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## Money For Nothing: Getting The Most From Your Tenant Settlement Strategies

By **Brad Kraus**  
rentalhousingjournal.com



*Photo by Helloquence on Unsplash*

I'm amazed by the number of landlords who give money or rent concessions to tenants, thinking they just settled a dispute, only to find themselves at the wrong end of subsequent claims for those same disputes.

Rather than giving up money for nothing, let's make sure you're getting the most from your tenant settlement strategies.

Landlord/Tenant relationships are like many other contractual relationships. Parties must comply with their end of the agreed upon terms/conditions/obligations, and a failure to do so can lead down the path towards litigation.

Whether, for example, a tenant seeks damages for a defective toilet or an unlawful entry, many landlords give tenants money, thinking the damage claims are thereby resolved. The landlord's goal in making the payment is obvious: pay the money, make the problem go away.

However, those same landlords may not realize that, without solid settlement documents, they may have created more headaches than solutions.

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**NOTE: There is no  
educational dinner  
offered in November.**

**Happy  
Thanksgiving**

**Make a Contribution TODAY!**



# RENTAL OWNERS ASSOCIATION OF SOUTHWESTERN OREGON

## Who is the ROA?

Rental Owners Association of Southwestern Oregon is an organization that's been around for over 30 years and consists of landlords who care about practical, legal and profitable land lording practices. Through the association, they share problems, solutions, and ideas with other landlords and find information that comes from similar organizations in Oregon and around the country.



Our Association is currently comprised of over 200 landlords!

## Advertise Your Business in the ROA Newsletter!

The monthly newsletter reaches over 200 landlords who need your products/services to manage their rentals.

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## When Does a Guest Become a Tenant?

Sept 17, 2019

www.turbotenant.com

Tenants will have people coming and going from their place at many different times throughout their lease. However, determining whether a new face on your property is a short-term guest or one who is overstaying their welcome can be a tricky situation.

Tenants are absolutely allowed to have guests, whether it's friends from home visiting, a sibling or even a significant other – there are tenant rights regarding guests according to the covenant of quiet enjoyment. Yet, this doesn't mean guests are allowed to stay for an indefinite amount of time – crashing on the couch can turn to a full-time roommate pretty quickly. So when does a guest become a tenant? Here is everything you need to break it down:

### Guests Vs. Tenants

This definition should seem pretty obvious to most people, but an actual tenant is someone who is on the lease – they pay rent every month to live in the specific rental property. Therefore, a guest means someone who is not on the lease but is just visiting for a few days or so – there is no binding contract for guests, just tenants.

### Examples of Guests Vs. Tenants

- **Nannies** – If they are full-time nannies who live at the property, then they would be considered a tenant. If they only come to stay at the property during business hours and don't actually "live" there, then they can be considered a guest.
- **Romantic partners** – If partners tend to only visit and stay over occasionally, they would be considered just a guest. If partners tend to stay over most nights, park at the property frequently, and even have furniture or personal belongings in the property, they are tenants.
- **Visiting family** – If a family member only stays for a few days, they are obviously just guests. However, if elderly parents or a sibling decided to move-in for various reasons, then they will be a tenant on the property as well.



Photo by Benjamin Combs on Unsplash

- **College students** – If college students are coming back to stay with their parents or family over breaks or on weekends, then they are just guests. If students move back in for a period of time longer than a couple of weeks, such as summer break, then they can be considered a tenant.

### How Many Days Can a Tenant Have a Guest Visiting in the Home?

This can and should be laid out in the lease and specified to the tenant. Depending on how lenient you want to be as a landlord, anywhere from 10-14 days is usually acceptable. Having your tenant sign their initials next to this detail in your lease will ensure there was proper communication beforehand.

