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portland's new regulations on multi-family landlords

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Portland's landlord tenant laws have drastically transformed over the past few years. The city has focused in on rental properties and pushed through many new regulations and requirements that carry heavy penalties for landlords. The intentions behind the new rules are well meant but not fully thought out and applied. These new rules and regulations are increasing costs and risks for local owners who are invested in rental units within the city. Many longtime local property owners, landlords, and property management companies are concerned that the city has been too aggressive and that these new rules and regulations will end up hurting local owners, while unintentionally forcing them to sell their properties to large national investors.

Let us begin by focusing on the recent Portland FAIR ordinance in housing. FAIR stands for Fair Access In Renting. The stated goal of the ordinance is to remove criteria of the rental process that can be used as a basis to discriminate on race or class with a goal to create a fair process(Eudaly). Unfortunately, this new ordinance has created much confusion along with many hurdles and barriers with high consequences for rental property owners and operators.

SCREENING AND APPLICATION

The new rules and regulations begin with the application process. The application process is now on a "first come, first serve" policy. It is now illegal to get a batch of applications, run credit checks, employment checks, background checks and then choose who will be a good fit for your property. You must offer the first applicant that meets all of the predetermined criteria the unit for rent. As a landlord or property manager you must log and time stamp every application you receive to protect yourself and prove that you have complied with the new rules (Templeton). In addition to the "first come, first serve" policy, if you are advertising your rental property, you must give a 72-hour notice stating when you will begin to accept applications. If an application is accepted early, that applicant is subject to an 8-hour penalty. Therefore, their application will technically be received 8 hours after your starting time. (Bluestone & Hockley).

Additionally, there are other qualifying rules that have changed. The city has offered a set rules of criteria for screening applicants called the low barrier screening criteria. Landlords have a choice when screening applicants to either use the city's designated "low barrier screening criteria" or their own criteria (Templeton). If a landlord chooses to use their own criteria, they must document all reasons why an applicant was disqualified in writing (Bluestone & Hockley). Obviously, the reasons for disqualification cannot be for any reasons that could be seen as discriminatory. The challenge will be explaining in writing, why a tenant was disqualified, without making any errors that could be seen as discriminatory or put a landlord in position to get sued.

The low barrier criteria is meant to be "black and white" in terms of who is allowed to qualify for a rental unit, with the goal of offering more access to housing. An applicant is not allowed to be denied for any misdemeanors over 3 years old or felonies over 7 years old. This is an ethical dilemma as I believe most people want to be fair and help others, but it would be a hard pill to swallow, knowing you have to accept an applicant who is a known felon, a felon that could be a murder or rapist. It seems the city would be better off spending time creating housing partner programs with property owners to house recovering criminals.

Another screening rule forbids rejection of an application due to a court ordered eviction less then 3 years old (PCC 30.01.086). This rule is also very worrisome as it is directly related to the transaction at hand. You have a potential tenant that could have possibly been through a court order eviction only 3 plus years ago and you now have to offer them a place to live because they turned in an application first. A credit score below 500 cannot be a cause for application denial. Other regulations include limiting application fees, applicants do not need to provide social security number or have valid government issued identification.

All tenants do not have to undergo an application process, applicants can choose an adult to be the applicant (PCC 30.01.086).

When a tenant has been selected and is moving in, the landlord must create a detailed itemized list of appliances or assets in the unit and document the age and depreciation of the appliances and assets. Tenant will have to approve this list and only will be held liable for remaining value of appliance. (Garcia)

The new requirements for renting properties essentially takes control out of the hands of owners and property managers. It flips the application process of reducing risk into a high-risk scenario with increased unknown variables. It leaves a lot of room for a landlord to misstep and be held liable for a significant amount of money. In addition to the risk of not feeling comfortable or safe with a prospective tenant, there are increased financial penalties for any mistake or infraction made during this new complicated process. Violations during the screening process carry a penalty of $250 per infraction (Bluestone & Hockley).

Failure to include all required items in your ad. Items include date applications can be processed, criteria, whether this is an ADU or not, screening fee.	**$250**
Failure to process application in the correct order	**$250**
Not including the proper forms and sections with or on your applications	**$250**
Credit screening a Non-Applicant and using that against them in the screening process	**$250**
Charging more than the allowable screening fee	**$250**
Improperly deny an otherwise qualified applicant	**$250**
Not conducting the proper individual assessments before denying an applicant	**$250**
Failure to follow the appeals policy	**$250**
Charging more than the allowable security deposit	**2x the deposit**
Not including the proper information in the Rental Agreement. Information includes: Depreciation schedule, banking institutions name and address, condition report	**2x the deposit**
Not providing a rental history form upon termination notice	**2x the deposit**
Charging a tenant for items not listed on the depreciation schedule or improperly charging an amount based on incorrect schedule, update condition reports, charging for routine maintenance or normal wear and tear	**2x the deposit**
Not sending out the move out settlement and/or deposit refund within 30/31 days	**2x the deposit**
Not including the security deposit notice of rights with the move out settlement	**2x the deposit**

Bluestone & Hockley, 2020

TERMINATION AND SECURITY DEPOSITS

The FAIR Ordinance also creates many new process and steps when it comes to termination of a lease. In a normal lease termination, a tenant gives notice and the landlord or property manager must respond with in 5 days with a completed rental history form that is provided by Portland Housing Bureau. This rental history form details the last two years of rent history payments. After tenant moves out the landlord must perform a walk-through of the property within 7 days of move out. The former tenant or a representative of the tenant (ie, any individual of the tenant's choice), have the right to be present. An itemized and documented list must be completed and given to the tenant for any repairs over $200 (PORTLAND HOUSING BUREAU).

