Eastern Michigan Real Estate Investment Association

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OVERCOMING OBJECTIONS FROM MR. LANDLORD

When you show a property to prospective residents, you'll inevitably face some objections. You may even hear a laundry list of why your property isn't good enough for them. Some people will have valid concerns, but others will just complain because it's in their nature. Regardless of why people raise concerns, if you're prepared, you can counter these objections and turn those prospects into paying residents (the ones who have valid concerns, not the perpetual complainers who you don't want.)

You might hear prospective residents say that the property is dirty, it needs repair, or that the carpet needs to be cleaned or replaced. None of these should ever be a real concern because you should never show anyone a property that's not in "move-in" condition. Never allow anyone inside one of your properties if it desperately needs to be repainted or the carpet is soiled or outdated. In most cases, you have only one chance to make a first impression with the type of residents you truly want, so you always want to put your best foot forward. If you show a prospect a property that's not ready to be lived in, you may have just lost all the time and energy you spent on getting an ideal prospect to the property. Even if you tell them, "This will all be fixed before you move in," you've put yourself in a bad situation. Avoid that by taking care of any needed cleaning or repairs before an applicant sees a property.

Some residents will complain about the kitchen or appliances. They may tell you the kitchen is too small, or say that the appliances are old or the wrong color.

Or they don't like them because they're electric and not gas. Obviously, it would be prohibitive to replace the appliances every time you rent to a new resident. I also wouldn't recommend replacing a new stove so long as it works. You might tell the prospect that many people prefer smaller kitchens because they're easier to navigate and they don't take floor space away from a dining room. Or mention that electricity is safer and cleaner than gas, and that's an added benefit to the property.

You might hear someone say the closets or rooms are too small. Small rooms are more efficient and cheaper to heat and cool. Smaller closets mean that the rooms are larger. You can also solve issues about closet size by going to your local hardware store and investing a few dollars in an efficient shelving system that will maximize the space you have.

Once again, if you've done your homework, you can counter virtually any valid objection a prospective resident throws your way. And after you've gained enough experience renting to people, you'll know when someone has a real objection and when he's trying to negotiate. **The key is to have information at your fingertips.**

Interestingly, I rarely hear someone complain about the rent. However, this is one

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area where other investors receive a lot of questions.

I've always been insecure about raising the rent, and I may undercharge for many of my properties. However, high rent is a very common issue that a man recently created a political party called "The Rent Is Too Damn High Party". I don't know how serious he was about running for office, but the issue was important enough that the party was featured on nearly every national news channel.

If you've done your homework and understand your property's market, you'll be able to explain your rent charges to prospective residents. If you know that there are four similar rental houses in the area and you charge the same amount of rent as the owners of the other properties, you can explain this. Or if your property has more square footage or more bedrooms than other houses in the area, you can use that to overcome a concern about the rent. By Steven Vancauwenbergh

FILLING VACANCIES

THE MOST COMMON OBJECTION

"Let me think about it." Ugh! How many times have you heard that one? Just remember that in this type of situation, silence is the key. After they say the above statement, count to ten in your head. If they still don't say anything, **You might want to ask one of the following questions:**

- What do you need to think about?
- Why do you feel that way?
- What would make you feel more comfortable?
- I'm not sure I understand. Is there something I didn't explain correctly?
- I'm not sure I understand. Is there something I missed?
- Could you be a little more specific?
- Specifically, what do you need to think about?
- What makes you think you need some more time?
- Is it the home or something else that you need to think about?
- Which rentals are you comparing us to?
- You like the rental home, right? It has (here, summarize the features and qualities that may appeal to the prospective resident).
- Follow up with, "This place could be perfect for you. I know how much time you can spend looking around, so why wait?"

You can't overcome objections without finding out what the REAL objection is. By Mindy Williams

PROPERTY MANAGEMENT

THE SLOB ELIMINATION PROGRAM PART II

Nice is nice, but clean is mandatory. Slobs can be nice. Slobs can appear to be normal. Slobs make up great excuses and wonderful stories exonerating them from all blame.

Nice, personal appearance, excuses, and stories are optional. You rent a house. Houses don't need nice, personal appearances, excuses, or stories. Houses need clean. I'll say it again — Clean is mandatory.

Research the prospective resident's application like you're Sherlock Holmes. Call their current and previous landlords. The current landlord may want to get rid of them, so he or she may lie, or just not return your calls. The previous landlord is a better bet, but you must persist. It's important.

