

## **Best Practices for Landlords – Part II**

by Vena Jones-Cox

### **Best Practices: Management**

Management includes all relations with a tenant that occur after move-in. Rent collection, maintenance calls, eviction, rent raises, even collections fall under the definition of management. There is no “one best way” to manage rental properties, and some of the particulars of management policy fall under the rule of state and local law. However, it can still be said that, in general, the goals of best management practices are: **To maintain an appropriate level of customer service and communication, so as to provide a positive living experience for renters.** An “appropriate level” is one that fulfills the reasonable responsibilities of the rental property owner, while maintaining an expectation that the renter will also fulfill his reasonable obligations.

- **To maintain the highest overall profitability** possible by controlling or removing problem renters while satisfying the needs of—and therefore keeping—responsible renters who pay their rent on time and in full and who do their part to maintain the property in a reasonable condition.
- **To assure that any problem tenants do not become problems to the neighborhood** by controlling their behavior to the extent possible, and by having mechanisms in place by which they can and will be evicted from the premises if they become a chronic problem
- **To reduce or eliminate potential liability** by fulfilling the law’s expectations regarding fair housing, lead disclosure, legal notices, etc.
- **To create a positive experience for the rental property owner** by training tenants as to his rights and responsibilities

These practices are important not only in predicting a good experience for the current landlord, but for future landlords as well. One of the reasons that tenants have a reputation as being irresponsible, destructive, and uncaring is that they have been allowed to act in this way with few repercussions. Since most rental property owners have 1) poor screening practices and 2) poor management practices, an entire generation of tenants has evolved believing that, while non-payment of rent and destruction of property might result in eventual eviction, they will be able to secure another home quickly and with little effort. No other business allows its customers to damage its product, use it without payment, and then continue on to a competitor’s business with no repercussions whatsoever. Ours should not, either.

### **1. Good management begins with good policies and procedures.**

Policies and procedures are the set of rules under which you wish to operate. These should be: in writing, fair to both the property owner and the tenant, in alignment with local, state, and federal laws, apply to all residents equally, and, most importantly, be followed rigorously. The purpose of the policies and procedures is not to set random rules for the renters and/or the business, but to create a framework under which the rental business can operate most efficiently, legally, and profitably, while setting expectations of the tenants as to their behavior. At a minimum, your policies and procedures should address:

**Maintenance** - i.e. that maintenance requests must be made in writing (which avoids the “he said-she said” debate if the tenant later claims that a request was ignored); response time (for instance, all emergency health/safety issues such as water leaks, lack of heat, electrical problems, pest intrusion etc will be repaired within X hours; non-emergency issues within X days); the way in which residents will be charged for damage they caused (added to next month’s rent, payment plan set up etc); how tenants will acknowledge that maintenance issues have been resolved (in writing); how the property owner will notify the tenant that a maintenance request will NOT be honored (in writing); when and how periodic inspections by the property owner will take place (quarterly? Yearly? With 24 hour’s notice, 48 hours’ notice etc as required by state law); who tenant should call for emergency maintenance if owner cannot be reached; etc.

**Late Rents** - i.e. when rent is due; what the grace period is (minimum grace periods are set by state law); amount of any late fee; when first notice of eviction will be delivered; when eviction or forcible detainer suit will be filed (generally after a period set by state law); whether partial rents will be accepted before or after notice is filed; whether rent paid after notice is filed must include court fees; etc.

**Complaints by other tenants/neighbors/authorities** etc – how tenant will be notified; how long tenant will be given to correct the problem etc.

**Pet policy** – what kinds of pets, if any, will be allowed, and at what additional cost; what happens if tenant is found to have a pet that does not meet the requirements of the pet policy; whether the tenant will be required to carry insurance against the acts of the animal. Note: “Helper animals” for people with legitimate medical needs (as testified to by a medical professional) cannot be denied occupancy whatever the nature of the animal or the disability of its owner.

**Illegal activities in or on the property engaged in by the tenant, his children, guests, or associates**—addressing drug use or trafficking, illegal use of the property (such as for a commercial venture in a residential area), and any other crimes, the policies citing whether the tenant will be notified of the activity; how long (if any time is allowed at all) he will have to correct the problem; whether authorities such as police, zoning officials, the health department etc will be contacted, and when; and how these records will be kept by the owner (in writing, and for how long).

