

B-Engrossed
Senate Bill 1069

Ordered by the House May 12
Including Senate Amendments dated April 7 and House Amendments
dated May 12

Sponsored by Senators JAMA, ANDERSON; Senators GIROD, KNOPP, MEEK, THATCHER, WOODS, Representatives DEXTER, HELFRICH, JAVADI, TRAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Allows residential landlord and tenant to agree to provide written notices by electronic mail and allow landlord to refund moneys by electronic means. **Requires mailed copy of termination notices provided by electronic mail.**

A BILL FOR AN ACT

1
2 Relating to residential tenancies; amending ORS 90.150, 90.155, 90.160, 90.300, 90.394, 90.412 and
3 90.414.

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

5 **SECTION 1.** ORS 90.155 is amended to read:

6 90.155. (1) Except as provided in ORS 90.300, 90.315, 90.425 and 90.675, where this chapter re-
7 quires written notice, service or delivery of that written notice shall be executed by one or more
8 of the following methods:

9 (a) Personal delivery to the landlord or tenant[;].

10 (b) First class mail to the landlord or tenant[; *or*].

11 (c) If **allowed under** a written rental agreement [*so provides*], both first class mail and attach-
12 ment to a designated location. In order for a written rental agreement to provide for mail and at-
13 tachment service of written notices from the landlord to the tenant, the agreement must also provide
14 for such service of written notices from the tenant to the landlord. Mail and attachment service of
15 written notices shall be executed as follows:

16 (A) For written notices from the landlord to the tenant, the first class mail notice copy shall
17 be addressed to the tenant at the premises and the second notice copy shall be attached in a secure
18 manner to the main entrance to that portion of the premises of which the tenant has possession; and

19 (B) For written notices from the tenant to the landlord, the first class mail notice copy shall be
20 addressed to the landlord at an address as designated in the written rental agreement and the sec-
21 ond notice copy shall be attached in a secure manner to the landlord's designated location, which
22 shall be described with particularity in the written rental agreement, reasonably located in relation
23 to the tenant and available at all hours.

24 **(d) Except as provided in subsection (5) of this section, electronic mail, for written no-**
25 **trices to the landlord or the tenant, only if allowed under a written addendum to the rental**
26 **agreement that:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (A) Specifies the electronic mail address from which the landlord agrees to send, and at
2 which the landlord agrees to receive, electronic mail;

3 (B) Specifies the electronic mail address from which the tenant agrees to send, and at
4 which the tenant agrees to receive, electronic mail;

5 (C) Is executed by both parties after the tenancy begins and the tenant has occupied the
6 premises;

7 (D) Allows the landlord or tenant to terminate the service of written notice by electronic
8 mail or to change their specified electronic mail address for receipt of written notice by
9 giving no less than three days' written notice; and

10 (E) Includes notice in substantially the following form:

11
12
13 **THIS IS AN IMPORTANT NOTICE**
14 **ABOUT YOUR RIGHTS REGARDING**
15 **RECEIPT OF WRITTEN NOTICES.**
16

17 **By signing this addendum, you agree to receive written notices from your landlord by**
18 **e-mail. This may include important legal notices, including rent increase and tenancy ter-**
19 **mination notices. Failure to read or respond to a written notice could result in you losing**
20 **your housing or being unaware of a change in rent. Signing this addendum is voluntary. Only**
21 **agree to service of written notices electronically if you check your e-mail regularly.**
22

23
24 (2) If a notice is served by mail **under subsection (1)(b) of this section**, the minimum period
25 for compliance or termination of tenancy, as appropriate, shall be extended by three days, and the
26 notice shall include the extension in the period provided.

27 (3) A landlord or tenant may utilize alternative methods of notifying the other so long as the
28 alternative method is in addition to one of the service methods described in subsection (1) of this
29 section.

30 (4) After 30 days' written notice, a landlord may unilaterally amend a rental agreement for a
31 manufactured dwelling or floating home that is subject to ORS 90.505 to 90.850 to provide for service
32 or delivery of written notices by mail and attachment service as provided by subsection (1)(c) of this
33 section.

34 **(5) A party to a rental agreement may use electronic mail to give a written notice ter-**
35 **minating the tenancy only if allowed under subsection (1)(d) of this section and the termi-**
36 **nation notice is sent by both first class mail and electronic mail.**

37 **SECTION 2.** ORS 90.150 is amended to read:

38 90.150. When this chapter requires actual notice, service or delivery of that notice shall be ex-
39 ecuted by one or more of the following methods:

40 (1) Verbal notice that is given personally to the landlord or tenant or left on the landlord's or
41 tenant's telephone answering device.

