

# House Bill 4001

Sponsored by Representatives KENY-GUYER, KOTEK, Senators ROSENBAUM, DEMBROW; Representatives BARNHART, FREDERICK, HOLVEY, HOYLE, NATHANSON, PILUSO, TAYLOR, Senator GELSNER (Presession filed.)

## 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**.

Modifies conditions under which landlord may terminate month-to-month tenancy after first year of occupancy. Requires landlord to pay tenant relocation expenses under certain circumstances. Creates presumption of retaliation in actions between landlord and tenant commenced within six months of certain actions by tenant. Requires landlord to provide 90-day notice for rent increase. Prohibits rent increase during first year of occupancy of month-to-month tenancy.

Permits local government to adopt land use regulations or functional plan provisions, or impose conditions for approval of permits, that effectively establish below-market sales or rental price for up to 30 percent of new residential development or that limit sale or rental to class or group of purchasers or renters in exchange for one or more developer incentives.

Permits local government to waive state or local building and zoning codes during state of emergency or upon finding rental vacancy of four percent or less.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to housing; creating new provisions; amending ORS 90.220, 90.230, 90.385, 90.427, 90.465,  
3 105.124, 197.309 and 401.335; and declaring an emergency.

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

5 **SECTION 1.** ORS 90.427 is amended to read:

6 90.427. (1) As used in this section, "first year of occupancy" includes all periods in which any  
7 of the tenants has resided in the dwelling unit for one year or less.

8 (2) If a tenancy is a week-to-week tenancy, the landlord or the tenant may terminate the tenancy  
9 by a written notice given to the other at least 10 days before the termination date specified in the  
10 notice.

11 (3) If a tenancy is a month-to-month tenancy:

12 (a) At any time during the tenancy, the tenant may terminate the tenancy by giving the landlord  
13 notice in writing not less than 30 days prior to the date designated in the notice for the termination  
14 of the tenancy.

15 (b) At any time during the first year of occupancy, the landlord may terminate the tenancy by  
16 giving the tenant notice in writing not less than 30 days prior to the date designated in the notice  
17 for the termination of the tenancy.

18 (c) At any time after the first year of occupancy, the landlord may terminate the tenancy by  
19 giving the tenant notice in writing not less than [60] **90** days prior to the date designated in the  
20 notice for the termination of the tenancy.

21 (4) If the tenancy is for a fixed term of at least one year and by its terms becomes a month-to-  
22 month tenancy after the fixed term:

23 (a) At any time during the fixed term, notwithstanding subsection (3) of this section, the landlord  
24 or the tenant may terminate the tenancy without cause by giving the other notice in writing not less

**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 than 30 days prior to the specified ending date for the fixed term or not less than 30 days prior to  
 2 the date designated in the notice for the termination of the tenancy, whichever is later.

3 (b) After the specified ending date for the fixed term, at any time during the month-to-month  
 4 tenancy, the landlord may terminate the tenancy without cause only by giving the tenant notice in  
 5 writing not less than [60] **90** days prior to the date designated in the notice for the termination of  
 6 the tenancy.

7 (5) *[Notwithstanding subsections (3)(c) and (4)(b) of this section, the landlord may terminate a*  
 8 *month-to-month tenancy at any time by giving the tenant notice in writing not less than 30 days prior*  
 9 *to the date designated in the notice for the termination of the tenancy if:]*

10 *[(a) The dwelling unit is purchased separately from any other dwelling unit;]*

11 *[(b) The landlord has accepted an offer to purchase the dwelling unit from a person who intends*  
 12 *in good faith to occupy the dwelling unit as the person's primary residence; and]*

13 *[(c) The landlord has provided the notice, and written evidence of the offer to purchase the dwelling*  
 14 *unit, to the tenant not more than 120 days after accepting the offer to purchase.]* **A landlord that**  
 15 **terminates a tenancy pursuant to subsection (3)(c) or (4)(b) of this section shall pay the**  
 16 **tenant relocation assistance in an amount equal to one month's periodic rent. Relocation**  
 17 **assistance payments are due at the time of delivery of the notice for the termination of the**  
 18 **tenancy. Failure to include the relocation assistance payment with the notice for termination**  
 19 **of the tenancy shall render the notice void.**

20 (6) The tenancy shall terminate on the date designated and without regard to the expiration of  
 21 the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed,  
 22 rent is uniformly apportionable from day to day.

