

ORDINANCE NO. 1461-21

AN ORDINANCE RELATING LANDLORD TENANT; EXTENDING THE 60-DAY PROTECTION PERIOD IN SB 278 (2021) TO 90 DAYS; CREATING NEW PROVISIONS IN TUALATIN MUNICIPAL CODE CHAPTER 9-12; AND DECLARING AN EMERGENCY.

WHEREAS, the State of Oregon provided statewide renter protections in HB 4213 (2020 First Special Session) with effective dates of April 1, 2020 to September 30, 2020. HB 4213 continued and refined the statewide residential eviction moratorium created by the Governor in Executive Order 20-13 and established a statewide six-month repayment grace period;

WHEREAS, the State of Oregon extended statewide renter protections in HB 4401 (2020 Third Special Session). HB 4401 extended the emergency period and the end of the repayment grace period until June 30, 2021 the State of Oregon has updated the State Building Codes; and

WHEREAS, the State of Oregon further extended statewide renter protections in SB 278 (2021 Regular Session). SB 278 provides that if a tenant provides the landlord with documentation that the tenant has applied for rental assistance, for a period of sixty days, a landlord may not deliver a termination notice for nonpayment; or initiate or continue an action for possession based on a termination notice for nonpayment;

WHEREAS, Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended provided \$25 billion for emergency rental assistance for the payment of rent and rental arrears. Congress later provided an additional \$21.55 billion in emergency rental assistance when it passed the American Rescue Plan Act;

WHEREAS, households who have applied for rental assistance could face eviction if they do not receive assistance before the 60-day period set in Senate Bill 278 expires;

WHEREAS, historically, recovery from an economic downturn takes longer for communities of color. Low-income communities of color have always faced disproportionate barriers to economic opportunities that allow them to pay rising rents and other housing costs. But the COVID-19 pandemic created additional obstacles for those communities, which will continue to exist beyond the lifting of public health restrictions and the statewide eviction moratorium. Statewide landlord data on renters' ability to pay rent has shown consistent volatility in properties that are generally more affordable to low-income households;

WHEREAS, extending the protection from eviction established by SB 278 (2021) will ensure that providers have sufficient time to reach these households and process rental assistance applications, mitigating further disproportionate impacts of the COVID-19 pandemic on local communities of color;

WHEREAS, the purpose of this Ordinance is to provide sufficient time for both tenants and landlords to secure emergency financial assistance as provided by funding designed to respond to the economic impacts of the COVID-19 pandemic;

WHEREAS, the purpose of this Ordinance is not to relieve tenants of the obligation to pay rent and the Ordinance does not authorize non-payment; and

WHEREAS, the City of Tualatin wishes to adopt the Ordinance to assist with the COVID-19 emergency and its impacts on tenants and landlords.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. Tualatin Municipal Code Chapter 9-12 (Landlord Tenant) is created to read as follows:

TMC 9-12-010 (Protection for Seeking Rental Assistance)

(1) As used in this Chapter the following terms mean:

(a) "Documentation" includes electronic mail, a screenshot or other written or electronic documentation from a rent assistance provider verifying the submission of an application for rental assistance.

(b) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement, and any person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

(c) "Nonpayment" means the nonpayment of a payment that is due to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.

(d) "Tenant":

(A) Except as provided in paragraph (B) of this subsection:

(i) Means a person, including a roomer, entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority.

(ii) Means a minor, as defined and provided for in ORS 109.697.

(B) For purposes of manufactured dwelling and floating home spaces, means only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(C) Does not mean a guest or temporary occupant.

(2) The provisions of this section applies only to a notice of termination for nonpayment given on or after July 1, 2021:

(a) If a tenant provides the landlord with documentation that the tenant has applied for rental assistance, a landlord may not:

(A) Deliver a termination notice for nonpayment; or

(B) Initiate or continue an action for possession based on a termination notice for nonpayment.

(b) A tenant may provide documentation by any method reasonably calculated to achieve receipt by the landlord, including by sending a copy or photograph of the documentation by electronic mail or text message.

(c) If 90 days have passed since the tenant provided documentation under this subsection:

(A) A landlord may deliver to the tenant a new termination notice for nonpayment, to which this section does not apply, without providing the notice under subsection (4) of this section; or

(B) If a claim for possession was postponed under subsection (5)(b) of this section, the court shall promptly set the matter for trial.