Also, Slobs sometimes go from job to job, have evictions, or eviction filings, or have criminal records. These are all red flags.

1. **30-Day visit—**Walk through the house (like a Home Visit, but more relaxed; we are looking for Slob evidence) 30 days after the move in. In the selection process, if we have made a mistake, it will now show. If there are problems at the rental home then take pictures.

Mail a Violation of the Lease with the pictures, and hand the resident a 3-5 day notice to correct the problems. Why do I say "problems" in plural? With Slobs its always plural. After the above steps, re-inspect the rental.

If the Slob resident hasn't solved the problems then take more pictures to prepare for step #4 on the following page. At this point the resident understands that you are serious.

2. **Bill them—** When we find resident-caused problems that we repair or replace (other than normal wear-and-tear) we bill the resident according to the prices he or she has already agreed to in the lease. Small or large, it doesn't matter. Take smoke detectors for example. We use the $20 (our cost) lithium-sealed battery smoke detectors by Kiddie. If they're discovered missing, the resident is billed $40. And if the resident doesn't pay, we bill them again. Still no payment? After the resident receives a stern WARNING letter, I file in district

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court ("Tenant Charges" Part IV Section B of my lease has a full 8 1/2 x 11 page of prices for just about anything, which the resident has signed and agrees to pay if damaged).

3. **File in district court for possession and a monetary judgment for the damage**—Let's review. Let's say you have found Slob problems in your rental. You've taken pictures, issued a Violation of the Lease, re-inspected the home, and the violations persist. You must now file for possession and a monetary judgment in district court.

Have at least 12 pristine color photos of the house before the resident moved in, 4 to a page, on 3 sheets of 8 1/2 x 11 photo paper. In contrast, show the judge that you have pictures of the problems/damage to the current rental. The resident is mailed a copy of the filing, then receives the Notice from the court with an appearance date. This threat of eviction may coerce the Slob to adhere to the lease and solve the problems, and pay what is owed to you. Sometimes this is not the case. If not, go to court and win a judgment; but most importantly possession. The Slob may then repent. If not, evict.

4. **Resident Ratings**—Residents are rated on a 1-2-3 scale (1-Excellent, 2-Good, 3-Not acceptable) on a rolling year-to-year judgment based on cleanliness, damage, and problems. Watch the 3s closely. Stop in to casually inspect the rental. Conduct a drive-by inspection looking for telltale signs. A handyman contractor at our office gives us feedback on cleanliness, damage, crowds and pets.

During an annual municipal or Section 8 inspection, the landlord, property manager or assigned contractor attends the inspection of the 3-rated homes, looking for problems.

5. **Discipline and Will**—As the landlord you have the lease, the law, the courts, and pictures. The resident has excuses and stories. But the landlord must also have the discipline to follow procedures, enforce the lease's standards, and the will to win. Without those, the 1-5 points mentioned above don't matter.

The Slob Elimination Program is proactive. Try your best to eliminate the Slob before they move in. But if you make a mistake, pounce before it gets out of hand. By Joseph Neilson

PROCEDURES

MOVE-IN INSPECTION

The number one source of resident/landlord disputes is the disposition of the resident's security deposit. Many of these potential problems can be resolved with proper procedures even before the resident takes possession of the rental by using a move-in/move-out inspection checklist. This form is an excellent tool to protect you and your resident when the resident moves out and wants the security deposit returned.

Let's say you have a move-in/move-out inspection checklist with three columns labeled, "Condition on Arrival/Move-in," "Condition on Departure," and "Estimated Cost of Repair/Replacement". The first column of the checklist is where you can note the condition of the rental home before the resident actually moves in. The last tow columns are for use when the resident moves out and you inspect the rental with the resident again. Often, you won't immediately know the estimated cost of repair of replacement, so you can complete that portion of the checklist later and then include a copy when you send your resident his or her security deposit disposition form.

When properly completed, the inspection form clearly documents the condition of the rental upon acceptance and move-in by the residents and serves as a baseline for the entire residency.

If the resident withholds rent or tries to break the lease claiming the rental home needs substantial repairs, you may need to be able to prove the condition of the rental upon move-in. When the resident moves out, you'll be able to clearly note the items that were damaged or were not left clean by the vacating residents so you can charge them the maximum allowed under your state or local laws.

The move-in/move-out inspection checklist is just as important as your lease or rental agreement. The purpose of the inspection is not to find all the items that you or your maintenance person forgot to check, because you should have already been through the rental home looking carefully to ensure that it met your high standards. The purpose of the inspection is to clearly demonstrate to the resident's satisfaction that the rental home is in good condition except for any noted items.

