

Berkeley Rental News

SPRING/SUMMER 2006

THE NEWSLETTER OF THE BERKELEY RENT STABILIZATION BOARD



BERKELEY RENT STABILIZATION BOARD

www.ci.berkeley.ca.us/rent/

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Regular Rent Board Meeting Schedule

Starting this year, meetings of the Rent Stabilization Board are now 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 7:00 p.m. in the City Council Chambers, 2134 Martin Luther King Jr. Way. For the remainder of 2006, meetings are scheduled for the following dates:

Monday, May 15	Monday, Sept. 18
Monday, June 19	Monday, Oct. 16
Monday, July 17	Monday, Nov. 20
Monday, Aug. 21	Monday, Dec. 18



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 on the Web! Visit the Rent Board's home page at

www.ci.berkeley.ca.us/rent/ and click on "2006 Regular Meeting Schedule."

Your security deposit: Don't give it up—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 recommend that the parties attempt to resolve any differences before filing a petition at the Rent Board or a suit in Small Claims Court.

Moving-out prep

Remember that a landlord does not have to return the security deposit until the tenancy ends and all original tenants have permanently moved out; a tenant who moves out before all of the other original tenants will have to wait until the tenancy ends or will have to recover the deposit from the remaining tenants or from the replacement tenant. 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. Since many landlords do not offer this inspection, we recommend that tenants request it.

Tenants: Leave it the way you found it!

Landlords are not permitted to charge for ordinary wear and tear on the rental unit, but they can charge for any damage that the tenants caused or for any cleaning that is required to return the unit to the condition it was in at the start of the tenancy.



Students! Spring is a time of comings and goings. Whether you're starting a new lease or leaving an apartment, be sure to come down to the Rent Board to learn your rights and responsibilities.

For this reason, tenants should:

- 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 date-stamped pictures of the unit before moving out.

Continued on Page 3

Got conflict? Let us mediate your troubles away

As a part of our continuing efforts to resolve conflict between property owners and tenants at the earliest possible stage, the Rent Board always seeks new ways to facilitate communication. Sometimes it can be as simple as having a housing counselor telephone one party while the other party is present, so that the counselor can weigh the input of both landlords and tenants and open the lines of communication between the two.

However, we also offer more structured forms of mediation between property owners and tenants. One program that the Rent Board is in the process of expanding is mediation sessions for owners and tenants. In mediation, a neutral third party tries to help two people fashion their own resolution of a dispute – no one imposes a solution or makes decisions for them. It differs from the Board's petition process, which is more formal and limited in scope. Some of the topics that can be addressed in a mediation but not through a petition are:

- Roommate disagreements
- Entry for repairs
- Noise complaints
- Privacy rights
- Rent due dates/late fees
- Move-out/eviction issues

Mediation is voluntary—it will occur only if both sides agree to participate. The mediator will seek to help the parties communicate effectively and focus on the desired outcomes of each person. Mediation is beneficial because of its emphasis on cooperative problem-solving and is especially helpful in an ongoing landlord-tenant relationship. The spirit of cooperation usually means more positive dealings between the parties in the future.

In contrast, at a hearing on a Rent Board petition, the hearing examiner focuses on gathering the facts through testimony and documents. The hearing examiner's decision—which can take from a few weeks to two months, or longer in complex cases—is limited to determining

whether a rent ceiling reduction or other relief is warranted under the Rent Stabilization and Eviction for Good Cause Ordinance. Parties must attend and participate in the hearing to protect their rights.

A Rent Board mediation can cover both rights under the Rent Ordinance and other landlord-tenant issues. For example, in one recently mediated case, the parties worked out a mutually satisfactory arrangement to have needed repairs done that accommodated both the tenant's desire to have the work completed by a professional contractor and the landlord's need for access to the unit at established times. A mediation will usually be conducted by two Rent Board staff members: a counselor and a hearing examiner. If no agreement is reached, other avenues for resolution, such as the Rent Board petition process or the courts, are still available.

The Process

We suggest you call or visit our offices to speak to a Rent Board

Continued on Page 3

Moving in and Moving out

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.