### Signs That a Guest is Establishing Residency in Someone Else's Home

Usually, you will be able to tell if someone other than your actual tenant is living on the rental property as more than just a guest – here are some tell-tale signs:

- The guest stays over every night
- The guest parks their car in the property lot every day
- The guest is getting mail delivered to the property
- The guest is seen moving in furniture

*continued on page 5*



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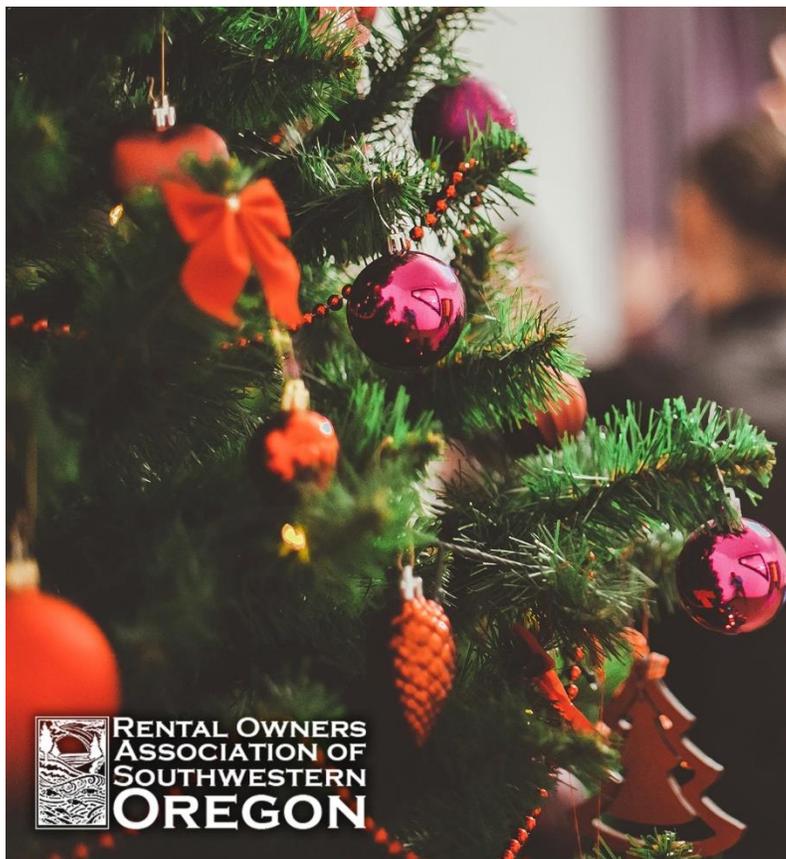
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You're invited to the Annual ROA

# Christmas Party

**Thurs, Dec 12th @ 5:30pm**  
**Coach House Restaurant**  
**604 6th Ave, Coos Bay**

Meetup with your fellow ROA members for a fun-filled and festive no-host dinner at the Coach House Restaurant's outdoor patio.



**RENTAL OWNERS  
ASSOCIATION OF  
SOUTHWESTERN  
OREGON**

## When Does a Guest Become a Tenant?

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### What Should I Do if a Tenant has a Long-Term Guest?

#### #1: Consider Adding them to the Lease

If there are obvious signs your tenant has a permanent long-term guest, adding them to the lease will help protect you as the landlord since they will be obligated to the lease and, therefore, all the rental property rules and stipulations. If you are debating between adding the tenant guest to the lease versus asking them to clear out, ask yourself these questions:

- Do they have a key to the property?
- Are they there more than 50% of the time?
- Have they already made arrangements to receive bills at the address?
- Do you think they have another lease?

#### #2: Have a Conversation with the Tenant

Having to be confrontational as a landlord can be awkward and uncomfortable for both parties, but it is sometimes necessary. While it can be difficult to have the conversation, make sure to bring a copy of the lease to show them the outlined length of time you both agreed to in regards to guests. You should be understanding and courteous while also explaining policies in the lease are non-negotiable.