The move-in/move-out inspection checklist is unique in that you will use the form throughout the entire residency—upon initial move-in, during the residency (if there are any repairs or upgrades to the rental home), and when the resident finally vacates the rental. Be sure to give your residents a copy of the completed and signed form for their records.

You need to physically walk through the rental with your new residents and guide them through the inspection form. Let the residents tell you the conditions they observe and make sure that your working on the noted conditions and comments are detailed and that they accurately describe them.

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Print legibly and be as detailed and specific as possible noting the condition of each item. Be sure to indicate which items are in new, excellent, or very good condition as well as noting any items that are dirty, scratched, broken, or in poor condition. For example, rather than generally indicate that the oven in "broken," be specific and note that the "built-in timer doesn't work". The oven works fine but the residents know that they need to use a separate timer and that they will not be held responsible for this specific item upon move-out. Be particularly careful to note the property condition regarding any mildew, mold, pest, or rodent problems, because these are health issues that must be addressed immediately before the resident takes possession.

Although a good checklist clearly documents all damaged or sub-standard items, you should not overlook the importance of noting a detailed description of the items that are in good condition.

If the flooring in the kitchen is new, be sure to indicate that on the form. Many disputes can be resolved if the inspection checklist specifically notes the condition. If you only comment on damaged items, the court may conclude that you didn't inspect or you forgot to record the condition of a component of the home that you are now claiming was damaged by the resident. You may think that everyone knows and agrees that all items without any notation are in "average" or "okay" condition, but the resident will likely tell the court that the item was at least somewhat dirty or damaged and that you should not be able to collect for that item.

You and the resident should complete the inspection form *together* prior to or at the time of move-in. If it is impossible for you to do this walk-through with your resident than you should complete the move-in/move-out inspection checklist and ask that all adults to review and sign the form as soon as possible upon move-in. Inform the residents that you will be glad to deliver the mailbox key after you have the approved form in hand. I never seem to get anything but bills and junk mail, but I have learned that the mailbox key is very important to residents and is a useful tool to motivate the resident to promptly review and approve the inspection form.

When used properly, your move-in/move-out inspection checklist will not only prove the existence of damage in the rental home, but it can pinpoint when the damage occurred. Don't fall for one of the oldest resident ploys in the book. Residents often try to avoid walking the rental home with you upon move-in because they want to wait and be able to avoid charges for damage that occurs during their actual move-in.

You must require the residents to walk through the rental premises and all agree that all items are in undamaged condition *before* they start moving in their boxes and furnishings. If you discover any problems during your walkthrough, note them on the inspection form and take steps to have them corrected, unless it is not economically feasible.

For example, you may have a hairline crack along the edge of the bathroom countertop. If you have determined that it would be too costly to refinish or replace the countertop, just note the condition on the inspection form so that your resident is not charged in error upon move-out.

Be sure that your move-in/move-out inspection checklist reflects any repairs or improvements made after the initial walkthrough inspection. For example, if you and your residents noted on the form that the bathroom door didn't lock properly, you would have that item repaired and you would need to update the inspection form and have your resident initial the change. Or you may install new carpeting or make other improvements that should be reflected on the inspection form.

Always be sure to note the condition of the carpets and floor coverings, because this is one of the most common areas of dispute with residents upon move-out. Although residents should not be charged for ordinary wear and tear, if they destroy the carpet they should pay for the damage. Indicate the age of the carpet and whether it has been professionally cleaned as part of your rental turnover process.

When a resident leaves after only six months and has destroyed the carpet, you can be sure that his or her memory will be that the carpet was old, dirty, and threadbare. The resident's selective memory will not recall that the carpet was actually brand new or at least in very good condition and professionally cleaned upon move-in. Another excellent way to avoid disputes over security deposits is for you to take photos or videotape at the rental home before the resident moves in. In addition to your inspection form you will have some photos to help refresh the resident's memory or to show the court if necessary. By Robert Griswold

LANDLORD SAFETY

SIX SAFETY GUIDELINES FOR LANDLORDS

Although most of us have heard news stories involving crimes against real estate agents—say, a mugging or attack at an open house—there hasn't been too much media attention on crimes against landlords. Yet, landlord-resident violence appears in newspaper headlines with some frequency. Just last month a resident was arrested for pepper spraying his landlord, who was doing maintenance nearby.

