

BERKELEY RENTAL NEWS

SPRING 2009

THE NEWSLETTER OF THE BERKELEY RENT STABILIZATION BOARD

Feeling Secure About Your Deposit?

Make Sure You Get it Back!

As we approach the time of year when many Berkeley tenants will be moving out of their rental units, we thought it a good time to help landlords and tenants prepare for security deposit returns. While each case is unique, this information will hopefully provide a foundation for dealing with move-out and deposit recovery issues. As with most landlord/tenant interactions, we encourage parties to try to resolve any differences before filing a petition at the Rent Board or a suit in Small Claims Court.

Landlords – When it's really time to give it back

Under Berkeley Rent Regulation 706(B), owners do not have to return a security deposit until an apartment is *completely vacated*. This issue can come up when a group of tenants

rent an apartment together and some of those tenants decide to stay in the apartment while others vacate; then the landlord does *not* need to return the deposit. The landlord needs to return the deposit only when all occupants leave. In a situation where roommates are revolving, the outgoing roommate should ask any replacement roommate to pay his/her share of the security deposit. This severs the outgoing roommate's ties to the apartment and makes return of the deposit much easier when the apartment has been vacated by everyone.

The "Big Three"

For tenants and owners alike, it is important to understand the lawful uses of a security deposit. The landlord may lawfully withhold money for only the following reasons:

- ✓ To remedy any unpaid rent
- ✓ To fix damage caused by the tenant beyond ordinary wear and tear
- ✓ Necessary cleaning to return the unit to its condition at the start of the tenancy

Moving-out prep

The deposit does not have to be returned until all original tenants have permanently moved out. The last original tenant to vacate the unit must provide at least 30 days' written notice to the landlord that s/he will be vacating the unit.

The landlord is required to offer a walk-through inspection of the rental unit during the last two weeks of the tenancy to identify any items that require repair/cleaning in order to avoid deductions from the security deposit. The landlord must immediately provide the tenants with a written itemized list of all items that require attention before the tenants move out of the unit. If the landlord fails to note a defect and give the tenant a chance to address it, then s/he may forfeit the chance to withhold money for that defect. Since many landlords do not offer this inspection, which is required by law, we urge tenants to request it in writing when they submit their 30-day notice.

Tenants – Leave it the way you found it!

Because landlords can charge for any damage that the tenants caused or for any cleaning that is required to

return the rental unit to its condition at the start of the tenancy, tenants should:

- ✓ Request a walk-through inspection with the landlord two weeks before leaving
- ✓ Make sure to leave the rental unit in the same condition as it was delivered to them
- ✓ Hold onto all receipts and invoices for money spent on cleaning or repairing the rental unit
- ✓ Take and keep date-stamped pictures of the rental unit before moving out. In addition,



it may be wise to have a neutral witness observe the condition of the unit

Tenants – Tell them where to reach you

California law provides that a landlord must return a tenant's security deposit (minus any authorized deductions) or provide written justification for why it

Remember!

When a tenant moves out, the landlord must return interest on the security deposit in addition to the deposit itself. The interest is calculated on the deposit for the months between the previous November 1st and the move-out date. We can help you calculate the correct amount.

is not being returned within 21 days of the day the last original tenant permanently vacates the rental unit. In Berkeley, owners must also return interest from the prior November 1st for any deposit held. The rate of interest depends upon whether the deposit is held in a Berkeley branch of an insured financial institution or outside the city. In order to avoid delays in recovering the security deposit, we recommend that tenants provide the landlord with a new address where s/he can send a check.

Unreturned security deposits

If landlords do not return the security deposit – or provide written justification for why it is being withheld – within the required 21 days, tenants should write a letter to the landlord requesting immediate return of the deposit. Tenants should very clearly spell out why they are entitled to the return of their security deposit in the letter and provide receipts and photos (if available) that illustrate the condition of the rental unit. Remember to keep a signed copy of this letter.

Get it back – Filing a claim to recover your security deposit

If, after receiving security deposit demand letters, the landlord still refuses to return the money – or returns less money than the tenant feels is justified – tenants have the option to:

- ✓ File a claim in Small Claims Court, or
- ✓ Petition the Rent Board (if the rental unit is covered by rent control)

In both venues, tenants will need to prove that they left the apartment in a condition that required the landlord to refund the security deposit. The landlord will have to prove that s/he was justified in withholding all or part of the deposit. **Should a tenant prevail in Small Claims Court and prove that the deposit was withheld in "bad faith," they may be awarded up to twice the amount of the deposit held.**

Separate information packets for landlords and tenants regarding these issues are available at our office and on our website.

