WILLIAMS, ZINMAN & PARHAM P.C.

LEGAL REMEDIES

LANDLORD NEWS... YOU CAN USE

JULY 2014

RENTAL INCREASE THIS YEAR? BY: MIKE PARHAM

Deadlines come up fast! It is time to start thinking of those annoying mass mailings letting your tenants know that they are going to have to pay higher rent….and fielding the complaints. You may as well get it over with early!

We understand that nothing is more important to a parks bottom line than ensuring its tenants are paying the rent necessary to support the park's operation. Most years that entails increasing rents to ensure there is enough coming in to cover increased operating costs.

Most parks have rent increase anniversary dates of January 1. Since the law requires a 90 day notice to make a rent increase effective, a park with a January 1 anniversary date must get the notice out no later than September 25th. That adds up to 90 days notice plus an extra five days for sending by Certified Mail. Time truly is of the essence, the rent increase notice must be sent out on time or you can loose the ability to increase the rent for the entire year.

The law allows rent increase notices to be given by personal delivery, regular mail or Certified Mail. Of the three, the law creates a presumption that a notice sent by Certified Mail is received five days after mailing. No such presumption attaches when the notice is given by hand delivery or regular mail. It is for this reason that we recommend rent increase notices be sent by Certified Mail. There is no need to pay for return receipt service.

Parks unable to prove receipt of the notice by regular mail or hand delivery may lose a year's worth of the rent increase, depending on what their rental documents say about lease renewals. At the least they could lose several months of the increase. This should not be a problem if the notice is sent by Certified Mail by September 25.

Similar rules apply to rent increases for long term RV space rentals except the notice period is 60 days.

If you need some assistance in getting the rent increase notices out to your residents, we can prepare the notice for you and mail it certified to all your tenants. We are able to do this for as low as $12.00 each, including postage. However to enable it we would need a tenant list in an Excel spreadsheet format, the rent increase would need to be a single monthly amount, and we would need the necessary data well in advance of the deadline. We would also need a special retainer agreement signed specifying what is to be done and the timeframe.

If you want this service we simply ask that you prepare an Excel Spread Sheet with the names and space numbers of all your tenants and get it to us by September 1st 2014. (If your spaces have different addresses we will need those too.)

Please feel free to contact Chris in our office with any questions on the notices or updating your park documents.

SPECIAL POINTS OF INTEREST:

- *Rent increase*
- *Time is of the essence*
- *Legal service as low as $10.00*
- *Caregivers and background checks*
- *Removal of homes from parks*
- *Sums due before homes must be released for removal*
- *Attorneys' fees and legal costs due before homes must be released*

INSIDE THIS ISSUE:

Caregiver Background Checks

By: Mike Parham

"Whoever is careless with the truth in small matters cannot be trusted with important matters".

Albert Einstein

Sedona, Arizona

Simply Beautiful !!!

Residential Caregivers are folks who reside with tenants who due to a disability are in need of round the clock assistance. Landlords are often asked to waive such things as occupancy limits or age restrictions (in Age 55+ parks) as a reasonable accommodation to permit a caregiver to reside with the disabled tenant.

We often see the law abused by tenants who really are not disabled but pretend to be asking for a rule waiver to permit an otherwise ineligible relative or friend to live with them. The law lends itself to this kind of abuse.

If a disabled tenant presents medical evidence of a disability and the need for a residential caregiver, the question then arises whether the landlord has the right to screen and approve or reject the caregiver on the basis of the screening report.

Authorities generally agree that a credit report on a caregiver is irrelevant since the caregiver is not a tenant, has no independent rights under the lease, and must move out when the tenancy of the tenant ends. But his criminal background is relevant and a landlord has every right to check it and reject the caregiver if his background does not satisfy the landlord's standard reasonable criteria.

For example here is an excerpt from a publication by the Tenants Union of Washington State:

"A housing provider may require live-in caregivers to be identified and to undergo some screening. If a housing provider screens live-in caregivers, the screening should be limited to appropriate areas. For example, it may be appropriate to screen a caregiver for a criminal record if the landlord's policy is to conduct criminal background checks for all adult applicants. But it is not necessary to screen the caregiver for the ability to pay the rent, because a caregiver is not obligated under the lease.

Housing providers can deny residency to a live-in caregiver who refuses to be identified or consent to limited screening".

And here is an excerpt from a publication by the Bazelon Center, a nationally respected advocacy organization for the disabled:

"PHAs and private owners of project-based subsidized housing have a legitimate interest in screening for criminal history, a history of disturbing other tenants, or financial improprieties in subsidized housing, and can refuse to approve a live-in aide".

While MHC's are not public housing authorities (PHA's), the reasoning is the same.

For some reason certain AAMHO representatives in recent years have claimed there is no right for landlords to do criminal background screening on caregiver applicants.

From a logical point of view consider the fact that even though the caregiver is not a tenant and does not have tenant rights, they will be living in your community.

If you knowingly allow a caregiver to live in your community without a criminal background check you may be opening yourself up for liability.