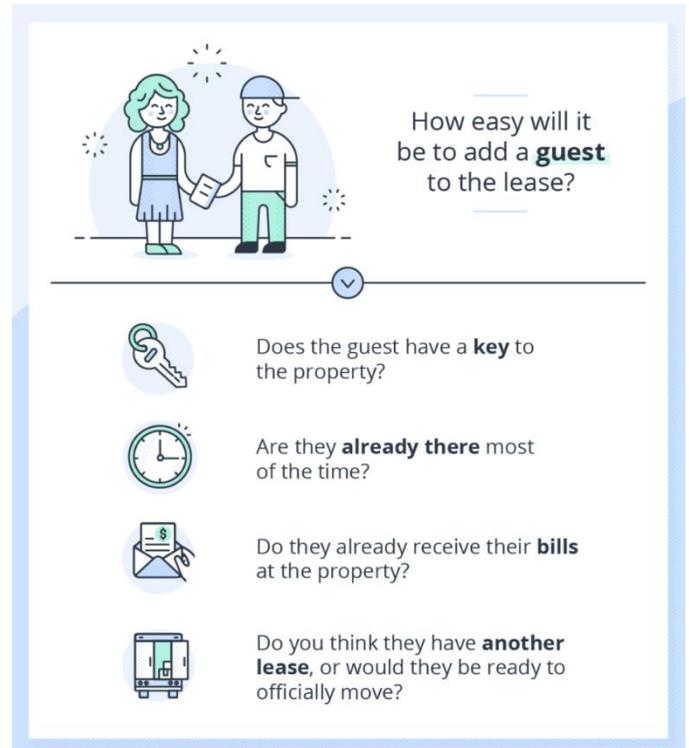
#### #3: Follow Through

After you are able to talk to your tenant, it's a good idea to confirm the long-term guest isn't still secretly slumming. Follow through to make sure the guest either moves out or is officially added to the lease – if not, you can remind the tenant a lease violation could lead to eviction.

## When Does a Guest Become a Tenant FAQs

### Why is it important to identify long-term guests?

This is important for legal accountability – if there is a tenant living at the rental who isn't on the lease, the landlord could be at risk, especially if an accident or something else were to happen.



How easy will it be to add a **guest** to the lease?

- Does the guest have a **key** to the property?
- Are they **already there** most of the time?
- Do they already receive their **bills** at the property?
- Do you think they have **another lease**, or would they be ready to officially move?

### Should I accept rent from a guest?

No – do not accept rent from guests because, again, this puts the landlord at risk for legal issues. Only accept rent from people on the lease.

### Can I evict a tenant if they refuse to add their guest to the lease?

Yes, if you've given all the options multiple times to your tenant and they refuse to add their guest to lease or have them move out, eviction is an option as a last resort.

Overall, it is important to identify long-term guests as a landlord because they can be a liability to you and your rental property. Furthermore, if tenants are allowing long-term guests, it means they are violating their lease. Adding the guest to the lease or having them move out are the best options to ensure you are protected – make sure that each potential resident is filling out a rental application and that you are still screening them for possible red flags.

**DISCLAIMER:** TurboTenant, Inc does not provide legal advice. This material has been prepared for informational purposes only. All users are advised to check all applicable local, state and federal laws and consult legal counsel should questions arise.



# Form of the Month 72-HOUR NOTICE TO PAY OR VACATE FOR NON-PAYMENT OF RENT

4

Tenant(s): 1  
 Tenant(s): \_\_\_\_\_ et al (and all others)  
 Address: \_\_\_\_\_ Unit: \_\_\_\_\_  
 City: \_\_\_\_\_ OREGON Zip: \_\_\_\_\_

**This is to inform you that your rent is now at least seven (7) days past due. This is your 72-hour written notice to pay your past due rent or your rental agreement will be terminated as provided by Oregon Landlord/Tenant Law.**

**To Satisfy This Notice, You Must Pay At Least Your Past Due Rent Amount of: \$ 2**

**3**  This notice has been served personally to each individual named above.  
 Date: \_\_\_\_\_ Time: \_\_\_\_\_ (If left blank, notice was served prior to 11:59 p.m. on date of service.)  
 Your Past Due Rent Amount must be paid by: \_\_\_\_\_ (Time notice expires or 11:59 p.m. if left blank.)  
 on \_\_\_\_\_ (date) or your tenancy will be terminated automatically without further notice.

**4**  This notice has been served by posting on the main entrance door of the dwelling unit and mailed first class mail.  
 Date: \_\_\_\_\_ Time: \_\_\_\_\_ (If left blank, notice was served prior to 11:59 p.m. on date of service.)  
 Your Past Due Rent Amount must be paid by 11:59 pm on \_\_\_\_\_ (date) or your tenancy will be terminated automatically without further notice.

This notice has been served by first class mail and the effective date is extended by four days, including date mailed.

**5**  This notice has been served by first class mail and the effective date is extended by four days, including date mailed.  
 Date: \_\_\_\_\_ Time: \_\_\_\_\_ (If left blank, notice was served prior to 11:59 p.m. on date of service.)  
 Your Past Due Rent Amount must be paid by 11:59 pm on 6 (date) or your tenancy will be terminated automatically without further notice.

