From:	Jeff Bennett
To:	Sen Gelser; Sen.AlanOlsen@state.or.us; Sen.MichaelDembrow@state.or.us; Sen Knopp; Sen MonnesAnderson; Rosenberg Corey; exhibits@oregonlegislature.gov
Subject:	HB 2004-A
Date:	Thursday, May 18, 2017 2:27:07 PM
Attachments:	Table Termination and Rent Increase Table.2017.v2.pdf

Hello, Senators

I understand that HB 2004-A is coming up for a committee hearing on May 31, 2017.

FOR CAUSE NOTICES… IN THE REAL WORLD

I urge each of you to read and understand how For Cause and Repeat Violation Notices really work, in order to see why the elimination of No Cause Notices is … crazy.

Let's say that you have a tenant who is smoking, making noise, selling drugs, housing guests, running an AirBnB operation, conduct commercial business in a residential property, manufacturing drugs, or committing any of a myriad of other bad acts that are difficult to prove. Now, let's assume that those same bad acts are driving all of the neighboring tenants crazy. If the landlord serves a For Cause Notice, the tenant will cure. (All of the foregoing acts are curable defaults.) if the tenant commits substantially the same bad act, within six months following the For Cause Notice, the landlord can serve a 10 Day Repeat Violation Notice. However, here's the catch….

In order to win an FED (eviction action) based upon the 10 Day Repeat Violation, the landlord must prove, by a preponderance of the evidence, (a) the first bad acts, (b) the second bad acts, (c) valid service of the first notice, (d) valid service of the second notice, and so on. Try to imagine carrying that burden of proof, when the tenant's smoking, noise making, drug selling, drug manufacturing (a) occurs within the tenant's premises, (b) hasn't been directly witnessed by the landlord (e.g., it occurred after hours), and (c) is denied by the offending tenants. Try to further imagine proving the misconduct, when neighboring tenants are scared of the offending tenant, have moved away due to the offending tenant's misconduct, etc.

It's extraordinarily difficult to build a solid eviction case, given the foregoing facts and challenges. In fact, its extraordinarily difficult to build a solid eviction case, given an unimaginably large number of other factual scenarios.

In short, For Cause and Repeat Violation Notices are no substitute for No Cause Notices.

YOU'VE ONLY LOOKED AT THE TIP OF THE ICEBERG

I noted that HB 2004-A attempts to make some exceptions to the prohibition on No Cause Notices and the requirement that leases be renewed. However, you've probably missed a large neighbor of potential exceptions that no one ever contemplated. Consider these questions: (a) What happens when a landlord dies and the estate is supposed to sell the property(ies)? (b) What happens if the landlord is sick, dying, or broke? (c) What happens if the landlord must sell, due to having to move out of state? (d) What happens if the termination is required by federal laws (e.g., tenant violations

of LIHTC certification laws, HOME laws, Section 8 laws…)? (e) What happens if the landlord wants to convert an apartment complex to no smoking (is that a change in terms and conditions)? (f) What happens if the landlord must move (and sell) due to military obligations? (g) What happens in eminent domain scenarios?

In short, the draft statute contemplates a small fraction of possible scenarios, most of which you're unlikely to have imagined or considered, due to the lack of adequate discussion, research and community outreach. If you assembled a room full of seasoned property managers, they'd likely present scores of other situations the proposed statute fails to address… because the bill's authors never thought of them.

DEFINITIONS

Please further note that "landlord" may not be correctly defined in the draft statute.

TIMING

Please further note that not every landlord watches legislative enactments on a daily basis. They may be at work, on vacation, ill, taking care of family, on military duty…. When Portland enacted its ordinance, on an emergency basis, it blindsided innumerable landlords. It's wholly absurd to expect landlords to discover the existence of new laws, and to comply with them instantaneously, when the legislature takes no action to notify all landlords of the enactments. In other words, landlords need time to hear of, adjust to, and comply with new laws.

LAWS IN MULTIPLE JURISDICTIONS

Take a look at the attached table, and imagine having to manage property in Portland, Milwaukie and Bend. It's absurd that a landlord must now look at a grid/table, in order to figure out which landlord/tenant laws apply to which locality.

DAMAGES

There is no discussion of how and when damages are to be paid. Are they conditions precedent to the filing of FEDs? Are they separate and distinct from FEDs?

THE WHOLE PREMISE IS MISTAKEN

The draft statute contains the following clause, which is derived from the existing statute prohibiting rent control: "Cities, counties and state agencies may impose temporary rent controls when a natural or man-made disaster that materially eliminates a significant portion of the rental housing supply occurs, but must remove the controls when the rental housing supply is restored to substantially normal levels."

The statute prohibiting rent control focuses upon disasters. (Think: Hurricane Katrina, the Vanport Floods, etc.) Portland artificially, and deceptively, combined the concept of a "rent crisis" (which may

or may not even exist) with "disasters." Since disasters are wholly different from crises, in the current context espoused by Portland rent control advocates, the proposed statute perpetuates the underlying problem with the current legal, political, and legislative discussions: it arguably fails to fully or sufficiently define disaster. If the definition of "disaster" is enhance, then Portland wouldn't argue opposite of its clear meaning.

OTHER POSSIBLE SOLUTIONS

One scenario that triggered a media blitz was one landlord's attempt to terminate multiple tenants' tenancies, during a school year, when those tenants had kids in school. From a legislative perspective, one possible fix would be to allow the use of No Cause Notices, but tie the timing into school years.

Even if you think the foregoing premises is overly narrow, or misses the point, it illuminates the fact that there are many possible legislative solutions that (a) are less Draconian, and (b) which you may not have considered.

SUMMARY

I could go on, for many pages. However, you've likely obtained the gist of your overwhelmingly obvious problem: You're trying to solve a problem that arguably doesn't exist, using methods that are counterproductive, and failing to recognize about 90% of the variables that exist. The proposed statute has enough holes in it through which trucks could be driven, enough ambiguities to trigger many years of litigation, and would inevitably cause landlords to be increasingly unable to effectively remove bad tenants from premises.

FINAL COMMENTS

Landlords are not in the business of removing tenants from premises, despite what tenants' advocates would lead you to believe. Claiming that landlords are in the business of removing tenants from premises is like saying that Walmart is in the business of leaving its shelves empty. It is the very existence of landlord and tenant relationships – in which there are landlords and in which tenants are present in the property – that should be the focus of the discussion. Landlords want tenants. Landlords don't want *bad* tenants. *Tenants don't want bad tenants living next to them*. No Cause Notices are used to remove bad tenants.

HB 2004 would increase the number of bad tenants, and trigger a ripple effect you've not yet fully imagined.

Respectfully Yours,

JB

Jeffrey S. Bennett
Attorney at Law

Warren Allen LLP
850 NE 122nd Avenue
Portland, OR 97230
P: (503) 255-8795
F: (503) 255-8836
E: Bennett@warrenallen.com
W: www.warrenallen.com