(3) Except as provided in subsection (2)(c)(A) of this section, a landlord shall deliver the notice described in subsection (4) of this section along with:

(a) Any notice of termination for nonpayment; and

(b) Any summons for a complaint seeking possession based on nonpayment given by the landlord or service processor, including a summons delivered under ORS 105.135 (3)(b).

(4) The notice required under subsection (3) of this section must be in substantially the form provided in Oregon Senate Bill 278 (2021), Section 2(4).

(5) Court Dismissal of Complaint for Possession in Certain Circumstances.

(a) A court shall enter a judgment dismissing a complaint for possession that is based on a termination notice for nonpayment if the court determines that:

(A) The landlord failed to attach the notice as required under subsection (3) of this section.

(B) The tenant's nonpayment was substantially caused by the landlord's failure to reasonably participate with a rental assistance program. This subparagraph does not require that a landlord apply for compensation under section 2, chapter 3, Oregon Laws 2020 (third special session).

(C) The landlord receives rental assistance covering the rent owed under the notice.

(D) The tenant provided the landlord with documentation of application for rental assistance as described in subsection (2) of this section before the claim was filed.

(b) If the tenant provides the landlord or court with documentation of application for rental assistance as described in subsection (2) of this section at any time after the landlord commenced the action for possession and at or before the first appearance, at the first appearance the court shall, on its own motion, postpone the first appearance to a date not earlier than 90 days after the documentation was delivered.

(6) If a landlord violates this section:

(a) A tenant may obtain injunctive relief to recover possession or address any other violation; and

(b) The tenant has a defense to an action for possession by the landlord.

(7) If a claim for possession is dismissed under this section, the tenant is not entitled to prevailing party fees, costs or attorney fees, unless authorized by State law.

Section 2. Automatic Repeal Date. Unless otherwise provided by subsequent Ordinance of the Council, this Ordinance is repealed effective March 1, 2022.

Section 3. Non-Payment of Rent Not Authorized. Nothing in this Ordinance authorizes the non-payment of rent owed by a tenant to a landlord.

Section 4. Severability. Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

Section 5. Emergency. The Council finds that this action is necessary to avoid mass evictions for non-payment of rent directly attributed to the impacts of the COVID-19 pandemic, promote housing stability, and protect the health and safety of community members the City of Tualatin. This Ordinance is necessary for the immediate protection of the public peace, health, safety, and welfare and take effect on October 1, 2021.

ADOPTED by the City Council this 27th day of September, 2021.

CITY OF TUALATIN, OREGON

BY Frank Bubenik
Mayor

APPROVED AS TO FORM

BY Sean Brady
City Attorney

ATTEST:

BY Don Hudson
City Recorder

Signature: 
Email: fbubenik@tualatin.gov

Signature: 
Email: dhudson@tualatin.gov

Signature: 
Email: sbrady@tualatin.gov












Ord 1461-21

Final Audit Report

2021-09-28

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| Created: | 2021-09-28 |
| By: | Nicole Morris (nmorris@tualatin.gov) |
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| Transaction ID: | CBJCHBCAABAAaLekqHEyqICnFN6EHBnc2Jplcqs0B_B |

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Attachment A
to
Staff Report for Ordinance No. 1461-21

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

Enrolled
Senate Bill 278

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 Senate Interim Committee on Human Services)

CHAPTER

AN ACT

Relating to residential tenancies; creating new provisions; amending section 2, chapter 3, Oregon Laws 2020 (third special session); and declaring an emergency.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 90.

SECTION 2. (1) As used in this section:

(a) "Documentation" includes electronic mail, a screenshot or other written or electronic documentation from a rent assistance provider verifying the submission of an application for rental assistance.

(b) "Nonpayment" means the nonpayment of a payment that is due to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.

(2)(a) If a tenant provides the landlord with documentation that the tenant has applied for rental assistance, a landlord may not:

(A) Deliver a termination notice for nonpayment; or

(B) Initiate or continue an action for possession based on a termination notice for nonpayment.

(b) A tenant may provide documentation by any method reasonably calculated to achieve receipt by the landlord, including by sending a copy or photograph of the documentation by electronic mail or text message.

