) This section does not apply to:

(a) Attorney fees awarded pursuant to ORS 90.255;

(b) Applicant screening charges paid pursuant to ORS 90.295;

(c) Charges for improvements or other actions that are requested by the tenant and are not required of the landlord by the rental agreement or by law, including the cost to replace a key lost by a tenant;

(d) Processing fees charged to the landlord by a credit card company and passed through to the tenant for the use of a credit card by the tenant to make a payment when:

(A) The credit card company allows processing fees to be passed through to the credit card holder; and

(B) The landlord allows the tenant to pay in cash or by check; *[or]*

(e) A requirement by a landlord in a written rental agreement that a tenant obtain and maintain renter's liability insurance pursuant to ORS 90.222[.]; **or**

**(f) Assessments, as defined in ORS 94.550 and 100.005, for a dwelling unit that is within a homeowners association organized under ORS 94.625 or an association of unit owners organized under ORS 100.405, respectively, if:**

**(A) The assessments are imposed by the association on a landlord who owns a dwelling unit within the association and the landlord passes the assessments through to a tenant of the unit;**

**(B) The assessments are imposed by the association on any person for expenses related to moving into or out of a unit located within the association;**

**(C) The landlord sets forth the assessment requirement in the written rental agreement at the commencement of the tenancy; and**

**(D) The landlord gives a copy of the assessment the landlord receives from the association to the tenant before or at the time the landlord charges the tenant.**

**(8) If a landlord charges a tenant a fee in violation of this section, the tenant may recover twice the actual damages of the tenant or \$300, whichever is greater. This penalty does not apply to fees described in subsection (2) of this section.**

#### **SECTION 4. ORS 90.412 is amended to read**

90.412. (1) As used in this section and ORS 90.414 and 90.417, “rent” does not include funds paid **to a landlord:**

**(a) Under the United States Housing Act of 1937 (42 U.S.C. 1437f).**

**(b) By any other local, state or federal housing assistance program.**

(2) Except as otherwise provided in this section, a landlord waives the right to terminate a rental agreement for a particular violation of the rental agreement or of law if the landlord:

(a) During three or more separate rental periods, accepts rent with knowledge of the violation by the tenant; or

(b) Accepts performance by a tenant that varies from the terms of the rental agreement.

(3) A landlord has not accepted rent for purposes of subsection (2) of this section if:

(a) Within 10 days after receipt of the rent payment, the landlord refunds the rent; or

(b) The rent payment is made in the form of a check that is dishonored.

(4) A landlord does not waive the right to terminate a rental agreement for a violation under any of the following circumstances:

(a) The landlord and tenant agree otherwise after the violation has occurred.

(b) The violation concerns the tenant’s conduct and, following the violation but prior to acceptance of rent for three rental periods or performance as described in subsection (2) of this section, the landlord gives a written warning notice to the tenant regarding the violation that:

(A) Describes specifically the conduct that constitutes the violation, either as a separate and distinct violation, a series or group of violations or a continuous or ongoing violation;

(B) States that the tenant is required to discontinue the conduct or correct the violation; and

(C) States that a reoccurrence of the conduct that constitutes a violation may result in a termination of the tenancy pursuant to ORS 90.392, 90.398, 90.405 or 90.630.

**(c) The violation concerns the tenant’s failure to pay money owed to the landlord for damage to the premises, damage to any other structure located upon the grounds, utility charges, fees or deposits and, following the violation but prior to the acceptance of rent for three rental periods or performance as described in subsection (2) of this section, the landlord gives a written warning notice to the tenant regarding the violation that:**

**(A) Describes specifically the basis of the claim and the amount of money owed that constitutes the violation;**

**(B) States that the tenant is required to correct the violation by paying the money owed; and**

**(C) States that continued nonpayment of the money owed that constitutes a violation may result in a termination of the tenancy pursuant to ORS 90.392.**

[(c)] **(d) The tenancy consists of rented space for a manufactured dwelling or floating home as described in ORS 90.505, and the violation concerns:**