**Occupancy standards**—addressing the total number of people who can occupy a unit of a particular size. Minimum occupancy standards are generally set by fair housing law and HUD (2 people per bedroom + 1 person); maximums are often set by local zoning authorities. In between these limits, you are permitted to set standards that avoid overcrowding or over use of your unit as long as they apply equally whether the people are children or adults and apply equally to all applicants.

**2. A good lease is required to enforce the policies and procedures above.** A good lease is one that is in writing, clear, enforceable in the sense that it complies with the law,

and which covers all agreements between the owner and the resident. It is also important that the lease be understandable—in fact, some states are now requiring “plain language” leases that can be easily understood by any minimally literate person.

Any “agreement” that you have with a tenant must be included in the lease, or it will not be possible to enforce the agreement. For instance, it is common for rental property owners to offer rent discounts for early payment, then document the LOWER rent in the lease instead of the actual rent and the rent discount. Whatever your agreement with the resident, the lower rent becomes, legally, the rent owed. If you attempt to evict the tenant for non-payment of the higher rent, you will lose the case. Surprisingly, it is also difficult or impossible to enforce commonsense rules if they are not in the lease; for instance, a tenant who runs a business raising dangerous dogs on the property cannot be evicted for a lease violation if the lease does not state that 1) no businesses can be operated on the property or 2) no dogs—or only the ones they moved in with—can be housed on the premises.

In general, “boiler plate” leases that can be purchased from stationary stores or forms books are not adequate to fully document your agreements with the tenant.

**A good lease and good policies and procedures are not a replacement for a clear understanding between the owner and tenant as to the rights and responsibilities of each.** Instead, clear, continuous communication of these rights and responsibilities is the best practice.

One practice that furthers this goal is to have a formal lease-signing meeting where the lease is read line-by-line with the tenant asking questions and initialing that he understands each clause are recommended. In addition, constant, written communication reinforcing the terms of the clause are helpful in restating and confirming your commitment to enforcing the rules.

Another is to provide the renter with a plain-language document outlining these rules at or prior to the lease signing. A third is to provide the tenant with a monthly “newsletter” or similar document reinforcing one or more parts of the agreement.

But the most important is to document all communications with the tenant in writing and to copy the tenant on each. For instance, if a tenant calls with a maintenance request and is told that, in accordance with the lease agreement, their request must be made in writing, a follow up letter recapping the conversation and including the relevant portions of the lease or other documentation addressing the issue should be sent to the tenant immediately.

### **Rent Collection**

1. On-time rent collection should be a primary goal of every rental business. Tenants who are repeatedly allowed to pay rents late create a number of problems. When allowed to become more than a few weeks delinquent, they quickly find themselves in a situation where they are simply unable to get current due to the nature of their income streams. Furthermore, a tenant who is permitted to pay late on a consistent basis has a legal

argument that, despite the conditions of the lease, a new agreement has been created by the property owner's inaction in enforcing it. And finally, for owners with underlying mortgages, late payment by the tenant can result in late payment of the mortgage, or in the owner repeatedly coming "out of pocket" to make the payments on time.

One key to creating on-time rent payment is having a significant (but not overly burdensome) and consistently enforced late fee tied to late payment. Another is rapid notification to the tenant of non-receipt of the rent and the consequences that will follow. State law governs the process by which a rental property owner must notify tenants of impending eviction actions, and in some cases also governs "grace periods" and acceptable late fees.

2. Non-paying tenants should be started along the road to eviction as soon as is legally possible. This serves three important purposes: first, it underlines the owner's commitment to on-time rent collection; second, it gives the tenant a push to make his rent current before he becomes more than a month late and cannot catch up; and third, it assures that an eviction is in process as early as possible so that tenants who cannot or will not eventually pay will be removed from the premises in as short a time as is allowed by State law, and that the property can be reintroduced to the market with a minimal loss of cash flow.

3. In most states, eviction and collection are separate court actions. Many rental property owners do not pursue judgments against tenants for damages or lost rents, because it requires additional time and expense and because the chances of actually collecting seem remote. This is a mistake on several levels. First, although the chances of collecting on a judgment may be remote, the chances of collecting from an ex-tenant against whom the property owner has no judgment are non-existent. And second, a certified judgment against a tenant appears on his credit report, and warns future housing providers that the tenant in question could be problematic.

