

B-Engrossed
Senate Bill 154

Ordered by the House May 31
Including Senate Amendments dated May 7 and House Amendments dated
May 31

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

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.

Provides that residence in residential program for primary purpose of receiving care, treatment, training or support due to disability or dependency is not subject to landlord-tenant laws.

[Changes standard for disqualifying certain residence and occupancy arrangements from landlord-tenant law exemption.]

Establishes criteria and process for termination of tenancy in group recovery home. Allows former tenant removed from group recovery home to bring action for injunctive relief to recover possession of dwelling unit if removal was wrongful or in bad faith.

A BILL FOR AN ACT

1
2 Relating to landlord-tenant law.

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

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

6 **SECTION 2. Residence in a Department of Human Services licensed program, facility or**
7 **home described in ORS 430.306 to 430.375, 430.380, 430.385, 430.395, 430.397 to 430.401, 430.405**
8 **to 430.565, 430.570, 430.590, 443.400 to 443.455, 443.705 to 443.825 or 443.835 is not governed by**
9 **this chapter.**

10 **SECTION 3. (1) As used in this section:**

11 (a) "Group recovery home" means a place that provides occupants with shared living fa-
12 cilities and that meets the description of a group home under 42 U.S.C. 300x-25.

13 (b) "Illegal drugs" includes controlled substances or prescription drugs:

14 (A) For which the tenant does not have a valid prescription; or

15 (B) That are used by the tenant in a manner contrary to the prescribed regimen.

16 (c) "Peace officer" means a sheriff, constable, marshal or deputy or a member of a state
17 or city police force.

18 (2) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a
19 tenancy and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the
20 tenant has used or possessed alcohol or illegal drugs within the preceding seven days. For
21 purposes of this subsection, the following are sufficient proof that a tenant has used or
22 possessed alcohol or illegal drugs:

23 (a) The tenant fails a test for alcohol or illegal drug use;

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 (b) The tenant refuses a request made in good faith by the group recovery home that the
2 tenant take a test for alcohol or illegal drug use; or

3 (c) Any person has personally observed the tenant using or possessing alcohol or illegal
4 drugs.

5 (3) A group recovery home that undertakes the removal of a tenant under this section
6 shall personally deliver to the tenant a written notice that:

7 (a) Describes why the tenant is being removed;

8 (b) Describes the proof that the tenant has used or possessed alcohol or illegal drugs
9 within the seven days preceding delivery of the notice;

10 (c) Specifies the date and time by which the tenant must move out of the group recovery
11 home;

12 (d) Explains that if the removal was wrongful or in bad faith the tenant may seek
13 injunctive relief to recover possession under section 5 of this 2007 Act and may bring an
14 action to recover monetary damages; and

15 (e) Gives contact information for the local legal services office and for the Oregon State
16 Bar's Lawyer Referral Service, identifying those services as possible sources for free or
17 reduced-cost legal services.

18 (4) A written notice in substantially the following form meets the requirements of sub-
19 section (3) of this section:

20 _____

21
22 This notice is to inform you that you must move out of _____ (insert address of
23 group recovery home) by _____ (insert date and time that is not less than 24 hours
24 after delivery of notice).

25 The reason for this notice is _____ (specify use or possession of alcohol or illegal
26 drugs, as applicable, and dates of occurrence).

27 The proof of your use or possession is _____ (specify facts).

28 If you did not use or possess alcohol or illegal drugs within the seven days before delivery
29 of this notice, if this notice was given in bad faith or if your group recovery home has not
30 substantially complied with section 3 of this 2007 Act, you may be able to get a court to order
31 the group recovery home to let you move back in. You may also be able to recover monetary
32 damages.

33 You may be eligible for free legal services at your local legal services office
34 _____ (insert telephone number) or reduced fee legal services through the Oregon
35 State Bar at 1-800-452-7636.

36 _____

37
38 (5) Within the notice period, a group recovery home shall allow a tenant removed under
39 this section to follow any emergency departure plan that was prepared by the tenant and
40 approved by the group recovery home at the time the tenancy began. If the removed tenant
41 does not have an emergency departure plan, a representative of the group recovery home
42 shall offer to take the removed tenant to a public shelter, detoxification center or similar
43 location if existing in the community.

44 (6) The date and time for moving out specified in a notice under subsection (3) of this
45 section must be at least 24 hours after the date and time the notice is delivered to the ten-

1 ant. If the tenant remains on the group recovery home premises after the date and time for
2 moving out specified in the notice, the tenant is a person remaining unlawfully in a dwelling
3 as described in ORS 164.255 and not a person described in ORS 105.115. Only a peace officer
4 may forcibly remove a tenant who remains on the group recovery home premises after the
5 date and time specified for moving out.

6 (7) A group recovery home that removes a tenant under this section shall send a copy
7 of the notice described in subsection (3) of this section to the Department of Human Services
8 no later than 72 hours after delivering the notice to the tenant.

9 (8) A tenant who is removed under subsection (2) of this section may obtain injunctive
10 relief to recover possession and may recover an amount equal to the greater of actual dam-
11 ages or three times the tenant's monthly rent if:

12 (a) The group recovery home removed the tenant in bad faith or without substantially
13 complying with this section; or

14 (b) If removal is under subsection (2)(c) of this section, the removal was wrongful be-
15 cause the tenant did not use or possess alcohol or illegal drugs.