- (A) Disrepair or deterioration of the manufactured dwelling or floating home pursuant to ORS 90.632; or
- (B) A failure to maintain the rented space, as provided by ORS 90.740 (2), (4)(b) and (4)(h) and (i).
- [(d)] (e) The termination is under ORS 90.396.
- [(e)] (f) The landlord accepts:
- (A) A last month's rent deposit collected at the beginning of the tenancy, regardless of whether the deposit covers a period beyond a termination date;
- (B) Rent distributed pursuant to a court order releasing money paid into court as provided by ORS 90.370 (1); or
- (C) Rent paid for a rent obligation not yet due and paid more than one rental period in advance.
- (5)(a) For a continuous or ongoing violation, the landlord's written warning notice under subsection (4)(b) of this section remains effective for 12 months and may be renewed with a new warning notice before the end of the 12 months.
- (b) For a violation concerning the tenant's failure to pay money owed to the landlord, the landlord's written warning notice under subsection (4)(c) of this section remains effective for 12 months from the date of the tenant's failure to pay the money owed.**
- (6) A landlord that must refund rent under this section shall make the refund to the tenant or other payer by personal delivery or first class mail. The refund may be in the form of the tenant's or other payer's check or in any other form of check or money.

#### **SECTION 5. ORS 90.222 is amended to read**

- 90.222. (1) A landlord may require a tenant to obtain and maintain renter's liability insurance in a written rental agreement. The amount of coverage may not exceed \$100,000 per occurrence or the customary amount required by landlords for similar properties with similar rents in the same rental market, whichever is greater.
- (2) Before entering a new tenancy, a landlord:
- (a) Shall advise an applicant in writing of a requirement to obtain and maintain renter's liability insurance and the amount of insurance required **and provide a reasonable written summary of the exceptions to this requirement under subsections (8) and (9) of this section.**
- (b) May require an applicant to provide documentation of renter's liability insurance coverage before the tenancy begins.
- (3) For an existing month-to-month tenancy, the landlord may amend a written rental agreement to require renter's liability insurance after giving the tenant at least 30 days' written notice of the requirement **and the written summary described in subsection (2) of this section.** If the tenant does not obtain renter's liability insurance within the 30-day period:
- (a) The landlord may terminate the tenancy pursuant to ORS 90.392; and
- (b) The tenant may cure the cause of the termination as provided by ORS 90.392 by obtaining insurance.
- (4) A landlord may require *[documentation that the tenant maintains the renter's liability insurance]* **that the tenant provide documentation:**
- (a) That the tenant has named the landlord as an interested party on the tenant's renter's liability insurance policy authorizing the insurer to notify the landlord of:**
- (A) Cancellation or nonrenewal of the policy;**

**(B) Reduction of policy coverage; or**

**(C) Removal of the landlord as an interested party; or**

**(b)** On a periodic basis related to the coverage period of the renter's liability insurance policy or more frequently if the landlord reasonably believes that the insurance policy is no longer in effect, **that the tenant maintains the renter's liability insurance.**

(5) A landlord may require that a tenant obtain or maintain renter's liability insurance only if the landlord obtains and maintains comparable liability insurance and provides documentation to any tenant who requests the documentation, orally or in writing. The landlord may provide documentation to a tenant in person, by mail or by posting in a common area or office. The documentation may consist of a current certificate of coverage. A written rental agreement that requires a tenant to obtain and maintain renter's liability insurance must include a description of the requirements of this subsection.

(6) Neither a landlord nor a tenant shall make unreasonable demands that have the effect of harassing the other with regard to providing documentation of insurance coverage.

(7) A landlord may not:

(a) Require that a tenant obtain renter's liability insurance from a particular insurer;

(b) Require that a tenant name the landlord as an additional insured or as having any *[other]* special status on the tenant's renter's liability insurance policy **other than as an interested party for the purposes described in subsection (4)(a) of this section;**

(c) Require that a tenant waive the insurer's subrogation rights; or

(d) Make a claim against the tenant's renter's liability insurance unless:

(A) The claim is for damages or costs for which the tenant is legally liable and not for damages or costs that result from ordinary wear and tear, acts of God or the conduct of the landlord;

(B) The claim is greater than the security deposit of the tenant, if any; and

(C) The landlord provides a copy of the claim to the tenant contemporaneous with filing the claim with the insurer.

(8) A landlord may not require a tenant to obtain or maintain renter's liability insurance if the household income of the tenant is equal to or less than 50 percent of the area median income, adjusted for family size as measured up to a five-person family, as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development.

