

Renters' Rights for Disasters: Questions and Answers



All tenants in Berkeley should understand their basic rights under the Berkeley Rent Ordinance, which includes eviction protections, interest on their deposit and a stabilized or controlled rent. Understanding the basic rights under the Berkeley Rent Ordinance helps protect a tenant from unwarranted evictions and unwarranted rent increases.

Q: What are some of the risks to tenants' rights in disasters?

A: In disaster situations, tenants are often subject to a lot of misinformation and in some cases unlawful attempts by the landlord to recover possession of units so they can charge market rent for the next tenant. In some cases, a landlord may be doing seismic safety work and need the tenant to relocate while the work is being done. It is important for tenants to document any relocation agreement in writing to avoid misunderstandings and to reduce the possibility that the owner will act in bad faith (for example, trying to recover possession of the tenants unit by taking exceedingly long to make repairs, or taking other action or inaction to encourage the tenant to give up on trying to return to their unit).

Q: If my water heater is not strapped, can I do it myself or hire someone to do so? Can I charge the landlord for my costs?

A: As of about 15 years ago, new code requirements made it mandatory to have new water heater installations include strapping. This code requirement only applies to new installs or installs that took place after the new code came into effect. Water heaters that were installed prior to the "new" code would not be cited as a housing code violation. City of Berkeley Housing Inspectors, however, will issue a recommendation to the owner to strap a water heater if a water heater was grandfathered in under the old code.

Regardless of whether or not the law requires a landlord to strap the water heater or not, the Rent Board recommends tenants proceed with caution when it comes to making alterations to the property (including strapping the water heater on their own). Generally, most leases or rental agreements require prior written permission from the landlord before being able to make repairs or alterations. If a tenant makes a repair or alteration without the landlord's permission it may give the landlord good cause to evict the tenant. The landlord would be required to issue a warning letter on the tenant to cease, correct or pay for any damage they may have caused. If the tenant continues to violate the lease or refuses to pay for damage they caused, the landlord would have good cause to evict.

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As a first course of action, we recommend that a tenant write a letter to the landlord that outlines their safety concerns regarding the lack of strapping on the water heater. A sample letter can be found at <http://cityofberkeley.info/prepare/activity-guides/>. Furthermore, a tenant can also contact the Planning Department at 981-7400 to see if the water heater was installed with permits. If a tenant finds out that permits were not taken out for their water heater; the landlord would be required by the Housing Inspection Unit to install strapping to meet current code requirements. If the water heater was permitted and grandfathered under the older code, the tenant may want to write a stronger letter that warns the landlord of their potential liability if they are harmed due to the landlord neglecting to install strapping. A tenant should also contact a housing counselor at the Rent Board to discuss other options for resolving the issue, such as mediation (at the Rent Board or with SEEDS Community Mediation). Call (510) 981-RENT (7368) or email rent@cityofberkeley.info.

Q: If my lease doesn't allow holes in the walls, can I still brace heavy cabinets, book shelves, etc. as recommended for earthquake preparedness?

A: Because most leases prohibit tenants from making any alterations without the landlord's prior permission, we would advise a tenant to get written permission from the landlord before making holes in a wall. A sample letter requesting permission can be found at <http://www.cityofberkeley.info/prepare/activity-guides/>

If a tenant makes holes in a wall to brace heavy cabinets or bookshelves without getting prior written permission, a landlord may try to evict for damaging the property or violating the lease after being warned to cease or correct the violation. Long term tenants paying lower rent are more vulnerable to such eviction attempts because the landlord would likely gain financially from a significant rent increase due to resetting the rent on the next tenant, after the eviction.

Q: Should I know where the gas & water shut-offs are for my building, and shut them off if there is a leak?

A: The Rent Board recommends that all tenants (and landlords) know where gas and water shut offs are so that they can direct public safety officials in case of an emergency or disaster. We also recommend that tenant familiarize themselves with all fire escapes and exit options on the property.

After an earthquake, you should turn off the gas if you smell gas, hear gas escaping, see a broken gas line or if you suspect a gas leak. Call 911, PG&E and your property

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manager or landlord to report it immediately. See <http://www.pge.com/en/safety/gaselectricsafety/index.page> for more information.

