

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • • Administration • • • Executive Legal • • • Enforcement • • • Conflict of Interest
1916 322 5662 322 5660 322 5601 322 6441 322 6444

November 30, 1979

Shirley Dean
2180 Milvia Street
Berkeley, CA 94704

A-79-110

Dear Ms. Dean:

This is in response to your letter of November 20, 1979, and our telephone conversation of November 27, 1979, in which you requested advice concerning your responsibilities under the Political Reform Act, Government Code Sections 81000, et seq.^{1/} The following advice is provided pursuant to Section 83114(c). The facts as I understand them from your letter are as follows.

You are a member of the Berkeley City Council, which has before it a proposal to enact rent and eviction control ordinances. You are part owner of residential real property which consists of two flats. Your mother, who is also part owner of the property, lives in one of the flats and the other is rented. You have asked whether you can participate in the City Council's consideration of the ordinances, and whether our advice differs if the ordinances exempt owner-occupied buildings of four or less units.

Section 87100 of the Political Reform Act prohibits public officials from participating in decisions in which they have a financial interest. Section 87103 provides that an official has a financial interest in a decision if it is reasonably foreseeable that the decision will have "a material financial effect, distinguishable from its effect on the public generally" on various kinds of interests held by the official, including interests in real property worth more than \$1,000. By regulation, the Commission has determined that:

A material financial effect of a governmental decision on an official's interests ... is distinguishable from its effect on the public generally unless the decision will effect the official's interest in substantially

^{1/} All statutory references are to the Government Code unless otherwise stated.

Shirley Dean
November 30, 1979
Page Two

the same manner as it will affect all members of the public or a significant segment of the public....

2 Cal. Adm. Code Section 18703.

The Commission has already issued a formal opinion interpreting this provision in the context of rent control ordinances and has reached the following conclusion:

... In order to be considered a significant segment of the public, we think a group usually must be large in numbers and heterogeneous in quality. The class of persons owning three or fewer units meets both these standards and therefore constitutes a significant segment of the general public....

Opinion requested by
John Ferraro, 4 FPCC Ops. 62,67
(No. 78-009, Nov. 7, 1978)

As you own fewer than three rental units, the ordinances under consideration by the Berkeley City Council will affect your interests in substantially the same manner as they will affect a significant segment of the public. You therefore do not have to disqualify yourself from consideration of these ordinances and this advice does not differ if the ordinance exempts owner-occupied buildings.

I have enclosed a copy of the Ferraro opinion. If you have any further questions, please do not hesitate to call me.

Sincerely,

Sarah Cameron
Deputy Chief for
Conflicts of Interest
Legal Division

SC:plh
Enclosure



7710
NOV 21 10 57 AM '79

November 20, 1979

Ted Prim
State of California
Fair Campaign Practices Commission
Post Office Box 807
Sacramento CA 95804

Dear Mr. Prim:

It is my understanding that your Office offers to elected officials an individual opinion regarding their responsibilities under certain potential conflict of interest situations. The purpose of my letter to you at this time is to request such an opinion, in writing, that I might use for future guidance. It is further my understanding that rendering a formal opinion under Government Code Section 83114 takes approximately two weeks. Such a timeframe would be very much appreciated, as I would like your guidance as quickly as possible in order to know whether I can participate fully in the discussion which is currently taking place in this community.

The situation involves temporary rent and eviction control ordinances, a copy of which I have included for your information. These ordinances cover all residential rental property in the City of Berkeley. For approximately one year prior to the time these ordinances were approved, rent controls have been in place, approved by an initiative process. These prior controls exempted owner occupied residential rental units of four or fewer. Therefore, the thrust of these new Council approved ordinances is to cover residential units that have not previously had controls. You will note in the new ordinances that rents are frozen for a temporary period of time; there are no pass throughs allowed. While these new ordinances are temporary in nature, it is anticipated that permanent ordinances will be proposed, quite probably at the coverage level, i.e., all residential rental units, that exists in the temporary ordinances. The question could logically be asked, why else would there be a requirement to register these units in the temporary ordinances unless it was seriously to be proposed to cover such units in permanent ordinances?

My personal situation is that I own, along with my husband and mother, property that consists of two flats. My mother lives in one, the other is rented. Under former ordinances, this property was not covered, coming under

the exemption of an owner occupied four unit or less property. I do not live there, my mother does and thus meets the owner occupied definition. The unit rents for \$250/month, \$150 of which goes to my husband and myself, \$100 to my mother. Maintenance and repair costs are our responsibility, not my mother's. The income from this unit is not significant to me, it is significant to my mother. The equity interest in the property owned by each of us is substantial, well over \$1000 each. This is the only residential rental property I have an interest in.