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. If you move out before the lease ends, you may be held responsible for paying rent if the unit is not re-rented before the lease period expires. If you want to rent a certain apartment, but you think the rent is too high for the current market, you might negotiate with the landlord to lower the rent. Remember that losing out on an individual apartment is much better than having to pay rent on a place where you're not even living.
- 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 in excess of the first month's rent 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. If last month's rent is paid in advance the tenants will be entitled to interest (the same that the security deposit earns) on the amount paid.
- 4. Call the Berkeley Rent Board to determine if 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 could be visible at the time of the showing are smoke detectors and a working phone jack. Each rental unit should have them.

Once You Move In...

- Take date-stamped photos of any damage, so that you are able to document the condition of your apartment when you moved into it.
- Send these pictures to your landlord with a letter identifying any substandard conditions and keep copies for yourself.
- Have a friend, neighbor or other neutral party witness the condition of the rental unit.

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

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

CANNOT

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

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

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 premature 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.

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' 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 has bad credit.

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 number of tenants imposed by a landlord. For example, if the number of tenants allowed decreases from three to two, the rent ceiling could be reduced by one third. Whether the landlord imposes this by unreasonably rejecting each proposed person or by refusing to consider anyone at all (even if the landlord has placed a prohibition against subletting in the rental agreement), the Regulation still permits a rent ceiling reduction. Faced with the prospect of a significant rent decrease, landlords often decide to permit a replacement tenant.

Not good cause for eviction . . . Under the Rent Ordinance, an owner cannot evict a tenant for violating the lease 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 lease, then the landlord will not qualify for a vacancy increase until this replacement tenant also moves out. Call a Rent Board housing counselor if you need further assistance in proceeding with a roommate replacement issue.

Update of Market Rents

The following are median rents for new tenancies started from Jan. 1-March 31 2006, as reported to the Rent Stabilization Board. We have received frequent inquiries as to the amounts that units are currently renting for in Berkeley. If you are starting a new tenancy or renegotiating a lease, this information may be of interest.

Median Rents			
Studio:	\$825	2 BR:	\$1350
1 BR:	\$1050	3 BR:	\$1700

Security Deposit, continued from Page 1

■ Keep copies of these records in case there is any dispute over the landlord's justification for deducting from the deposit after the landlord recovers possession 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 s/he is not returning it within 21 days of the day the last original tenant permanently vacated the rental unit. In Berkeley, they must also return the balance of interest that the security deposit has earned from the prior Nov. 1 to the move-out date (please see the handy calculator on our Web site to determine how much would be owed). In order to avoid any unreasonable delays in recovering the security deposit, it is recommended that tenants provide the landlord with a new address where s/he can send a check. If a tenant does not yet have a new address, s/he can inform the landlord to send it to a friend or relative (preferably one who lives in the Bay Area or near where the tenant plans to live).

Unreturned security deposits

If landlords do not return the security deposit—or written justification for why it is being withheld—within 21 days of the day that a tenant permanently moves out of the rental unit, 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 security deposit

If after receiving security deposit demand letters, the landlord still refuses to return the money, tenants have the option to:

- File a claim at 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 that s/he retained, and the landlord will have to prove that s/he was justified in withholding all or part of the deposit. Should you prevail in a Small Claims Court suit claiming the landlord has withheld your security deposit in "bad faith," then you may be awarded damages of up to twice the amount of the security deposit. Tenants and landlords should retain the following to serve as documentation:

- Photos of the unit at the commencement and/or the end of the tenancy
- Witness statements regarding the condition of the rental unit when they moved out
- Copies of signed letters
- Cleaning/repair receipts

Separate information packets for landlords and tenants regarding these issues are available at our office at 2125 Milvia Street, Berkeley, CA 94704 and at our Web site (<http://www.ci.berkeley.ca.us/rent/>). As always, Rent Board housing counselors are available to answer any questions you may have regarding this process. Please call us at (510) 644-6128 for assistance. ■

Mediation, continued from Page 1

counselor, who can determine whether your case is right for mediation. If it is, you may begin the process by completing a "Request for Mediation" form, which asks for the parties' general information and a brief description of the dispute. A mediation session can be scheduled as soon as a week from the request, provided the other party agrees.