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To bring some attention to the topic, we've compiled a short list of some of the most useful safety tips for landlords. Implement and follow a fair and thorough screening process, which will help weed out troublemakers. **Don't make any exceptions.**

1. Communicate with your residents and avoid giving them unpleasant surprises.
2. Use a PO Box, drop box, or electronic deposit to receive rent checks; don't make your home address known.
3. Schedule group showings or meet with questionable renters in a public place before showing them your rental home. Have them fill out a contact/interest form and take photos of their identification using your smart phone.
4. Learn how you can de-escalate a conflict. You will inevitably be dealing with an irate resident at some point. Skills to help you listen, stay calm, communicate, and take a break will help you.
5. When showing a rental, always have the potential rent go through doors first. (Say, "After you.") Always stay nearest to the exit.
6. Show rentals during daylight—not when it's dark out. Sometimes, headlines aren't about crimes against landlords, they're about crimes by landlords. Whether they think their actions are justified or not, some landlords are better suited for other work. Customer service is a huge part of the property management and landlord business; having good customer service skills so you don't lose your cool is critical. If your strengths lie in other areas, consider having a property manager help you out. ■

LANDLORD QUARTERS
RPOA

Landlords should know the risks of liability associated with tenant smoking and understand how they can limit that liability

As one of the cases in this bulletin highlighted, landlords may face the complicated issue of tenant grievances associated with second hand smoke from other tenants. Smoking related conflicts that continue unresolved may expose landlords to legal liability.

THE "RISKS" ASSOCIATED WITH TENANTS' SMOKING

According to a 2010 notice from the United States Department of Housing and Urban Development, secondhand smoke, also referred to as environmental tobacco smoke, can migrate between units in multifamily housing, causing or worsening certain health effects in neighboring tenants, including respiratory illness, asthma, heart disease, and cancer. According to the Centers for Disease Control, secondhand smoke causes almost 50,000 deaths in adult nonsmokers in the United States each year, including approximately 3,400 from lung cancer and another 22,000 to 69,000 from heart disease. According to the United States Environmental Protection Agency, secondhand smoke exposure causes disease and premature death in children and adults who do not smoke.

Smoking can also be a source of fires and fire-related deaths and injuries. Based on data from the U.S. Fire Administration of the Department of Homeland Security, there were an estimated 18,700 smoking-material fires in homes in 2006. Those fires caused 700 civilian deaths, and 1,320 civilian injuries, and $496 million in direct property damage. In multifamily buildings, smoking is the leading cause of fire deaths. For this reason, some insurance companies may provide a discount when there is a smoke-free policy at the residential rental property.

Also, smoking increases maintenance costs of rental units, particularly when preparing a unit for a change in tenancy.

POSSIBLE RELATED LANDLORD LIABILITY

Legal claims that may be brought against a landlord by a tenant claiming substantial harm from a neighboring tenant's drifting second hand smoke include:

- Nuisance;
- Negligence;
- Harassment;
- Constructive eviction;

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The Process of Rent-to-Own Homes from Michigan Landlord

Getting financing is still tough for some buyers. And, some real estate investors prefer not to be long-term landlords. Rent-to-own can be the solution for both.

Also called a lease-to-own house, the process works similarly to a car lease: Renters pay a certain amount each month to live in the house, and at the end of a set period—generally within three years—they have the option to buy the house. Each month of rent they pay is income for the seller, while a portion of it goes toward a down payment to eventually buy the home.

Both renters and sellers need to be very clear about the contract they draw up before they agree to this arrangement. Renting-to-own has advantages and disadvantages for both parties. Buyers who can't yet afford a house may be able to get one more quickly.

Before entering into an agreement, sellers have to decide the sale price and rent they'll charge for the house. Both amounts are subject to negotiation, just as a regular sale would be. But sellers and buyers need to remember that once they sign an agreement, the sale price of the house is locked in until the end of their rental term, typically between one and three years. Even if other housing prices rise or fall during that time, the original greed-upon price is final.

Sellers may also charge an option fee and a rent premium. The option fee is a set amount that the renter pays the seller. If at the end of the lease period, the renter buys the house, the option fee becomes part of the down payment. If the renter doesn't buy the house, the option fee becomes income for the seller. Rent premiums are an amount slightly above the typical rent, with a portion of that money going toward a down payment. An option fee should not be confused with a "security deposit," which is something completely different. The contract should be clear on the various payments.