Being uncertain as to whether I had a conflict I did not vote on the enclosed ordinance. I also did not participate in the discussion about the substance of the ordinance although I did participate in discussion of the process by which consideration of the ordinance should take place, e.g., whether a public hearing should be held.

If your opinion is such that I cannot participate at the Council table on this matter, does this mean I can take part in community discussions and political activities concerning these matters? May I discuss and participate in a Council Committee whose charge is to consider the process by which permanent controls will be considered? At the time the Council considers the substance of such an ordinance, should I absent myself from Council Chambers?

Thank you in advance for your assistance in this matter. I will be happy to supply you with any additional information you might need. I can be reached at (415) 644-6294 or (415) 514-3223.

Yours truly,


Shirley Dean,
Councilmember

Enclosure

cc: T. Lakey, Acting City Attorney

ADOPTING A RENT REGISTRATION AND TEMPORARY RENT STABILIZATION PROGRAM.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. TITLE.

This Ordinance shall be known as the Rent Registration and Temporary Rent Stabilization Ordinance.

Section 2. FINDINGS

a. The Housing Element of the Berkeley Master Plan of 1977 states that:

1. Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford (Goal 1).
2. Existing housing should be maintained and improved (Goal 2).
3. Berkeley should have an adequate supply of housing throughout the City for persons with special needs (Goal 3).
4. All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis (Goal 4).

b. On June 6, 1972, the electorate of the City of Berkeley passed a Rent Control Charter Amendment that was later voided by the California Supreme Court as being unconstitutional.

c. On June 5, 1973, the City Council declared the existence of a housing emergency in the City of Berkeley, based upon the Council's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.

d. On November 7, 1978 the electorate of the City of Berkeley passed a Renter Property Tax Relief Ordinance.

e. On October 25, 1979 the Berkeley City Council, Berkeley Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the City's administrative staff held a public workshop regarding the current housing conditions in Berkeley.

f. On October 30, 1979 the Berkeley City Council held a public hearing at which members of the public expressed their views regarding current housing conditions in Berkeley.

g. The most significant provisions of the 1978 Renter Property Tax Relief Ordinance will expire on December 31, 1979.

h. The development of comprehensive legislation and programmatic remedies by the City will require time for study, evaluation and development. The City Council of the City of Berkeley hereby adopts temporary legislation to assure that, subsequent to December 31, 1979 and prior to the adoption of permanent legislation intended to address the City of Berkeley's housing crisis, the public peace, health and safety are immediately preserved, and that, in particular, the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged are not endangered prior to public consideration and adoption of permanent legislation to protect the public peace, health and safety.

Section 3. PURPOSE.

The purpose of this Ordinance is to prohibit rent increases for a temporary period. During this moratorium, the City of Berkeley will take the opportunity to study the desirability and feasibility of measures to address the problems resulting from the critical housing shortage presently facing the residents of the City of Berkeley.

Section 4. DEFINITIONS.

a. Rental Unit: Any building, structure, or part thereof, or any other real property rented or available for rent for residential use located in the City of Berkeley, together with all services supplied in connection with the use or occupancy of such property.

b. Tenant: Any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of a rental unit.

c. Rental Agreement: An agreement, verbal, written or implied between a landlord and a tenant for the use or occupancy of any residential unit.

d. Rent: The consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units including, but not limited to, monies demanded or paid for use, occupancy, parking, pets, furnishings, housing services, sublessees and deposits.

e. Property: A parcel of real property which is assessed and taxed as an undivided whole.

f. Landlord: An owner-of-record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

g. Skilled Nursing Facility: "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

h. Health Facility: "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

Section 5. APPLICABILITY.

This Ordinance shall apply to all real property which is being rented or is available for rent for residential use in whole or in part except for the following:

- a. Such rental units which are owned by any government agency.
- b. Rental units which are rented primarily to transient guests for a period of less than fourteen (14) days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses.
- c. Rental units in non-profit cooperatives owned and controlled by a majority of the residents.
- d. Rental units leased by the Berkeley Housing Authority under the Section 23 program (42 USC 1421b) or units leased to tenants assisted under the Section 8 program (42 USC 1437f).
- e. Rental units in any hospital, skilled nursing facility, asylum, or non-profit home for the aged.
- f. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of this Ordinance.

