

House Bill 2546

Sponsored by Representative KRUMMEL (at the request of Dave and Carmen Robins)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Limits reasons for which residential landlord may terminate month-to-month tenancy without cause. Requires landlord terminating tenancy without cause to give tenant written statement setting forth reasons for termination. Applies to tenancy where tenant has occupied rental unit for more than 90 days.

Provides for fixed term tenancy to become month-to-month tenancy at end of term unless rental agreement expressly provides otherwise.

A BILL FOR AN ACT

1
2 Relating to landlord-tenant law; creating new provisions; and amending ORS 90.100, 90.385, 105.115
3 and 105.137.

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

5 **SECTION 1. Sections 2 and 3 of this 2007 Act are added to and made a part of ORS 90.100**
6 **to 90.459.**

7 **SECTION 2. (1) If a tenant has occupied a rental unit for more than 90 days, a landlord**
8 **may not terminate a month-to-month tenancy under ORS 90.427 (2) unless the landlord pro-**
9 **vides the tenant with a reason for the termination. A landlord may provide the tenant with**
10 **more than one reason for the termination. A landlord may not terminate a tenancy described**
11 **in this subsection by giving a notice under ORS 90.427 (2) if the only reasons for termination**
12 **that the landlord provides:**

13 (a) **Would allow the landlord to pursue termination of the tenancy for cause under ORS**
14 **90.392, 90.394, 90.396 or 90.398; or**

15 (b) **Are one or more nonmaterial violations of the rental agreement.**

16 (2) **The landlord shall provide the tenant with the reason for termination in writing at**
17 **the same time the landlord delivers the notice of termination.**

18 (3) **A termination notice for which this section requires a written reason is a notice**
19 **without stated cause for purposes of filing a complaint described in ORS 105.124. For pur-**
20 **poses of ORS 105.115, a tenancy has not been validly terminated pursuant to a termination**
21 **notice described in subsection (1) of this section if:**

22 (a) **The landlord did not provide a reason for the termination in writing at the time the**
23 **notice of termination was delivered; or**

24 (b) **The reason for termination provided by the landlord constitutes cause for the landlord**
25 **to terminate the tenancy under ORS 90.392, 90.394, 90.396 or 90.398 or is a nonmaterial vio-**
26 **lation of the rental agreement, and the landlord did not provide the tenant with a valid ad-**
27 **ditional reason for the termination.**

28 **SECTION 3. (1) If a rental agreement for a fixed term tenancy expressly states that the**
29 **tenancy cannot be converted or renewed, the tenancy expires upon the ending date specified**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 in the rental agreement without any further notice being required to effect the termination.

2 (2) If a rental agreement for a fixed term tenancy does not expressly state that the
 3 tenancy cannot be converted or renewed, except as provided in subsection (3) of this section,
 4 upon the specified ending date the fixed term tenancy shall convert to a month-to-month
 5 tenancy having the same terms and conditions, other than duration and rent amount, as
 6 under the fixed term tenancy agreement.

7 (3) To renew a fixed term tenancy for a fixed term of any duration, the landlord shall
 8 deliver a proposed new rental agreement to the tenant at least 60 days before the specified
 9 ending date of the term. The landlord shall include with the proposed agreement a written
 10 statement of any new or revised terms, conditions, rules or regulations applicable to a
 11 tenancy under the proposed agreement. If a landlord timely offers the tenant a proposed new
 12 rental agreement and the tenant does not accept the proposed agreement on or before 30
 13 days after receipt, the tenancy shall terminate on the specified ending date as described in
 14 subsection (1) of this section.

15 (4) Subsections (1) to (3) of this section do not apply to a tenancy that is subject to ORS
 16 90.540, 90.545 or 90.630.

17 **SECTION 4.** ORS 90.100 is amended to read:

18 90.100. As used in this chapter, unless the context otherwise requires:

19 (1) "Accessory building or structure" means any portable, demountable or permanent structure,
 20 including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks,
 21 steps, ramps, piers and pilings, that is:

22 (a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or

23 (b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a
 24 tenant of a manufactured dwelling or floating home.

25 (2) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding
 26 in which rights are determined, including an action for possession.

27 (3) "Applicant screening charge" means any payment of money required by a landlord of an
 28 applicant prior to entering into a rental agreement with that applicant for a residential dwelling
 29 unit, the purpose of which is to pay the cost of processing an application for a rental agreement for
 30 a residential dwelling unit.