Berkeley Rent Stabilization Board

www.ci.berkeley.ca.us/rent

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Regular Meeting Schedule

Meetings of the Rent Stabilization Board are held on the third Monday of each month, except holidays. When a Board meeting falls on a holiday, it has traditionally been rescheduled to the following Thursday. Meetings take place at 7pm in the City Council Chambers, 2134 Martin Luther King Jr. Way. For the remainder of 2009, meetings are scheduled for the following dates:

Monday, May 4
(Special Meeting)

Thursday, May 21

Monday, June 15

Monday, July 20

Monday, August 17

Monday, September 21

Monday, October 19

Monday, November 16

Monday, December 21



Meetings are open to the public and are televised live on Berkeley's

Cable Channel 33 and broadcast live by KPFB radio station (89.3 FM). Rebroadcasts are televised on Cable Channel 33 according to their schedule. Meetings may now also be viewed live on the Web. Visit the Rent Board's home page at: www.ci.berkeley.ca.us/rent and click on "Meetings: 2009 Meeting Schedule, Agendas, Minutes."

As the summer approaches, many tenants will experience some change in their tenancy, or perhaps have a housemate move out. There are many ways a tenancy can come to an end. Regardless of how the tenancy ends, however, state law requires that the tenant give 30 days' written notice to the landlord if the tenant is terminating the tenancy. **This applies even to tenants planning to leave at the end of a fixed-term lease.** For each situation described below, both tenants and landlords should be aware of how their actions will affect the tenancy.

MOVING OUT

Breaking a lease

A tenant who breaks a fixed-term lease could be held responsible for rent for the remainder of the lease term unless a replacement tenant is found. If the lease allows subletting, then the tenant should find a subtenant; if subletting is forbidden, the landlord is obligated to "mitigate damages" by trying to re-rent the unit as soon as possible once the tenant vacates. Civil Code section 1951.2 states that the tenant can be held responsible for expenses associated with the tenant's early termination of the lease. This could include lost rent. Therefore, we recommend that the tenant assist the landlord in trying to re-rent the unit as soon as possible to reduce the chance of being saddled with these expenses. In most cases, the tenant and landlord can work together to find a suitable replacement, thus ensuring minimal losses on both sides.

Roommate replacement

When a group rents an apartment and individual tenants leave, the remaining tenants are allowed to replace their outgoing roommates. A tenant moving out should give 30 days' written notice to her/his roommates and to the landlord. The roommates should try to find a responsible replacement, and provide a rental application to the landlord, who may request an interview. A landlord can reject a replacement only if s/he has reasonable grounds – e.g., the person does not qualify for tenancy under the landlord's standard application process.

If a landlord unreasonably denies a tenant the right to replace a roommate in a unit under Berkeley rent control, there could be a significant impact on the rent level. Rent Stabilization Board Regulation 1270 allows a rent ceiling reduction in proportion to the decrease in the number of tenants imposed by a landlord. Whether the landlord imposes this by unreasonably rejecting each proposed person or by refusing to consider anyone at all, the Regulation still permits a rent ceiling reduction (even if the landlord prohibits subletting in the rental agreement). For example, if three tenants were leasing an apartment for \$1,500, then the rent ceiling would be reduced to \$1,000 if one tenant left and the landlord prohibited a replacement.

Not good cause for eviction

Under the Rent Ordinance, an owner cannot evict because the tenant sublet the unit if the landlord has unreasonably withheld consent to sublet. In order for this protection to apply, the original tenant must remain an actual occupant of the rental unit and the number of tenants may not exceed the base occupancy level established at the inception of the tenancy. We strongly advise tenants and landlords who are having a problem with roommate replacement to speak with a Rent Board housing counselor as soon as possible before taking any action.

Becoming a co-tenant

If a landlord makes the replacement tenant a co-tenant by adding their name to the lease, then the landlord will not qualify for a vacancy increase until this replacement tenant also moves out.

MOVING IN

While you're looking for a place...

1. Make sure you can afford the rent! Signing a one-year lease may obligate a tenant to pay the rent for the entire year – unless there is a really good reason to leave, such as major habitability problems. Thus, if you move out before the lease ends, you may be held responsible for paying rent if the owner cannot re-rent the unit before the lease period expires. If you want to rent a certain apartment, you may negotiate with the landlord to lower the rent. Losing out on an individual apartment is much better than having to pay rent on a place you cannot afford.

