

Berkeley Rental News

SPRING 2007

THE NEWSLETTER OF THE BERKELEY RENT STABILIZATION BOARD



BERKELEY RENT STABILIZATION BOARD

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

COMMISSIONERS

Jesse Arreguin, Chair
David Blake
Howard Chong
Jack Harrison, Vice Chair
Chris Kavanagh
Jason Overman
Lisa Stephens
Eleanor Walden
Pamela Webster

EXECUTIVE DIRECTOR

Jay Kelekian

EDITOR

Allison Pretto

RENT BOARD OFFICES

2125 Milvia Street
Berkeley, CA 94704
Phone: (510) 644-6128

Regular Rent Board 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 7:00 p.m. in the City Council Chambers, 2134 Martin Luther King Jr. Way. For the remainder of 2007, meetings are scheduled for the following dates:

Monday, May 21
Monday, June 18
Monday, July 16
Monday, August 20
Monday, September 17
Monday, October 15
Monday, November 19
Monday, December 17

When a Board meeting falls on a holiday, it has been traditionally rescheduled to the following Thursday.



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 "2007 Regular Meeting Schedule."

It's that Time Again

The Ins and Outs of Security Deposits

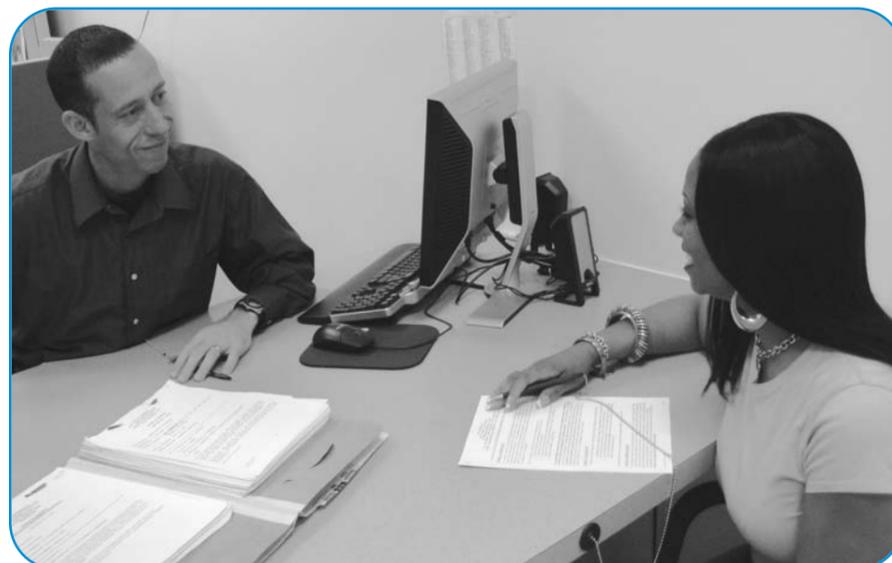
As we approach the time of year when many Berkeley tenants will be moving out of their rental units, we thought it a good time to help landlords and tenants prepare for security deposit returns. While each case is unique, this information will hopefully provide a foundation for dealing with move-out and deposit recovery issues. As with most landlord/tenant interactions, we recommend that the parties attempt to amicably 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. If, at the end of the lease term, some of those tenants decide to stay in the apartment and some decide to vacate, then the landlord does not need to return the deposit. The landlord needs to return the deposit only when all occupants leave.

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:



It's a busy time of year for tenants and owners alike. Our Rent Board housing counselors can help answer your questions about moving in and moving out.

1. To remedy any unpaid rent;
2. To fix damage caused by the tenant beyond ordinary wear and tear;
3. To pay for any cleaning that is necessary to return the unit to its condition at the start of the tenancy.

Moving-out prep

Again, under state law, landlords do not have to return the security deposit until the tenancy ends and 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

Continued on Page 3

Message from the Director



Summer's just around the corner, but events of last fall continue to have an impact on the property owners and tenants of Berkeley. I am pleased to provide updates on the outcomes of the measures that would affect the Rent Board operations and/or the Berkeley rental market.

Measure I would have changed the rules on condo conversions in Berkeley, allowing up to 500 units per year to be converted. This measure was defeated by Berkeley voters 26% to 74%. As a result, the existing condo conversion regulations recommended by the Rent Board and passed by the City Council over the past two years will continue to be law. "Ask the Rent Board" on Page 3 provides more information on rights of tenants under Berkeley's condo conversion rules.