(9) A landlord may not require a tenant to obtain or maintain renter's liability insurance if the dwelling unit of the tenant has been subsidized with public funds:

(a) Including federal or state tax credits, federal block grants authorized in the HOME Investment Partnerships Act under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, or the Community Development Block Grant program authorized in the Housing and Community Development Act of 1974, as amended, **project-based federal rent subsidy payments under 42 U.S.C. 1437f** and tax-exempt bonds.

(b) Not including **tenant-based** federal rent subsidy payments under **the Housing Choice Voucher Program authorized by 42 U.S.C. 1437f** or **any other local, state or federal rental housing assistance.**

(10) Subsection (9) of this section does not apply to a dwelling unit that is not subsidized even if the unit is on premises in which some dwelling units are subsidized.

**(11)(a) If a landlord knowingly violates this section, the tenant may recover the actual damages of the tenant or \$250, whichever is greater.**

**(b)** If a landlord files a frivolous claim against the renter's liability insurance of a tenant, the

tenant may recover from the landlord the actual damages of the tenant plus \$500.

(12) This section does not:

- (a) Affect rights or obligations otherwise provided in this chapter or in the rental agreement.
- (b) Apply to tenancies governed by ORS 90.505 to 90.840.

**SECTION 6. ORS 90.453 is amended to read**

90.453. (1) As used in this section:

(a) “Immediate family member” means, with regard to a tenant who is a victim of domestic violence, sexual assault or stalking, any of the following who is not a perpetrator of the domestic violence, sexual assault or stalking against the tenant:

(A) An adult person related by blood, adoption, marriage or domestic partnership, as defined in ORS 106.310, or as defined or described in similar law in another jurisdiction;

(B) A cohabitant in an intimate relationship;

(C) An unmarried parent of a joint child; or

(D) A child, grandchild, foster child, ward or guardian of the victim or of anyone listed in subparagraph

(A), (B) or (C) of this paragraph.

(b) “Qualified third party” means a person that has had individual contact with the tenant and is a law enforcement officer, attorney or licensed health professional or is a victim’s advocate at a victim services provider.

(c) “Verification” means:

(A) A copy of a valid order of protection issued by a court pursuant to ORS 30.866, 107.095

(1)(c), 107.716, 107.718 [*or 163.738*], **107.725, 107.730, 163.738, 163.765, 163.767 or 163.775** or any other federal, state, local or tribal court order that restrains a person from contact with the tenant;

(B) A copy of a federal agency or state, local or tribal police report regarding an act of domestic violence, sexual assault or stalking against the tenant;

(C) A copy of a conviction of any person for an act of domestic violence, sexual assault or stalking against the tenant; or

(D) A statement substantially in the form set forth in subsection (3) of this section.

(d) “Victim services provider” means:

(A) A nonprofit agency or program receiving moneys administered by the Department of Human Services or the Department of Justice that offers safety planning, counseling, support or advocacy to victims of domestic violence, sexual assault or stalking; or

(B) A prosecution-based victim assistance program or unit.

(2)(a) If a tenant gives a landlord at least 14 days’ written notice, and the notice so requests, the landlord shall release the tenant and any immediate family member of the tenant from the rental agreement.

(b) The notice given by the tenant must specify the release date and must list the names of any immediate family members to be released in addition to the tenant.

(c) The notice must be accompanied by verification that the tenant:

(A) Is protected by a valid order of protection; or

(B) Has been the victim of domestic violence, sexual assault or stalking within the 90 days preceding the date of the notice. For purposes of this subparagraph, any time the perpetrator was

incarcerated or residing more than 100 miles from the victim's home does not count as part of the 90-day period.

(3) A verification statement must be signed by the tenant and the qualified third party and be in substantially the following form:

---

**QUALIFIED THIRD PARTY  
VERIFICATION**

Name of qualified third party

Name of tenant

**PART 1. STATEMENT BY TENANT**

I, (Name of tenant), do hereby state as follows:

(A) I or a minor member of my household have been a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS 90.100.

(B) The most recent incident(s) that I rely on in support of this statement occurred on the following date(s):

The time since the most recent incident took place is less than 90 days; or

The time since the most recent incident took place is less than 90 days if periods when the perpetrator was incarcerated or was living more than 100 miles from my home are not counted. The perpetrator was incarcerated from to . The perpetrator lived more than 100 miles from my home from to .