31 (4) "Building and housing codes" includes any law, ordinance or governmental regulation con-
 32 cerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or ap-
 33 pearance of any premises or dwelling unit.

34 (5) "Conduct" means the commission of an act or the failure to act.

35 (6) "Dealer" means any person in the business of selling, leasing or distributing new or used
 36 manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling
 37 or floating home for use as a residence.

38 (7) "Domestic violence" has the meaning given that term in ORS 135.230.

39 (8) "Drug and alcohol free housing" means a dwelling unit described in ORS 90.243.

40 (9) "Dwelling unit" means a structure or the part of a structure that is used as a home, resi-
 41 dence or sleeping place by one person who maintains a household or by two or more persons who
 42 maintain a common household. "Dwelling unit" regarding a person who rents a space for a manu-
 43 factured dwelling or recreational vehicle or regarding a person who rents moorage space for a
 44 floating home as defined in ORS 830.700, but does not rent the home, means the space rented and
 45 not the manufactured dwelling, recreational vehicle or floating home itself.

- 1 (10) "Essential service" means:
- 2 (a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or
3 recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.840:
- 4 (A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior
5 doors, latches for windows and any cooking appliance or refrigerator supplied or required to be
6 supplied by the landlord; and
- 7 (B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320,
8 the lack or violation of which creates a serious threat to the tenant's health, safety or property or
9 makes the dwelling unit unfit for occupancy.
- 10 (b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or rec-
11 reational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.840:
- 12 (A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any
13 drainage system; and
- 14 (B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730,
15 the lack or violation of which creates a serious threat to the tenant's health, safety or property or
16 makes the rented space unfit for occupancy.
- 17 (11) "Facility" means:
- 18 (a) A place where four or more manufactured dwellings are located, the primary purpose of
19 which is to rent space or keep space for rent to any person for a fee; or
- 20 (b) A moorage of contiguous dwelling units that may be legally transferred as a single unit and
21 are owned by one person where four or more floating homes are secured, the primary purpose of
22 which is to rent space or keep space for rent to any person for a fee.
- 23 (12) "Facility purchase association" means a group of three or more tenants who reside in a
24 facility and have organized for the purpose of eventual purchase of the facility.
- 25 (13) "Fee" means a nonrefundable payment of money.
- 26 (14) "First class mail" does not include certified or registered mail, or any other form of mail
27 that may delay or hinder actual delivery of mail to the recipient.
- 28 (15) "Fixed term tenancy" means a tenancy that has a fixed term of existence, continuing to a
29 specific ending date and terminating on that date [*without requiring further notice to effect the ter-*
30 *mination*].
- 31 (16) "Floating home" has the meaning given that term in ORS 830.700. "Floating home" includes
32 an accessory building or structure.
- 33 (17) "Good faith" means honesty in fact in the conduct of the transaction concerned.
- 34 (18) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.
- 35 (19) "Informal dispute resolution" means, but is not limited to, consultation between the landlord
36 or landlord's agent and one or more tenants, or mediation utilizing the services of a third party.
- 37 (20) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or
38 premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor
39 or sublessor to manage the premises or to enter into a rental agreement.
- 40 (21) "Landlord's agent" means a person who has oral or written authority, either express or
41 implied, to act for or on behalf of a landlord.
- 42 (22) "Last month's rent deposit" means a type of security deposit, however designated, the pri-
43 mary function of which is to secure the payment of rent for the last month of the tenancy.
- 44 (23) "Manufactured dwelling" means a residential trailer, a mobile home or a manufactured
45 home as those terms are defined in ORS 446.003. "Manufactured dwelling" includes an accessory

1 building or structure. “Manufactured dwelling” does not include a recreational vehicle.

2 (24) “Month-to-month tenancy” means a tenancy that automatically renews and continues for
 3 successive monthly periods on the same terms and conditions originally agreed to, or as revised by
 4 the parties, until terminated by one or both of the parties.

5 (25) “Organization” includes a corporation, government, governmental subdivision or agency,
 6 business trust, estate, trust, partnership or association, two or more persons having a joint or com-
 7 mon interest, and any other legal or commercial entity.

8 (26) “Owner” includes a mortgagee in possession and means one or more persons, jointly or se-
 9 verally, in whom is vested:

10 (a) All or part of the legal title to property; or

11 (b) All or part of the beneficial ownership and a right to present use and enjoyment of the
 12 premises.