Measure E was placed on the ballot at the request of the Rent Board and approved by over 82% of the voters! As a result, the City Charter was amended to change the way vacancies on the Rent Board are filled. This change ensures the Board will be fully functioning and eliminates the requirement for costly mid-year citywide elections.

Five Rent Board Members were elected to four-year terms last fall. We congratulate and welcome Dave Blake, Lisa Stephens and Pam Webster to the Rent Board and thank Howard Chong and Chris Kavanagh for their continuing service on the Board.

Another new law, this one enacted by the California Legislature, is worth noting: As of January 1, 2007, tenants throughout the state who have lived in a property longer than one year must receive at least 60 days' notice if they are being evicted for a "no-fault" eviction (a reason other than violating some term of the tenancy such as non-payment of rent, nuisance, etc.). The article on Page 4 offers more detail.

Because of the high turnover of units during the late spring and summer, this newsletter emphasizes guidance when beginning or ending a tenancy. Some of the information may also be useful in helping readers decide if they are better off looking for another unit or staying in their existing situation. I encourage you to follow up by speaking to one of our housing counselors if you have additional questions. Finally, your comments about this newsletter and/or how we can improve our service are always welcome.

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' 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 number of tenants imposed by a landlord. 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. Whether the landlord imposes this by unreasonably rejecting each proposed person or by refusing to consider anyone at all (even if the landlord prohibits 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 the 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.

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. 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. But consider: On the one hand, you might be able to find a brand-new apartment that is significantly cheaper, and you could start a new lease with a new, lower rent ceiling. However, do not discount the idea of negotiating a 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.

The following median rents for new tenancies that began between October 1 and December 31, 2006, as reported to the Rent Stabilization Board, could affect your decision. Remember, this information provides only a baseline understanding of the rent charged for Berkeley units. A number of other factors, such as location, services, and size of the rental, affect the amount of rent the tenant and owner agree to in a lease.

Studio \$850 1 BR \$1,100 2 BR \$1,445 3 BR \$2,000

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. If you move out before the lease ends, it is possible that 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. This is especially important 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. All money paid in excess of the first month's rent is considered a security deposit, and you are entitled to interest on the entire amount. Deposits can be used for last month's rent or security—or a combination of the two—depending on what the lease stipulates.

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 is required to 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 standard conditions and keep copies for yourself.
- ✓ Have a friend, neighbor or other neutral party witness the condition of the rental unit.

AND 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.

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
■ Space provided	■ Late fees	■ Security deposit amount

Security Deposit, *continued from Page 1*

offer this inspection, we recommend that tenants request it.

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 unit to the condition it was in 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 date-stamped pictures of the unit before moving out. In addition, it may be wise to have a neutral witness observe the condition of the unit.
- Keep copies of all photos and other documentation in their 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 vacates the rental unit. In Berkeley, they must also return the balance of interest that the security deposit has earned from the prior November 1 to the move-out date (please see the handy calculator on our Web site to determine how much you are 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.

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—or returns less money than the tenant

feels is justified—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.

At any hearing before the court or Rent Board, landlords and tenants will be asked to explain their case and present any evidence (photos, witness statements, receipts, correspondence, etc.) that supports their position. Remember, being right is not always enough. You must be prepared to prove your case.

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. ♦

Help us update our records!!

In an ongoing campaign to provide the best service to all our clients, we are attempting to update all records this year. We sent out Notices of Apparent Lawful Rent Ceiling Notice to all landlords and tenants in February. These notices contained important information regarding tenancies that landlords have provided to us throughout the years. If the notice contains any errors, please notify us immediately. Remember, the public supplies our agency with all the relevant information regarding specific tenancies. Tenants are also able to respond to these notices if they provide us with a lease agreement that gives the correct information. We remind you, also, that landlords are not required to file Vacancy Registration Forms for Section 8 or other tenancies that are exempt from the Rent Ordinance's registration requirements. Lastly, rental units are technically out of compliance if a landlord fails to properly register the unit (including filing an updated Vacancy Registration Form) **within fifteen days** of the inception of a new tenancy.

ASK THE RENT BOARD

My tenant received one or your newsletters, and now is saying I need to pay the sewer service bill. Ever since the bills changed in 1999, I have expected tenants to pay this fee, and my leases make this clear. Who is right?