23 (7) If the tenant remains in possession without the landlord's consent after expiration of the  
 24 term of the rental agreement or its termination, the landlord may bring an action for possession. In  
 25 addition, the landlord may recover from the tenant any actual damages resulting from the tenant  
 26 holding over, including the value of any rent accruing from the expiration or termination of the  
 27 rental agreement until the landlord knows or should know that the tenant has relinquished pos-  
 28 session to the landlord. If the landlord consents to the tenant's continued occupancy, ORS 90.220 (7)  
 29 applies.

30 (8)(a) A notice given to terminate a tenancy under subsection (2) or (3) of this section need not  
 31 state a reason for the termination.

32 (b) Notwithstanding paragraph (a) of this subsection, a landlord or tenant may include in a no-  
 33 tice of termination given under subsection (2) or (3) of this section an explanation of the reason for  
 34 the termination without having to prove the reason. An explanation does not give the person re-  
 35 ceiving the notice of termination a right to cure the reason if the notice states that:

36 (A) The notice is given without stated cause;

37 (B) The recipient of the notice does not have a right to cure the reason for the termination; and

38 (C) The person giving the notice need not prove the reason for the termination in a court action.

39 (9) Subsections (2) to (5) of this section do not apply to a month-to-month tenancy subject to ORS  
 40 90.429 or other tenancy created by a rental agreement subject to ORS 90.505 to 90.850.

41 **(10) Subsection (5) of this section does not apply to a tenancy created by a rental agree-**  
 42 **ment subject to ORS 90.230.**

43 **SECTION 2.** ORS 90.385 is amended to read:

44 90.385. (1) Except as provided in this section, a landlord may not retaliate by increasing rent  
 45 or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening

1 to bring an action for possession after:

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

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

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

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

8 (b) The tenant has made any complaint to the landlord that is in good faith and related to the  
9 tenancy;

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

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

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

15 (A) The termination notice by the landlord was not served or delivered in the manner required  
16 by ORS 90.155; or

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

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

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

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

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

28 (3)(a) *[If the landlord]* **A landlord that** acts in violation of subsection (1) of this section **is liable**  
29 **to the tenant for** *[the tenant is entitled to]* the remedies provided in ORS 90.375 and has a defense  
30 in any retaliatory action against the tenant for possession.

31 **(b) In an action by or against the tenant, evidence that the tenant acted as described in**  
32 **subsection (1) of this section within six months of the commencement of the action creates**  
33 **a disputable presumption that the landlord's conduct was in retaliation for the complaint or**  
34 **other act by the tenant. This presumption does not arise if the tenant acted as described in**  
35 **subsection (1) of this section following receiving notice of a proposed rent increase or a de-**  
36 **crease in services.**

37 (4) Notwithstanding subsections (1) and (3) of this section, a landlord may bring an action for  
38 possession if:

39 *[(a) The complaint by the tenant was made to the landlord or an agent of the landlord in an un-*  
40 *reasonable manner or at an unreasonable time or was repeated in a manner having the effect of un-*  
41 *reasonably harassing the landlord. A determination whether the manner, time or effect of a complaint*  
42 *was unreasonable shall include consideration of all related circumstances preceding or*  
43 *contemporaneous to the complaint;]*

44 *[(b)]* (a) The violation of the applicable building or housing code was caused primarily by lack  
45 of reasonable care by the tenant or other person in the household of the tenant or upon the premises

1 with the consent of the tenant;

2 [(c)] (b) The tenant was in default in rent at the time of the service of the notice upon which  
3 the action is based; [or]

4 [(d)] (c) Compliance with the applicable building or housing code requires alteration, remodeling  
5 or demolition which would effectively deprive the tenant of use of the dwelling unit[.]; or

6 (d) **The complaint by the tenant was made to the landlord or an agent of the landlord in  
7 an unreasonable manner or at an unreasonable time or was repeated in a manner having the  
8 effect of unreasonably harassing the landlord. A determination whether the manner, time  
9 or effect of a complaint was unreasonable shall include consideration of all related circum-  
10 stances preceding or contemporaneous to the complaint.**

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

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

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

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 Address: \_\_\_\_\_

35 City: \_\_\_\_\_

36 State: \_\_\_\_\_ Zip: \_\_\_\_\_

37 Telephone: \_\_\_\_\_  
38

39 vs.