42 (2) Written notice that is personally delivered to the landlord or tenant, left at the landlord's
43 rental office, sent by facsimile to the landlord's residence or rental office or to the tenant's dwelling
44 unit, or attached in a secure manner to the main entrance of the landlord's residence or tenant's
45 dwelling unit.

1 (3) **Other** written notice *[that is delivered by first class mail to the landlord or tenant]* **under**
2 **ORS 90.155**. If the notice is mailed, the notice shall be considered served three days after the date
3 the notice was mailed.

4 (4) Any other method reasonably calculated to achieve actual receipt of notice, as agreed to and
5 described in a written rental agreement.

6 **SECTION 3.** ORS 90.160 is amended to read:

7 90.160. *[(1)]* Notwithstanding ORCP 10 *[and not including the seven-day and four-day waiting pe-*
8 *riods provided in ORS 90.394, where there are]:*

9 (1) **For** references in this chapter to periods *[and]* **or** notices based on a number of days, those
10 days *[shall]* **must** be calculated by consecutive calendar days, not including the initial day of ser-
11 vice, but including the last day until 11:59 p.m. *[Where there are]*

12 (2) **For** references in this chapter to periods or notices based on a number of hours, those hours
13 *[shall]* **must** be calculated in consecutive clock hours, beginning:

14 (a) Immediately upon service, **except as provided in paragraph (b) of this subsection; or[.]**

15 *[(2) Notwithstanding subsection (1) of this section, for nonpayment notices whose periods are based*
16 *on a number of hours under ORS 90.394 that are served pursuant to ORS 90.155 (1)(c), the time period*
17 *described in subsection (1) of this section begins at 11:59 p.m. the day the notice is both mailed and*
18 *attached to the premises.]*

19 (b) **For notices to terminate a tenancy, at 11:59 p.m. the day that:**

20 (A) **A notice given under ORS 90.155 (1)(c) is both mailed and attached to the premises;**
21 **or**

22 (B) **A notice given under ORS 90.155 (5) is both mailed and sent by electronic mail.**

23 **SECTION 4.** ORS 90.300 is amended to read:

24 90.300. (1) As used in this section, "security deposit" includes any last month's rent deposit.

25 (2)(a) Except as otherwise provided in this section, a landlord may require a tenant to pay a
26 security deposit. The landlord shall provide the tenant with a receipt for any security deposit the
27 tenant pays. The landlord shall hold a security deposit or prepaid rent for the tenant who is a party
28 to the rental agreement. A tenant's claim to the security deposit or prepaid rent is prior to the claim
29 of a creditor of the landlord, including a trustee in bankruptcy.

30 (b) Except as provided in ORS 86.782 (10), the holder of the landlord's interest in the premises
31 at the time the tenancy terminates is responsible to the tenant for any security deposit or prepaid
32 rent and is bound by this section.

33 (3) A written rental agreement, if any, must list a security deposit paid by a tenant or required
34 by a landlord.

35 (4) A landlord may not charge a tenant a pet security deposit for keeping a service animal or
36 companion animal that a tenant with a disability requires as a reasonable accommodation under fair
37 housing laws.

38 (5)(a) Except as otherwise provided in this subsection, a landlord may not change the rental
39 agreement to require the tenant to pay a new or increased security deposit during the first year
40 after the tenancy has begun. Subject to subsection (4) of this section, the landlord may require an
41 additional deposit if the landlord and tenant agree to modify the terms and conditions of the rental
42 agreement to permit a pet or for other cause and the additional deposit relates to the modification.
43 This paragraph does not prevent a landlord from collecting a security deposit that an initial rental
44 agreement provided for but that remained unpaid at the time the tenancy began.

45 (b) If a landlord requires a new or increased security deposit after the first year of the tenancy,

1 the landlord shall allow the tenant at least three months to pay the new or increased deposit.

2 (6) The landlord may claim all or part of the security deposit only if the landlord required the
3 security deposit for any or all of the purposes specified in subsection (7) of this section.

4 (7)(a) The landlord may claim from the security deposit only the amount reasonably necessary:

5 (A) To remedy the tenant's defaults in the performance of the rental agreement including, but
6 not limited to, unpaid rent; and

7 (B) To repair damages to the premises caused by the tenant, not including ordinary wear and
8 tear.