To prepare for mediation, you should think about what you want to discuss and what's important to you. Use these questions to help you prepare:

- What are the most important points for me to have in an agreement?
- Why are they important to me?
- What is the best result I could hope for?
- What is the worst result that could happen?
- What would be a sensible, realistic and fair solution?

At the mediation, the parties will be asked to read and sign an "Agreement to Mediate." The mediators will give each party a chance to describe the dispute as they see it, and to state how they would like to

see it resolved. The mediators will seek to understand what is important to each party and encourage a settlement that is satisfactory to both.

If an agreement is reached in the mediation, it will be written up for the parties to sign. Mediated agreements have a high rate of compliance because the parties have worked out their own solution. But if a party reneges on the agreement, the other party is free to seek Rent Board remedies, if appropriate, or to enforce that agreement in court.

Statements or offers made in mediation are confidential. That is, they will not be admissible in a Rent Board or civil court proceeding. If a mediation does not result in an agreement, the Rent Board hearing examiner who was involved will not be assigned to hear a related petition unless both parties consent.

We are excited to continue to develop this service for landlords and tenants and hope that you will take advantage of the opportunity to resolve your disputes in a cooperative manner. Please call a housing counselor at 510-644-6128 for more information about mediations. ■



A Warm Welcome

The Rent Board has seen some staff changes since the start of the new year. We'd like to extend the very kindest of greetings to Angelina Toscano (left) and Allison Preto, the new additions to our Public Information and Registration units.

They are available to answer your questions on rent control and eviction protections. Both Angelina and Allison have a wealth of experience and are committed to providing the highest possible quality of service to property owners and tenants.

ASK THE RENT BOARD

I'm a tenant in a building that is being converted to condominiums. Since I cannot afford to buy my unit, will I need to vacate once the conversion has been completed? Is it true that condominiums are exempt from rent control?

A conversion to condominium has a number of implications for both owners and tenants. However, under the condo conversion ordinance amended by the City Council in October 2005, many protections exist for tenants. **First, tenants may not be evicted from a unit due to a conversion to condominium.** In fact, all sitting tenants are allowed to remain in the unit with a regulated rent tied to the increase in the Consumer Price Index. Furthermore, tenants may only be evicted for a "good cause"—nonpayment of rent, violation of the lease, and ongoing disturbance of other occupants are examples of good cause for eviction. For units converted to condo after October 2005, owners may not evict a sitting tenant in order to owner-occupy the unit.

To address your question regarding condos being exempt from rent control: A rented condominium is exempt from rent control only if it has been rented out after being bought by a new owner after conversion. However, eviction and security deposit protections still exist even for rented condos. As noted above, for sitting tenants in units that were converted to condominium after October 2005, rents must be limited to annual increases equal to 65% of the increase in CPI.

I rented out one of my apartments to four students two years ago. Their tenancy ended last month, and after they moved out the apartment was in pretty bad shape: The carpets were covered with stains, the stove burners were so encrusted with grime that they are not functioning correctly, and there was a large hole in one of the bedroom walls. I plan on having the damage repaired and taking any money I use out of their security deposit. How should I go about this?

It sounds like the damage left by the tenants goes beyond the normal "wear and tear" that a landlord expects to see during the course of a two-year tenancy. For this reason, you can hold the tenants responsible for the repairs, as long as you go about it the right way: First, get the damage fixed as soon as possible, and keep all invoices and receipts for work performed. Second, return the tenants' security deposit—minus any money you used to make repairs—to them within three weeks of their move-out date. Finally, if the money you spent making repairs exceeds \$125, you must include an itemized list of repairs made to the unit, along with copies of the receipts and invoices for work done.

Message from the Director



Onward and upward—this is the theme of late spring in Berkeley as thousands of students graduate from the university to embark on the next chapter of their lives. Thousands more students simply decide to leave their tiny dorm rooms to embrace the freedoms and responsibilities of apartment living. In addition, many families use the summer break to switch housing without the necessity of changing schools mid-term.

For this reason, May and June are the months in which Berkeley sees about a quarter of its rental stock—close to 4,000 units—change hands. At no other time of year does the city see more people move in and out of apartments—and at no other time of the year is the Rent Board as inundated with questions about the issues that inevitably come up when people move: the retrieval of security deposits, how to deal with damages that occur during a tenancy, subletting, and how to approach the breaking/renewal of leases.

