THE TOP TEN REASONS TENANTS FILE PETITIONS FOR AN OAH HEARING

An analysis of petitions filed with the Department of Fire, Building and Life Safety over the period beginning in 2007 and through 2009 reveals a common thread through most of the petitions. That is the failure of landlord and tenant to communicate thoroughly and without hostility. While filing a petition is entirely within the tenants' scope of rights it should be an action of last resort. It is the civic responsibility of both parties to engage in good faith discussions to settle a disagreement before pursuing legal recourse. Certainly, not incurring the costs, both in time and money, of legal action is beneficial to both parties.

Not every tenant complaint gave rise to a petition because of a lack of communication but communication or the lack thereof play a part in many petitions. Certainly, petitions are filed when management has made a clear statement denying responsibility and while often the reasons are given, the tenant disagrees. This report will help clarify some of these issues. The intent is to provide information that may be useful in promoting resolution of commonly occurring issues and thereby preventing the filing of petitions and the costs and acrimony associated with them. The intent is, to encourage, both the tenant and the landlord, to take a proactive role in solving problems and avoiding formal legal action.

The question that was studied is how many petitions could be eliminated if problem areas could be addressed differently. The following are examples of issues that could have been handled before reaching the petition stage. These concerns are not listed in any order of frequency but each is often the basis for a petition. It is not suggested that the tenant is always right but their perception is their reality. These concerns can be monitored by the landlord to avoid tenant issues. In many instances the Park Rules and Regulations are not as clear as they could be to avoid misunderstandings. Regardless, all communications between landlord and tenant should be specifically documented and any relevant papers should be copied and/or cataloged.

Please note that this document is not prepared to provide legal advice or to suggest that the information provided herein is sufficient for the landlord to make an informed decision as each situation consists of different facts and circumstances and must be considered independently. It is important that the information contained herein be used only as a guide when contemplating corrective action.

FAILURE TO MAINTAIN PREMISES IN A FIT AND HABITABLE CONDITION

Questionable cleanliness of common areas including social hall, kitchen, pool and pool area, and tenant rest rooms are frequent petition items. Ref: A.R.S. 33-1434.A.2, 3 and 4, and ALJ Decision 07F-L067022-BFS.

MAINTENANCE AND REMOVAL OF TREES

Trees are often the subject of petitions and seem to be a contentious issue between management and tenants. Refer to A.R.S. 33-1409.8 which states that "Dwelling Unit excludes real property used to accommodate a mobile home." ALJ decisions have been in favor of both

parties in different instances. The most recent decision in reference to this matter is case number 10F- L1010007-BFS.

WATER USAGE

This broad category generally includes tenants with individually metered water being charged for watering common areas and for not being allowed to turn off their water during a prolonged absence. The underlying issue is the tenant does not understand the Park's Rules and Regulations or these policy statements are not clear on the subject.

Another issue that gives rise to petitions is individually metered water is not charged the same fee structure as "… the prevailing basic service single family residential rate charged by the serving utility or provider." Refer to A.R.S. 33-1413.01.

SEPTIC TANK SYSTEMS

Landlords and tenants claim that the other is responsible for septic tank system failure such as sewage backup. Many allegations by each side have surfaced in disputes over septic tanks. Our analysis reflects that a thorough inspection of the septic system on a regular basis may prevent problems. If the source of a septic tank system problem cannot be identified by the landlord it might be useful if an expert was asked to review the problem.

SEWER LINE SERVICE FAILURES

Sewer lines that empty into a public utility sewage disposal line are alleged by one tenant to have a leak on another tenant's home site. This issue can be viewed in light of A.R.S. § 33-1434.A.1-2 or A.R.S. 41-2155. E.

REPLACEMENT OF GAS LINES

When an in-ground natural gas supply line provided by a local utility company to a tenant's home becomes unsafe a debate begins over who has the responsibility to repair the gas line. A.R.S. 41-2155. E. provides guidance in resolving this question. When a petition is filed alleging that responsibility belongs to the landlord it implies that the petitioner and the landlord have not thoroughly discussed the question.

DRAINAGE ISSUES

Proper drainage of land surrounding tenants' property has resulted in the filing of a greater number of petitions. This could be the result of water movement over time causing a reconfiguration of the ground and thus a change in water drainage patterns. Drainage issues vary as to type and cause and, therefore, as to responsibility for correction. Continuous monitoring of rain water drainage is a prudent course of action.

“SHOTGUN PETITIONS”

A significant number of petitions are loaded with a large number of complaints many of which seem to insignificant or which could have been settled without a petition. This type of petition seems to be born out of a tenant’s anger and frustration with the Park. Our analysis reflects that many of these petitions could have been prevented. This is not to say that the Park has acted improperly, but rather that communication broke down or the tenant has reached the point where they want someone else to hear them.

RULES AND REGULATIONS THAT ATTEMPT TO OVERRIDE THE TENANT RIGHT PROVIDED BY THE LTA.

Many petitions are filed because the landlord has written a rule and/or regulation that is contrary to the provisions of the LTA. Provisions that conflict with the existing LTA are not enforceable.

SEASONAL VISITORS WISHING TO SUSPEND TRASH COLLECTION FEES WHEN THEY ARE AWAY.

This is a frequent question and the subject of petitions. Again, the prevailing rate policy implemented by the political subdivision or provider should be examined before making a decision. Refer to A.R.S. 33-1413.01.D.

Lack of communication amongst landlord and tenant can have a significant and negative impact on the landlord/tenant relationship, resulting in unnecessary petitions and ultimately unnecessary litigation. The willingness of both parties to have open communication can be beneficial to everyone involved. The purposes of this document is to aid in bridging the gap in communication and hopefully will create a segue toward less hostile and more productive communication which, in the long run, will be mutually beneficial to everyone involved.