**Housing Choice/Section 8 Voucher Recipients: Notice is served by one of the methods above AND a copy mailed, emailed or faxed to the Public Housing Authority the same day.**

**7** *If you are on a fixed-term lease, be advised your landlord has the option to terminate your tenancy at the end of your lease if you have received three or more notices for noncompliance (including non-payment of rent) within a 12-month period preceding the end of the fixed term. Owner/Agent may terminate the tenancy by issuing a 90-day notice prior to the lease end date, or 90 days prior to the date designated in the notice, whichever is later. Correcting the third or subsequent violation is not a defense to the termination. This is your \_\_\_ violation in the last 12 months.*

Owner/Agent Signature: 8 Date: \_\_\_\_\_

**MAKE PAYMENTS TO:**  
 Owner/Agent: 9  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**For Informational Purposes Only:**

Late Fee per Written Rental Agreement:	<b>10</b>	\$ _____
Actual Damages (costs) incurred by Owner/Agent for preparation and service of this notice:		\$ _____
Other amounts owed on account:		\$ _____
<b>Total Amount Due</b> (not including rent amount above):		\$ _____

There may be additional charges due under your rental agreement for which you remain responsible. To avoid termination of your tenancy for non-payment of rent, you need only pay the Past Due Rent Amount listed above.

*If you are a veteran of the armed forces, assistance may be available from a county veterans' service officer or community action agency. Call the 2-1-1 information service to learn about resources in your area.*



# 4 — 72-Hour Notice to Pay or Vacate for Non-Payment of Rent



UPDATED

## What this form is for:

This is the basic form for terminating the tenancy of a Tenant who hasn't paid rent. Any violation of a rental agreement can be grounds for terminating the agreement, but most take 30 days' notice. The law allows, though, an expedited process if the violation is non-payment of rent.

## When this form is used:

This form is used when the rent is not paid, but it cannot be used until the rent is 7 days past due. In other words, if your rent is due on the 1st of the month, you cannot serve this notice until the 8th of the month.

This form can be thought of as a special type of for-cause notice. In essence, it says "You're in violation of your rental agreement, in that you didn't pay your rent. You have a certain amount of time to cure this violation or your rental agreement will be terminated." So if the Tenant pays, cures the rental agreement-violating behavior, within the time allowed, the tenancy continues; if the Tenant doesn't, the tenancy is terminated. Assuming the Tenant doesn't voluntarily leave, file an FED, asking the court to return to you the property that this Tenant is now unlawfully withholding from you.

The law requires you to give "at least" 72 hours notice. You can give more.

An alternative to this form exists: the *144-Hour Notice to Pay or Vacate for Non-Payment of Rent (Form #44)*. See page 141 for the differences.

## When must the Tenant pay?

The law, ORS 90.394(4), says payment by the Tenant is timely "if mailed within the period of the notice..." with an exception for certain hand-delivered and posted-and-mailed notices.

ORS 90.394(4) provides an exception to allowing the rent to be mailed to you, though it's not generally of practical use. You can insist that the Tenant not just send you the rent but get you the rent within the time stated in the notice if all of the following apply:

- The notice was delivered by hand or post-and-mail,
- The written rental agreement and the 72-hour notice both specify where the rent is to be paid,
- The place must be available at all hours,
- The place must be either on the premises or where the Tenant has made all previous rent payments.

That can work in some cases, such as at an apartment complex with an on-site office, but in many circumstances it doesn't work.

## How the form is filled in:

The date and times on the notice depend on when and how the notice is delivered to the Tenant.

1. Fill in the name(s) of the Tenant(s) and the address. Notice there is space for multiple Tenants.

You should name each adult in the household. If you don't know a name, write "John Doe" or "Jane Doe." The "et al (and all others)" is for someone there you don't know about, but it's always best to list everyone.