40  
41 DEFENDANT (Tenants/Occupants):

42 \_\_\_\_\_  
43 \_\_\_\_\_

44 MAILING ADDRESS: \_\_\_\_\_

45 City: \_\_\_\_\_

1 State: \_\_\_\_\_ Zip: \_\_\_\_\_

2 Telephone: \_\_\_\_\_

3

4

1.

5

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

6

7

8

\_\_\_\_\_

9

10

2.

11

Landlord is entitled to possession of the property because of:

12

13

\_\_\_\_\_ 24-hour notice for personal injury, substantial damage, extremely outrageous act or unlawful occupant. ORS 90.396 or 90.403.

14

15

16

17

\_\_\_\_\_ 24-hour or 48-hour notice for violation of a drug or alcohol program. ORS 90.398.

18

19

20

\_\_\_\_\_ 24-hour notice for perpetrating domestic violence, sexual assault or stalking. ORS 90.445.

21

22

23

\_\_\_\_\_ 72-hour or 144-hour notice for nonpayment of rent. ORS 90.394.

24

25

\_\_\_\_\_ 7-day notice with stated cause in a week-to-week tenancy. ORS 90.392 (6).

26

27

\_\_\_\_\_ 10-day notice for a pet violation, a repeat violation in a month-to-month tenancy or without stated cause in a week-to-week tenancy. ORS 90.392 (5), 90.405 or 90.427 (2).

28

29

30

31

\_\_\_\_\_ 20-day notice for a repeat violation. ORS 90.630 (4).

32

33

34

\_\_\_\_\_ 30-day, [60-day] **90-day** or 180-day notice without stated cause in a month-to-month tenancy. ORS 90.427 (3) or (4) or 90.429.

35

36

37

\_\_\_\_\_ 30-day notice with stated cause. ORS 90.392, 90.630 or 90.632.

38

39

40

\_\_\_\_\_ Notice to bona fide tenants after foreclosure sale or termination of fixed term tenancy after foreclosure sale. ORS 86.782 (6)(c).

41

42

43

\_\_\_\_\_ Other notice \_\_\_\_\_

44

\_\_\_\_\_ No notice (explain) \_\_\_\_\_

45

1 A COPY OF THE NOTICE RELIED UPON, IF ANY, IS ATTACHED

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

3.

If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3).

Landlord requests judgment for possession of the premises, court costs, disbursements and attorney fees.

I certify that the allegations and factual assertions in this complaint are true to the best of my knowledge.

\_\_\_\_\_  
Signature of landlord or agent.

(2) The complaint must be signed by the plaintiff or an attorney representing the plaintiff as provided by ORCP 17, or verified by an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(3) A copy of the notice relied upon, if any, must be attached to the complaint.

**SECTION 4. Section 5 of this 2016 Act is added to and made a part of ORS chapter 90.**

**SECTION 5. (1) As used in this section, "first year of occupancy" includes all periods in which any of the tenants has resided in the dwelling unit for one year or less.**

**(2) If a tenancy is a week-to-week tenancy, the landlord may not increase the rent without giving the tenant written notice at least seven days prior to the effective date of the rent increase.**

**(3) If a tenancy is a month-to-month tenancy, the landlord may not increase the rent at any time during the first year of occupancy.**

**(4) If a tenancy is a month-to-month tenancy, the landlord may not increase the rent at any time after the first year of occupancy unless the landlord gives notice in writing to each affected tenant at least 90 days prior to the effective date of the rent increase. The notice must specify:**

- (a) The amount of the increase;**
- (b) The amount of the new rent;**
- (c) The date on which the increase becomes effective; and**
- (d) If the stated increase is five percent or more, the basis for the increase.**

**SECTION 6.** 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 90.850 for space in a facility as defined

1 in ORS 90.100.