Here's a typical example: The house is worth $200,000, and typical rent would be $1,000 a month. Someone who's renting to own might pay $1,200 a month in rent and them receive a $200 rent credit each month. Add the option fee, in this case $5,000. On a three-year lease, the renter would earn $7,200 in rent credits. Adding the earned rental credits to the option fee, the renter has accumulated $12,200 for a down payment.

This is a valuable alternative for buyers who otherwise wouldn't have the credit score or money saved to acquire their own home. And the sellers earn this money whether or not the house sells once the leasing period expires. If, at the end of the contract the renter can't or chooses not to buy the house, the seller keeps all the money.

As with any business contract, there are mutual risks and disadvantages involved for both parties. What if someone else wants to purchase the house for a higher price than originally negotiated? Who's responsible for fixing the leaky roof in the middle of the night? Read on to discover the advantages and disadvantages for each side.

Risks and Benefits to Buyers

For many people, a home will be the biggest purchase they ever make. Both buyers and sellers should carefully weigh their options before agreeing to any binding contract. Let's look at some advantages and disadvantages for buyers:

The Process of Rent-to-Own Homes from Michigan Landlord

- Buyers have time to build income and repair their credit history as they rent the house.
- Depending on the agreement, renters can walk away if they find something seriously wrong with the house. Although the renter will lose the option fee and all their rent credit money, that amount will be much less than if the renter had bought the house outright and tried to leave it later.
- Buyers still have to pay the upfront option fee. It's usually a percentage of the agreed-upon selling price of the home and is often thousands of dollars. Although this money will go to the down payment should the renter decide to buy the house, it can still be difficult to accumulate that much money before renting.
- If the byer is just one day late on a month's rent payment, most agreements void the rent credit for that month. If the buyer paid the rent late just three times each year, at the end of the lease period, the buyer would have $1,800 less for the down payment. The buyer in the rent-to-own agreement must pay on time, every time.
- If the seller fails to pay the original mortgage on the house, it may be foreclosed and the buyer forced to move.
- At the end of the rental period, the buyer still may not be able to buy the home for the same reasons they couldn't buy at the start of the lease: bad credit, insufficient down payment, not enough income.

All those repairs that used to be somebody else's problem in a rented apartment often become the responsibility of the new buyer, even during the rental period. Whether it means climbing on a ladder to unclog the gutters or having to pay for a new washing machine when the original washer breaks, the renter has to take care of it. In some communities, the municipality will still hold the seller responsible under the local rental property maintenance code and certification program.

If you're the seller in a rent-to-own arrangement, here are some of the ins and outs from your perspective.

Risks and Benefits to Sellers

Here are some pros and cons sellers can expect in a rent-to-own contract:

- If home values are falling, sellers can lock in a higher price at the start of the agreement.
- Renters who are looking to own generally treat their living space and community better. They're planning for their future, instead of living in a place they'll vacate in a year or two.
- If a renter does back out at the end of the agreement, the seller still has the option fee and rent premiums as income. However, the seller is back to square one, which may be difficult for some homeowners who just want to be free of their old house.
- If a new potential buyer comes along who wants to purchase the house for a higher price, the seller is out of luck. He entered into a contract with the renter, and he has to abide by it.
- Many sellers use the rent they earn to pay the existing mortgage on their investment, which eases their financial burden. If the renter can't make payments, the seller could be forced into foreclosure.

Because of the many concerns on each side of the rent-to-own transaction, both parties should consult a real estate attorney.

Tenant's Pit Bull Attacks Another Tenant by Landlord Liability

Victim contends landlord is liable in negligence for not evicting dog owner and not imposing landlord regulations prohibiting pit bulls.

The Background/Facts: Renee Burnett ("Burnett") and her daughter Kalynn lived in a manufactured home community (the "Community") owned by Hillcrest Acres Associates, L.L.C. ("Hillcrest Acres"). Crystal Clarke ("Clarke") also lived in the same manufactured home community.

In May 2006, Burnett sent Kalynn to Clarke's home to look for Kalynn's younger sister. Kalynn knocked on Clarke's front door, and, when the door opened, Clarke's pit bull, Bruno, "suddenly lunged at Kalynn, bit her on the right side of her cheek and ran away." The cut from the bite required stiches and left a scar on Kalynn's face.

Burnett, as next of friend for Kalynn, later sued Hillcrest Acres. Burnett alleged that Hillcrest Acres was negligent as the landowner and that negligence was the proximate cause of Kalynn's injuries from the dog bite. Among other things, Burnett argued that Hillcrest Acres should have: removed Bruno from the Community; and/or evicted Clarke for violating Community rules, which prohibited certain breeds of dogs including pit bulls. Burnett also contended that Hillcrest Acres, through its rules and regulations prohibiting pit bulls, voluntarily assumed a duty of care-and was liable in violating that duty.