9 (b) A landlord is not required to repair damage caused by the tenant in order for the landlord
10 to claim against the deposit for the cost to make the repair. Any labor costs the landlord assesses
11 under this subsection for cleaning or repairs must be based on a reasonable hourly rate. The land-
12 lord may charge a reasonable hourly rate for the landlord's own performance of cleaning or repair
13 work.

14 (c) Defaults and damages for which a landlord may recover under this subsection include, but
15 are not limited to:

16 (A) Carpet cleaning, other than the use of a common vacuum cleaner, if:

17 (i) The cleaning is performed by use of a machine specifically designed for cleaning or
18 shampooing carpets;

19 (ii) The carpet was cleaned or replaced after the previous tenancy or the most recent significant
20 use of the carpet and before the tenant took possession; and

21 (iii) The written rental agreement provides that the landlord may deduct the cost of carpet
22 cleaning regardless of whether the tenant cleans the carpet before the tenant delivers possession
23 as described in ORS 90.147.

24 (B) Loss of use of the dwelling unit during the performance of necessary cleaning or repairs for
25 which the tenant is responsible under this subsection if the cleaning or repairs are performed in a
26 timely manner.

27 (8) A landlord may not require a tenant to pay or to forfeit a security deposit or prepaid rent
28 to the landlord for the tenant's failure to maintain a tenancy for a minimum number of months in
29 a month-to-month tenancy.

30 (9) The landlord must apply any last month's rent deposit to the rent due for the last month of
31 the tenancy:

32 (a) When either the landlord or the tenant gives to the other a notice of termination, pursuant
33 to this chapter, other than a notice of termination under ORS 90.394;

34 (b) When the landlord and tenant agree to terminate the tenancy; or

35 (c) When the tenancy terminates in accordance with the provisions of a written rental agree-
36 ment for a term tenancy.

37 (10) A landlord shall account for and refund as provided in subsections (12) to (14) of this section
38 any portion of a last month's rent deposit the landlord does not apply as provided under subsection
39 (9) of this section. Unless the tenant and landlord agree otherwise, the tenant may not require the
40 landlord to apply a last month's rent deposit to rent due for any period other than the last month
41 of the tenancy. A last month's rent deposit does not limit the amount of rent charged unless a
42 written rental agreement provides otherwise.

43 (11) When the tenancy terminates, a landlord shall account for and refund to the tenant, in the
44 same manner this section requires for security deposits, the unused balance of any prepaid rent the
45 landlord has not previously refunded to the tenant under ORS 90.380 and 105.120 (5)(b) or any other

1 provision of this chapter. The landlord may claim from the remaining prepaid rent only the amount
2 reasonably necessary to pay the tenant's unpaid rent.

3 (12) In order to claim all or part of any prepaid rent or security deposit, within 31 days after
4 the tenancy terminates and the tenant delivers possession the landlord shall give to the tenant a
5 written accounting that states specifically the basis or bases of the claim. The landlord shall give
6 a separate accounting for security deposits and for prepaid rent.

7 (13) The landlord shall return to the tenant the security deposit or prepaid rent or the portion
8 of the security deposit or prepaid rent that the landlord does not claim in the manner provided by
9 subsections (11) and (12) of this section not later than 31 days after the tenancy terminates and the
10 tenant delivers possession to the landlord. **If agreed to by both parties in an addendum executed
11 after the tenancy begins and the tenant has occupied the premises, the landlord may return
12 any amount due under this subsection electronically to a bank account or other financial
13 institution designated by the tenant.**

14 (14) The landlord shall give the written accounting required under subsection (12) of this section
15 or shall return the security deposit or prepaid rent as required by subsection (13) of this section by
16 personal delivery or by first class mail **or, if allowed under ORS 90.155 (1)(d), by electronic
17 mail.**

18 (15) If a security deposit or prepaid rent secures a tenancy for a space for a manufactured
19 dwelling or floating home the tenant owns and occupies, whether or not in a facility, and the
20 dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the 31-day period de-
21 scribed in subsections (12) and (13) of this section commences on the earliest of:

22 (a) Waiver of the abandoned property process under ORS 90.425 (26) or 90.675 (24);

23 (b) Removal of the manufactured dwelling or floating home from the rented space;

24 (c) Destruction or other disposition of the manufactured dwelling or floating home under ORS
25 90.425 (10)(b) or 90.675 (10)(b); or

26 (d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675
27 (10)(a).

28 (16) If the landlord fails to comply with subsection (13) of this section or if the landlord in bad
29 faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant
30 under this chapter or the rental agreement, the tenant may recover the money due in an amount
31 equal to twice the amount:

32 (a) Withheld without a written accounting under subsection (12) of this section; or

33 (b) Withheld in bad faith.

