

LANDLORDS, TECHNOLOGY, AND THE LAW

Technology constantly evolves and impacts how landlords interact with tenants. THS handles client situations and court cases every day that involve e-mails, text messages, or other technology. This month we share our experiences and some key takeaways based on our experience.

Text and E-mail Messages

If you communicate with tenants by e-mail or text, you must obtain the tenant's consent, and you must give the tenant an opportunity to decline the use of e-mail and texts, i.e. you must give the tenant an opportunity to opt out. Permission and the option to opt out should be obtained regularly and stored. Many landlords use e-mail and text messages to communicate with tenants to expedite service and resolution of issues. However, landlords need to know that any of these communications can be used in the future.

Hastily communicated messages tend to have long shelf lives and reappear in the courtroom, especially text messages. Computing related costs have decreased dramatically, especially storage costs. Because the cost of storing electronic data is minuscule, a tremendous amount of data is stored for long periods of time, and easily retrievable by tenants at any time. Accordingly, any communication you send can easily be posted online for the world to read, or worse show up in court and be read by the judge in your case. If a landlord engages in an emotional text battle with a tenant, the text messages will show up in court. At best, text messages can be a huge distraction in court by wasting time and making an easy case complicated. At worst, text messages can sink a witness' credibility or the entire case.

Generally, landlords do not need to immediately respond to every e-mail or text message, and in some cases, you should never respond immediately. You can't answer every phone when it rings, nor can you instantly meet with every person that enters the leasing office. While speed can be beneficial to provide customer service, the content of the message can be critical. In our impatient society, we are used to immediate responses to complex questions. Whether that is applying for a mortgage, ordering items online for 2-day delivery, or one-hour delivery, we have grown accustomed to immediate response. Speedy responses are not always the best practice. You should never immediately respond to emotionally charged or complicated tenant communications. Rapid fire response without thought to the impact or the perception of the communication can make a difficult situation go nuclear, and have long-lasting impact, including resulting in significant financial repercussions.

As a golden rule, never send an e-mail or text when you are angry or upset. Always take time to properly think through the response. If an immediate or prompt response is required, you should run the matter by a trusted advisor, co-worker, or attorney. You should only seek advice from someone with experience and who has the backbone to inform you if you are about to make a huge mistake. This is not to say that you should communicate with a sense of paranoia, but a little bit of paranoia and mindfulness could save some embarrassment.

The Firm regularly handles cases where colorful language used in electronic communications comes out in Court. Usually, these communications come from the tenant, but

not always. Sometimes we can have electronic evidence excluded because it is not relevant. We have also been involved in cases where a tenant forged e-mails to prove that the tenant provided the landlord with notice of an issue. However, in the vast majority of cases we handle, the courts admit into evidence e-mails and text messages between a landlord's agent and a tenant if they are relevant to the dispute.

Text messages and e-mails can have a huge impact on a witness' credibility. Specifically, the judge will evaluate the tone of communications made out of Court in determining a witness' credibility. If you come across as polite and professional in Court, your testimony can be undercut if the tenant can introduce written communications that are unreasonable, and use colorful language. Not every miscommunication is fatal. However, we cannot overstate how critical it is to meet challenging communications head on. If you know that there is a text message that the tenant may bring up, let us know so that we can adequately prepare to deal with it in court. If you think it is too embarrassing to let us know or that it won't come up, you are making a mistake. We can't deal with a problem that we don't know about, and it is always more embarrassing to have it surprisingly come up in court for the first time. Further, we base legal advice on facts. We will always give the best legal advice if we know all the facts. In the real-world, emotions can get away from even the most disciplined individual and miscommunications do happen. You are always better off addressing them so we can eliminate any "gotcha" moments that a tenant may try to launch.

Bottom line, you should always be mindful of your written communications. Avoid excessive speed if necessary. Remember, all your communications are likely being captured, and that the tenant can and will try to use them against you if you end up in court. Just as curt, rude, or demeaning communications can hurt you, professional, courteous, and polite communications go a long way in Court and may avoid Court altogether.

Cameras

In the past, cameras were an expensive piece of technology. For us older folk, we can remember when taking a picture was a big deal and a big process. Every picture costs money. Now the cost of taking a photo and storing it is an affordable cost once a phone is purchased. Accordingly, taking a video or snapping a picture is now done with no thought of storage or processing costs.