The trial court rejected Burnett's arguments. It entered an order of judgment in favor of Hillcrest Acres.

Burnett appealed.

Decision: Affirmed. The Court of Appeals of Michigan held that Hillcrest Acres, as landlord of the mobile home community, was not liable for injuries sustained by tenant Kalynn, from a bite from tenant Clarke's pit bull dog.

In so holding, the court explained that to succeed on her negligence action against Hillcrest Acres, Burnett had to prove: (1) that Hillcrest Acres owed a duty to Kalynn; (2) that Hillcrest Acres breached that duty; (3) that Hillcrest Acres' breach of that duty caused Kalynn's injuries; and (4) that Kalynn suffered damages. The court further explained that in regard to dog bite liability, Hillcrest Acres would only have a duty, and therefore could only be liable, if it had: (1) knowledge of the dog's vicious nature; and (2) control over the premises. The court found both of those factors absent here.

Evidence that Bruno had previously run from a child or was later seen "growling and barking while bouncing against Clarke's front window" did not establish that Bruno's behavior was "abnormally dangerous or usually vicious," found the court. Moreover, the court found that Hillcrest Acres could not have lawfully exercised control over Bruno. The court said this was because Kalynn was bitten on Clarke's front porch, which was land under the control of Clarke.

Furthermore, the court rejected Burnett's theory that Hillcrest Acres could have exercised control over Bruno by evicting Clarke. The court said that even if it had accepted that theory, because Bruno's only other alleged offense-a child chasing incident-occurred two weeks before Kalynn was bitten by Bruno, Hillcrest Acres could not have lawfully exercised control over Bruno by evicting Clarke since a tenant has at least 30 days' notice before eviction.

Burnett had also contended that Hillcrest Acres, thorough its rules and regulations prohibiting pit bulls on its premises, voluntarily assumed a duty of care., Burnett had argued that by not enforcing those regulations on Clarke, Hillcrest Acres had breached that duty and was liable in negligence for Kalynn's injuries. The court rejected that argument too. The court explained that whether Hillcrest Acres had a duty that should be imposed depended on: (1) the foreseeability of harm; (2) the degree of certainty of injury; (3) the closeness of connection between the conduct and the injury; (4) the moral blame attached to the conduct; (5) the policy of preventing future harm; and (6) the burdens and consequences of imposing a duty and the resulting liability for breaching the duty. Applying those factors, the court found that Hillcrest Acres did not voluntarily assume a duty of care by promulgating the rule that prohibited Pit Bulls at the manufactured home community because: (1) the harm was not foreseeable because Bruno had not previously exhibited vicious behavior; (2) the injury was certain because Kalynn was bitten; (3) there was a loose connection between the injury and Hillcrest Acres' failure to enforce its rules because, although there was no evidence that Clarke would have removed Bruno, there was evidence that she had previously removed similar dogs; (4) Hillcrest Acre's failure to enforce its rules did not demonstrate a blatant disregard of safety because Bruno had not previously displayed vicious tendencies; (5) Hillcrest Acres policy did prevent future harm; and (6) the burden on Hillcrest Acres to enforce the rule was slight and they could insure against the risk. The court concluded that "the most that can be said is that [Hillcrest Acres' rule prohibiting Pit Bulls] created a duty on the part of the [Clarke} to [Hillcrest Acres] because [Hillcrest Acres'} rule prohibited tenants from bringing pit bulls on the land."

See also: *Feister v. Bosack, 198 Mich. App. 19, 497 N. W.2d 522 (1993).*

See also: *Braun v. York Properties, Inc., 230 Mich. App. 138, 583 N. W.2d 503 (1998).*

New Homes Get Built With Renters in Mind by Conor Dougherty

More single-family homes across the nation are being built for renters, a shift that mirrors a steady decline in homeownership in the years since the housing bust.

Until recently, real-estate investors had focused primarily on scooping up tens of thousands of foreclosed homes, at a sharp discount, and converting them into rental properties. Now that the pool of these properties has declined and prices have risen, these investors are snapping up newly finished single-family homes to be used as rentals, or even developing vacant lots from the ground up.