To this end, we once again provide our comprehensive guide to moving in and out of apartments on Page 2 of this newsletter. Here you will find checklists and a guide to issues to consider when you are either entering into a new apartment or leaving one behind. Be prepared—and stave off the potential for conflict later on!

Mediation

Speaking of staving off conflict, the Rent Board is stepping up its efforts to solve the disputes that can arise over a rental. We are proud to expand our mediation

program for property owners and tenants. While the Rent Ordinance generally governs only issues of rent levels, deposits and eviction protection, the mediation program is designed to provide an alternative method for resolving disagreements that can arise between owners and tenants—or even between tenants. Check out the full description of how this program works and how to take advantage on Page 1—you just might find a way to restore the peace.

Going condo?

Another point of interest that has spurred many questions here at the Rent Board is the issue of condominium conversion. We find that we're counseling many tenants and property owners on the changes to the Condominium Conversion Ordinance adopted by the Berkeley City Council last fall. These changes, endorsed by the Rent Board, loosened the historic ban on converting rental units to condos—but also took into account the Rent Board's recommendation to guarantee protections to all sitting tenants as well as a method for replenishing the stock of affordable housing for the most vulnerable in our city.

The Board believes that, given the current circumstances, the new ordinance strikes the right balance by allowing a reasonable number of conversions (100 per year) while guaranteeing that sitting tenants need not be displaced. If you have questions about your rights under this new ordinance, please do not hesitate to call us.

And as we continue to progress, I hope to hear from the owners and tenants that comprise Berkeley's unique and vital community on how we can improve our services further. ■

Sewer and Water: Who Pays What?

You may not want to think about what's going on in your sewer, but somebody has got to when it's time to pay the bill.

In 1997, the City of Berkeley stopped billing sewer service fees on the property tax bill and arranged to have them billed by East Bay Municipal Utility District on their water bills. Depending on the lease, either landlords or tenants can be responsible for paying the water bill. **However, for tenancies that began prior to Jan. 1, 1999, regardless of who pays the water bill, landlords must pay for all sewer charges.**

For all tenancies that began after Jan. 1, 1999, the landlord is still responsible for paying sewer charges, **unless** a lease expressly assigns this charge to the tenant. If sewer charges are not expressly assigned to the tenant in a written lease agreement, and the tenant receives a bill for these charges, s/he may deduct the cost of the sewer charges from the rent. Please contact a Rent Board housing counselor at (510) 644-6128 for more information. ■

- Rent Board Moving Guide
 - Understanding Security Deposits
 - Expanded mediation services
- What's inside this issue of the Berkeley Rental News...**

CONTACT INFORMATION:
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 Monday-Friday
 9:00 a.m.-4:45 p.m.
 Except Wednesdays
 12:00 noon-6:30 p.m.

Rent Stabilization Program
 2125 Milvia Street
 Berkeley, CA 94704



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Announcements

RENTAL HOUSING SAFETY PROGRAM CERTIFICATION CHECKLIST (SCHEDULE A) MUST BE COMPLETE BY JULY 1ST

Owners are required to inspect each rental unit for safety hazards using the City's Certification Checklist on a yearly basis, unless their units are exempt under the RHSP regulations, and provide a copy of the completed checklist to the tenants by July 1st. If the owner cannot complete the checklist due to the tenant's refusal to allow entry into the unit, he/she must indicate this on the checklist and return the form to the Housing Department. For additional information, contact the Rental Housing Safety Program at (510) 981-5445, TDD at (510) 981-6903, or via e-mail at RHSP@ci.berkeley.ca.us.

WORKSHOPS

The Berkeley Rent Board regularly hosts workshops to offer a forum for landlords and tenants to learn more about their rights and responsibilities. All workshops will be held at Rent Stabilization Board offices in downtown Berkeley, 2125 Milvia St. Upcoming workshops include:

Security Deposits: How should deductions, refunds and interest be calculated, and when should they be paid?
June 7, 2006 @ 5:30

Condo Conversion Ordinance: Know your rights and protections under this new law. **June 21 @ 5:30**

¡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 644-6128 ext. 122