(c) If 60 days have passed since the tenant provided documentation under this subsection:

(A) A landlord may deliver to the tenant a new termination notice for nonpayment, to which this section does not apply, without providing the notice under subsection (4) of this section; or

(B) If a claim for possession was postponed under subsection (5)(b) of this section, the court shall promptly set the matter for trial.

(3) Except as provided in subsection (2)(c)(A) of this section, a landlord shall deliver the notice described in subsection (4) of this section along with:

(a) Any notice of termination for nonpayment; and

(b) Any summons for a complaint seeking possession based on nonpayment given by the landlord or service processor, including a summons delivered under ORS 105.135 (3)(b).

(4) The notice required under subsection (3) of this section must be in substantially the following form:

THIS IS AN IMPORTANT NOTICE ABOUT YOUR RIGHTS TO PROTECTION AGAINST EVICTION FOR NONPAYMENT.

For information in Spanish, Korean, Russian, Vietnamese or Chinese, go to the Judicial Department website at www.courts.oregon.gov.

Until February 28, 2022, if you give your landlord documentation that you have applied for rental assistance at or before your first appearance in court, you may be temporarily protected from eviction for nonpayment. Documentation may be made by any reasonable method, including by sending a copy or photograph of the documentation by electronic mail or text message. "Documentation" includes electronic mail, a screenshot or other written or electronic documentation verifying the submission of an application for rental assistance.

To apply for rental assistance, go to www.oregonrentalassistance.org, dial 211 or go to www.211info.org. To find free legal assistance for low-income Oregonians, go to www.oregonlawhelp.org.

(5)(a) A court shall enter a judgment dismissing a complaint for possession that is based on a termination notice for nonpayment if the court determines that:

(A) The landlord failed to attach the notice as required under subsection (3) of this section.

(B) The tenant's nonpayment was substantially caused by the landlord's failure to reasonably participate with a rental assistance program. This subparagraph does not require that a landlord apply for compensation under section 2, chapter 3, Oregon Laws 2020 (third special session).

(C) The landlord receives rental assistance covering the rent owed under the notice.

(D) The tenant provided the landlord with documentation of application for rental assistance as described in subsection (2) of this section before the claim was filed.

(b) If the tenant provides the landlord or court with documentation of application for rental assistance as described in subsection (2) of this section at any time after the landlord commenced the action for possession and at or before the first appearance, at the first appearance the court shall, on its own motion, postpone the first appearance to a date not earlier than 60 days after the documentation was delivered.

(6) If a landlord violates this section:

(a) A tenant may obtain injunctive relief to recover possession or address any other violation;

(b) The tenant has a defense to an action for possession by the landlord.

(7) Notwithstanding ORS 105.137 (4), if a claim for possession is dismissed under this section, the tenant is not entitled to prevailing party fees, costs or attorney fees if the landlord:

(a) Delivered to the tenant all notices required under subsection (3) of this section as required;

(b) Did not know, and did not have reasonable cause to know, at the time of commencing the action that the tenant had provided documentation of application for rental assistance under subsection (2) of this section; and

(c) Promptly dismissed the action upon becoming aware of the documentation of application for rental assistance.

SECTION 3. Section 2 of this 2021 Act applies only to a notice of termination for non-payment given on or after July 1, 2021.

SECTION 4. Section 5 of this 2021 Act is added to and made a part of ORS 105.105 to 105.168.

SECTION 5. The clerk shall include the notice described in section 2 (4) of this 2021 Act with the summons and complaint mailed to a defendant under ORS 105.135 (3)(a).

SECTION 6. (1)(a) The Judicial Department shall translate the notice form under section 2 (4) of this 2021 Act into the Spanish, Korean, Russian, Vietnamese and Chinese languages and shall display links to the English and translated forms prominently on the main webpage at www.courts.oregon.gov.

(b) Each form on the Judicial Department website must include a statement in English, Spanish, Korean, Russian, Vietnamese and Chinese indicating that the form and translations can be found on the Judicial Department website and the web address where the forms may be found.

(2) The department shall prepare a summary of sections 2 and 3 of this 2021 Act, deliver a copy of the summary to each circuit court in this state for posting at the clerk's counter and publish the summary on the department's website.

