

Enrolled Senate Bill 599

Sponsored by Senators STEINER, JAMA, Representative NERON, Senator ANDERSON, Representative HELFRICH; Senators LIEBER, PATTERSON, SOLLMAN, Representatives DEXTER, FAHEY, GAMBA, HUDSON, KROPF, LEVY E, NGUYEN H, PHAM K, REYNOLDS, WALTERS (Presession filed.)

CHAPTER

AN ACT

Relating to use of rental unit as family child care home; creating new provisions; and amending ORS 90.385.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 90.

SECTION 2. (1) Except as provided in subsection (4) of this section, a landlord may not prohibit the tenant's use of a dwelling as a family child care home if:

(a) The family child care home is certified under ORS 329A.280 or registered under ORS 329A.330; and

(b) The tenant has notified the landlord of the use.

(2) A landlord shall take reasonable steps to cooperate with a tenant who uses, or intends, plans or attempts to use, the dwelling as a family child care home.

(3) A tenant may enforce the requirements of subsections (1) and (2) of this section under ORS 90.360.

(4) This section and ORS 90.385 do not prohibit a landlord from:

(a) Requiring that a tenant pay in advance for costs of modifications necessary or desirable for the tenant's use, certification or registration of the dwelling as a family child care home that are not required of the landlord under ORS 90.320 or the rental agreement.

(b) Prohibiting a use not allowed under the zoning for the dwelling unit or an association's governing documents as defined in ORS 94.550 or 100.005.

(c) Prohibiting a use not allowed under rules established by the Early Learning Council implementing ORS 329A.280.

(5) A landlord may require that a tenant using the property as a family child care home, at the election of the landlord, either:

(a) Require parents of any children under the care of the family child care home sign a document in which the parents:

(A) Agree for themselves and their children that the landlord, owner or association, as defined in ORS 94.550 or 100.005, is not liable for losses from injuries to their children or their guests connected with the operation of the family child care facility; and

(B) Acknowledge that the family home care provider does not maintain liability coverage for losses from injuries to their children or their guests connected with the operation of the family child care facility; or

(b) In addition to the requirements of ORS 90.222, carry and maintain a reasonable surety bond or liability policy covering injuries to their children and guests that:

(A) Provides coverage of claims for injuries sustained on account of the negligence of the tenant or its employees; and

(B) Names the landlord, owner or association, as defined in ORS 94.550 or 100.005, as an additional insured.

(6) This section does not require a family child care home to carry any insurance policy unless required by a landlord under subsection (5)(b) of this section.

(7) This section does not apply to housing for older persons as defined in ORS 659A.421.

SECTION 3. ORS 90.385 is amended to read:

90.385. (1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening to bring an action for possession after:

(a) The tenant has complained to, or expressed to the landlord in writing an intention to complain to, a governmental agency charged with responsibility for enforcement of any of the following concerning a violation applicable to the tenancy:

(A) A building, health or housing code materially affecting health or safety;

(B) Laws or regulations concerning the delivery of mail; or

(C) Laws or regulations prohibiting discrimination in rental housing;

(b) The tenant has made any complaint to the landlord that is in good faith and related to the tenancy;

(c) The tenant has organized or become a member of a tenants' union or similar organization;

(d) The tenant has testified against the landlord in any judicial, administrative or legislative proceeding;

(e) The tenant successfully defended an action for possession brought by the landlord within the previous six months except if the tenant was successful in defending the action only because:

(A) The termination notice by the landlord was not served or delivered in the manner required by ORS 90.155; or

(B) The period provided by the termination notice was less than that required by the statute upon which the notice relied to terminate the tenancy; *[or]*

(f) The tenant uses, or intends or attempts to use, the dwelling as a family child care home in compliance with section 2 of this 2023 Act; or

[(f)] **(g)** The tenant has performed or expressed intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to tenants under any federal, state or local law.

(2) As used in subsection (1) of this section, "decreasing services" includes:

(a) Unreasonably restricting the availability of or placing unreasonable burdens on the use of common areas or facilities by tenant associations or tenants meeting to establish a tenant organization; and

(b) Intentionally and unreasonably interfering with and substantially impairing the enjoyment or use of the premises by the tenant.

(3) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 90.375 and has a defense in any retaliatory action against the tenant for possession.

(4) Notwithstanding subsections (1) and (3) of this section, a landlord may bring an action for possession if:

(a) The complaint by the tenant was made to the landlord or an agent of the landlord in an unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of unreasonably harassing the landlord. *A determination whether the manner, time or effect of a complaint was unreasonable shall include* **in** consideration of all related circumstances preceding or contemporaneous to the complaint;

(b) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the household of the tenant or upon the premises with the consent of the tenant;

(c) The tenant was in default in rent at the time of the service of the notice upon which the action is based; or

(d) Compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit.

(5) For purposes of this section, a complaint made by another on behalf of a tenant is considered a complaint by the tenant.

(6) For the purposes of subsection (4)(c) of this section, a tenant who has paid rent into court pursuant to ORS 90.370 shall not be considered to be in default in rent.

(7) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under ORS 90.360 (2).

Passed by Senate February 15, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 22, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State