16 (9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover
17 possession under section 5 of this 2007 Act must commence the action to seek relief not
18 more than 90 days after the date specified in the notice for the tenant to move out.

19 (10) In any court action regarding the removal of a tenant under this section, a group
20 recovery home may present evidence that the tenant used or possessed alcohol or illegal
21 drugs within seven days preceding the removal, whether or not the evidence was described
22 in the notice required by subsection (3) of this section.

23 (11) This section does not prevent a group recovery home from terminating a tenancy
24 as provided by any other provision of this chapter and evicting a tenant as provided in ORS
25 105.105 to 105.168.

26 SECTION 4. Section 5 of this 2007 Act is added to and made a part of ORS 105.105 to
27 105.168.

28 SECTION 5. (1) A former tenant removed from a group recovery home under section 3
29 of this 2007 Act may bring an action for injunctive relief to recover possession if the removal
30 was wrongful or in bad faith.

31 (2) An action under this section shall be governed by the provisions of ORS 105.105 to
32 105.168 except that:

33 (a) The complaint shall be in substantially the following form and shall be available from
34 the court clerk:

35 _____

36
37 IN THE _____ COURT FOR
38 THE COUNTY OF _____

39
40 (Tenant),)
41 Plaintiff(s),)
42)
43 vs.) No._____
44)
45 (Landlord),)

1)
2 Defendant(s).)

3
4 **COMPLAINT FOR RETURN**
5 **OF POSSESSION OF A**
6 **DWELLING UNIT IN A**
7 **GROUP RECOVERY HOME**

8
9 **I**

10
11 **Defendant is a group recovery home subject to section 3 of this 2007 Act. Defendant re-**
12 **moved plaintiff from the group recovery home dwelling unit rented by plaintiff from defend-**
13 **ant at:**

14
15 _____ (street and number)

16
17 _____ (city)

18
19 _____ (county)

20
21 **II**

22
23 **Notice of removal from the dwelling unit was served on plaintiff under section 3 of this**
24 **2007 Act. The notice of removal was served on:**

25
26 _____ (date)

27
28 **III**

29
30 **Plaintiff is entitled to possession of the dwelling unit because:**

31 _____ **Defendant removed plaintiff wrongfully by failing to comply with the proce-**
32 **dural requirements of section 3 of this 2007 Act.**

33 _____ **Defendant removed plaintiff wrongfully because plaintiff did not use or possess**
34 **alcohol or illegal drugs within seven days preceding delivery of a written notice of removal.**

35 _____ **Defendant removed plaintiff under section 3 of this 2007 Act in bad faith.**

36 **Wherefore, plaintiff prays for possession of the group recovery home dwelling unit and**
37 **costs and disbursements incurred herein.**

38
39 _____
40 **Date** **Signature of plaintiff**

41 _____

42
43 **(b) The complaint shall be signed by the plaintiff or an attorney representing the plaintiff**
44 **as provided by ORCP 17 and served by personal delivery on the group recovery home house**
45 **president or a person in an equivalent leadership position for the group recovery home.**

1 (c) The answer shall be in substantially the following form and shall be available from the
2 court clerk:

3 _____

4
5 IN THE _____ COURT FOR
6 THE COUNTY OF _____

7
8 (Tenant),)
9)
10 Plaintiff(s),)
11)
12 vs.) No.____
13)
14 (Landlord),)
15)
16 Defendant(s).)

17
18 ANSWER

19
20 We deny that the plaintiff is entitled to possession of the group recovery home dwelling
21 unit that is the subject of the complaint because:

22 _____ The defendant removed the plaintiff in compliance with the procedural re-
23 quirements of section 3 of this 2007 Act.

24 _____ The plaintiff used or possessed alcohol or illegal drugs as described in section
25 3 of this 2007 Act within seven days preceding delivery of a written notice of removal.

26 _____ The defendant did not remove the plaintiff in bad faith as alleged.

27 We ask that the plaintiff take nothing by the complaint and that we be awarded our costs
28 and disbursements.

29
30 _____
31 Date Signature of defendant

32
33
34 (d) The issue at trial shall be limited to whether the plaintiff is entitled to possession of
35 the dwelling unit described in the complaint.

36 (e) If the basis for the complaint is that removal was wrongful because the plaintiff did
37 not use or possess alcohol or illegal drugs, the defendant has the burden of proving that the
38 plaintiff used or possessed alcohol or illegal drugs as described in section 3 of this 2007 Act
39 within seven days preceding delivery of the written notice of removal.

40 (f) A claim for damages may not be asserted by either party in the action for possession
41 of the dwelling unit under this section, but each party may pursue any claim for damages in
42 a separate action.

43 (g) A party may join an action for possession of the dwelling unit with an action for
44 damages or a claim for other relief, but the proceeding is not governed by the provisions of
45 ORS 105.105 to 105.168.

1 **(h) If the court determines that the plaintiff is entitled to possession of the dwelling unit**
2 **that is the subject of the complaint, the court shall enter an order directing the defendant**
3 **to return possession of the dwelling unit to the plaintiff. The court may provide that the**
4 **defendant have a period of time to deliver possession of the dwelling unit to the plaintiff.**

5 **(i) Subject to the provisions of ORCP 68, a prevailing party who has been represented by**
6 **counsel may recover attorney fees as provided by ORS 90.255.**

7