Section 6. MAXIMUM ALLOWABLE RENT.

a. For the duration of this Ordinance, the landlord shall not charge, demand, accept or receive a rent higher than the amount set forth in this Section for any unit covered by the terms of this Ordinance.

b. For all rental units covered by the terms of this Ordinance the maximum allowable rent shall be the lawful rent in effect on December 31, 1979. For such rental units where no rent was in effect on December 31, 1979, the maximum allowable rent will be the most recent lawful rent in effect for that rental unit during the six months preceding that date. For such rental units where no rent was in effect on December 31, 1979, or during the six months preceding that date, the maximum allowable rent shall be a good faith estimate of the median rent in effect for comparable units in the City of Berkeley on December 31, 1979.

c. The lawful rent in effect on December 31, 1979 for a rental unit shall be the lawful rent which was actually due under the periodic term of the rental agreement, on, or last preceding, December 31, 1979.

Section 7. RENT REGISTRATION.

a. By January 15, 1980 all landlords subject to the provisions of this Ordinance shall file with the Housing and Development Department of the City of Berkeley a rent registration statement for each rental unit covered by this Ordinance.

b. Landlords shall provide in their rent registration statement the following information:

1. The address of each rental unit.
2. The name and address of the landlord(s) or managing agent, if any.
3. The date on which the landlord received title to the rental unit.
4. The housing services provided for the rental unit including, but not limited to, parking, furnishings, and utilities.
5. The rent in effect on June 6, 1978.
6. The rent in effect on December 31, 1979.
7. The lowest rent in effect between June 6, 1978 and December 31, 1979.
8. The amount of any deposits or other monies in addition to rent demanded or received by the landlord in connection with the use or occupancy of the rental unit.
9. Any other information deemed appropriate and required by the Housing and Development Department of the City of Berkeley to further the implementation and purposes of this Ordinance.

c. All rent registration statements provided by landlords in accordance with this Ordinance shall include an affidavit signed by the landlord. The landlord shall declare in such affidavit under penalty of perjury that he or she has complied with the renter notification requirements set forth in Section 8 of this Ordinance, and that the information provided in the rent registration statement is true and correct.

d. A rent registration fee of \$4.00 per rental unit shall be paid by landlords to the Housing and Development Department of the City of Berkeley at the time of registration.

e. The Housing and Development Department of the City of Berkeley shall provide forms for the registration information required by this Section, and shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this Section of the Ordinance.

f. Landlords subject to the provisions of this Ordinance who fail to comply with the requirements of this Section by January 15, 1980 shall be subject to a late fee of \$4.00 in addition to the registration fee of \$4.00 (a total fee of \$8.00) to be paid to the Housing and Development Department of the City of Berkeley at the time of registration.

The Housing and Development Department of the City of Berkeley shall notify landlords by first class United States postage pre-paid mail of their failure to comply with the rent registration requirements of this Section of the Ordinance subsequent to January 15, 1980. After expiration of fifteen (15) days from the date the City mails the notice of non-compliance provided by this subsection to a landlord, the City Manager of the City of Berkeley shall be notified of the landlord's failure to comply, and may initiate action to revoke the business license of the non-complying landlord.

Section 8. TENANT NOTIFICATION.

a. By January 1, 1980 the tenant of each rental unit covered by this Ordinance shall be provided by the landlord with a written notice of the maximum allowable rent as set forth in Section 6 of this Ordinance. Such notice shall follow the form set out in Appendix A of this Ordinance.

b. When a rental unit covered by this Ordinance is rented to a new tenant, the landlord shall provide the new tenant with a written notice of the maximum allowable rent as set forth in Section 6 of this Ordinance. Such notice shall be provided by the date the first rent is due and payable, and shall follow the form set forth in Appendix A of this Ordinance.

c. A sublessor may satisfy the notice requirements of this Section by providing notices to sublessees within one week of receipt of the corresponding notice from the lessor.

Section 9. REMEDIES.

a. If a notice required by Section 8 and/or rent registration required by Section 7 of this Ordinance has not been provided by the date required, or if a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a tenant may take any or all of the following actions until compliance is achieved:

1. A tenant may withhold up to the full amount of his or her periodic rent which is allowed under the provisions of this Ordinance. In any action for eviction based on non-payment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this Section.

2. A tenant may seek injunctive relief on behalf of herself or himself and on behalf of other similarly situated tenants to restrain the landlord from demanding or receiving any rent on this unit until the landlord has complied with this Ordinance.

3. A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed by this Ordinance. Upon further proof of a bad faith claim or retention of rent in excess of the maximum rent allowed by this Ordinance the tenant shall receive a judgment of up to seven hundred and fifty dollars (\$750.00) in addition to any actual damages.

b. The City Attorney may bring an action for injunctive relief on behalf of the City or on behalf of tenants seeking compliance by landlords with this Ordinance.

Section 10. RETALIATION PROHIBITED.