2 (5) Notwithstanding ORS 90.245 (1), the parties to a rental agreement to which ORS 90.100 to  
 3 90.465 apply may include in the rental agreement a provision for informal dispute resolution.

4 (6) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and  
 5 occupancy of the dwelling unit.

6 (7) Except as otherwise provided by this chapter:

7 (a) Rent is payable without demand or notice at the time and place agreed upon by the parties.  
 8 Unless otherwise agreed, rent is payable at the dwelling unit, periodic rent is payable at the be-  
 9 ginning of any term of one month or less and otherwise in equal monthly or weekly installments at  
 10 the beginning of each month or week, depending on whether the tenancy is month-to-month or  
 11 week-to-week. Rent may not be considered to be due prior to the first day of each rental period.  
 12 [*Rent may not be increased without a 30-day written notice thereof in the case of a month-to-month*  
 13 *tenancy or a seven-day written notice thereof in the case of a week-to-week tenancy.*] **Rent increases**  
 14 **must comply with section 5 of this 2016 Act.**

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

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

- 19 (a) The date that a notice terminating the tenancy expires;
- 20 (b) The date that the tenancy terminates by its own terms;
- 21 (c) The date that the tenancy terminates by surrender;
- 22 (d) The date that the tenancy terminates as a result of the landlord failing to use reasonable  
 23 efforts to rent the dwelling unit to a new tenant as provided under ORS 90.410 (3);
- 24 (e) The date when a new tenancy with a new tenant begins;
- 25 (f) Thirty days after delivery of possession without prior notice of termination of a month-to-  
 26 month tenancy; or
- 27 (g) Ten days after delivery of possession without prior notice of termination of a week-to-week  
 28 tenancy.

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

- 31 (A) Outstanding rent from prior rental periods;
- 32 (B) Rent for the current rental period;
- 33 (C) Utility or service charges;
- 34 (D) Late rent payment charges; and
- 35 (E) Fees or charges owed by the tenant under ORS 90.302 or other fees or charges related to  
 36 damage claims or other claims against the tenant.

37 (b) This subsection does not apply to rental agreements subject to ORS 90.505 to 90.850.

38 **SECTION 7.** ORS 197.309 is amended to read:

39 197.309. [(1) *Except as provided in subsection (2) of this section,*] **Notwithstanding ORS 91.225,**  
 40 a city, county or metropolitan service district may [*not*] adopt a land use regulation or functional  
 41 plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178[,] a  
 42 requirement, that has the effect of establishing the sales **or rental** price for a **new** housing unit or  
 43 residential building lot or parcel, or that requires a **new** housing unit or residential building lot or  
 44 parcel to be designated for sale **or rent** to [*any*] a particular class or group of purchasers[.] **or**  
 45 **renters based on income, provided the regulation, provision or requirement:**

1 (1) Does not require more than 30 percent of housing units within a development to be  
2 sold, or rented, at below-market rates; and

3 (2) Offers developers one or more of the following incentives:

4 (a) Density adjustments.

5 (b) Fee waivers or reductions.

6 (c) Waivers of system development charges or impact fees.

7 (d) Finance-based incentives.

8 (e) Preferential treatment for processing of permits.

9 (f) Expedited service for local approval processes.

10 (g) Modification of height, floor area or other site-specific requirements.

11 (h) State-authorized property tax exemptions or abatements.

12 [(2) This section does not limit the authority of a city, county or metropolitan service district to:]

13 [(a) Adopt or enforce a land use regulation, functional plan provision or condition of approval  
14 creating or implementing an incentive, contract commitment, density bonus or other voluntary regu-  
15 lation, provision or condition designed to increase the supply of moderate or lower cost housing units;  
16 or]

17 [(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.]