2. Get it in writing! Request that the rental agreement be in written form, and make sure both you and the landlord sign it. Get receipts for any payments that you make, especially if you pay in cash.

3. Ask the landlord if last month's rent will be applied. Rental contract language varies, and can be difficult to interpret. Be clear on what the landlord's intentions are with all money collected (beyond the first month's rent) at the beginning of a tenancy.

4. Call the Rent Board to determine whether the unit is under rent control. Additional protections are offered to tenants in units covered by rent control. This information is useful when negotiating rent and a rental term.

5. Make sure the unit has the basics. Some items that may be visible at the time of the showing are smoke detectors and a working phone jack. Each rental unit is required to have them.

IF YOU'RE STAYING

Renewing a lease

Many tenants stay in their rental units long after their original lease agreement expires. For units under Berkeley rent control, tenancies continue even if a lease period expires. Landlords and tenants should be aware that when a fixed-term lease is close to expiration.

A landlord CAN:

1. Request that the tenant sign a substantially identical renewal lease.
2. Require 30 days' written notice from a tenant who wishes to move out.
3. Assume the tenancy will continue on a month-to-month basis **if the tenant does not inform them in writing at least 30 days prior to a planned move-out date.**

A landlord CANNOT:

1. Require the tenant to sign a new lease after the previous lease has expired and the tenancy has converted to a month-to-month agreement. (California state law provides that if, after the expiration of a lease, a landlord accepts rent, the tenancy will become month-to-month under the same terms of the original lease.)

2. Require a tenant to sign a lease that changes any material term of the original lease. Examples of material terms are:

- Lease period
- Rent amount
- Services provided
- Security deposit amount
- Space provided
- Late fees

Should I stay or should I go?

As the expiration date of your lease nears, it is time to consider whether you will stay in your current living situation or move on. You might be able to find a new apartment that is significantly cheaper, and you could start a new lease with a new, lower rent ceiling. In many cases, it is a lot easier to remain in the same place and not have to deal with the expense and hassle of moving. However, do not discount the idea of negotiating a

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If There's a Problem When You Move In...

- Have a friend, neighbor or other neutral party witness the condition of the rental unit.
- Take date-stamped photos of any damage, so that you are able to document the condition of your apartment when you moved in.
- Send a letter to the owner identifying any substandard conditions and keep copies for yourself. If you have photos of the damage, send those along as well.
- If the apartment is presented in a condition that does not live up to the original rental agreement (i.e., the owner promised that a problem would be fixed but did not follow up on it), you should document this as well – either in photos or in writing – soon after moving in.

Foreclosures Are Frightening

Tenants Should Know Their Rights

Berkeley's Rental Laws Offer Protections Against Unfair Eviction

The subprime mortgage lending crisis shows few signs of slowing down. Properties continue to foreclose at alarming speed, and both property owners and tenants have been caught up in the maelstrom. Luckily, in a city with rent controls and eviction protections, tenants of a building going through foreclosure still have important rights.

A foreclosure is an extremely stressful time for all people involved, especially for the owner of the property, and we urge tenants in those buildings to be sensitive. Tenants also experience a great deal of stress during a foreclosure, mostly due to the uncertainty surrounding such an event.

One thing that should remain foremost in the minds of Berkeley tenants is that, in this city, an eviction solely due to foreclosure is not lawful.

If a bank wishes to evict any tenants, the bank must cite one of the twelve good causes outlined in the Berkeley Rent Ordinance, just as any other property owner would.

A change in the building's ownership – which is ultimately what a foreclosure is, since the bank has taken over ownership – **does not** amount to good cause for eviction. Many banks issue eviction notices as a matter of course once they have taken over the property. In most cities, they can do this because most cities do not provide good cause for eviction protection to tenants.

Another issue for tenants of a foreclosed property to consider is that of paying rent. Tenants should **always** assume that the owner has retained title to the building and continue paying rent to that owner until they are notified otherwise in writing by a financial institution.

Once a tenant has received a written notice informing them of the foreclosure and change in owner-

ship, tenants should make every effort to contact that financial institution and inquire about how to make rent payments.

Many foreclosure notices include a notice to quit, addressed to all occupants of the property. **Tenants**

should not ignore such notices. Just because the bank does not have the right to evict does not mean that the institution will not make the attempt, in the hopes that tenants will ignore their rights.

Tenants who have received such notices should take the following action:

1. Call the Rent Board. We will request a copy of the notice that the tenant has received and contact the financial institution to provide information on Berkeley rental laws, particularly the eviction protections.