13 (27) “Person” includes an individual or organization.

14 (28) “Premises” means:

15 (a) A dwelling unit and the structure of which it is a part and facilities and appurtenances
 16 therein;

17 (b) Grounds, areas and facilities held out for the use of tenants generally or the use of which
 18 is promised to the tenant; and

19 (c) A facility for manufactured dwellings or floating homes.

20 (29) “Prepaid rent” means any payment of money to the landlord for a rent obligation not yet
 21 due. In addition, “prepaid rent” means rent paid for a period extending beyond a termination date.

22 (30) “Recreational vehicle” has the meaning given that term in ORS 446.003.

23 (31) “Rent” means any payment to be made to the landlord under the rental agreement, periodic
 24 or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit
 25 to the exclusion of others. “Rent” does not include security deposits, fees or utility or service
 26 charges as described in ORS 90.315 (4) and 90.532.

27 (32) “Rental agreement” means all agreements, written or oral, and valid rules and regulations
 28 adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the use and
 29 occupancy of a dwelling unit and premises. “Rental agreement” includes a lease. A rental agreement
 30 shall be either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

31 (33) “Roomer” means a person occupying a dwelling unit that does not include a toilet and ei-
 32 ther a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and
 33 where one or more of these facilities are used in common by occupants in the structure.

34 (34) “Screening or admission criteria” means a written statement of any factors a landlord
 35 considers in deciding whether to accept or reject an applicant and any qualifications required for
 36 acceptance. “Screening or admission criteria” includes, but is not limited to, the rental history,
 37 character references, public records, criminal records, credit reports, credit references and incomes
 38 or resources of the applicant.

39 (35) “Security deposit” means a refundable payment or deposit of money, however designated,
 40 the primary function of which is to secure the performance of a rental agreement or any part of a
 41 rental agreement. “Security deposit” does not include a fee.

42 (36) “Sexual assault” has the meaning given that term in ORS 147.450.

43 (37) “Squatter” means a person occupying a dwelling unit who is not so entitled under a rental
 44 agreement or who is not authorized by the tenant to occupy that dwelling unit. “Squatter” does
 45 not include a tenant who holds over as described in ORS 90.427 (4).

1 (38) "Stalking" means the behavior described in ORS 163.732.

2 (39) "Statement of policy" means the summary explanation of information and facility policies
3 to be provided to prospective and existing tenants under ORS 90.510.

4 (40) "Surrender" means an agreement, express or implied, as described in ORS 90.148 between
5 a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a
6 dwelling unit.

7 (41) "Tenant" means a person, including a roomer, entitled under a rental agreement to occupy
8 a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled
9 by a public housing authority. "Tenant" also includes a minor, as defined and provided for in ORS
10 109.697. As used in ORS 90.505 to 90.840, "tenant" includes only a person who owns and occupies
11 as a residence a manufactured dwelling or a floating home in a facility and persons residing with
12 that tenant under the terms of the rental agreement.

13 (42) "Transient lodging" means a room or a suite of rooms.

14 (43) "Transient occupancy" means occupancy in transient lodging that has all of the following
15 characteristics:

16 (a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

17 (b) The lodging operator provides maid and linen service daily or every two days as part of the
18 regularly charged cost of occupancy; and

19 (c) The period of occupancy does not exceed 30 days.

20 (44) "Vacation occupancy" means occupancy in a dwelling unit, not including transient occu-
21 pancy in a hotel or motel, that has all of the following characteristics:

22 (a) The occupant rents the unit for vacation purposes only, not as a principal residence;

23 (b) The occupant has a principal residence other than at the unit; and

24 (c) The period of authorized occupancy does not exceed 45 days.

25 (45) "Victim" means a person who is the subject of domestic violence, sexual assault or stalking.
26 "Victim" includes a parent or guardian of a minor who is the subject of domestic violence, sexual
27 assault or stalking.

28 (46) "Week-to-week tenancy" means a tenancy that has all of the following characteristics:

29 (a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven
30 days;

31 (b) There is a written rental agreement that defines the landlord's and the tenant's rights and
32 responsibilities under this chapter; and

33 (c) There are no fees or security deposits, although the landlord may require the payment of an
34 applicant screening charge, as provided in ORS 90.295.

