

Senate Bill 561

Sponsored by COMMITTEE ON COMMERCE (at the request of Landlord Tenant Coalition)

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**.

Allows tenant to cause repair of minor defect in dwelling unit if landlord fails to timely repair defect after tenant gives proper notice.

Eliminates option to provide tenant Social Security number on residential eviction complaint.

Provides that defendant in action for possession of rental dwelling unit may not be awarded attorney fees for legal services provided after notice of voluntary dismissal.

A BILL FOR AN ACT

1
2 Relating to landlord-tenant law; creating new provisions; and amending ORS 105.123, 105.124, 105.137
3 and 105.138.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 90.100 to 90.459.**

6 **SECTION 2. (1) As used in this section, "minor habitability defect":**

7 (a) **Means a defect that may reasonably be repaired for not more than \$300, such as the**
8 **repair of leaky plumbing, stopped up toilets or faulty light switches.**

9 (b) **Does not mean the presence of mold, radon, asbestos or lead-based paint.**

10 (2) **If, contrary to ORS 90.320, the landlord fails to repair a minor habitability defect, the**
11 **tenant may cause the repair of the defect and deduct from the tenant's subsequent rent**
12 **obligation the actual and reasonable cost of the repair work, not to exceed \$300.**

13 (3)(a) **Prior to causing a repair under subsection (2) of this section, the tenant shall give**
14 **the landlord written notice:**

15 (A) **Describing the minor habitability defect; and**

16 (B) **Stating the tenant's intention to cause the repair of the defect and deduct the cost**
17 **of the repair from a subsequent rent obligation if the landlord fails to make the repair by a**
18 **specified date.**

19 (b) **The specified date for repair contained in a written notice given to a landlord under**
20 **this subsection must be at least seven days after the date the notice is given to the landlord.**
21 **If the landlord fails to make the repair by the specified date, the tenant may use the remedy**
22 **provided by subsection (2) of this section. Service or delivery of the required written notice**
23 **shall be made as provided under ORS 90.155.**

24 (4)(a) **Any repair work performed under this section must be performed in a workmanlike**
25 **manner and be in compliance with state statutes, local ordinances and the state building**
26 **code.**

27 (b) **The landlord may specify the people to perform the repair work if the landlord's**
28 **specifications are reasonable and do not diminish the tenant's rights under this section.**

29 (c) **The tenant may not perform work to repair the defect.**

30 (d) **To deduct the repair cost from the rent, the tenant must provide to the landlord a**

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 written statement, prepared by the person who made the repair, showing the actual cost of
2 the repair.

3 (5) A tenant may not cause the making of a repair under this section if:

4 (a) Within the time specified in the notice, the landlord substantially repairs the defect;

5 (b) After the time specified in the notice, but before the tenant causes the repair to be
6 made, the landlord substantially repairs the defect;

7 (c) The tenant has prevented the landlord from making the repair;

8 (d) The defect was caused by a deliberate or negligent act or omission of the tenant or
9 of a person on the premises with the tenant's consent;

10 (e) The tenant knew of the defect for more than six months before giving notice under
11 this section; or

12 (f) The tenant has previously used the remedy provided by this section for the same oc-
13 currence of the defect.

14 (6) If the tenant proceeds under this section, the tenant may not proceed under ORS
15 90.360 (1) as to that breach, but may use any other available remedy in addition to the rem-
16 edy provided by this section.

17 **SECTION 3.** ORS 105.124 is amended to read:

18 105.124. For a complaint described in ORS 105.123, if ORS chapter 90 applies to the dwelling
19 unit:

20 (1) The complaint must be in substantially the following form and be available from the clerk
21 of the court:

22 _____
23
24 IN THE CIRCUIT COURT
25 FOR THE COUNTY OF

26 _____
27 No. _____
28

29 RESIDENTIAL EVICTION COMPLAINT

30
31 PLAINTIFF (Landlord or agent):

32 _____
33

34 _____
35

36
37 Address: _____

38
39 City: _____

40
41 State: _____ Zip: _____

42
43 Telephone: _____
44

45 vs.

1 DEFENDANT (Tenants/Occupants):

2
3 _____

4
5 _____

6
7 MAILING ADDRESS: _____

8
9 City: _____

10
11 State: _____ Zip: _____

12
13 Telephone: _____

14
15 [Defendant's Social Security number _____ (Optional information for purposes of
16 identification.)]

17
18 1.

19 Tenants are in possession of the dwelling unit, premises or rental property described above or
20 located at:

21
22 _____

23
24 2.