2. Consider contacting an attorney. You may want to select a private attorney familiar with Berkeley rental laws. Tenants can also inquire

at the Rent Board to see if they qualify for representation at a non-profit agency funded by the Board. But it is wise to find an attorney, and to do it quickly. Failure to respond to even a faulty notice can result in eviction, so tenants should enlist the aid of a professional who can navigate the legal system.

3. Either the tenant or the tenant's legal representative should contact the financial institution (foreclosure notices should include a contact name and address), stating the tenant's intent to continue paying rent, to confirm that the bank's representative is the correct person to whom rental payments should be addressed, and to state that the tenant understands that Berkeley's rental laws do not allow eviction in the event of foreclosure.

If tenants even suspect that a foreclosure is in the works and have questions, they should always contact a Rent Board housing counselor.

FORECLOSURE

FOUR

1

Foreclosure is NOT a good cause for eviction!

2

Never ignore notices!

3

Continue to pay your rent!

4

Get representation – we can help!

Paying the Rent When Money's Scarce

With the state's unemployment rate on the rise and savings depleted, tenants are often hard pressed to pay rents that were once manageable. Or they're stuck between a rock and a hard place because they need to leave a unit with high rent, but can't come up with deposit money for a new home.

The City of Berkeley has services to assist those struggling with unpaid rent. The Housing Retention Program's participating agencies assist tenants facing eviction and offers help in paying back rent. Tenants eligible for assistance must have received some kind of notice to quit, and must be experiencing a temporary financial setback. They may also need to meet additional criteria set by the participating agency. If you have received a 3-day notice to pay rent or quit, visit the City of Berkeley Housing Department's home page at:

www.ci.berkeley.ca.us/housing and click on "Housing Retention Program."

Berkeley residents can also take advantage of Alameda County services that offer rent and deposit assistance. Most have particular dates when residents need to call in to apply for grants; dates are provided in the agencies' outgoing voice messages:

- Native American Health Center (deposits and late rent assistance): (510) 535-4450
- Catholic Charities (deposits): (510) 768-3102
- Catholic Charities for Seniors 55+ (deposits): (510) 768-3113
- Travelers Aid Society (deposits and late rent assistance): (510) 444-6834
- Operation Dignity (deposits and late rent assistance): (510) 844-0785

Finally, if you are having trouble paying your energy bills, you may qualify for assistance through the City of Berkeley's Low-Income Energy Assistance Program, which provides low-income households with energy bill payment assistance. Approximately 1,000 clients are served annually.

Call (510) 981-7770 to see if you qualify.

Making Way for Waste: You May Not Want it, but We Do!

As summer approaches, many Berkeley tenants prepare to move out of their rental units. Neighborhoods near the university are especially impacted by the annual move-out of students at the end of the academic year. Too often, unwanted items are left on the sidewalks. Leaving furniture and other items curbside is not only illegal (the city can impose fines up to \$1,500), it harms the environment and also tarnishes our beautiful city. Unwanted electronics, including televisions, computers and monitors, are hazardous waste due to the materials used in their manufacture. Never dispose of these in trash containers of any type or leave them on sidewalks.

A program sponsored by the City of Berkeley and UC Berkeley aims to reduce the environmental and social impacts of students when they move. By following three easy steps listed below, all Berkeley residents can reduce their eco-footprint. If you are planning on moving out:

- 1. Plan Ahead; Recycle.** If you know you'll be moving in a few months, now is the time to think about what you'll be taking with you or storing and what you'll want to discard. Ask around or post a flyer: maybe another tenant in your building could use your unwanted furniture.
- 2. Donate or Sell.** Several non-profits such as Goodwill and Salvation Army will gladly accept reusable furniture, appliances, clothing, etc., and some will even pick up your items free of charge. Utilize online marketplaces like Craigslist or freecycle.org.
- 3. Schedule a free pick-up.** If you live in a rental property with fewer than eight units you are eligible for one free "bulky waste pickup" every calendar year. Call the City of Berkeley at (510) 981-7270 to schedule an appointment.

For more information on properly disposing of unwanted items, visit the City of Berkeley Reuse Guide at www.ci.berkeley.ca.us/pw/swm/reuseguide.pdf

Tenant Survey and Owner Study Coming!

The Berkeley Rent Board recently sent a survey to several thousand tenants to gain information that will help us better serve the community. The survey is confidential and seeks feedback on tenants' relationships with the owners of their buildings, as well as their satisfaction with city agencies such as the Rent Board, the Housing Department, and the Housing Authority. If you received this survey, please help the Rent Board by filling it out and returning it as soon as possible – even if you are leaving a unit, since we want to understand your rental experience.