35 **SECTION 5.** ORS 90.385 is amended to read:

36 90.385. (1) Except as provided in this section, a landlord may not retaliate by increasing rent
37 or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening
38 to bring an action for possession after:

39 (a) The tenant has complained to, or expressed to the landlord in writing an intention to com-
40 plain to, a governmental agency charged with responsibility for enforcement of any of the following
41 concerning a violation applicable to the tenancy:

42 (A) A building, health or housing code materially affecting health or safety;

43 (B) Laws or regulations concerning the delivery of mail; or

44 (C) Laws or regulations prohibiting discrimination in rental housing;

45 (b) The tenant has made any complaint to the landlord that is in good faith and related to the

1 tenancy;

2 (c) The tenant has organized or become a member of a tenants' union or similar organization;

3 (d) The tenant has testified against the landlord in any judicial, administrative or legislative
4 proceeding;

5 (e) The tenant successfully defended an action for possession brought by the landlord within the
6 previous six months except if the tenant was successful in defending the action only because:

7 (A) The termination notice by the landlord was not served or delivered in the manner required
8 by ORS 90.155; [or]

9 (B) The period provided by the termination notice was less than that required by the statute
10 upon which the notice relied to terminate the tenancy; or

11 **(C) The landlord failed to timely provide a written reason for terminating a tenancy un-**
12 **der ORS 90.427 (2) that was required by section 2 of this 2007 Act; or**

13 (f) The tenant has performed or expressed intent to perform any other act for the purpose of
14 asserting, protecting or invoking the protection of any right secured to tenants under any federal,
15 state or local law.

16 (2) As used in subsection (1) of this section, "decreasing services" includes:

17 (a) Unreasonably restricting the availability of or placing unreasonable burdens on the use of
18 common areas or facilities by tenant associations or tenants meeting to establish a tenant organ-
19 ization; and

20 (b) Intentionally and unreasonably interfering with and substantially impairing the enjoyment
21 or use of the premises by the tenant.

22 (3) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the
23 remedies provided in ORS 90.375 and has a defense in any retaliatory action against the tenant for
24 possession.

25 (4) Notwithstanding subsections (1) and (3) of this section, a landlord may bring an action for
26 possession [if] **under any of the following circumstances:**

27 (a) The complaint by the tenant was made to the landlord or an agent of the landlord in an
28 unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of
29 unreasonably harassing the landlord. A determination whether the manner, time or effect of a com-
30 plaint was unreasonable shall include consideration of all related circumstances preceding or
31 contemporaneous to the complaint.[:]

32 (b) The violation of the applicable building or housing code was caused primarily by lack of
33 reasonable care by the tenant or other person in the household of the tenant or upon the premises
34 with the consent of the tenant.[:]

35 (c) The tenant is in default in rent.[: or]

36 (d) Compliance with the applicable building or housing code requires alteration, remodeling or
37 demolition which would effectively deprive the tenant of use of the dwelling unit.

38 (5) For purposes of this section, a complaint made by another on behalf of a tenant is considered
39 a complaint by the tenant.

40 (6) For the purposes of subsection (4)(c) of this section, a tenant who has paid rent into court
41 pursuant to ORS 90.370 shall not be considered to be in default in rent.

42 (7) The maintenance of an action under subsection (4) of this section does not release the land-
43 lord from liability under ORS 90.360 (2).

44 **SECTION 6.** ORS 105.115 is amended to read:

45 105.115. (1) Except as provided by subsections (2) and (3) of this section, the following are causes

1 of unlawful holding by force within the meaning of ORS 105.110, 105.123 and 105.126:

2 (a) When the tenant or person in possession of any premises fails or refuses to pay rent within
3 10 days after it is due under the lease or agreement under which the tenant or person in possession
4 holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.

5 (b) When the lease by its terms has expired and has not been renewed, or when the tenant or
6 person in possession is holding from month to month, or year to year, and remains in possession
7 after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant
8 of the lease or is holding possession without any written lease or agreement.

9 (2) In the case of a dwelling unit to which ORS chapter 90 applies:

10 (a) The following are causes of unlawful holding by force within the meaning of ORS 105.110 and
11 105.123:

12 (A) When the tenant or person in possession of any premises fails or refuses to pay rent within
13 72 hours or 144 hours, as the case may be, of the notice required by ORS 90.394.

14 (B) When a rental agreement by its terms has expired and has not **converted to a new form**
15 **of tenancy under section 3 of this 2007 Act** or been renewed, or when the tenant or person in
16 possession remains in possession after a valid notice terminating the tenancy pursuant to ORS
17 chapter 90, or is holding contrary to any valid condition or covenant of the rental agreement or
18 ORS chapter 90.

