



Rent Stabilization Board
Legal Department

MEMORANDUM

DATE: March 20, 2017
TO: Honorable Members of the Berkeley Rent Stabilization Board
FROM: Honorable Members of the IRA/AGA/Habitability Committee

By: Matt Brown, Staff Attorney

SUBJECT: Proposed Regulation 1383 [Owner Move-In and Ellis Act Relocation Assistance Disputes (B.M.C. 13.76.130.A.9 and 13.77.055)] – First Reading

Recommendation:

That the Board adopt Rent Board Regulation 1383 [Owner Move-In and Ellis Act Relocation Assistance Disputes (B.M.C. 13.76.130.A.9 and 13.77.055)] as recommended by the IRA/AGA/Habitability Committee at its March 8, 2017 meeting.

Background and Need for Rent Stabilization Board Action:

The Bay Area housing crisis has dramatically increased the costs faced by any tenant household that is forced to relocate due to an owner move-in. However, prior to the enactment of Measure AA, owner move-in relocation assistance payments were required only for low-income households. Effective December 18, 2016, owner move-in relocation assistance payments are now required for all tenant households who are displaced from a rental unit where they have resided for over a year. Additional relocation assistance payments are now available to tenants who are elderly, disabled, families with minor children, and households who have resided in the unit since before January 1, 1999. The City Council has also amended the Ellis Act Implementation Ordinance to harmonize the amounts and eligibility for relocation assistance payments with those that apply in owner move-in cases.

In addition to increasing the amount and broadening the eligibility for relocation assistance payments, the new laws also give either party the option to resolve disputes over eligibility by filing a Rent Board petition. Given the increased amount of the relocation assistance payment, and the increased number of eligible tenants, we expect the number of disputes over eligibility to increase as well. Regulation 1383 is designed to clarify and streamline the procedures associated

with filing a petition to determine eligibility for relocation assistance payments.

A. Tenant must notify Rent Board and Landlord of eligibility for additional relocation assistance payments

Landlords who seek to evict for reasons of owner move-in or Ellis Act must deposit \$15,000 in relocation assistance payments with the Rent Board within ten days of service of the termination notice. A tenant who is eligible for additional relocation assistance payments must then notify the Rent Board and the Landlord of their eligibility within 30 days. See B.M.C. subsections 13.76.130.A.9(p)(ii) and 13.77.055.D.

B. Rent Board is required to hold disputed funds in escrow

In any dispute over the eligibility of a tenant household for relocation assistance payments (either standard or additional), the landlord must first notify the Rent Board that he or she disputes the tenant's eligibility. The Rent Board must then hold the funds in escrow until the parties either reach an agreement, or present the Rent Board with a court order to release the funds. See B.M.C. subsections 13.76130A.9.p.(i), 13.77.055.D.2., and Regulation 1383 subsection B.

Measure AA and the recent amendment to the Ellis Act Implementation Ordinance open up a third option: the filing of a Rent Board petition for determination of eligibility for relocation assistance payments. See B.M.C. subsections 13.76.130.A.9(p)(iii), 13.77.055.D.2, and Regulation 1383, subsection A. Either party may file a petition where a landlord has deposited the funds in escrow and disputed the tenant's eligibility. Furthermore, a tenant may file a petition where a landlord has refused to deposit the funds.

C. Rent Board petitions allow disputed funds to avoid costly litigation

There are many reasons why filing a lawsuit over relocation assistance payments is problematic. First, the legal process for recovery of a sum larger than \$10,000 is not a summary procedure, and can take many months, more likely years. Second, the cost of obtaining legal counsel and preparing and filing the appropriate legal pleadings is high, even for a seemingly simple legal case. For example, the filing fees alone in basic case would quickly exceed \$1,000, not including the costs of hiring process servers and attorneys.¹

In contrast, the Rent Board petition process is neither costly nor time-consuming. In light of the straightforward nature of most disputes over eligibility for relocation assistance payments, Regulation 1383 would further streamline our petition process, providing an accelerated timeline from filing to hearing (30 days) and from hearing to decision (30 days). Thus, most petitions seeking determinations of eligibility for relocation assistance payments could reach a final decision within 60 days of the filing of the petition. See Regulation 1383, subsection D.

¹ Sample fees from Alameda County Superior Court Fee Schedule Effective January 1, 2015:

Filing fee for Limited Civil Complaint: \$375; Answer or first paper: \$370; Motion for Summary Judgment: \$500; Writ for enforcement of Judgment: \$25

D. The Rent Board's jurisdiction

If one of the parties chooses to raise the issue of eligibility for relocation assistance payments in court, the Rent Board may be unable to take jurisdiction of the matter away from the court, regardless of the relative advantages in speed and cost. The general rule on concurrent jurisdiction awards priority to "the tribunal where process is first served." *California Union Ins. Co. v. Trinity River Land Co.* (1980) 105 Cal.App.3d 104, 109. For the sake of clarity, this rule is reiterated in Regulation 1383. If both a Rent Board petition and a lawsuit are served regarding the same dispute, the Rent Board will proceed only on petitions served *before* the date of service the lawsuit. In the absence of clear evidence regarding service, the filing date will determine priority. See Regulation 1383, subsection A.

E. Evidence of eligibility

The Rent Board petition process is designed to be easily navigated by a layperson with no legal experience. Rent Board hearing examiners do not apply arcane, confusing rules of procedure, nor do they enforce the rules of evidence used in court proceedings. This flexibility enables the hearings to proceed more quickly and ensures that a party without a lawyer does not have a significant technical disadvantage in making their case.

