

Q: I recently read an article about some changes to credit reporting and that the credit reports I receive to screen my prospective residents might not be telling me the whole story. What's up with that?

A: Yes, that is correct. As of July 1, 2017, Equifax, Experian and TransUnion, the big three credit reporting agencies, stopped including tax liens, most civil debts and judgments when providing credit reports. Civil debts, court judgments and tax liens will not be reported unless those obligations include the consumers' names and addresses, as well as Social Security Numbers and/or dates of birth. The trouble is, the courts will not allow Social Security Numbers or other "unique personal identifying information" to be placed on any court document. Actually, the court will sanction (penalize) a party who inadvertently includes a Social Security Number on a filed document. Damned if you do, damned if you don't.

The change is part of the National Consumer Assistance Plan, and is intended by the reporting agencies to "ensure the data they maintain on their consumer files is accurate and current, to best serve consumers and the needs of their business and government customers." Not surprisingly, credit scores have risen. The impact to housing providers is obvious: it will be even more difficult to properly screen a prospective applicant. It is almost impossible to make good business decisions without good data. Remember, credit reports are merely tools, as are eviction reports. They certainly are not perfect, and getting less so now; however, they are still tools to be used. Just be aware of the glaring weaknesses inherent in these reports.

Q: Just closed escrow on a ten-unit building in Southern California. Nice area, nice tenants, everybody is current, no rent control—life's good. Going through the tenancy documents, I noticed that all the tenants are month-to-month tenancies, close to market rents but the security deposit on file is only \$300 per unit. I'm thinking of serving a Change In Terms of Tenancy bringing all of the security deposits up to the equivalent of one month's rent. What do you think? Can I do that? Is that a good policy?

A: The short answer is yes you can do that; you can change the terms of tenancy and require that each tenant pay the equivalent of one month's rent as the security deposit. The better answer is rather than raising the security deposits, it is better to implement a small rent increase of say \$50 or so per month. Security deposits are simply held by you for the benefit of the tenant, they are not yours to keep. The increased rent is yours to keep. Many tenants would prefer to pay an additional \$50 or so in increased rent rather than having to come up with an additional \$900 or so in additional security deposit. Many tenants might simply move when asked to pay an additional \$900 or so within a month's time.

Remember, rent and security deposits held are inversely proportionate. If your rents are below market, tenants are generally willing to pay a bit more than market as a security deposit to secure the rental. The converse is true as well, if your security deposits are lower than market, tenants are generally willing to pay a bit more than market rent to maintain the rental.

Q: Most of my residents pay on time and their checks are honored by their banks. Lately,

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it seems that I've been getting many checks from small banks, even some internet banks with no real offices, many I've never even heard of. I recently had one returned insufficient funds over three weeks after the check was deposited! Do I have to accept these types of checks? Should I require that all my tenants pay by cash or cashier's check? What about direct deposit?

A: You can control the method of payment and the types of payment instruments that you will accept. If your tenancies are month-to-month, you may change the terms of the tenancy agreement to establish different payment methods or to require payment by certified funds. Service of a 30-day Notice of Change of Terms will suffice. It is generally not a good business practice to accept cash as payment for rent due to the increased risk of robbery, theft or other criminal conduct. Many owners allow residents to make direct deposits or transfers to the owner's bank account. There are many benefits to this arrangement, but many drawbacks as well. If you do allow the resident to make direct deposits, then establish an account separate from your personal general account and establish clear guidelines instructing the resident when and how to make deposits.

Suggested guidelines would state that you will not accept a partial payment without prior consent; that the resident is not authorized to make a direct deposit after service of a three-day notice to pay rent or quit or a notice of breach of a covenant of the lease, or for any period of time after expiration of a notice of termination of tenancy. Once your payment terms are established, stick to them and require the residents do the same.

This article is presented in a general nature to address typical landlord tenant legal issues. Specific inquiries regarding a particular situation should be addressed to your attorney. The Duringer Law Group, PLC, one of the largest and most experienced landlord tenant law firms, and has collected over \$155,000,000.00 in debt since 1988. The firm may be reached at 714.279.1100, toll free at 800.829.6994 or 877.387.4643. Please visit www.DuringerLaw.com for more information and to sign up for our periodic newsletter.