(C) I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

(Signature of tenant)

Date:

**PART 2. STATEMENT BY QUALIFIED THIRD PARTY**

I, (Name of qualified third party), do hereby verify as follows:

(A) I am a law enforcement officer, attorney or licensed health professional or a victim's advocate with a victims services provider, as defined in ORS 90.453.

(B) My name, business address and business telephone are as follows:

(C) The person who signed the statement above has informed me that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, based on incidents that occurred on the dates listed above.

(D) I reasonably believe the statement of the person above that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS 90.100. I understand that the person who made the statement may use this document as a basis for gaining a release from the rental agreement with the person's landlord.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

(Signature of qualified third party making this statement)

Date:

---

(4) A tenant and any immediate family member who is released from a rental agreement pursuant to subsection (2) of this section:

- (a) Is not liable for rent or damages to the dwelling unit incurred after the release date; and
- (b) Is not subject to any fee solely because of termination of the rental agreement.
- (5) Notwithstanding the release from a rental agreement of a tenant who is a victim of domestic violence, sexual assault or stalking and any tenant who is an immediate family member of that tenant, other tenants remain subject to the rental agreement.
- (6) A landlord may not disclose any information provided by a tenant under this section to a third party unless the disclosure is:
  - (a) Consented to in writing by the tenant;
  - (b) Required for use in an eviction proceeding;
  - (c) Made to a qualified third party; or
  - (d) Required by law.
- (7) The provision of a verification statement under subsection (2) of this section does not waive the confidential or privileged nature of a communication between the victim of domestic violence, sexual assault or stalking and a qualified third party.

**SECTION 7. ORS 90.325 is amended to read**

90.325. (1) The tenant shall:

- (a) Use the parts of the premises including the living room, bedroom, kitchen, bathroom and dining room in a reasonable manner considering the purposes for which they were designed and intended.
- (b) Keep all areas of the premises under control of the tenant in every part as clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, as the condition of the premises permits and to the extent that the tenant is responsible for causing the problem. The tenant shall cooperate to a reasonable extent in assisting the landlord in any reasonable effort to remedy the problem.
- (c) Dispose from the dwelling unit all ashes, garbage, rubbish and other waste in a clean, safe and legal manner. With regard to needles, syringes and other infectious waste, as defined in ORS 459.386, the tenant may not dispose of these items by placing them in garbage receptacles or in any other place or manner except as authorized by state and local governmental agencies.
- (d) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.
- (e) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances including elevators in the premises.
- (f) Test at least once every six months and replace batteries as needed in any smoke alarm, smoke detector or carbon monoxide alarm provided by the landlord and notify the landlord in writing of any operating deficiencies.
- (g) Behave and require other persons on the premises with the consent of the tenant to behave in a manner that will not disturb the peaceful enjoyment of the premises by neighbors.

(2) A tenant may not:

- (a) Remove or tamper with a smoke alarm, smoke detector or carbon monoxide alarm as described in ORS 105.842 or 479.300.
- (b) Deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so.

**(c) Remove, obstruct or tamper with a sprinkler head used for fire suppression.**

**(3) A tenant is not responsible for damage that results from:**

- (a) Acts of God; or
- (b) Conduct by a perpetrator relating to domestic violence, sexual assault or stalking.
- (4) For damage that results from conduct by a perpetrator relating to domestic violence, sexual assault or stalking, a landlord may require a tenant to provide verification that the tenant or a member of the tenant's household is a victim of domestic violence, sexual assault or stalking as provided by ORS 90.453.

**SECTION 8. ORS 90.315 is amended to read**

90.315. (1) As used in this section:

(a) **“Public service” means municipal services and the provision of public resources related to the dwelling unit, including street maintenance, transportation improvements, public transit, public safety and parks and open space.**

(b)(A) **“Public service charge” means a charge imposed on a landlord by a utility or service provider, by a utility or service provider on behalf of a local government or directly by a local government.**

(B) **“Public service charge” does not include real property taxes, income taxes, business license fees or dwelling inspection fees.**

[(a)] (c) **“Sewer service” includes storm water service and wastewater service.**

[(b)] (d) **“Utility or service” includes but is not limited to electricity, natural or liquid propane gas, oil, water, hot water, heat, air conditioning, cable television, direct satellite or other video subscription services, Internet access or usage, sewer service, public services and garbage collection and disposal.**

(2) The landlord shall disclose to the tenant in writing at or before the commencement of the tenancy any utility or service that the tenant pays directly to a utility or service provider that benefits, directly, the landlord or other tenants. A tenant's payment for a given utility or service benefits the landlord or other tenants if the utility or service is delivered to any area other than the tenant's dwelling unit.