18 **SECTION 8.** ORS 401.335 is amended to read:

19 401.335. (1) **A local government is expressly authorized to waive any state or local building  
20 code, zoning code, regulation or requirement to accommodate the installation of temporary  
21 housing units, provided:**

22 (a) **The governing body of the city or county has declared a state of emergency pursuant  
23 to ORS 401.309; or**

24 (b) **The housing vacancy rate within the jurisdiction of the local government is four  
25 percent or less.**

26 (2) Any political subdivision of this state is expressly authorized to acquire, temporarily or  
27 permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing  
28 units for disaster victims, and to enter into arrangements necessary to prepare or equip such sites  
29 to utilize the housing units.

30 **SECTION 9.** ORS 90.230 is amended to read:

31 90.230. (1) If a tenancy is for the occupancy of a recreational vehicle in a manufactured dwelling  
32 park, mobile home park or recreational vehicle park, all as defined in ORS 197.492, the landlord  
33 shall provide a written rental agreement for a month-to-month, week-to-week or fixed-term tenancy.  
34 The rental agreement must state:

35 (a) If applicable, that the tenancy may be terminated [*by the landlord under ORS 90.427 without*  
36 *cause upon 30 or 60 days' written notice for a month-to-month tenancy or upon 10 days' written notice*  
37 *for a week-to-week tenancy*] **as provided in ORS 90.427, except that the landlord shall provide 30**  
38 **days' written notice for a month-to-month tenancy during the first year of occupancy, 60**  
39 **days' written notice for a month-to-month tenancy at any time after the first year of occu-**  
40 **pancy and 10 days' written notice for a week-to-week tenancy.**

41 (b) That any accessory building or structure paid for or provided by the tenant belongs to the  
42 tenant and is subject to a demand by the landlord that the tenant remove the building or structure  
43 upon termination of the tenancy.

44 (c) That the tenancy is subject to the requirements of ORS 197.493 (1) for exemption from  
45 placement and occupancy restrictions.



1 (2) If a tenant described in subsection (1) of this section moves following termination of the  
2 tenancy by the landlord under ORS 90.427, and the landlord failed to provide the required written  
3 rental agreement before the beginning of the tenancy, the tenant may recover the tenant's actual  
4 damages or twice the periodic rent, whichever is greater.

5 (3) If the occupancy fails at any time to comply with the requirements of ORS 197.493 (1) for  
6 exemption from placement and occupancy restrictions, and a state agency or local government re-  
7 quires the tenant to move as a result of the noncompliance, the tenant may recover the tenant's  
8 actual damages or twice the periodic rent, whichever is greater. This subsection does not apply if  
9 the noncompliance was caused by the tenant.

10 (4) This section does not apply to a vacation occupancy.

11 **SECTION 10.** ORS 90.465 is amended to read:

12 90.465. (1) A city with a population that exceeds 300,000 shall have a right of action against the  
13 owner of any premises to recover the reasonable costs of relocation incurred by the city because  
14 the condition of the premises causes condemnation and relocation of the tenants at public expense.  
15 In order to recover the costs, the city must allege and prove that, due to action or inaction of the  
16 owner, the premises are or have been in multiple and material violation of applicable health or  
17 safety codes for a period of more than 30 days and that the violation endangers the health or safety  
18 of the tenants or the public, or both.

19 (2) It shall be an affirmative defense to recovery of relocation costs incurred for any tenant that  
20 the condition was caused by the action or negligence of that tenant.

21 (3) The official responsible for city code enforcement shall notify the owner in writing when the  
22 official finds the premises to be in a condition that may cause tenant relocation. The notice shall  
23 also inform the owner of the potential liability for relocation costs.

24 (4) A landlord may not terminate a rental agreement because of the receipt of the notice re-  
25 quired by subsection (3) of this section except for the reasons set forth in ORS 90.385 (4). The owner  
26 is not liable for tenant relocation costs if the termination is for the reasons set forth in ORS 90.385  
27 [(4)(b)] (4)(a).

28 (5) The action provided in subsection (1) of this section is in addition to any other action that  
29 may be brought against an owner under any other provision of law.

30 **SECTION 11. This 2016 Act being necessary for the immediate preservation of the public**  
31 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**  
32 **on its passage.**

33 \_\_\_\_\_