SECTION 7. In distributing rental assistance to residential tenants funded by federal, state or local moneys, the Housing and Community Services Department, other public bodies and local governments, along with their subgrantees, shall promptly provide a dated application receipt to each tenant who applies for assistance. The receipt may be in an electronic format.

SECTION 8. Sections 2, 5, 6 and 7 of this 2021 Act are repealed on March 1, 2022.

SECTION 9. The Housing and Community Services Department shall provide a grant to a third party to make distributions to compensate landlords who, under section 2 of this 2021 Act, have delayed termination notices or eviction proceedings. A landlord may apply for compensation for nonpayment that accrued during the delay if the landlord demonstrates that:

(1) The tenant's application for rental assistance was denied; or

(2) Sixty days have passed since the tenant provided documentation of application for rental assistance without the landlord receiving rental assistance.

SECTION 10. Section 9 of this 2021 Act is repealed on March 1, 2023.

SECTION 11. Sections 2, 5, 6, 7 and 9 of this 2021 Act become operative on July 1, 2021.

SECTION 12. Section 2, chapter 3, Oregon Laws 2020 (third special session), is amended to read:

Sec. 2. (1) The Housing and Community Services Department shall make distributions to compensate residential landlords for [80] **100** percent of the past-due rent of qualified tenants that the landlord has not collected after April 1, 2020, **and on or before the earlier of June 30, 2021, or the date of the application**, if the landlord or the landlord's designee:

(a) Submits an application to the department for all of the landlord's tenants who have not paid rent and have delivered to the landlord a signed declaration under section 7 (1)(b) [*of this 2020 third special session Act*], **chapter 3, Oregon Laws 2020 (third special session), as in effect on June 30, 2021;**

(b) Includes in the application a copy of the tenants' declarations;

(c) Provides the department with a description of the unpaid rent for all current tenants;

[(d) *Agrees to forgive the remaining 20 percent of the unpaid rent due from qualified tenants that has accrued between April 1, 2020, and the date of the application, upon receiving a distribution under this subsection;*]

[(e)] **(d)** *Agrees to repay to the department any amount [that was forgiven by the landlord or] that was paid to the landlord under this section and the landlord later receives from the qualified tenant or on the tenant's behalf, within the period requested by the department;*

[(f)] **(e)** *Is not a member of the tenant's immediate family, as defined in ORS 90.427;*

[(g)] (f) During the pendency of the distribution application, agrees to not give a termination notice without cause or for nonpayment, as those terms are defined in section 3, chapter 13, Oregon Laws 2020 (first special session); and

[(h)] (g) Provides any other information or materials required by the department.

(2)(a) The department shall develop an online application for landlords to apply for distributions under this section.

(b) The application must be made available in languages other than English.

(c) The application period must be open more than once to allow for greater outreach and participation.

(3) The department may establish any qualifications, priorities, restrictions or limits on the distributions made under this section, to prioritize landlords with fewer units and landlords with a higher percentage of unpaid rents. Restrictions or limits may include:

(a) Limits per tenant, per landlord or per time period;

(b) The number of units a landlord must own; or

(c) The percentage or amount of total rent unpaid.

(4) The department may coordinate with local housing authorities to administer this section, including through making distributions to landlords.

(5) The department or local housing authority shall mail to tenants copies of a notice of distribution to their landlords [*and the amount of rent forgiveness agreed to by their landlords*].

(6) The department may conduct outreach to landlords and tenants, including outreach to non-English speakers.

(7) Notwithstanding ORS 276A.300, 279A.025, 279A.050 (6)(g), 279A.205 and 456.571, the department shall expedite the implementation of the landlord compensation fund.

(8) As used in this section, "landlord" includes a manufactured dwelling park nonprofit cooperative as defined in ORS 62.803.

SECTION 13. (1) The amendments to section 2, chapter 3, Oregon Laws 2020 (third special session), by section 12 of this 2021 Act apply to all applications submitted or approved before, on or after the effective date of this 2021 Act.

(2) The Housing and Community Services Department shall make distributions to adjust the compensation under section 2 (1), chapter 3, Oregon Laws 2020 (third special session), for landlords whose applications were approved before the effective date of this 2021 Act without requiring that the landlord submit an additional application.

SECTION 14. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate March 24, 2021

Repassed by Senate June 22, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 17, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State