(3) If the landlord knowingly fails to disclose those matters required under subsection (2) of this section, the tenant may recover twice the actual damages sustained or one month's rent, whichever is greater.

(4)(a) Except for tenancies covered by ORS 90.505 to 90.840, if a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge **or a public service charge** that has been billed by a utility or service provider to the landlord for utility or service provided directly, **or for a public service provided indirectly**, to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility or service charge that shall be assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from such a charge for the tenant's dwelling unit. *[Unless the method of allocating the charges to the tenant is described in the tenant's written rental agreement, the tenant may require that the landlord give the tenant a copy of the provider's bill as a condition of paying the charges.]*

(b)(A) **If a rental agreement provides that a landlord may require a tenant to pay a utility or service charge, the landlord must bill the tenant in writing for the utility or service charge within 30 days after receipt of the provider's bill. If the landlord includes in the bill to the tenant a statement of the rent due, the landlord must separately and distinctly state the amount of the rent and the amount of the utility or service charge.**

**(B) The landlord must provide to the tenant, in the written rental agreement or in a bill to the tenant, an explanation of:**

- (i) The manner in which the provider assesses a utility or service charge; and**
- (ii) The manner in which the charge is allocated among the tenants if the provider's bill to the landlord covers multiple tenants.**

**(C) The landlord must:**

- (i) Include in the bill to the tenant a copy of the provider's bill; or**
- (ii) If the provider's bill is not included, state that the tenant may inspect the provider's bill at a reasonable time and place and that the tenant may obtain a copy of the provider's bill by making a request to the landlord during the inspection and upon payment to the landlord for the reasonable cost of making copies.**

**(D) A landlord may require that a bill to the tenant for a utility or service charge is due upon delivery of the bill. A landlord shall treat the tenant's payment as timely for purposes of ORS 90.302 (3)(b)(A) if the payment is made by a date that is specified in the bill and that is not less than 30 days after delivery of the bill.**

**(E) If a written rental agreement so provides, the landlord may deliver a bill to the tenant as provided in ORS 90.155 or by electronic means.**

**[(b)] (c)** Except as provided in this paragraph, a utility or service charge may only include the cost of the utility or service as billed to the landlord by the provider. A landlord may add an additional amount to a utility or service charge billed to the tenant if:

**(A)** The utility or service charge to which the additional amount is added is for cable television, direct satellite or other video subscription services or for Internet access or usage;

**(B)** The additional amount is not more than 10 percent of the utility or service charge billed to the tenant;

**(C)** The total of the utility or service charge and the additional amount is less than the typical periodic cost the tenant would incur if the tenant contracted directly with the provider for the cable television, direct satellite or other video subscription services or for Internet access or usage;

**(D)** The written rental agreement providing for the utility or service charge describes the additional amount separately and distinctly from the utility or service charge; and

**(E)** Any billing or notice from the landlord regarding the utility or service charge lists the additional amount separately and distinctly from the utility or service charge.

**(d)(A) A landlord must provide 60 days' written notice to a tenant before the landlord may amend an existing rental agreement for a month-to-month tenancy to require a tenant to pay a public service charge that was adopted by a utility or service provider or a local government within the previous six months.**

**(B) A landlord may not hold a tenant liable for a public service charge billed to a previous tenant.**

**[(c)] (C)** A landlord may not require a tenant to agree to the amendment of an existing rental agreement, and may not terminate a tenant for refusing to agree to the amendment of a rental agreement, if the amendment would obligate the tenant to pay an additional amount for cable television, direct satellite or other video subscription services or for Internet access or usage as provided under paragraph **[(b)] (c)** of this subsection.

**[(d)] (e)** A utility or service charge, including any additional amount added pursuant to paragraph

**[(b)] (c)** of this subsection, is not rent or a fee. Nonpayment of a utility or service charge is

not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394 but is grounds for termination of a rental agreement for cause under ORS 90.392.