*continued on page 8*

2. This is the amount of rent due. It should be a whole month's rent. If you have accepted a partial payment of the rent, it gets complicated. If you have accepted a portion of this month's rent and executed a ***One-Time Partial Payment Agreement (Form #29)***, you can put in the balance due. If you didn't execute such a written agreement, you have probably lost your ability to use a 72-hour notice and will have to use a ***Notice of Termination For Cause (Form #38)***. The other amounts due can go below in item #10.
  3. Check this box if you are individually serving the notice, that is, handing a copy to each of your Tenants (listed in item #1). Here the time is important. If you have a choice of times, it should be the latest time. Then the time to pay by must be at least 72-hours after the time delivered and the date to pay by must be at least three days after the date delivered. It may be simpler to leave the time to pay by blank and allow the rent to be paid anytime on the third day.
  4. Check this box if you are posting and mailing. Then fill in the date and time of posting, then the date by which to pay. If you are delivering this form on the 8th (the first day you can do so if the rent was due on the 1st), then the date in the first blank would be the 8th. Put down the approximate time of the posting, but this will be a day notice, given this form of delivery. The next date would be the 11th unless you wanted to allow more time (or it's a Sunday or holiday).
  5. Check this box if you are mailing the form only. Fill in today's date and time (the time isn't important here).
  6. Fill in the date by which the past due rent must be paid. That date must be at least 7 days later. So, if mailed on the 8th, pay by 14th (or later if you choose or it's a Sunday or holiday).
  7. Three Strikes: A Landlord may terminate a lease with 90-days' written notice if the Tenant has committed three or more lease violations, including non-payment of rent, within the calendar year preceding service of the notice. To terminate a tenancy under this provision, the Landlord must provide a written warning notice at the time of each violation. Each warning notice must specify the violation, state that the Landlord may choose to terminate the tenancy at the end of the fixed term if there are three violations within a 12-month period preceding the end of the fixed term, and state that correcting the third or subsequent violation is not a defense to termination under this subsection. The 90-day notice of termination must state that the rental agreement will terminate upon the specified ending date for the fixed term or upon a designated date not less than 90 days after delivery of the notice. If you want to reserve the right to terminate the lease on this basis, fill in the number that this specific violation constitutes counting back one year.
  8. The person serving the notice should sign and date the notice.
  9. This is the person the rent should be paid to. This normally is you, normally the entity identified on the ***Rental Agreement (Forms #2A or #2B)***. The address is essential; phone and e-mail are practical, but not obligatory. It would be risky for this to be a different name or address from what's on the rental agreement form.
  10. You can list other amounts due here, though you don't need to. Some Owner/Agents calculate the cost of preparing and serving a notice (mostly time to prepare and deliver, but also postage, mileage, etc.), that is what the second line is for; see ***Actual Damages Invoice (Form #23)***.
- Other amounts could be outstanding repair bills, partial rent, or non-compliance fees. The total does not include the rent due from item #2.

#### Older Editions:

The most recent edition is "Rev. 5/19"

- Do not use older editions.

**NOTE:** Unless you're sure you know what you're doing, refer to the section entitled "Delivery of Notices" in the 2019 Forms Manual before completing this form. Most Owners/Agents who lose in FED court do so because they miscounted the days or hours on this notice or they delivered the notice incorrectly

## Money For Nothing: Getting The Most From Your Tenant Settlement Strategies

*continued from page 1*

### Tenant settlement strategies

A landlord’s payment of money to a tenant without a signed settlement agreement often occurs as a result of several faulty assumptions.

The landlord may incorrectly assume that:

- (a) The tenant has agreed that the money fully compensates the tenant for that claim.
- (b) The tenant has no other potential claims against the landlord.
- (c) The tenant won’t pursue those claims (and seek more money) on a later date.

The faulty nature of the foregoing assumptions often raises its ugly head when the tenant files a lawsuit, for it is at that moment the landlord discovers that money was handed out for nothing.

To add insult to injury, the landlord may also discover that litigation costs can dwarf the initial payment to the tenant.

The forgoing “money for nothing” scenario is wholly avoidable: in consideration for any payment of money to a tenant, have the tenant execute a settlement agreement releasing any and all claims that may exist.

In other words, utilize a written contract that protects you.

The necessity of a document evidencing the parties’ settlement agreement—and the complete release of *any* and *all* claims—derives directly from contract law: Settlement agreements are contracts, and they are subject to the basic rules of contract law. Well written settlement agreements contractually waive and release existing claims; eliminate disputes regarding the nature of the parties’ settlement; and rebut tenants’ subsequent efforts to contend that no such waivers and releases exist. In other words, a well written settlement agreement provides a landlord with a solid defense to any lawsuit brought by the tenant for the previously resolved claims.

