



Berkeley Housing Authority



Section 8 HAP'nings! October 2014

This issue is dedicated to responding to issues/concerns/questions raised by participating landlords. If you have a question, it is likely another owner shares that same question. Email the question to bha@ci.berkeley.ca.us and we will address it in a future Newsletter.

Is BHA Approving Rent Increases?

YES! We understand your participation in the S8 program is a business endeavor, and your rents need to keep pace with current market conditions. We are continuing to tweak the process to make it simpler, yet compliant with HUD regulations. Important factors to consider when determining to request a rent increase:

- 1) You are eligible for one increase every 12 months;
- 2) You must provide written notice to the family, with a copy to BHA, at least 60-days prior to the effective date of the change;
- 3) The rent must be reasonable – comparable to rents for similar unassisted units [*information about upgrades/improvements to the unit are an added plus when we are reviewing your request*];
- 4) The request will be denied if the unit is in *fail* status for an inspection;
- 5) If the approved rent equals the Payment Standard, the family will not receive an allowance for any tenant paid utilities;
- 6) If the rent demanded is greater than the Payment Standard for the unit size, you will become subject to registration and payment of registration fees to the Rent Board and the unit will also be covered by many provisions of the Berkeley Rent Control Ordinance. In addition the rent you will be able to collect will most likely be the recent Payment Standard plus Rent Control increases and NOT the market rent you were seeking;
- 7) If your tenant is over-housed (in a unit that has more bedrooms than authorized for the family), any increase in rent will likely be paid by the family, not BHA; and
- 8) The change is not approved or effective, until BHA issues a “Rent Change Notice.”

Thank you for your efforts to maintain the quality of your units, and keeping your rents affordable.

Can I Terminate the Lease of a “Problem” Tenant?

YES, and we will work with you! The approximate 2,000 households with a rental subsidy via BHA’s S8 Voucher Program are enjoying a benefit that is not available to others – because of limited funding. There is an expectation that the family will comply with ALL the S8 program rules, comply with ALL the terms of the rental lease, and maintain proper communication with the owner. If this is not the case, you should enforce your lease AND provide BHA copies of all documents and communications. We will support your efforts while initiating our own actions – if the behavior is a program violation. In many cases we can make it more financially possible for you to work through an eviction action – by continuing the monthly rental subsidy for as long as the tenant remains in the unit and provided that the unit is not in abatement status for inspections issues.

Is the problem tenant allowed to continue receiving a rental subsidy?

MAYBE. HUD rules require BHA to notify the family of the *intent* to terminate assistance, AND allow an opportunity for an Informal Hearing *before* terminating assistance. In most cases, when a family is evicted, there is sufficient documentation of a program violation for BHA to win if the termination is appealed. In addition to termination from BHA’s program, the family’s termination is reported in a national database used by all Public Housing Authorities – as part of any future application process. A record in this database can be used in reaching a decision to deny the family admission.

Can I Opt-Out?

NO. The pre-2010 HUD regulation that allowed an owner to “opt-out” of the Housing Assistance Payment (HAP) contract with 90-day notice was eliminated in 2009 consistent with the Court’s ruling in “Barrientos v. 1801-1825 MORTON LLC” (Google for more information).

The HAP terminates (a) when the assisted lease is voluntarily terminated by the family; (b) the assisted lease is terminated by the owner via a legal eviction; or (c) BHA determines the family is no longer eligible to receive a rental subsidy.

Is the Landlord Required to Make the Repair?

YES. Under California law, the owner must make repairs to the unit, regardless of whether the damage was tenant caused. This includes vermin infestation, even if caused by the family's living habits. The owner may charge the tenant for the repair, but cannot refuse to make repairs even when it is determined it was tenant caused. In the case of vermin infestation, if the problem is serious and/or repeated, the owner may consider eviction for serious or repeated lease violation.

The one exception is when utilities that are under the tenant's control are not in service for reason(s) related to the tenant's conduct (i.e. non-payment).

Who makes repairs is really a decision best left to the property owner and tenant, ideally spelled out in the lease. We will not instruct a tenant to make any alteration to the unit – without first obtaining permission from the owner.

We get it: it is frustrating to be required to make repairs to items that are clearly caused by the tenant. Our advice is to invoke the lease, including reasonable charges for the repair of tenant caused damage.

For our part our inspector is equipped with:

- a. batteries that he will give the tenant – to install in a nonfunctioning smoke detector or carbon monoxide detector; and
- b. Plastic electrical cover plates that he will give the tenant – to eliminate the hazard; and

We will **NOT** abate the owners rent for tenant caused fail items while the owner is pursuing remedies under the lease.

How is That a Fail?

????? We inspect to HUD published Housing Quality Standards (HQS). HQS is a performance standard, intended to ensure the unit is safe, decent and sanitary. Adherence does not ensure compliance with all applicable local standards.

We cannot enforce standards that unfairly burden owners and discourage participation, but we also cannot allow conditions to be present that make the unit (property) unsafe for assisted households.

- Broken glass. The property will *not fail* unless the break is such that it is reasonable to believe someone could be injured. The report will note the condition as a recommendation.
- Inoperative smoke or carbon monoxide detector. This is a life safety consideration and the unit *will fail* if the inspector does not find a working device at the time of the inspection (for units with gas appliances/heaters).

- Missing globe. A missing globe will *not fail* if there is a light bulb in the socket, preventing someone from an accidental electrical shock.
- Overgrown vegetation. Our concern with overgrown vegetation is the harborage it creates for rodents. If a tree is growing onto/leaning on a property, the condition will be noted as a recommendation for proactive, preventative measure but will *not fail* unless evidence of rodents inside the unit is visible. If the grounds (outside) of the unit contain heavy accumulations of trash, garbage, or other debris that may harbor vermin, the unit will fail. HUD's requirement is for units to have *adequate barriers to prevent infestation*.

Recycling Requirement

Are you aware that property owners of buildings with five (5) or more residential units in Alameda County are required to provide recycling collection for their tenants' food scraps, food-soiled papers, and any plant debris generated at the property? To establish recycling service at your Berkeley property please call the City's Customer Service Call Center at 311 (510-981-7270). The City of Berkeley provides free assistance, collection containers, and instructional posters to all refuse accounts. Visit the City of Berkeley Recycling Website for more info at: <http://www.ci.berkeley.ca.us/recycling/>

The Check is NOT in the Mail

With direct deposit, your HAP funds are deposited directly to your account. No waiting for the mail; no trip to the bank; and your funds are available for use more quickly. It is also cost effective to BHA. You are familiar with direct deposit if you receive SS or SSI or other government benefits. Some people have resisted the services of banks for a long time, and swear they will "never use a bank." But banks insure all deposits, and are known to be the safest place for families to hold and manage their finances.

Many owners began benefiting from having their rental subsidy deposited directly into their designated accounts on a voluntary basis for many years. Others joined the program over the past 7 months leading up to our mandatory system September 2014. And it is not too late for you. To request forms visit our website (www.cityofberkeley.info/bha), stop by the office, or call Jayla at (510) 981-5474.

It was our pleasure to provide this information. Feel free to provide us feedback at bba@ci.berkeley.ca.us.