No landlord may threaten to bring, or bring, an action for possession, cause the tenant to quit the unit involuntarily, decrease any services or increase the rent where the landlord's dominant intent is retaliation against a renter for the renter's assertion or exercise of rights under this Ordinance. Such retaliation shall be a defense to an eviction action, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this Ordinance within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption.

Section 11. CRIMINAL PENALTIES.

It shall be unlawful for any person willfully to violate any provision or to fail to comply with any of the requirements of this Ordinance. Any person violating any provision of this Ordinance, or knowingly and intentionally misrepresenting any fact to any officer or employee of this city in registering a rental unit hereunder, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of any of the provisions of this Ordinance is committed, continued or permitted by such person and shall be punishable therefor as provided for in this Ordinance.

Section 12. PARTIAL INVALIDITY.

If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

Section 13. NON-WAIVERABILITY.

Any provision in a rental agreement which waives or modifies any provision of this Ordinance is contrary to public policy and void.

Section 14. CONSTRUCTION.

This Ordinance shall be read and interpreted in harmony with the Renter Property Tax Relief Ordinance of 1978 and shall not be construed to amend, nullify, or abridge the provisions of the Renter Property Tax Relief Ordinance of 1978, and shall be read and interpreted in harmony and conjunction with City of Berkeley Ordinance No. . -N.S. (Adopting Eviction Controls).

Section 15. EFFECTIVE DATE.

The effective date of this Ordinance shall be January 1, 1980.

Section 16. EXPIRATION DATE.

The expiration date of this Ordinance shall be March 31, 1980. The March 31, 1980 expiration date of this Ordinance shall not constitute a bar to the pursuit of remedies authorized under this Ordinance, to the commencement or continuation of civil or criminal judicial proceedings instituted in regard to any act in violation of this Ordinance, or to the assertion of any defense under this Ordinance.

Section 17. POSTING.

Copies of this Bill are hereby ordered published by posting with the vote thereon for two (2) days at the ten (10) prominent places in the City of Berkeley as designated by Chapter 1.08 of the Berkeley Municipal Code.

Approved as to form:



Acting City Attorney

FORM FOR THE
NOTICE TO TENANTS OF THE
MAXIMUM ALLOWABLE RENT UNDER THIS ORDINANCE

In accordance with the City of Berkeley Rent Registration and Temporary Rent Stabilization Ordinance, this notice informs you that the maximum allowable rent for the rental unit located at _____ is \$ _____ per month for the time period for which this Ordinance is in effect, January 1, 1980 through March 31, 1980.

The maximum allowable rent is the rent in effect on December 31, 1979.

The rent in effect for this rental unit on June 6, 1978 was \$ _____ per month. The rent in effect on December 31, 1979 for this rental unit was \$ _____ per month. The lowest rent in effect between June 6, 1978 and December 31, 1979 for this rental unit was \$ _____ per month.

All rents currently being charged for rental units covered by this Ordinance are on file with the Housing and Development Department of the City of Berkeley, and are a matter of public record and are available for public inspection during those hours when City of Berkeley offices are open for the conduct of public business.

If you have any questions about this Ordinance, please contact me or the City of Berkeley _____ at _____.

Signed: _____

Address: _____

Telephone: _____

Date: _____

ORDINANCE NO.

-N.S.

ADOPTING EVICTION CONTROLS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. TITLE.

This Ordinance shall be known as the Eviction Controls Ordinance.

Section 2. FINDINGS.

- a. The Housing Element of the Berkeley Master Plan of 1977 states that:
1. Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford (Goal 1).
 2. Existing housing should be maintained and improved (Goal 2).
 3. Berkeley should have an adequate supply of housing throughout the City for persons with special needs (Goal 3).
 4. All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis (Goal 4).
- b. On June 6, 1972 the electorate of the City of Berkeley passed a Rent Control Charter Amendment that was later voided by the California Supreme Court as being unconstitutional.
- c. On June 5, 1973 the City Council declared the existence of a housing emergency in the City of Berkeley, based upon the Council's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.
- d. On November 7, 1978 the electorate of the City of Berkeley passed a Renter Property Tax Relief Ordinance.
- e. On October 25, 1979 the Berkeley City Council, Berkeley Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the City's administrative staff held a public workshop regarding the current housing conditions in Berkeley.
- f. On October 30, 1979 the Berkeley City Council held a public hearing at which members of the public expressed their views regarding current housing conditions in Berkeley.

g. The most significant provisions of the 1978 Renter Property Tax Relief Ordinance will expire on December 31, 1979.

h. The development of comprehensive legislation and programmatic remedies by the City will require time for study, evaluation and development. The City Council of the City of Berkeley hereby adopts temporary legislation to assure that, subsequent to December 31, 1979 and prior to the adoption of permanent legislation intended to address the City of Berkeley's housing crisis, the public peace, health and safety are immediately preserved, and that, in particular, the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged are not endangered prior to public consideration and adoption of permanent legislation to protect the public peace, health and safety.