[(e)] (f) If a landlord fails to comply with paragraph (a), (b), [or] (c) **or (d)** of this subsection, the tenant may recover from the landlord an amount equal to one month's periodic rent or twice the amount wrongfully charged to the tenant, whichever is greater.

(5)(a) If a tenant, under the rental agreement, is responsible for a utility or service and is unable to obtain the service prior to moving into the premises due to a nonpayment of an outstanding amount due by a previous tenant or the owner, the tenant may either:

- (A) Pay the outstanding amount and deduct the amount from the rent;
- (B) Enter into a mutual agreement with the landlord to resolve the lack of service; or
- (C) Immediately terminate the rental agreement by giving the landlord actual notice and the reason for the termination.

(b) If the tenancy terminates, the landlord shall return all moneys paid by the tenant as deposits, rent or fees within four days after termination.

(6) If a tenant, under the rental agreement, is responsible for a utility or service and is unable to obtain the service after moving into the premises due to a nonpayment of an outstanding amount due by a previous tenant or the owner, the tenant may either:

- (a) Pay the outstanding amount and deduct the amount from the rent; or
- (b) Terminate the rental agreement by giving the landlord actual notice 72 hours prior to the date of termination and the reason for the termination. The tenancy does not terminate if the landlord restores service or the availability of service during the 72 hours. If the tenancy terminates, the tenant may recover actual damages from the landlord resulting from the shutoff and the landlord shall return:

- (A) Within four days after termination, all rent and fees; and
- (B) All of the security deposit owed to the tenant under ORS 90.300.

(7) If a landlord, under the rental agreement, is responsible for a utility or service and the utility or service is shut off due to a nonpayment of an outstanding amount, the tenant may either:

- (a) Pay the outstanding balance and deduct the amount from the rent; or
- (b) Terminate the rental agreement by giving the landlord actual notice 72 hours prior to the date of termination and the reason for the termination. The tenancy does not terminate if the landlord restores service during the 72 hours. If the tenancy terminates, the tenant may recover actual damages from the landlord resulting from the shutoff and the landlord shall return:

- (A) Within four days after termination, all rent prepaid for the month in which the termination occurs prorated from the date of termination or the date the tenant vacates the premises, whichever is later, and any other prepaid rent; and
- (B) All of the security deposit owed to the tenant under ORS 90.300.

(8) If a landlord fails to return to the tenant the moneys owed as provided in subsection (5), (6) or (7) of this section, the tenant shall be entitled to twice the amount wrongfully withheld.

(9) This section does not preclude the tenant from pursuing any other remedies under this chapter.

### **SECTION 9. ORS 90.155 is amended to read**

90.155. (1) Except as provided in ORS 90.300, **90.315**, 90.425 and 90.675, where this chapter requires

written notice, service or delivery of that written notice shall be executed by one or more of the following methods:

- (a) Personal delivery to the landlord or tenant;
  - (b) First class mail to the landlord or tenant; or
  - (c) If a written rental agreement so provides, both first class mail and attachment to a designated location. In order for a written rental agreement to provide for mail and attachment service of written notices from the landlord to the tenant, the agreement must also provide for such service of written notices from the tenant to the landlord. Mail and attachment service of written notices shall be executed as follows:
    - (A) For written notices from the landlord to the tenant, the first class mail notice copy shall be addressed to the tenant at the premises and the second notice copy shall be attached in a secure manner to the main entrance to that portion of the premises of which the tenant has possession; and
    - (B) For written notices from the tenant to the landlord, the first class mail notice copy shall be addressed to the landlord at an address as designated in the written rental agreement and the second notice copy shall be attached in a secure manner to the landlord's designated location, which shall be described with particularity in the written rental agreement, reasonably located in relation to the tenant and available at all hours.
- (2) If a notice is served by mail, the minimum period for compliance or termination of tenancy, as appropriate, shall be extended by three days, and the notice shall include the extension in the period provided.
- (3) A landlord or tenant may utilize alternative methods of notifying the other so long as the alternative method is in addition to one of the service methods described in subsection (1) of this section.
- (4) Notwithstanding ORS 90.510 (4), after 30 days' written notice, a landlord may unilaterally amend a rental agreement for a manufactured dwelling or floating home that is subject to ORS 90.505 to 90.840 to provide for service or delivery of written notices by mail and attachment service as provided by subsection (1)(c) of this section.