34 (17)(a) A security deposit or prepaid rent in the possession of the landlord is not garnishable
35 property, as provided in ORS 18.618.

36 (b) If a landlord delivers a security deposit or prepaid rent to a garnishor in violation of ORS
37 18.618 (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall
38 allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is
39 delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the
40 tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph be-
41 fore the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the
42 tenant after the garnishment, the landlord is not required to refund or account for the security de-
43 posit or prepaid rent under subsection (11) of this section.

44 (18) This section does not preclude the landlord or tenant from recovering other damages under
45 this chapter.

1 **SECTION 5.** ORS 90.394 is amended to read:

2 90.394. The landlord may terminate the rental agreement for nonpayment of rent and take pos-
3 session as provided in ORS 105.105 to 105.168, as follows:

4 (1) When the tenancy is a week-to-week tenancy, by delivering to the tenant at least 72 hours'
5 written notice of nonpayment and the landlord's intention to terminate the rental agreement if the
6 rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth
7 day of the rental period, including the first day the rent is due.

8 (2) For all tenancies other than week-to-week tenancies, by delivering to the tenant:

9 (a) At least 72 hours' written notice of nonpayment and the landlord's intention to terminate the
10 rental agreement if the rent is not paid within that period. The landlord shall give this notice no
11 sooner than on the eighth day of the rental period, including the first day the rent is due; or

12 (b) At least 144 hours' written notice of nonpayment and the landlord's intention to terminate
13 the rental agreement if the rent is not paid within that period. The landlord shall give this notice
14 no sooner than on the fifth day of the rental period, including the first day the rent is due.

15 (3) The notice described in this section must also specify the amount of rent that must be paid
16 and the date and time by which the tenant must pay the rent to cure the nonpayment of rent.

17 (4) Payment by a tenant who has received a notice under this section is timely if mailed to the
18 landlord within the period of the notice unless:

19 (a) The notice is served on the tenant:

20 (A) By personal delivery as provided in ORS 90.155 (1)(a); *or*

21 (B) By first class mail and attachment as provided in ORS 90.155 (1)(c); **or**

22 **(C) By first class mail and electronic mail as provided in ORS 90.155 (5);**

23 (b) A written rental agreement and the notice expressly state that payment is to be made at a
24 specified location that is either on the premises or at a place where the tenant has made all previ-
25 ous rent payments in person; and

26 (c) The place so specified is available to the tenant for payment throughout the period of the
27 notice.

28 **SECTION 6.** ORS 90.412 is amended to read:

29 90.412. (1) As used in this section and ORS 90.414 and 90.417, "rent" does not include funds paid
30 to a landlord:

31 (a) Under the United States Housing Act of 1937 (42 U.S.C. 1437f).

32 (b) By any other local, state or federal housing assistance program.

33 (2) Except as otherwise provided in this section, a landlord waives the right to terminate a
34 rental agreement for a particular violation of the rental agreement or of law if the landlord:

35 (a) During three or more separate rental periods, accepts rent with knowledge of the violation
36 by the tenant; or

37 (b) Accepts performance by a tenant that varies from the terms of the rental agreement.

38 (3) A landlord has not accepted rent for purposes of subsection (2) of this section if:

39 (a) Within 10 days after receipt of the rent payment, the landlord refunds the rent; or

40 (b) The rent payment is made in the form of a check that is dishonored.

41 (4) A landlord does not waive the right to terminate a rental agreement for a violation under
42 any of the following circumstances:

43 (a) The landlord and tenant agree otherwise after the violation has occurred.

44 (b) The violation concerns the tenant's conduct and, following the violation but prior to ac-
45 ceptance of rent for three rental periods or performance as described in subsection (2) of this sec-

1 tion, the landlord gives a written warning notice to the tenant regarding the violation that:

2 (A) Describes specifically the conduct that constitutes the violation, either as a separate and
3 distinct violation, a series or group of violations or a continuous or ongoing violation;

4 (B) States that the tenant is required to discontinue the conduct or correct the violation; and

5 (C) States that a reoccurrence of the conduct that constitutes a violation may result in a ter-
6 mination of the tenancy pursuant to ORS 90.392, 90.398, 90.405 or 90.630.