25 Landlord is entitled to possession of the property because of:

- 26 _____ 24-hour notice for personal
- 27 injury, substantial damage, extremely
- 28 outrageous act or unlawful occupant.
- 29 ORS 90.396 or 90.403.
- 30 _____ 24-hour or 48-hour notice for
- 31 violation of a drug or alcohol
- 32 program. ORS 90.398.
- 33 _____ 72-hour or 144-hour notice for
- 34 nonpayment of rent. ORS 90.394.
- 35 _____ 7-day notice with stated cause in
- 36 a week-to-week tenancy. ORS 90.392 (6).
- 37 _____ 10-day notice for a pet violation,
- 38 a repeat violation in a month-to-month
- 39 tenancy or without stated cause in a
- 40 week-to-week tenancy. ORS 90.392 (5),
- 41 90.405 or 90.427 (1).
- 42 _____ 20-day notice for a repeat violation.
- 43 ORS 90.630 (4).
- 44 _____ 30-day or 180-day notice without
- 45

1 set the matter for trial as soon as practicable, unless the court is advised by the parties that the
2 matter has been settled. The trial shall be scheduled no later than 15 days from the date of such
3 appearance. If the matter is not tried within the 15-day period, and the delay in trial is not attrib-
4 utable to the landlord, the court shall order the defendant to pay rent that is accruing into court,
5 provided the court finds after hearing that entry of such an order is just and equitable.

6 [(6)(a)] (7)(a) The court shall permit an unrepresented defendant to proceed to trial by directing
7 the defendant to file an answer in writing on a form which shall be available from the court clerk,
8 and to serve a copy upon the plaintiff on the same day as first appearance.

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

10

11

12

13

14

IN THE _____ COURT FOR
THE COUNTY OF _____

15

(Landlord),)

16

)

17

Plaintiff(s),)

18

)

19

vs.) No. _____

20

)

21

(Tenant),)

22

)

23

Defendant(s).)

24

ANSWER

25

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

26

___ The landlord did not make repairs.

27

List any repair problems: _____

28

29

30

31

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

32

___ The eviction notice is wrong.

33

___ List any other defenses: _____

34

35

36

37

38

39

I (we) may be entitled as the prevailing party to recover attorney fees from plaintiff(s) if I (we)
40 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
42 awarded my (our) costs and disbursements and attorney fees, if applicable, or a prevailing party fee.

41

42

43

44

Date

45

Signature of defendant(s)

1 _____
2
3 [(7)] (8) If an unrepresented defendant files an answer as provided in subsection [(6)] (7) of this
4 section, the answer may not limit the defenses available to the defendant at trial under ORS chapter
5 90. If such a defendant seeks to assert at trial a defense not fairly raised by the answer, the plaintiff
6 shall be entitled to a reasonable continuance for the purposes of preparing to meet the defense.

7 **SECTION 5.** ORS 105.138 is amended to read:

8 105.138. (1) Notwithstanding ORS 105.137 [(5)] (6), if a party to an action to which ORS 90.505
9 to 90.840 apply moves for an order compelling arbitration and abating the proceedings, the court
10 shall summarily determine whether the controversy between the parties is subject to an arbitration
11 agreement enforceable under ORS 90.610 (2) and, if so, shall issue an order compelling the parties
12 to submit to arbitration in accordance with the agreement and abating the action for not more than
13 30 days, unless the parties agree to an order of abatement for a longer period acceptable to the
14 court.

15 (2) If the court issues an order compelling arbitration under subsection (1) of this section, the
16 court may not order the payment of rent into court pending the arbitration unless the court finds
17 such an order is necessary to protect the rights of the parties.

18 **SECTION 6.** ORS 105.123 is amended to read:

19 105.123. (1) In an action pursuant to ORS 105.110, it is sufficient to state in the complaint:

20 (a) A description of the premises with convenient certainty;

21 (b) That the defendant is in possession of the premises;

22 (c) That, in the case of a dwelling unit to which ORS chapter 90 does not apply, the defendant
23 entered upon the premises with force or unlawfully holds the premises with force; and

24 (d) That the plaintiff is entitled to the possession of the premises.

25 (2) **For an action to recover possession of premises to which ORS chapter 90 does not**
26 **apply**, the plaintiff may include, at the plaintiff's option, the defendant's Social Security number in
27 the complaint for the purpose of accuracy in tenant screening information. This subsection does not
28 require a tenant to have a Social Security number in order to enter into a rental agreement.

29 **SECTION 7. Notwithstanding the amendments to ORS 105.124 by section 3 of this 2007**
30 **Act, prior to January 1, 2009, a clerk of the court may use either the complaint form set**
31 **forth in ORS 105.124 as published in the 2005 Edition of Oregon Revised Statutes or the form**
32 **set forth in ORS 105.124 as amended and in effect on the effective date of this 2007 Act.**
33 _____