**SECTION 10. ORS 90.220 is amended to read**

- 90.220. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.
- (2) The terms of a fixed term tenancy, including the amount of rent, may not be unilaterally amended by the landlord or tenant.
- (3) The landlord shall provide the tenant with a copy of any written rental agreement and all amendments and additions thereto.
- (4) Except as provided in this subsection, the rental agreement must include a disclosure of the smoking policy for the premises that complies with ORS 479.305. A disclosure of smoking policy is not required in a rental agreement subject to ORS 90.505 to 90.840 for space in a facility as defined in ORS 90.100.
- (5) Notwithstanding ORS 90.245 (1), the parties to a rental agreement to which ORS 90.100 to 90.465 apply may include in the rental agreement a provision for informal dispute resolution.
- (6) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(7) Except as otherwise provided by this chapter:

(a) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly or weekly installments at the beginning of each month or week, depending on whether the tenancy is month-to-month or week-to-week. Rent may not be considered to be due prior to the first day of each rental period.

Rent may not be increased without a 30-day written notice thereof in the case of a month-to-month tenancy or a seven-day written notice thereof in the case of a week-to-week tenancy.

(b) If a rental agreement does not create a week-to-week tenancy, as defined in ORS 90.100, or a fixed term tenancy, the tenancy shall be a month-to-month tenancy.

(8) Except as provided by ORS 90.427 (7), a tenant is responsible for payment of rent until the earlier of:

(a) The date that a notice terminating the tenancy expires;

(b) The date that the tenancy terminates by its own terms;

(c) The date that the tenancy terminates by surrender;

(d) The date that the tenancy terminates as a result of the landlord failing to use reasonable efforts to rent the dwelling unit to a new tenant as provided under ORS 90.410 (3);

(e) The date when a new tenancy with a new tenant begins;

(f) Thirty days after delivery of possession without prior notice of termination of a month-to-month tenancy; or

(g) Ten days after delivery of possession without prior notice of termination of a week-to-week tenancy.

**(9)(a) Notwithstanding a provision in a rental agreement regarding the order of application of tenant payments, a landlord shall apply tenant payments in the following order:**

**(A) Outstanding rent from prior rental periods;**

**(B) Rent for the current rental period;**

**(C) Utility or service charges;**

**(D) Late rent payment charges; and**

**(E) Fees or charges owed by the tenant under ORS 90.302 or other fees or charges related to damage claims or other claims against the tenant.**

**(b) This subsection does not apply to rental agreements subject to ORS 90.505 to 90.840.**

## **SECTION 11**

**The amendments to ORS 90.220 by section 10 of this 2015 Act apply to:**

**(1) Rental agreements for fixed term tenancies entered into or renewed after the effective date of this 2015 Act; and**

**(2) Rental agreements for month-to-month tenancies and week-to-week tenancies in effect on or after the effective date of this 2015 Act.**

## **SECTION 12**

**Section 13 of this 2015 Act is added to and made a part of ORS 90.100 to 90.465.**

### **SECTION 13**

- (1) As used in this section, “bedroom” has the meaning given that term in ORS 90.262.**
- (2) A landlord shall provide at all times during the tenancy a route of exit from a bedroom, other than the main entrance to the bedroom, for use during an emergency. The secondary route of exit must conform to applicable law.**
- (3)(a) If the landlord fails to comply with the requirements of this section, the tenant may recover actual damages, and the tenant may terminate the tenancy by providing the landlord actual notice and a description of the noncompliance 72 hours prior to the date of termination.**
- (b) If the landlord cures the noncompliance within the 72-hour period:**
- (A) The tenancy does not terminate; and**
- (B) The tenant may recover the tenant’s actual damages.**
- (c) If the landlord fails to cure the noncompliance within the 72-hour period:**
- (A) The tenancy terminates;**
- (B) The tenant may recover twice the tenant’s actual damages or twice the periodic rent, whichever is greater; and**
- (C) The landlord must return all security deposits and prepaid rent owed to the tenant under ORS 90.300 within four days after the termination.**

**Passed by Senate April 23, 2015**