7 (c) The violation concerns the tenant's failure to pay money owed to the landlord for damage
8 to the premises, damage to any other structure located upon the grounds, utility charges, fees or
9 deposits and, following the violation but prior to the acceptance of rent for three rental periods or
10 performance as described in subsection (2) of this section, the landlord gives a written warning no-
11 tice to the tenant regarding the violation that:

12 (A) Describes specifically the basis of the claim and the amount of money owed that constitutes
13 the violation;

14 (B) States that the tenant is required to correct the violation by paying the money owed; and

15 (C) States that continued nonpayment of the money owed that constitutes a violation may result
16 in a termination of the tenancy pursuant to ORS 90.392.

17 (d) The tenancy consists of rented space for a manufactured dwelling or floating home as de-
18 scribed in ORS 90.505, and the violation concerns:

19 (A) Disrepair or deterioration of the manufactured dwelling or floating home pursuant to ORS
20 90.632; or

21 (B) A failure to maintain the rented space, as provided by ORS 90.740 (2), (4)(b) and (4)(h) and
22 (i).

23 (e) The termination is under ORS 90.396.

24 (f) The landlord accepts:

25 (A) A last month's rent deposit collected at the beginning of the tenancy, regardless of whether
26 the deposit covers a period beyond a termination date;

27 (B) Rent distributed pursuant to a court order releasing money paid into court as provided by
28 ORS 90.370 (1); or

29 (C) Rent paid for a rent obligation not yet due and paid more than one rental period in advance.

30 (5)(a) For a continuous or ongoing violation, the landlord's written warning notice under sub-
31 section (4)(b) of this section remains effective for 12 months and may be renewed with a new warn-
32 ing notice before the end of the 12 months.

33 (b) For a violation concerning the tenant's failure to pay money owed to the landlord, the
34 landlord's written warning notice under subsection (4)(c) of this section remains effective for 12
35 months from the date of the tenant's failure to pay the money owed.

36 (6) A landlord that must refund rent under this section **or ORS 90.414** shall make the refund:

37 (a) To the tenant **by personal delivery or first class mail in any form of check or money**
38 **or electronically as provided in ORS 90.300 (13);** or

39 (b) **To any** other payer by personal delivery or first class mail[. *The refund may be in the form*
40 *of the tenant's or other payer's check or*] in any [*other*] form of check or money.

41 **SECTION 7.** ORS 90.414 is amended to read:

42 90.414. (1) If a notice of termination has been given by the landlord or the tenant, the following
43 do not waive the right of the landlord to terminate on the notice and do not reinstate the tenancy:

44 (a) Except when the notice is a nonpayment of rent termination notice under ORS 90.394, the
45 acceptance of rent if:

1 (A) The rent is prorated to the termination date specified in the notice; or

2 (B) The landlord refunds at least the unused balance of the rent prorated for the period beyond
3 the termination date within 10 days after receiving the rent payment.

4 (b) Except if the termination is for cause under ORS 90.392, 90.398, 90.405, 90.630 or 90.632, the
5 acceptance of rent for a rental period that extends beyond the termination date in the notice, if the
6 landlord refunds at least the unused balance of the rent for the period beyond the termination date
7 within 10 days after the end of the remedy or correction period described in the applicable notice.

8 (c) If the termination is for cause under ORS 90.392, 90.398, 90.405, 90.630 or 90.632 and pro-
9 ceedings have commenced under ORS 105.105 to 105.168 to recover possession of the premises based
10 on the termination:

11 (A) The acceptance of rent for a period beyond the expiration of the notice of termination during
12 which the tenant remains in possession if:

13 (i) The landlord notifies the tenant in writing in, or after the service of, the notice of termi-
14 nation for cause that the acceptance of rent while an action for possession is pending will not waive
15 the right to terminate under the notice; and

16 (ii) The rent does not cover a period that extends beyond the date the rent payment is accepted.

17 (B) Service of a nonpayment of rent termination notice under ORS 90.394.

18 (2) The following do not waive the right of the landlord to terminate on a notice of termination
19 given by the landlord or the tenant and do not reinstate a tenancy:

20 (a) The acceptance of a last month's rent deposit collected at the beginning of the tenancy,
21 whether or not the deposit covers a period beyond a termination date.

22 (b) The acceptance of rent distributed under a court order releasing money that was paid into
23 the court as provided under ORS 90.370 (1).

24 (c) The acceptance of rent paid for a rent obligation not yet due and paid more than one rental
25 period in advance.

26 *[(3) When a landlord must refund rent under this section, the refund shall be made to the tenant*
27 *or other payer by personal delivery or first class mail and may be in the form of the tenant's or other*
28 *payer's check or in any other form of check or money.]*

29