Last year 5.8% of the 535,000 single-family homes started were being built as rentals, up from 4.8% in 2011 and the highest share since at least 1974, according to an analysis of census data by the National Association of Homebuilders. From 1974 to the home-price peak in 2006, only about 2% of single-family homes were built for rentals.

Vanessa Finch sees her new rental as a waypoint. Ms. Finch, a 37-year-old human-resources manager, recently moved into a newly built rental home in Jacksonville, Fla. Ms. Finch and her husband, who have four children, wanted to get to know the area before they buy. Their two-story, four-bedroom rental costs $1,400 a month, but unlike most rentals, it has new paint and fresh landscaping.

"A lot of the neighbors came by because they were interested," she says. "They were really surprised that there were brand-spanking new houses for rent. They had never heard of such a thing."

For investors, the interest in new homes reflects their belief that the rental market will continue to see strong demand and rising rents. While there is little data for the level of single-family home rents, apartment rents have shot up 11.3% since 2009, according to Reis Inc. Overall, about 15 million of the nation's single-family homes were rentals last year, up from 10.8 million in 2005, according to Zelman & Associates, a research firm.

Meanwhile, foreclosures and other distressed sales accounted for less than 15% of all home sales in September, down from 21% a year earlier and 33% at the peak of the housing bust in early 2009, according to CoreLogic, a data firm.

The new homes-turned-rentals can be found both in new subdivisions or built on lots in long-standing communities.

Colony Capital LLC's Colony American Homes unit has about 1,000 newly built homes out of a total portfolio of 15,000 rentals. The company purchases them from home builders and is able to customize the building along the way.

"We can say we want a three-bedroom home with 2,000 square fee with these kinds of finishing's and they're in these communities where most of the families have lived there for a while," says Justin Chang, chief executive of Colony American Homes. "It's not like a whole subdivision of rental homes; the builder sells us 30 or 50 homes from the last build out."

For builders like Marc Jungers, institutional buyers offer a way to move homes in a hurry and keep cash coming in the door. He recently sold about 30 newly finished homes to Landsmith LP, a San Francisco real-estate investment firm that plans to rent them out to tenants. Mr. Jungers says the newly built rental homes, because they are sold in bulk, are discounted between 8% and10% of what an owner-occupant buyer would pay. "It gives us certainty of closing and helps us backfill a community," he says.

Building new rental homes undercuts part of the thesis of investing in single-family rental homes. Investors were attracted to this market largely because they could buy houses for less than the "replacement cost" or how much it would cost to build a new home.

But investors say they can still make profits. They point out that new homes typically come with builder warranties and cost less to maintain, at least in the initial years of ownership.

Also, the cost of building a new home is relatively low these days if lots were purchased on the cheap. Take the case of Alex Sifakis, a 30-year-old entrepreneur who began his real-estate career in 2006 when he graduated from college and started buying and flipping properties.

Mr. Sifakis started buying empty lots at a discount during the downturn, and in the meantime he got a contractor's license so he could expand into development and build rental housing from the ground up. Mr. Savakis's Jacksonville-based company, JWB Real Estate Capital, built 68 new rental homes last year, he says, and is on track to start somewhere between 70 and 90 new rentals this year.

The homes are spread throughout the Jacksonville area, mostly as developments in older neighborhoods and subdivisions. JWB can rent them and still make money partly because land typically accounts for about 40% of the cost of building a home.

Landsmith bought about 1,800 existing single-family homes over the past two years but has recently turned to buying new homes. The company has developed or bought about 600 new single-family rentals in Houston, Indianapolis and Charlotte, N.C.

"So you could buy a house from 1990 and get a 12% return. Now you can buy a brand-new house and get a 10% net return, so the spread isn't that dramatic given the uptick in quality you're getting," says Chang Kim, a vice president at Landsmith. "We're in a unique period where brand-new houses can be built for a low enough cost that single family rentals can work."

- Violation of the implied covenant of quiet enjoyment;
- Violation of the implied warranty of habitability.

Note: Some cities specifically prohibit smoking in multiunit housing and/or specifically declare secondhand smoke to be a nuisance.

Of course, whether any such claims brought by a tenant against a landlord would be successful depend on various factors, including: whether the tenant actually suffered significant harm (e.g., frequent respiratory complaints; missed work due to illness caused by the smoke; or other inability to open windows or use a heater in an attempt to prevent smoke from entering the unit.)

Note: Tenants who have disabilities with conditions made worse by secondhand smoke may be eligible for special legal protections.