Security deposits also have many new regulations on handling and limits of deposits. Landlords must present in writing to the tenant with a bank name and address of where the security deposit is being held, this bank account must be separate from the landlord's personal bank account and tenants must be given any earned interest on the deposit. Tenants are limited to how much the deposit can be. A deposit will be limited to 1.5 times the monthly rent and tenants will have 3 months to make payments towards the deposit (Portland Housing Bureau). As with screening, the penalties are very heavy. For any violation, landlord can be liable for up to 2 times the security deposit plus legal fees. For example, if you are renting out a unit for $2,000 a month, with a month and half deposit of $3,000, You could be liable for a $6,000 penalty, even for making a simple clerical or administrative mistake, which Increases the risk for a landlord or property owner. (Bluestone & Hockley, 2020)

The mandatory fees for relocation assistance are:

Studio/SRO	**$2,900**
1 Bedroom	**$3,300**
2 Bedroom	**$4,200**
3 Bedroom	**$4,500**

Portland Housing Bureau

MANDATORY RENTER RELOCATION ASSISTANCE

Another large piece to this Portland landlord-tenant law puzzle is the new 'Mandatory Relocation Assistance'. Tenants are now lawfully entitled to relocation assistance, "If they have to move to no fault of their own, their rent is increasing significantly, or if there is a substantial change to the lease terms."(Portland Housing Bureau).

These mandatory fees must be paid to tenant within 31 days of receiving written notice from tenant (Portland Housing Bureau). The main requirements to receive relocation assistance are that the tenant resides in Portland city limits, the tenant does not live with landlord, the tenancy is not week-to-week, and it does not apply to for-cause terminations. There are about 12 exemptions from the mandatory rental relocation assistance. Some of the exemptions include a landlord living on site, a landlord temporarily rent out a primary residence due to active military duty or if less then 3 years, the property is certified affordable housing, or if the property is deemed uninhabitable not due to landlord action or inaction (Callahan).

This new relocation law is extremely challenging for local property owners. The amount of cash reserves owners will have to carry now will be much larger due to the potential -relocation assistance. Again, this is one more regulation that increases risk, liability, and potential administration challenges for smaller local owners.

RENTAL REGISTRATION

Portland City Code 7.02.890 now requires all residential rental owners to register their rental units with the city of Portland. This comes with an annual $60 fee. The city is attempting to create a current inventory of the rental units within city limits and are requiring property owners to pay for administration of this new program.

The rental registration is well intended but it causes two problems. One, while a relatively small fee per unit per year, it creates yet another obstacle for owners of rental properties. Second, the rental registration will be passed down to all tenants through increased rent. The more fees and costs will force rents to continue to creep up. Property owners have to be able to increase revenue to absorb these increased expenses while also paying for operating expenses and making sure they are meeting the minimum requirements of their mortgage debt.

CONCLUSION

Portland should reevaluate their policies in order for Portland to continue to thrive on the foundations that have built this city. A creative solution for Portland would be to focus on incentivizing multi-family property owners, local landlords, and developers to build more units, as well as incentivizing the updating of the current rental supply. Such a program could include incentivizing local landlords to invest in the community with affordability and diversity bonuses. Offering reduced SDC fees, FAR bonuses, and higher unit densities will help increase the supply of units in the city, reduce rents, and can help move Portland more to be a more equitable city.

While it is completely understood that these new regulations are meant to help protect renters from potential discrimination, my conclusion is that the added obstacles and costs of all these new regulations will actually end up driving up rents and chasing out local developers. The increase of rent and challenges in the city are additionally going to further drive development to the neighboring cities where one can build with less barriers. A recent report from the Portland Business Journal shows that the majority of the fastest appreciating neighborhoods of Q1 2020 are located outside of Portland city limits (Giegerich). The move of population and development activity away from the city of Portland will hurt Portland's tax revenue and have a downward domino effect on public services.

Another possible consequence of these restrictive and cost prohibitive policies is that local landlords might choose to sell their investments rather than increase their exposure to lawsuits. In turn this could open the doors for deep pocketed institutional investors to buy up assets in Portland. Larger national investors will be able to absorb these added costs while spreading the risk out over many properties and potentially raising rents. This will cause a loss to community-based landlords and a human connection for renters in Portland and turn housing into a sterile transactional relationship. Portland's slogan is "the city that works", yet Portland's new housing regulations are not working for local owners and operators.

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