It depends on when your tenant moved in, as well as how the issue is addressed in your lease.

To give a bit of background: 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 all tenancies that began prior to January 1, 1999, regardless of who pays the water bill, landlords must pay for sewer charges.

For all tenancies that began after January 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.

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. The Condominium Conversion Ordinance was challenged in November 2006; however, this challenge was defeated by the voters. Thus the original ordinance continues to stand, striking the balance

between allowing a reasonable number of conversions (100 per year) and guaranteeing certain protections to sitting tenants. **Most importantly, tenants may not be evicted from a unit due to a conversion to condominium.** In fact, except in rare cases, sitting tenants of any income level 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. Tenants must be offered lifetime leases for the unit as a precondition to the conversion. If the tenant chooses to accept such a lease, then the tenancy would remain in effect independently of any other city law—including the rent ordinance. Furthermore, tenants would be protected from any future owner-occupancy evictions. Finally, their rent increases would be limited to annual increases equal to 65% of the increase in the Consumer Price Index.

To address your question regarding condos being exempt from rent control: A rented condominium is exempt only if it has been rented out after being bought by a new owner after conversion (although conversion itself can sometimes be considered a sale transaction). 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 almost always will be limited to annual increases equal to 65% of the increase in CPI. Call us if your landlord indicates that s/he is considering this conversion. It does not have to be a contentious situation, but you do have important rights.

** "Ask the Rent Board" is intended to provide an overview of how the Rent Board interprets various issues presented by owners and tenants. The answers are not meant to offer exhaustive explanations, nor can they definitively resolve every reader's rent control situation. Please contact a Housing Counselor should you have questions about your own situation.*

Sixty-Day Notice now required for “no-fault” evictions

The California legislature recently passed a bill that will once again require Sixty-Day Notices for all “no-fault” evictions when a tenant has lived in the rental unit for one year or longer. Beginning in January 2007 landlords will have to give sixty days’ notice for actions such as owner-move-in evictions where the landlord is demanding possession of the rental unit but not alleging that the tenant did anything to precipitate the eviction. A Sixty-Day notice will be required for all no-fault evictions where the tenant has lived in the rental unit for a year or longer for the following “good cause” sections of the Rent Ordinance: B.M.C. Sections 13.76.130A.7, 13.76.130A.8, 13.76.130A.9, and 13.76.130A.10. Please contact a housing counselor at 644-6128 for further explanation regarding rights and responsibilities under the “good cause” section of the Rent Ordinance.

It’s All about the Interest

Did you know that 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 1 and the move-out date. Need help figuring out how much is owed? Give us a call, or visit our Web site at www.ci.berkeley.ca.us/rent/ and click on “Security Deposit Interest Rate.” We publish the “move-out” rate each month on our site and provide an easy-to-use “calculator” for your convenience.

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?

Wednesday, June 6, 2007 @ 5:30

Landlord 101: Just acquired rental property in Berkeley? Learn about the key rent control issues that can have an impact on you and your tenants

Wednesday, June 27, 2007 @ 5:30



Berkeley Rental News

SPRING 2007

THE NEWSLETTER OF THE BERKELEY RENT STABILIZATION BOARD

CONTACT INFORMATION:

Phone: (510) 644-6128
 Fax: (510) 644-7723
 TDD: (510) 981-6903
 E-mail: rent@ci.berkeley.ca.us

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

What's inside this issue of the Berkeley Rental News...

- Security Deposits
- Moving In/Moving Out Guide
- Election update



Rent Stabilization Program

2125 Milvia Street
 Berkeley, CA 94704

PSRST STD
 US POSTAGE
 PAID
 BERKELEY, CA
 PERMIT #18

¡HABLAMOS ESPAÑOL!
*Inquilinos y Propietarios
 Obtenga este Bolefín en Español*

La Mesa de Estabilización de Rentas de Berkeley ahora ofrece la traducción de este bolefín 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**

Security Deposits

Tenants: ALWAYS give at least 30 days' written notice!

Don't assume that the landlord knows you're leaving just because the lease is about to expire! State law mandates that tenants give landlords **at least 30 days' written notice** that they are vacating—even if the annual lease is expiring. So if your lease expires May 31, and you plan on vacating that same day, then you **MUST** notify your landlord in writing by May 1 that you will be leaving. The same rule applies if the lease has gone month to month.