If such a suit brought by a tenant is successful, possible awarded damages may include:

- Money damages—such as for medical bills, moving costs, or lost pay;
- An injunction might be forcing the landlord to designate certain units smoke-free or provide the complaining tenant with a different unit, or take remedial action to inhibit the drifting of smoke—such as installation of exhaust fans or sealing of units.

POTENTIAL SOLUTIONS FOR SMOKE-RELATED COMPLAINTS

Tenants do not have a "right to smoke" in their residential rental units. Smokers do not have a constitutional right to smoke, nor are they a protected class under fair housing laws. Moreover, an addiction to tobacco, nicotine, or smoking is not considered to be a disability under the Fair Housing Act or the Americans with Disabilities Act. Accordingly, as a landlord, if you desire, you have various options for limiting your potential liability associated with tenant smoking:

Prohibit Smoking. In lease agreements, landlords may include covenants, conditions, or terms that prohibit residential tenants from smoking in units, as well as in all common areas, including outdoors.

Note: State law may already prohibit smoking in indoor common areas if the facility has employees, such as property managers or others, who work on site.

If, as a landlord, you do not currently have a "smoke-free" policy for your residential building, such a policy can be phased in gradually with new leases containing clauses that prohibit smoking.

Note: If an existing lease agreement does not prohibit smoking, then you cannot change its terms until the lease expires without tenant consent. In any case, if changing the building rules on smoking, be sure to follow landlord-tenant law by giving notice, having existing tenants sign agreements with the rule change, and applying the rule equally.

Importantly, lease language that prohibits smoking should: make clear the purpose of the policy; define proscribed activities (e.g., define "smoking of "tobacco products"; particularly in states where the use of marijuana is legal, you may wish to also proscribe the smoking of marijuana); spell out landlord and tenant responsibilities; and limit landlord liability for violations of the policy when the landlord takes all reasonable steps to enforce the policy. The lease should not create an express or implied warranty that a property's smoking policy will increase safety, enhance habitability, or improve air quality. The lease should clearly define what constitutes a tenant breach of the smoking policy and the consequences of a breach.

Separate Units. If you own or operate a multibuilding complex you may consider separating the units of smokers and nonsmokers and designating some building as "smoke-free."

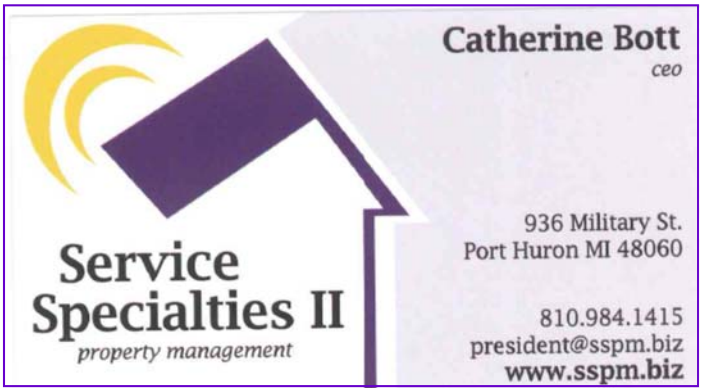
Utilities in Resident's Names

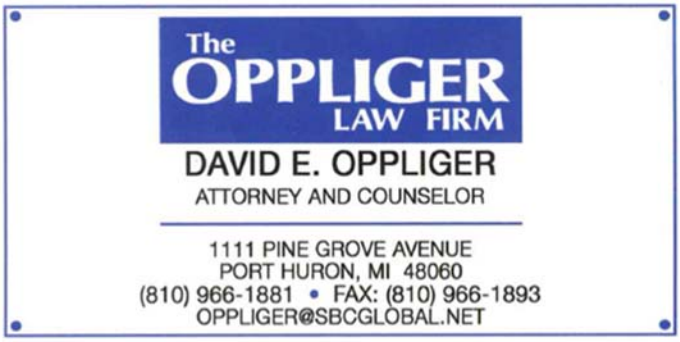
Mr. Landlord

Unless there is some specific technical reason for not doing so, all utilities should be paid by the tenant.

Be sure to contact the various utility companies prior to the resident's moving in to make sure they have been turned on AND in the name of the resident on the lease. It may be wise to contact the utilities again before he or she moves out to make sure that there are no outstanding bills that the resident was responsible for.

Some landlords check with utility companies before returning security deposits, especially if the landlord could be held ultimately responsible for unpaid utility bills. Consider having a provision in your lease that allows the landlord to charge to resident's account (as additional rent) for any unpaid utility bills.





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