Section 3. PURPOSE.

The purposes of this Ordinance are to protect tenants from arbitrary, discriminatory, or retaliatory evictions, to help maintain the diversity of the Berkeley community, and to ensure compliance with legal obligations relating to the rental of housing, to provide substantive grounds of defense in unlawful detainer proceedings for tenants, and to provide a means for tenants to assert these substantive defenses in unlawful detainer actions.

Section 4. DEFINITIONS.

a. Rental Unit: Any building, structure, or part thereof, or any other real property rented or available for rent for residential use located in the City of Berkeley, together with all services supplied in connection with the use or occupancy of such property.

b. Tenant: Any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of a rental unit.

c. Rental Agreement: An agreement, verbal, written, or implied between a landlord and a tenant for the use or occupancy of any residential unit.

d. Rent: The consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units including, but not limited to, monies demanded or paid for use, occupancy, parking, pets, furnishings, housing services, sublessees and deposits.

e. Property: A parcel of real property which is assessed and taxed as an undivided whole.

f. Landlord: An owner-of-record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

g. Skilled Nursing Facility: "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

h. Health Facility: "Health Facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

Section 5. APPLICABILITY.

This Ordinance shall apply to all real property which is being rented or is available for rent for residential use in whole or in part except for the following:

- a. Such rental units which are owned by any government agency.
- b. Rental units which are rented primarily to transient guests for a period of less than fourteen (14) days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses.
- c. Rental units in non-profit cooperatives owned and controlled by a majority of the residents.
- d. Rental units in any hospital, skilled nursing facility, asylum, or non-profit home for the aged.
- e. Rental units that are occupied as a principal residence by a landlord where such landlord also shares kitchen or bathroom facilities with the tenant. However, for the purposes of applying this exemption, the term landlord shall not include an agent of the landlord.
- f. This Ordinance shall not exempt tenants covered by the Berkeley Housing Authority under the Section 23 program (42 USC 1421b) or units leased to tenants assisted under the Section 8 program (42 USC 1437f) except as this Ordinance may be preempted by HUD Regulation or state and/or federal law.

Section 6. GOOD CAUSE REQUIRED FOR EVICTION.

a. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this Ordinance unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement.

3. The tenant has wilfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.

6. The tenant has, after written notice to cease, refused the landlord access to the unit as permitted by state or local law.

7. The landlord, after having obtained all necessary permits from the City of Berkeley, intends to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws or where necessary under an outstanding notice of code violations, and where such repairs cannot be completed while the tenant resides on the premises. In such cases, the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work.

8. The landlord seeks to recover possession for his or her own use and occupancy. For the purposes of this subsection, 6.a.8., the term landlord shall be defined as the owner of record and shall not include a lessor, sublessor, or agent of owner of record.

b. A landlord's failure to specify good cause as listed above in Subsections 1 through 8 in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this Ordinance.

Section 7. LANDLORD MUST ALLEGE COMPLIANCE WITH OTHER LEGAL OBLIGATIONS.

In any action to recover possession of a unit covered by the terms of this Ordinance, a landlord shall allege and prove substantial compliance with all applicable housing code regulations affecting the health and safety of the tenants and compliance with the terms of the Rent Registration and Temporary Rent Stabilization Ordinance, except Section 6.a.7. of this Ordinance.

Section 8. RETALIATION PROHIBITED.

No landlord may threaten to bring, or bring, an action for possession, cause the tenant to quit the unit involuntarily, decrease any services or increase the rent where the landlord's dominant intent is retaliation against a renter for the renter's assertion or exercise of rights under this Ordinance. Such retaliation shall be a defense to an eviction action, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this Ordinance within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption.

Section 9. REMEDY FOR BAD FAITH EVICTION.

If the event which the landlord claims as grounds for eviction under Section 6.a.7. or 6.a.8. of this Ordinance is not substantially initiated within two months after the tenant vacates the unit, the tenant shall be entitled to regain possession. If the landlord's conduct is willful, the tenant shall be entitled to damages in an amount of \$500 or not to exceed three times the actual damages sustained, whichever is greater.

Section 10. PARTIAL INVALIDITY.

If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and application of this Ordinance are severable.

Section 11. NON-WAIVERABILITY.

Any provision in a rental agreement which waives or modifies any provision of this Ordinance is contrary to public policy and void.