This goal is achieved, in part, through the adoption of regulations that lay out clear criteria for various claims, so that a person who comes into our office can obtain a plain explanation of the information that the hearing examiner will use to determine the outcome of a petition. To that end, it is important to include a list of the types of evidence that will be considered by the hearing examiner. See Regulation 1383, subsection E.

The purpose of Subsection E is not to set forth an exclusive list of the only types of evidence that the hearing examiner will consider. On the contrary, hearing examiners may still use their judgment to weigh the relative probative value of evidence and to reach findings of fact based upon any evidence they find to be reliable and relevant to the issues at hand. However, where a party is unable to produce any of the evidence listed in Subsection E, the hearing examiner may require an explanation as to why it is necessary to rely on other evidence.

Conclusion

Regulation 1383 clarifies and streamlines the procedures for petitions to determine eligibility for relocation assistance payments.

Proposed Regulation 1383 is attached hereto.

Name and Telephone Number of Contact Person:

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Rent Stabilization Board

1383. Owner Move-In and Ellis Act Relocation Assistance Disputes. (B.M.C. 13.76.130.A.9 and 13.77.055)

A) Scope and Purpose

Berkeley Municipal Code subsections 13.76.130.A.9(p)(iii) (Owner Move-In evictions) and 13.77.055.D.2 (Ellis Act evictions) provide that in the event of a dispute over a tenant's eligibility for relocation assistance, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. This Regulation sets forth the procedures and grounds for a Rent Board petition to determine a tenant's eligibility for relocation assistance and/or seeking release of disputed funds.

In the event that both a Rent Board petition and a claim in a court of competent jurisdiction (lawsuit) are filed regarding the same disputed funds, the Rent Board will proceed only on petitions served *before* service of the lawsuit for release of funds. Petitions served *after* the service of any lawsuit for release of funds will be dismissed without prejudice. In the event that the date of service of the lawsuit is unclear or unavailable to the hearing examiner, the filing dates for the respective proceedings may be used in lieu of the dates of service. An unlawful detainer action shall not stay the Rent Board petition, because state law prohibits the plaintiff in that type of action from recovering disputed relocation funds without filing a separate lawsuit.

Except as provided herein, proceedings on petitions filed under this section shall be taken according to all provisions of Chapter 12, Subchapter B.

(B) Standard Relocation Assistance Disputes.

As provided in subsections 13.76.130.A.9(p)(i) and 13.77.055.D.2, a landlord alleging that the tenant is not eligible for the standard relocation assistance must notify the Rent Board in writing that he/she disputes the tenant's eligibility before the funds are released to the tenant. The sole ground for dispute of release of standard relocation assistance is the duration of the tenancy. A tenant who has not resided in the unit for at least one year as of the expiration date of the Notice Terminating Tenancy is not eligible for the standard relocation assistance.

(C) Additional Relocation Assistance Disputes

As provided in subsections 13.76.130.A.9(p)(ii) and 13.77.055.D, a tenant who is eligible for additional relocation assistance must notify the landlord and the Rent Board in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 within 30 days of receipt of the notice of termination of tenancy. A landlord may dispute a tenant's eligibility for additional relocation assistance. In the event that the landlord disputes the tenant's eligibility or fails to deposit additional relocation funds after notice of a tenant's eligibility, either party may file a petition seeking that the Rent Board determine the tenant's eligibility and/or release the funds.

The grounds for claiming eligibility for additional relocation assistance and for filing a tenant petition for release of disputed additional relocation assistance funds are as follows:

- (1) The tenant's household income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5;
- (2) The tenant is disabled, meaning that he or she has a physical or mental impairment than limits one or more of his or her major life activities within the meaning of the California Fair Housing and Employment Act (Government Code Section 12926);
- (3) The tenant will be sixty years of age or older at the time of the expiration of the notice of termination of tenancy;
- (4) The tenant household includes a minor child under the age of 18 years of age at the time of the expiration of the notice of termination of tenancy; or
- (5) The tenancy began prior to January 1, 1999;

A landlord may file a petition for release of disputed additional relocation assistance funds by alleging that the applicable tenant eligibility claim, as stated above, is false.

(D) Petitions; Notice.

Where a landlord disputes the eligibility of a tenant for relocation assistance either party may petition for release of the funds from escrow. Petitions filed under this section shall be expedited so that a hearing on the petition is held within 30 days of filing and a decision rendered within 30 days of the hearing. The parties shall be given at least 15 days' notice of the hearing.

(E) Evidence in support of petition.

Evidence that a tenant is or is not eligible for additional relocation assistance includes, but is not limited to, documentation of the following:

- (1) Receipt of means-tested government benefits such as CalFresh, Medi-Cal, Supplemental Security Income; documentation of actual income, such as W-2 forms, appropriately redacted tax returns, and/or Social Security payments;
- (2) Correspondence from a medical provider, documentation of receipt of disability-related benefits such as Supplemental Security Income, Social Security Disability Insurance, and/or department of motor vehicles records;
- (3) Birth certificates, passports, and/or Department of Motor Vehicles records;
- (4) School registration paperwork, medical records, caregiver's affidavits, and/or guardianship paperwork;
- (5) The original lease agreement and any relevant addenda; correspondence between the parties and/or previous landlords; and/or other circumstantial evidence showing when a tenancy began.
[Effective Date: _____, 2017]