The Rent Board also is launching a profitability study to better understand rent control's effectiveness and to ensure that all property owners are receiving a fair return on their investment. We hope to have the results of this study available this fall.

DIRECTOR'S MESSAGE

The continuing economic woes have resulted in a significant increase in the number of clients we've been called upon to serve. Changes over the past year have also brought a sense of renewal and invigoration to the nation and to our agency. I eagerly look ahead to a year filled with promise and progress.

I wish to personally extend a warm welcome to our new group of Berkeley Rent Board Members, whom Berkeley voters elected in November. We welcome Nicole Drake, Judy Shelton, Jesse Townley and Igor Tregub, and congratulate Jack Harrison on his re-election. The new commissioners are ready for the tasks at hand, and have brought a new level of energy to the Board.

First on the agenda has been to shake up our existing Board committees in light of the new issues facing Berkeley residents. The Eviction Committee has been revamped to accommodate pressing needs in the housing market – it is now the Eviction, Section 8 and Foreclosure Committee. As most people know, foreclosures remain a grave concern throughout the state as the economy continues to founder, and Berkeley tenants and landlords have certainly been affected. We include in this issue of the *Berkeley Rental News* a guide to Berkeley tenants' rights in the event that the property goes through foreclosure. As always, we continue to emphasize that tenants **do not have to vacate a rental for foreclosure alone**. Tenants should contact our offices right away if they receive any kind of foreclosure and/or notice to vacate from a financial institution.

We are also proud to launch a new Safe and Sustainable Housing Committee, which is tackling a number of Berkeley housing issues affecting landlords and tenants,

including seismic and soft story concerns, disaster planning, as well as several "green" housing issues. The Board is also reviewing the city's proposal for limiting smoking in multi-family housing.

The Rent Stabilization Program is also engaged in several large projects designed to improve operations, including a complete overhaul of our 15-year-old Rent Tracking System. Efforts to replace this system are directed toward a streamlined database that can be updated more quickly and efficiently. I am also excited about the tenant survey and property owners' study, and expect to use those results to better serve our Berkeley clients.

May and June are the months in which Berkeley experiences a significant turnover in tenancies as students head home for the summer. Many people come to us with questions about the issues that inevitably arise when people move in and out: the retrieval of security deposits, damages that occur during a tenancy, subletting, and how to approach the breaking and renewal of leases. We once again provide our comprehensive guide to moving in and out of apartments on page 2. We urge all of those who are moving to read this closely, take the steps we recommend to protect yourself in this process – and to hopefully avoid conflict in the future.

Finally, a joyous welcome to Izaak Nathan Brown and James Edward Prater – may you both grow up to see the world more fully embrace the values of compassion and shared responsibility that we hold dear in our community of Berkeley.

Enjoy the season, and as always, feel free to give us your feedback by calling (510) 981-RENT!



Jay Kelekian, Executive Director

A Community Presence

The Rent Board continues to focus our outreach efforts directly in the community to make our services as widely available as possible. In addition to our regular office hours – which include an evening session each Wednesday from 5 to 6:30pm – Rent Board housing counselors regularly offer their expertise in additional venues.

You can find our housing counselors at the **Berkeley Central Library, 2090 Kittredge Street**, on the second Saturday of each month in the Berkeley History Room, 2nd floor, from 11am to noon.

Seniors can take advantage of our services at the **North Berkeley Senior Center, 1901 Hearst Ave.** Counselors offer one-on-one counseling sessions on the third Monday of each month, from noon to 3pm.

Finally, look for our booth at Berkeley's upcoming Earth Day festival and many other community events. For more information, please contact Nick Traylor at (510) 981-RENT.

Moving

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lower rent with your current landlord. Just remember: **If you and your landlord can agree on a discounted rent for a certain period of time, your original rent ceiling remains the same.** So if you signed an annual lease at \$1,500, and then negotiate a rent of \$1,400 on a month-to-month basis at the end of the year, your landlord does retain the right to raise your rent back to \$1,500 at any time with a 30-day notice, or back up to the ceiling when the new lease expires.

¡Hablamos Español! Inquilinos y Propietarios

Obtenga este Boletín en Español

La Mesa de Estabilización de Rentas de Berkeley ahora ofrece la traducción de este boletín en español. Si desea obtener una copia – o si usted tiene preguntas sobre la renta en Berkeley – por favor llame a:

Angelina Toscano
(510) 981-4902



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Visit Us:

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except Wednesdays

Noon to 6:30pm



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