Q: What should I do if my building is red-tagged?

A: If a building is red-tagged by authorities, no one should enter it. The landlord is not authorized to override a red-tag. Do not enter unless approved by authorities.

Q: If the property is not damaged but I need to leave town for an extended period because of other disaster-related issues (such as loss of job, school, or transportation), will I be able to break the lease without penalty?

A: California Civil Code 1951.2 governs situations when a tenant breaks a lease. Under CC 1951.2 if a tenant breaks their lease, the landlord is obligated to mitigate a tenant's damages by making a reasonable effort to re-rent the unit. The tenant is not liable for unpaid rent unless the landlord makes a reasonable effort to re-rent the unit. Loss of job, school or transportation issues are usually not good enough reason under the law to break a lease, however in the end it would be up to the courts. Victims of domestic violence, stalking, sexual assault, landlord harassment that amounts to constructive eviction, uninhabitable or unsafe living conditions and being called up for military service are some of the reasons that may allow a tenant to break a lease "without penalty" (without an obligation to continue paying rent after the lease is broken). In the end, however it is up to a judge or jury to decide whether or not a tenant had a right to break a lease.

If the tenant's unit is red-tagged, the tenant will likely have a good argument for breaking the lease- but again it's up to the courts to make that determination based on the facts of the case.

If a tenant must break a lease, we recommend that the tenant assist the landlord in mitigating their own damages by helping find a suitable replacement tenant or subletter/subleasee.

Q: My landlord didn't tell me that the building I was moving into is a soft-story building, and now I am stuck in a lease there. Do I have any rights?

A: B.M.C section 19.39.060 A.1 requires owners to notify each prospective tenant prior to change in a tenancy that the building is included on the soft-story inventory. The text of the law is available on the City of Berkeley's website:

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<http://www.ci.berkeley.ca.us/softstory/>. We recommend that tenant in soft-story buildings contact a Rent Board Housing Counselor at 981-RENT to discuss their particular situation or concerns and get a clear understanding of their rights and responsibilities.

Q: What are my rights if live in a soft-story building?

A: We recommend that tenant in soft-story buildings contact a Rent Board Housing Counselor at 981-RENT to discuss their particular situation or concerns and get a clear understanding of their rights and responsibilities. A tenant in a soft-story building has the following rights:

Private Right of Action: *If a tenant is negatively impacted by a property owner's failure to comply with the requirements of the Soft Story Ordinance, you may bring a civil action against this property owner for all appropriate relief. Prevailing plaintiff(s) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages imposed by law.*

Right to Return if Relocated: *The Relocation Ordinance requires property owners make certain relocation payments to offset the additional costs incurred by tenants as a result of a temporary relocation and to allow tenants to move back once the required work is complete. If asked to move out, you should contact the Rent Stabilization Board for more information by calling (510) 981-RENT (7368) or email at rent@cityofberkeley.info. Tenants facing a potential relocation for repairs should also contact Rachel Molina, the Relocation Ordinance administrator, to learn more about their rights under the Relocation Ordinance. Rachel Molina can be reached at 510-981-5412.*

Mediation or Rent Reduction Petition: *Should a tenant experience a temporary or permanent loss of or reduction in service, space or habitability due to necessary soft story retrofit work, a tenant may be entitled to a rent reduction through the Rent Board's Petition Process (Rent Board Regulation 1269). This may include a loss of parking, yard space, common area space, habitability problems resulting from the construction and reduction of interior space. Contact a Rent Board Housing Counselor by phone at (510) 981-RENT (7368) or by email at rent@cityofberkeley.info for more information on how to petition for a rent reduction.*

MEDIATION: *The Rent Board offers mediation as a means of reaching a formal agreement to for a rent reduction/refund and or relocate while repairs take place. Contact at Rent Board Housing Counselor or find the form online at www.cityofberkeley.info/Rent or visit the Rent Stabilization Program at 2125 Milvia St. Berkeley, CA. 94704.*