

Top Ten Legal Mistakes That Can Sink Your Landlord Business

by Attorney Janet Portman

Know the laws in your state before you rent out space.

Being a successful landlord requires lots of practical know-how, business moxie, and familiarity with the market. Until about 30 years ago, the law didn't have much to do with it. Now, however, federal law and most states closely regulate nearly every aspect of your business. Not knowing the rules can land you in lots of legal hot water.

1. Using Generic or Outdated Lease Forms

Most landlords know it's important to have a written lease or rental agreement. But using the wrong form can get you into trouble. So-called "standard" forms that are sold everywhere probably aren't compliant with the laws in your state. If you use a stationery store lease that short-cuts tenants' rights, you could find yourself at the losing end of a lawsuit because of an unenforceable lease clause. On the other hand, some standard forms actually impose greater obligations and restrictions on you than your state's law does! (My favorite requires landlords to return security deposits within ten days, which no state requires.)

2. Asking the Wrong Questions During Applicant Screening

Thorough tenant screening is the most important part of your business -- if you choose poorly, you're in for nothing but headaches, with tenants who don't pay the rent, trash your place, or worse. But there are limits to what you can ask. Many landlords don't realize that even well-meaning questions (such as asking a disabled person about his disability or asking if a couple is married) can be illegal forms of discrimination. If the applicant doesn't get the rental, even though your rejection had nothing to do with the offending question, that disappointed tenant has ammunition for a fair housing complaint (which fair housing watch-dog groups are eager to pursue).

3. Setting Policies that Discriminate Against Families

Although it's been illegal to discriminate against families for over 20 years, many owners' practices are far from family-friendly -- and are downright illegal. Excluding families because you feel children cause more wear and tear and you prefer a "mature, quiet" environment is illegal. And while you're permitted to limit the number of residents in a unit (in most situations, two occupants per bedroom), you may not apply that standard differently when dealing with families. The cost of this mistake can be another trip to your lawyer's office, to deal with a fair housing complaint.

4. Making Promises That You Don't Deliver On

It's fine to be enthusiastic about the benefits of your property, and it's necessary to do so in competitive markets, but understand that your enthusiastic promises will become binding if applicants rely on them when deciding to rent. For example, you may have to deliver the goods if you assure an applicant of a parking space, satellite service, or a new paint job. A tenant who feels ripped off may legally break the lease or sue you for the difference in value between what he was promised and what you delivered. Whether the tenant will win is hardly the point -- you'll have to respond, which will cost time and money.

5. Charging Excessive Late Fees

Late fees can be a powerful tool to motivate tenants to pay the rent on time. And while a higher fee can be a better motivator, some landlords cross the line, by setting fees that bear little resemblance to the actual damages they suffer when tenants pay late. Courts are increasingly invalidating excessive late fees that can't be justified with hard evidence. You're better off setting a modest fee that reflects your true damages, and dealing with chronic late-payers with pay-or-quit notices.

6. Violating Tenants' Rights to Privacy

Most states have detailed rules on when, for what reasons, and with how much notice you may enter a tenant's home. Yet many landlords stop by unannounced, asking to check things over, perform an on-the-spot repair, or show the place to prospective tenants. Repeated violations of a tenant's privacy (or even one outrageous violation) can excuse a tenant from any further obligations under the lease and may also result in court-ordered money damages against the landlord.

7. Using Security Deposits for the Wrong Projects

The most frequent types of cases heard in small claims court are arguments over security deposit retentions. Yet the basic rule -- that deposits should be used only to cover damage beyond wear and tear, needed cleaning, and unpaid rent -- isn't hard to understand. Still, landlords routinely use the deposit to cover appliance upgrades, cosmetic improvements and other refurbishing, not repairs. Not surprisingly, many of these landlords lose these cases in small claims court.

8. Ignoring Dangerous Conditions In and Around the Rental

Landlords in virtually every state are required to offer and maintain housing that meets basic health and safety standards, such as those set by state and local building codes, health ordinances, and landlord-tenant laws. If you fail to take care of important repairs, deal with environmental hazards, or respond when your property has become an easy mark for criminals, tenants may break the lease and, in many states, withhold the rent or make the repair themselves and deduct the expense from the rent.

Landlords who have failed to make their properties reasonably secure in the face of repeated on-site crime are often ordered to compensate the tenant-victim when yet another criminal intrudes. These are expensive ways to learn the law.

9. Keeping Security Deposits When Tenants Break a Lease

When tenants break a lease and leave early, landlords often keep the entire deposit, reasoning that the tenant's bad behavior justifies doing so, and that they'll ultimately need it anyway to cover rent. In many states, this is illegal -- you must take reasonably prompt steps to re-rent, and credit any new rent toward the tenant's obligation for the rest of the lease. Keeping a two months' rent deposit and re-renting within a month is not legal.

10. Failing to Return Security Deposits According to Law

This list wouldn't be complete without another reference to security deposits. Not only are they used improperly, they're often not returned according to state law, either. Many states have deadlines by which landlords must itemize their use of the deposit and return any balance. It's not uncommon for tenants to wait many weeks or months for this accounting. In some states, the deliberate or "bad faith" retention of the deposit will result in harsh penalties against the landlord, such as an order that the landlord pay two or three times the deposit to the tenant.

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