



IOWA LANDLORD ASSOCIATION NEWSLETTER
www.iowalandlord.org

December 2009

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From the Desk of Your Directors

We would like to thank all those who attended the ILA Fall Educational Seminar and Trade Show for making it a success and also our Vendor Partners for their support in hosting the Trade Show. And a big Thank You to all of our speakers for an informative day. Watch for pictures and highlights of the seminar in the December newsletter.

A special thank you to Michelle Brant with Professional Property Management for speaking at the October Lunch & Learn.

Just a couple of days that you need to mark on your calendar: January 21 will be our next Lunch & Learn at Mama Lacona's. Mark Hanson, Attorney, will be our guest speaker. We will not be holding

a Lunch & Learn in December due to the busy holiday season.

February 16 will be our annual "Landlord Day on the Hill." We will keep you informed of all the details about these two events in future newsletters.

We look forward to seeing you all at the ILA events we have planned in the upcoming months. You can also check the ILA website for upcoming events and updates.

We wish you a happy and safe holiday season!

From the ILA Officers and Staff



Welcome New Members

Chris Covington - Des Moines, Iowa

Brian Current - Current Sourciz - Forest City, Iowa

Cynthia Pollard - Newton, Iowa

Chad & Theresa Engelke - Dubuque, Iowa

Vendor Partner

We would like to welcome back as a Vendor Partner, The Des Moines Register.



Meet a Vendor



Artistic Waste Services has been locally owned and operated by Tony and Bobby Colosimo since 1993. Artistic Waste is the largest independent, full service waste and recycling hauler in the state of Iowa.

We provide residential, commercial and roll-off services, as well as recycling, medical waste and confidential shredding.

We offer a variety of container sizes to suit you individual needs.

For more information, please contact Tammy Smith at 697-3789 or email her at tsmith@artisticwaste.com.

For additional information about our services, you can also visit our website at www.ArtisticWaste.com.



ILA Legislative Report

Joe Kelly
ILA Lobbyist



Let's review some news since my last report. First, the Iowa Plumbing Board has decided not to try to define what an emergency repair is. They're just going to take the language from SF 224. That definition says that an emergency repair is one to prevent imminent danger to property. Since the Plumbing Board doesn't want to define it, you get to do so. And it's not just water repairs. It's any repair that falls under the jurisdiction of what the board regulates: plumbing, HVAC and hydronics.

The Iowa Department of Public Safety announced they have a new and improved sex offender website: www.iowasexoffender.com. The Iowa Civil Rights Commission announced they checked out 35 housing providers in six

Iowa cities. No illegal practices were discovered. The ILA had done a great job of informing members about how to conduct applications in the proper fashion.

The Fire Marshal has announced that the new dual sensor smoke detector requirement has been delayed for six months. The reason is that suppliers can't produce enough of the product. The new lead renovator licensing program will begin on April 22, 2010. The state Department of Health will begin certifying contractors on January 13th. There are 15,000 contractors who will have to be certified, including a significant number of landlords. Some landlords are chagrined at the cost of \$60 for the new license. The alternative is to have the federal government run it. The feds require a five year license. That's \$500 upfront money. If you get out of the business before the five years are up, you don't get any rebate. We're better off dealing with IDPH.



ASK AN ATTORNEY Legal Q & A

by Mark V. Hanson
Attorney at Law,
Whitfield & Eddy, P.L.C.

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Question: May a tenant terminate a rental agreement if they conclude that their "peaceful enjoyment" is not being met? This question came up from a tenant who wants to move but is concerned about their security deposit and rental contract. After they have contacted the property manager two or three times, nothing seems to be done about the noise that is bothering them.

Response: The tenant risks the landlord retaining the security deposit or suing for unexpired term rent. The landlord risks

challenge to those remedies by the vacating tenant.

Iowa Uniform Residential Landlord and Tenant Law, Iowa Code Chapter 562A, Section 17 (7) is the only section that addresses peaceful enjoyment. The tenant has the obligation to act in a manner that will not disturb a neighbor's peaceful enjoyment of the premises. The lease/rules may have reference to the same requirement. Both this Code section and any lease/rules are written that it is the tenant that has the obligation. There then is a remedy for the landlord to take action against the offending tenant. I have not seen any Code language or lease/rules which impose on the landlord the obligation to maintain the premises in such a manner for tenant's peaceful enjoyment, or enforce particular tenant obligations. The Code imposes on the landlord the obligation to comply with the building and housing codes materially affecting health and safety, make repairs to

Mark Hanson, Continued ...

keep premises in fit and habitable condition, etc.