Consider the possibility that you let the caregiver in with no background check but you promote the community as a crime free place to live….and you later discover the caregiver is a sex offender. How do you get rid of the person now? To make this scenario even worse what if you find about the caregivers criminal history from the police who are investigating the molestation of other tenants in your community. This could clearly be a mess.

On the other side of the coin you do not want to infringe on the tenant's right to have a caregiver by being too restrictive, that could be seen as refusing to make a reasonable accommodation to a disabled person and trigger a fair housing complaint.

Use good common sense and call us if you are in doubt.

LANDLORD LIENS AND REMOVAL OF HOMES FROM PARKS

Melissa Parham

In 2003, A.R.S. § 33-1485.01 was enacted covering removal of mobile homes from parks. It says that the home "shall not be removed" by anyone until the park has provided a written clearance for removal stating that ***all charges due have been paid*** and identifying the condition to which the "responsible party" must restore the space. (the space restoration must be done according to your park rules and regulations by anyone removing the home, regardless of whether they have a lease or not. Be sure to give the person requesting a clearance for removal a copy of the park rules so they know what is expected)

This must be read with A.R.S. § 33-1451(B), which says that a tenant shall not remove a home without a clearance for removal showing ***all sums due the landlord have been paid***. It also says that the home ***can*** be removed even if there is a long-term lease in force and only the rent through the date of removal can be required.

Under these the landlord has the right to prevent the home from being removed until all sums due as of that date have been paid. But, the park must be careful not to require more than is owed under the law. If removal is blocked because the park is demanding more, it can be sued for damages for wrongfully interfering with a lawful removal.

A MHP landlord lien on a tenant mobile home arises under the MHPLTA. Essentially, it is like a garageman's lien, a personal property lien, and a drycleaner's lien. If an individual, for example, takes a car to a repair garage, authorizes the garage to work on the vehicle, and then refuses to pay, the garage has a possessory lien on the vehicle.

Those liens are statutory and are not recorded. Likewise, when a mobile home remains on a park's property without the payment of rent, the mobile home park has a statutory lien on the mobile home to secure the payment of rent. By statute, the home may not be removed from the park without payment of all amounts owed—just as a vehicle cannot be removed from a repair garage before payment is made.

The statutes make clear that amounts "due the landlord" are what must be paid before the park must provide a clearance for removal. The amount must be clear; it must be "liquidated." A liquidated claim is one for an amount that the parties have agreed upon, or one that can be precisely determined by operation of law or by the terms and conditions of the parties' agreement.

Certain sums are clearly liquidated. Rent, utilities, late charges, pet fees, and amounts reduced to judgment such as awards of attorney fees and court costs in eviction judgments are liquidated and meet the definition of "due the landlord." But, other things do not. Future rents are not monies "due the landlord" since the landlord may be able to re-rent the space (and future rents cannot be demanded under A.R.S. § 33-1451(B)).

A problem involves costs and attorneys' fees the landlord incurs but that have not been awarded against the tenant in a judgment. For example those incurred in processing a landlord lien sale when a buyer or tenant appears just before the sale, demands a clearance for removal, and offers to pay rent and utilities but not sale expense.

The landlord has a claim for those costs and attorneys' fees, but the claim has not been ruled on by a court. They are an ***unliquidated*** claim until a court rules. Attorneys' fees are by their very nature unliquidated. The reasonableness of attorneys' fees is a question of fact and is an unliquidated demand, for which a court entering a judgment should hear evidence.

When a court has not determined that the landlord is the prevailing party in a dispute, or that the amounts sought are reasonable, the charges are not liquidated and cannot support a landlord lien or the refusal to issue a clearance for removal.

Once a court has entered a judgment in the landlord's favor, however, (as a court does in an eviction judgment), the amounts included in the judgment are now liquidated and can be considered sums "due the landlord."

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LANDLORD REPRESENTATION

Throughout Arizona - Phoenix, Tucson - *Statewide*

Evictions
Fair Housing & ALJ Complaint Defense
Purchase and Sale of Properties (Document Review)
Borrower Loan Opinions - Financing / Refinancing of Properties
Lease Creation & Review
Real Estate Law

HELPFUL REMINDERS

5 days—*the amount of time you add to your time lines to allow for Certified Mail delivery. (always)*

7 days — *7 day notice of non payment of rent. Send the day after rent is due.*

14 calendar Days — *14 day notice of non compliance. File Eviction on the 30th calendar day if tenant did not comply by the 14th day.*

14 Business Days — *the amount of time you have after gaining possession of the rental space to give the tenant the Security Deposit Accounting.*

90 Days — *90 day notice for a rent increase, prior to the annual renewal date must be served 90 days or three full rental periods before the end of the lease, whichever is greater.*

- *You must accept the rent if paid in full BEFORE a judgment is granted.*
- *A partial payment, without a written agreement stating otherwise, allows the tenant to stay the entire rental period.*
- *You are NOT obligated to reinstate a persons lease AFTER judgment is granted...even if they pay the full amount due. Write "payment to apply toward judgment and does not reinstate lease" on your receipt.*

ANYTIME — *Call us to get answers to your questions. (480) 994-4732*

Always remember to drain the waterbed before you move the house!