### **Maintenance**

The number one complaint that renters express about housing providers is that they do not respond to maintenance requests. This is counter to best practices for rental housing providers for several reasons—first, it does not create the proper atmosphere of customer service. Second, it creates potential liability if the unrepaired item causes a health or safety issue for the residents. Third, deferred maintenance leads to a property that does not meet or exceed community standards. Fourth, deferred maintenance complaints by tenants to officials can lead to involvement by code enforcement, health departments and even fire departments, adding additional cost and hassle to the process of resolving the problem.

And finally, unfulfilled maintenance request are, in many states, the ONLY defense for non-payment of rent—in other words, a tenant may escrow his rent with the court (and in many cases be awarded all or part of it back) if the housing provider does not maintain the property in safe and habitable condition. Therefore, it is crucial that every rental property owner have and follow good policies and procedures regarding maintenance and

repairs to his properties. These include:

**1. A process by which maintenance requests are made.** For the sake of proper record keeping, maintenance requests should be made by the tenant in writing and faxed, emailed, mailed, or delivered to the owner. This avoids any dispute as to what maintenance was requested and when, and allows the owner to understand the nature of the requested maintenance as he plans for the appropriate service provider to repair it. Providing tenants with a form or checklist by which they can report these problems provides consistency to the process by collecting all the information the owner needs to deal with the problem in a single report.

**2. A policy for “emergency” requests.** Items that affect the health or safety of the residents, such as water leakage, electrical, plumbing, or sewer problems, heating issues, mold, and any other issues that could be or become an actual danger to the tenants, should be responded to in a matter of hours, not days or weeks. Tenants should be given a mechanism to report these problems immediately, even if the owner is not available. An emergency contact number for when the owner is out of town or otherwise unavailable, and a mechanism by which the emergency contact is empowered to take care of the issue, is crucial

**3. A policy for non-emergency requests.** Items not affecting the health or safety of the tenants fall into two categories: reasonable and unreasonable. A request by a tenant for the repair of a broken window is reasonable; a request by a tenant for a finished basement is probably not. Valid requests should be dealt with according to a policy that repairs them in a reasonable period of time; non-valid requests should be rejected in writing with an explanation as to why the repair will not be made.

**4. A policy for tenant-caused damages.** In some cases, tenants will report damage that goes beyond ordinary wear and tear and was actually caused by the tenant’s own actions or neglect. The law does not allow a housing provider to refuse to make repairs to tenant-caused damage; however, it does allow owners to charge tenants for such damage—although not as a condition of making the repair. Many housing providers deal with these problems by “deducting the amount from the security deposit”. This is a mistake, as it reduces a deposit meant to cover damages and lost rents that are present at or discovered upon tenant move-out. The best practice is to charge the tenant for the cost of the repairs with the next month’s rent, and to work out a payment plan with the tenant if necessary. This should be a condition of the lease and conveyed to the tenant in no uncertain terms—and then enforced through an eviction for non-payment, if necessary.

**5. A policy for periodic inspections.** Many rental housing providers assume that a lack of maintenance requests by a tenant means all is well, and therefore enter their own properties only when such a request is made. It is more likely that a complete lack of maintenance requests over a period of months or years means that the tenant has created a number of problems or conditions that he does not want to be charged for. Therefore, it is absolutely crucial that rental property owners plan for and execute periodic inspections of their properties in order to identify any potential or existing problems, so that they can be

dealt with before they become a danger to the tenant or the property.

**6. Lead paint hazards.** Unfortunately, lead contamination is a fact of life for most rental property owners in most urban areas. Minimization of the hazards of lead paint must be a focus for housing providers, both because of the extreme, uninsurable liability that can be created by them and for the health and welfare of tenants and, more particularly, their children.

Minimization of lead hazards generally involves removal and replacement of old friction surfaces (door and their frames and windows and their frames), assuring that all interior and exterior paint is intact and remains so, making sure plumbing and roofing systems are functional (water leakage is one of the primary causes of disturbed paint) and using lead-safe maintenance practices when disturbing paint for the purposes of making repairs to occupied properties.

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