But, peaceful enjoyment language is not included in these obligations. So, if an offending tenant disturbs a neighbor's peaceful enjoyment, the landlord has remedy against the offending tenant. But, what remedy does the innocent tenant have if the landlord takes no action against the offending tenant?

Since this column is directed to landlords, my comments will be from that perspective. When might this come up that you would have a tenant threatening to move/terminate the lease because another tenant is disturbing the first tenant's peaceful enjoyment. Can the first tenant do that?

You would all know that it would not be easy to evict the offending tenant. You need to give proper notices. And, you would need the neighbors to be willing to come down to the small claims court and be willing to testify against the offending tenant. They may not be willing to do so. So, you are reluctant to take action, or feel you do not have sufficient evidence to win if you go to court. Then the innocent tenant terminates. Do you have any recourse against that tenant if the lease has not expired. Does that tenant have any defense against your recourse?

A. You could give notice that you are withholding deposit.

If the tenant challenges you, the burden is on you to justify withholding it. Bad faith retention exposes the landlord to judgment for punitive damages, actual damages and attorney fees.

B. You could sue for unexpired term.

If the tenant challenges you, you need to prove your efforts to re-rent the property. And, you need to meet the tenants allegations made in his/her defense of your actions.

In either of these, the basic issue then becomes, was the tenant justified in

terminating. The Code does not specifically permit the tenant to terminate for landlord's failure to enforce peaceful enjoyment against an offending tenant. That would be the main argument of the landlord. But, the terminating tenant would try to establish justification to terminate by equating lack of peaceful enjoyment to being equivalent to landlord's failure to supply possession of the dwelling unit.

The tenant would say the condition of the disturbance is so bad that the tenant cannot live there, and is in effect being effectively evicted. Or, the tenant would argue if the tenant has an obligation to not disturb, the landlord has in effect reciprocal obligation to enforce. The landlord would need to address those arguments if he/she is seeking to retain security deposit or unpaid rent. The landlord would want to establish he/she took reasonable measures to get the offending tenant to discontinue disturbing noise and activity - even if they were unsuccessful. The landlord would need to argue that the offending tenant's noise and disturbance was not so bad that it was "effective eviction," and the terminating tenant was not justified in terminating. And, what other evidence do you have to prove your side of the argument. Do you have other tenants to testify that the disturbance wasn't all that bad?

My recommendation if you have a tenant terminate for this reason: Consider how bad the disturbance was and whether the tenant was justified in terminating. Assess if it is worth the risk to keep security deposit. Assess if it is worth the effort to sue for unexpired term rent.

"The determination of the need for legal services and the choice of a lawyer are extremely important decisions and should not be based solely upon advertisements or self-proclaimed expertise. This disclosure is required by rule of the Supreme Court of Iowa."



Raising Rent

Sticker shock. It can happen for a tenant just like when they or you look at the prices of a new car. With today's economy, when a rental renewal notice is sent with a rent increase, tenants may become angry and want to vacate.

Sharing comparisons with an educated tenant can help. To prevent sticker shock, the manager must know the market and what other landlords are charging. This knowledge base will help you defend your decision and the amount you have proposed as an increase.

Once the tenant knows that the market is asking a certain level of rental income, then the tenant will not seem as agitated.

For BIG rental increases, you may want to phase in the increase. Work with your tenants to educate them and possibly do a small upgrade. A "phase in" approach may minimize the "sticker shock" of a rental increase.

A yellow sticky note with a black border, featuring the words "Important Information" in blue and red text. The note is pinned to a surface with a black corner tab.

Important
Information

December 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
 DECEMBER		1	2	3	4	5
6	7	8	9	 10	11	12 Hanukkah (Dec. 12-19)
13	14	15	16	17	18	19
20	21  FIRST DAY OF WINTER	22	23	24	25 Christmas - ILA Offices Closed	26
27	28	29	30	31		



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Current Resident
 12345 Sample Address
 City, ST 00000