Cameras are not just limited to phones. Security cameras are now very common and quite affordable. Tenants regularly capture landlords and management agents in various acts within their units. It can be very costly if a tenant's camera catches maintenance employees on camera examining, touching, and commenting on the tenant's personal items. Recently, a situation involved a tenant video of a maintenance tech lingering in a unit and rifling through a tenant's personal property and making derogatory comments about that property. The landlord did not want a judge to see this, and the case was resolved at a mediation. Another case in the news involved a landlord (not a Firm client) engaging in a sexual act in the tenant's apartment. This outrageous behavior was caught on video by the tenant's hidden camera. Obviously, this is a very unusual case, but the sordid episode makes the critical point. Assume you will be watched by hidden cameras every time you enter a tenant's unit, and especially train your maintenance staff to act accordingly.

Tenant cameras can also benefit the landlord. We recently tried a case based on a tenant's disruptive behavior towards management. The tenant blatantly video recorded almost every interaction with the landlord. This strategy backfired on the tenant, big time. The tenant's behavior was hostile and disruptive towards management. The manager testified describing the interactions. The tenant then inadvertently and strongly backed up the manager's testimony by introducing the video that supported the manager's testimony. The takeaway is that managers and landlords should assume that their actions are being recorded, whether by phone or camera and act accordingly. While we are not yet in an Orwellian world where cameras record every moment of our lives, with the proliferation of cameras, it may be close. This really should only impact those in the property management who are not behaving well.

Where can we place cameras, is a common question that we are asked. Cameras should only be placed where there is no expectation of privacy. A camera should not be facing into a bathroom, or toward a tenant's window. Although there is no Colorado law requiring signage stating that a camera is in use or whether it is monitored, some benefit is derived from drawing attention to the fact that there is a camera in place. Specifically, such signage can act as a deterrent. However, given some of the tenant behavior that we've seen captured by Landlord cameras, a sign will not be a deterrent for all tenants or all bad tenant behavior. Landlords have captured tenants stealing items from common areas, engaged in fights, vandalism, and allowing unauthorized occupants into the premises. Cameras on-site are good for Landlords. Some tenants will want to install cameras on the exterior of their unit. This is often a lease violation in most multi-family leases and is often associated with criminal behavior. While some tenants have legitimate reasons to be concerned about their own personal security, outside tenant cameras detract from the aesthetics of a community, and thus most of our clients do not allow them.

The Web of Tenant Portals and Social Media and Reviews

We are living in a connected age, and for reasons of marketing and convenience, many communities have a large online presence. An online presence can be necessary and beneficial for communities to facilitate communication with tenants about what may be going on in a community and to make it easier for tenants to pay their rent. However, significant online presence sometimes comes with drawbacks.

If your community is going to have an online social portal or social media page, somebody needs to be tasked with regularly monitoring it. Many communities have systems set up that will forward communications through a portal or social media page via e-mail. Because a tenant can decide to utilize that form of communication to communicate a repair request, it should be monitored. Having a policy that limits how a repair request is to be communicated, may not be enough to overcome a tenant using the social media portal to communicate a complaint. The best practice is to regularly monitor all social media communications.

If you have an online platform that allows for a chat room, you will need to monitor this as well. Tenants will sometimes get into feuds in chat forums, which can result in lease violations. Anytime a landlord has a forum that allows for public postings and interactions between tenants, there needs to be a use policy. A use policy can encourage good behavior but is more likely to be a useful tool in addressing unwanted behavior. There are services that provide

reputational reviews for companies that can be very helpful in locating reviews. When a tenant posts a disparaging review, it can be a negative for a community. The process of having a review removed can be a frustrating process. The easiest way to reach a resolution would be to try and solve the underlying dispute with the tenant that results in the tenant removing the review. However, unfortunately, many times the community is not provided this opportunity because of anonymous posting.

Tenants or former tenants are not always reasonable or open to a compromise. Some tenants will be easy to deal with in person and then launch into online tirades late in the evening complaining about anything. It can be very difficult for a landlord to reason with a tenant who refuses to communicate directly. Communicating in an online forum should be done very carefully, if at all. The best response is often an invitation to set up a meeting to discuss the tenant's concerns. We strongly advise clients to not discuss anything about a tenant in an online forum that could disclose anything about that tenant or another tenant, or the community.

Sometimes resolutions cannot be found, which lead to trying a different tactic to get the review removed by contacting the host of the review. Depending on the content of the review, the host may not remove the review. The final step could be litigation over the review. In order to be successful in litigation to remove a review, the review must be clearly defamatory and untrue. If the review is simply an opinion, this is a losing case for the landlord.

Technology is useful and generally makes property management more efficient. Because technology is constantly and rapidly evolving, the law does not always do a good job of keeping up with it. However, we do. When a situation arises involving technology, be sure to reach out. Be careful out there and remember, somebody is always watching.