

REVIEWING YOUR RENEWAL PROCESS AND LETTERS CAN AVOID HEADACHES

The business axiom that it costs less to keep a customer than to get a new customer certainly applies to the rental industry. Every community wants good tenants to stay forever and always sends good tenants renewal letters. However, communities are also sending out too many renewal letters by mistake to problem tenants. Because we regularly handle situations regarding renewal letters (offers), this month we address renewal letter problems, and how to avoid them.

Renewal letter horror stories run the gamut. However, renewal letter problems generally fall into two categories. One, you accidentally send a renewal letter to a tenant that should not be renewed. You were planning on serving this tenant with a Notice to Vacate, but instead sent a renewal letter. Two, after you send a renewal letter that you meant to send; the tenant becomes a significant problem. With more and more management companies adopting sixty-day notice periods, this has become more common. When a tenant has to give sixty days' notice, communities are sending out renewal letters as much as three months prior to the end of the lease term.

Three months is a long time. Even an ideal tenant's circumstances and conduct can change significantly in ninety days. Tenants, who have been marginal problems, may become huge problems after a renewal letter goes out. Without thoughtful analysis and corresponding policies, all options are bad if a problem tenant gets a renewal offer. If you renew and a problem tenant's bad behavior persists, landlords then have to pursue a difficult or time-consuming non-compliance eviction. Evictions based on notices to vacate are routine. Evictions based on disturbing other tenants can involve five or even more witnesses. Frequently, some of the key witnesses in non-compliance cases are other tenants that don't or won't get involved. Finally, if a landlord evicts based on non-compliance, the tenant can frequently club the landlord over the head with the renewal letter. "Your honor, if I am such a bad tenant, why did they offer to renew me?"

When these renewal problems surface, the situation board at THS lights up. Landlords often ask us whether they can revoke or take back the renewal offer if it was sent by mistake, or circumstances have changed to the point that the community is justified in not renewing. Can a landlord revoke a renewal offer? Maybe. The answer depends on the language of the renewal letter. Unfortunately, most of the renewal letters we have reviewed do not allow a landlord to retract a renewal letter (offer).

Basic contract law governs renewal letters. Contracts are formed when there is an offer and acceptance. Landlords start the ball rolling by making tenants offers to renew their leases. Firm offers have no conditions other than for the other party to accept. Firm offers cannot be revoked. If a renewal letter is a firm offer, the renewal offer cannot be revoked. It is either accepted, or dies when it is not accepted by the deadline. If no deadline is placed on when the tenant can accept a renewal offer, the tenant can accept the renewal offer within a reasonable time. A reasonable time means up to and including the last day of the tenant's current lease term.

If a renewal offer only requires the tenant to accept, and has no time limit for acceptance, the renewal offer (letter) cannot be withdrawn.

Many renewal letters are clearly offers to renew. For example, many renewal letters state that the property is “pleased to offer” the tenant a renewal, or “invite the tenant to renew”. By using such language, the community is clearly making an offer and many times such offers lock you into specific rates for an extended period of time. Similarly, some communities use combination renewal letters. The renewal letter has both an offer to renew, and the tenant can accept by signing the letter in the designated space. Almost all of the combination renewal letters that we have reviewed use language that makes the renewal letter a firm offer that cannot be revoked, and will only die with the passage of time.

The first step to avoiding renewal problems is to tighten down your renewal process. Your system should be able to flag problem tenants so that you don’t send renewal offers to problem tenants. In theory this should be easy, in practice it is not. You will never be able to eliminate human error. However, you can eliminate software shortcomings. If your property management software can’t flag problem tenants to prevent the automatic generation of a renewal letter, you should talk to your software provider about adding this feature. If a landlord has one hundred percent confidence that renewal letters will only go to tenants that deserve to be renewed and that the landlord wants to renew, the landlord will avoid most renewal related issues.

However, even if a landlord’s renewal process is airtight, this doesn’t resolve the issue of tenants who are sent renewals and then become major problems. This problem along with almost all other renewal related issues can only be addressed by careful drafting of the renewal letter. A well-drafted renewal letter should meet a number of goals. Landlords should draft renewal letters so that the renewal letter does not make an offer to the tenant to renew. Rather, a renewal letter should be drafted as an invitation by the landlord to receive (be receptive) to offers of renewal from the tenant. A landlord’s renewal letter language should never create an unconditional firm offer. Rather, a renewal letter should be drafted more as a reminder and marketing letter. For example, “we invite you to discuss renewing your lease with us.”

If a landlord decides to make a renewal offer, the renewal letter should give the landlord an out if circumstances change. Additionally, if you make an offer, you should consider placing appropriate conditions on the renewal. For example, “our offer to renew is open for thirty days, and can only be accepted as long as you are in good standing (not in default), and by executing a new lease”. A good renewal letter should also remind a tenant of the disadvantages of not renewing. Specifically, the letter should remind the tenant that if they don’t renew, the much higher month-to-month rates go into effect.

A carefully drafted renewal letter can meet the dual goals of having flexibility of not being locked in to set rates for extended periods if conditions change, and also effective marketing. To illustrate this point, let’s compare two renewal letter approaches that go out ninety days prior to the end of a tenant’s lease. The first renewal letter states, “We invite you to meet with us to discuss renewing your lease. Our current rate for a one bedroom is \$700 per month,

but rates are subject to change.” The second renewal letter states, “we are offering to renew your one bedroom for \$700 per month.”

The first approach is not an offer, but an invitation to discuss a new lease. If the tenant becomes a problem, you don’t have to sign a new lease with them. The first approach also creates a sense of urgency on the tenant’s part. The tenant may likely conclude that they better get into the leasing office, and get this done, or the price might go up. The second approach creates no sense of urgency. The tenant may conclude that they can accept it at any time during the next three months. Given the human tendency to keep options open and put things off, the tenant will put off dealing with renewal as long as possible.

If a landlord decides to stick with the second approach, the renewal letter can be substantially strengthened by minor changes. Specifically, the second approach could be changed from “we are offering to renew you” to “we are currently leasing to qualified tenants”. If you make this one minor change, you now have an out if the tenant becomes a problem. You can explain to a problem tenant that “qualified tenants” mean tenants that are not currently in default of their lease.

If a tenant situation blows up, and you want to withdraw the renewal, you should always do so in writing. “Because of the incident, we are withdrawing our offer to renew.” It may not fly legally, depending on the renewal letter that was sent, but it is better than nothing, and many times a tenant will just accept the revocation.

Also, keep in mind guarantor, or co-signer issues when sending renewal letters. When renewal comes up, frequently guarantors or co-signers won’t re-sign. Accordingly, the renewal of tenants with guarantors, or co-signers should always be conditioned on the guarantors and co-signers re-signing as well.

Similarly, to all tenant-related legal documents, renewal letters illustrate the constant tension between legally advantageous language and tenant friendly documents. Because legal ly ironclad language can negatively affect leasing, landlords do not want a five-page renewal letter written in legalese. On the other hand, overly simplistic renewal letters that are not well thought out can lead to unnecessary legal battles and associated costs. However, with knowledge of the key legal principles that apply to renewals, a landlord should be able to strike a proper balance, and write renewal letters in a tenant friendly fashion that also serves the community’s marketing goals and strategies. Fair housing concerns dictate consistency. If a tenant becomes a problem after a renewal letter goes out, you don’t have to renew if your renewal letter gives you options. However, you need to follow through and not renew all other tenants that have the same or similar issues.