19 (b) A landlord may not file an action for the return of possession of a dwelling unit based upon
20 a cause of unlawful holding by force as described in paragraph (a) of this subsection until after the
21 expiration of a rental agreement for a fixed term tenancy or after the expiration of the time period
22 provided in a notice terminating the tenancy.

23 (3) In an action under subsection (2) of this section, ORS chapter 90 shall be applied to deter-
24 mine the rights of the parties, including:

25 (a) Whether and in what amount rent is due;

26 (b) Whether a tenancy or rental agreement has been validly terminated; and

27 (c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as pro-
28 vided by ORS 90.385 and 90.765.

29 **SECTION 7.** ORS 105.137 is amended to read:

30 105.137. In the case of a dwelling unit to which ORS chapter 90 applies:

31 (1) If the plaintiff appears and the defendant fails to appear at the first appearance, a default
32 judgment shall be entered in favor of the plaintiff for possession of the premises and costs and dis-
33 bursements.

34 (2) If the defendant appears and the plaintiff fails to appear at the first appearance, a default
35 judgment shall be entered in favor of the defendant dismissing the plaintiff's complaint and awarding
36 costs and disbursements.

37 (3) An attorney at law shall be entitled to appear on behalf of any party, but no attorney fees
38 may be awarded if the defendant does not contest the action.

39 (4) The plaintiff or an agent of the plaintiff may obtain a continuance of the action for as long
40 as the plaintiff or the agent of the plaintiff deems necessary to obtain the services of an attorney
41 at law.

42 (5) If both parties appear in court on the date contained in the summons, the court shall set the
43 matter for trial as soon as practicable, unless the court is advised by the parties that the matter
44 has been settled. The trial shall be scheduled no later than 15 days from the date of such appear-
45 ance. If the matter is not tried within the 15-day period, and the delay in trial is not attributable

1 to the landlord, the court shall order the defendant to pay rent that is accruing into court, provided
2 the court finds after hearing that entry of such an order is just and equitable.

3 (6)(a) The court shall permit an unrepresented defendant to proceed to trial by directing the
4 defendant to file an answer in writing on a form which shall be available from the court clerk, and
5 to serve a copy upon the plaintiff on the same day as first appearance.

6 (b) The answer shall be in substantially the following form:

7 _____

8
9 IN THE _____ COURT FOR
10 THE COUNTY OF _____

11
12 (Landlord),)
13)
14 Plaintiff(s),)
15)
16 vs.) No. _____
17)
18 (Tenant),)
19)
20 Defendant(s).)

21
22 ANSWER

23 I (we) deny that the plaintiff(s) is (are) entitled to possession because:

24 ___ The landlord did not make repairs.

25 List any repair problems: _____

26 _____
27 _____

28 ___ The landlord is attempting to evict me (us) because of my (our) complaints (or the eviction is
29 otherwise retaliatory).

30 ___ The eviction notice is wrong.

31 ___ **The termination is invalid because the landlord failed to comply with section 2 of this 2007**
32 **Act.**

33 ___ List any other defenses: _____

34 _____
35 _____
36 _____
37 _____

38 I (we) may be entitled as the prevailing party to recover attorney fees from plaintiff(s) if I (we)
39 obtain legal services to defend this action pursuant to ORS 90.255.

40 I (we) ask that the plaintiff(s) not be awarded possession of the premises and that I (we) be
41 awarded my (our) costs and disbursements and attorney fees, if applicable, or a prevailing party fee.

42 _____
43 _____
44 Date Signature of defendant(s)

45 _____

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(7) If an unrepresented defendant files an answer as provided in subsection (6) of this section, the answer may not limit the defenses available to the defendant at trial under ORS chapter 90. If such a defendant seeks to assert at trial a defense not fairly raised by the answer, the plaintiff shall be entitled to a reasonable continuance for the purposes of preparing to meet the defense.

SECTION 8. (1) Section 2 of this 2007 Act and the amendments to ORS 90.385 and 105.137 by sections 5 and 7 of this 2007 Act apply to the termination of tenancies created on or after the effective date of this 2007 Act.

(2) Section 3 of this 2007 Act and the amendments to ORS 90.100 and 105.115 by sections 4 and 6 of this 2007 Act apply to fixed term tenancies that commence on or after the effective date of this 2007 Act.