So... money for nothing? It’s a great song title, but let’s make your money work for you and get you something in return: create and execute well-written settlement agreements, put past disputes in the past, and avoid allowing the past to tarnish your future.

### NEED FORMS?



Oregon Rental Housing Forms are just a click away!

<ol style="list-style-type: none"> <li>1 <a href="http://www.oregonrentalhousing.com">www.oregonrentalhousing.com</a></li> <li>2 Click (top right): “Click to Get ORHA Forms Online”</li> <li>3 Input your local association code in the field labeled “Enter Your Member ID” to receive ORHA forms 1/2 PRICE</li> <li>4 Choose a form</li> <li>5 Click on the form</li> </ol>	<ol style="list-style-type: none"> <li>6 Input your information</li> <li>7 Click “Generate PDF”</li> <li>8 Click “Check Out” – This will direct you to PayPal</li> <li>9 Follow payment directions. Once complete, PayPal will return to the ORHA Forms page to “Print Link.” This link will also be sent to your email address.</li> </ol>
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Helpline  
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Need help? Call the Helpline!

FREE to all ROA members of the Southwestern Oregon Chapter.

RENTAL OWNERS  
ASSOCIATION OF  
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# Welcome New and Returning ROA Members!

- Mike Smith

- Carl Faris

- Vickie Hook

## Your ROA Board of Directors

**President:** Cindy Colter  
coltercindy@gmail.com (541) 404-8609

**Vice President:** Sage Coleman  
sage@pacificproptiesteam.com

**Secretary:** Vacant

**Treasurer:** Kris Thurman  
kris@eledwardsrealty.com (541) 756-0347

**Position #1:** Maria Menguita  
malumeng@gmail.com

**Position #2:** Regina Gabbard  
rgabbard15@yahoo.com

**Position #3:** Joan Mahaffy  
mahaffyje12@yahoo.com (541) 269-6562

**Position #4:** Vacant

**Position #5:** Dennis Schad  
dennisschad@gmail.com (541) 297-3609

**Position #6:** Danielle Cleary  
dcleary@ccnbchas.org (541) 751-2051

## Join Us

Ever wonder what goes on at ROA Board meetings? Have any suggestions to share? Interested in joining? Bring your thoughts and/or ideas. Or just listen in and see what we're all about.

The ROA Board of Directors meets every first Tuesday of the month at 880 California Ave. in North Bend from noon to 1:00pm. Meetings are always open to the public.

Consider joining the board and have a voice in your local Rental Owners Association. Everyone wins when we put our ideas together to achieve a shared goal.



**roa-swo.com**

## Contact us at:

2707 Broadway Ave.  
North Bend OR 97459

info@roa-swo.com  
(541) 756-0347

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## In Case You Missed It: Applicant Screening



David Navarro of Oregon Coast Community Action did a great presentation for our group on Oct 24<sup>th</sup>. In it, he discussed the background of ORCCA and all the great services that they provide to our community. Their aim is to serve as a hand up in helping people get on their feet with short term programs. They're also collaborating with other organizations to try to alleviate the pressure on housing in our area.

David also talked at length about ORCCA's supportive housing programs in which program participants work directly with a Case Manager to identify a way to meet their needs. As landlords, we need not change our operating procedures, but we do have the added benefit of being able to reach out to the Case Manager should any concerns arise. It's good to note that the tenants assigned Case Manager, works to provide regular home visits and support to the tenant to help them remain stable in their housing. This may include childcare, counseling, or employment/financial literacy courses. Even after tenants exit an ORCCA program, they receive follow up care for a designated period.

ORCCA has also established a dedicated Helpline and Responsive Email for landlords so they have quick access to support regarding any housing program participants. You can also just call for general questions. (541) 435-7080 x248 or [landlordhelp@orcca.us](mailto:landlordhelp@orcca.us)

Finally, ORCCA can accommodate landlords that require first and last month's rent upfront. They also have a Risk Mitigation fund available for landlords to claim legal fees, lost rent or excessive damage to your unit not already covered by the security deposit. They do a great job of providing peace of mind in renting to individuals/families in need.

**ROA**  
**Helpline**  
(541) 435-1492

Need help? Call the Helpline!

FREE to all ROA members of the  
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NOTE: There is no educational  
dinner offered in November.

**Happy Thanksgiving**



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