

Berkeley Rental News

Fall 2004

The Newsletter of the Berkeley Rent Stabilization Board



What is Rent Control?

Berkeley's Rent Control Ordinance, passed by a majority of voters in 1980, regulates most residential rental units in Berkeley. Its provisions have two fundamental purposes: to protect tenants from unwarranted rent increases, thus affording some predictability in housing costs; and to protect tenants from unwarranted evictions. The Ordinance can be broken down into four basic components:

Stable Rent

Rent increases during a tenancy are still controlled in Berkeley, even though, since January 1, 1999, under the Costa-Hawkins Rental Housing Act, landlords have been able to establish new rents for new tenants (vacancy decontrol). The rent that is negotiated at the beginning of the tenancy is the "base rent." (If your original agreement includes 'discounts' or periods of free rent, call us for assistance in calculating your base rent.) Each January, after the one-year anniversary date of the tenancy's inception, the landlord may impose a 'cost-of-living' increase (annual general adjustment). No additional rent increases may be imposed on any of the original tenants, unless the landlord files a petition for individual rent adjustment and the Board determines that an additional rent increase is warranted.

Eviction Protection

Berkeley's Rent Ordinance provides eviction protection. A Berkeley landlord has to have "good cause" to evict a tenant. (See Berkeley Municipal Code Section 13.76.130 for the eleven good causes for eviction.) Eviction restrictions are designed to prevent arbitrary, discriminatory or retaliatory evictions.

Security Deposit Interest

Berkeley's Rent Ordinance requires landlords to place any security deposits they collect from their tenants in interest-bearing accounts and to refund the actual interest earned to their tenants every December. Any monies collected at the beginning of a tenancy beyond the first month's rent are considered security deposit. If the interest is not paid by January 10th of the following year or the landlord has not provided evidence of the actual interest earned, tenants may, after providing the landlord with 15 days' prior written notice, deduct interest at the rate of 10% from their rent. (See accompanying article on the ballot measure that would change this portion of the law).

Stable Services And Habitable Conditions

While state law and the Berkeley

Rent Ordinance require landlords to maintain their rental units in a habitable condition, Berkeley's ordinance also requires landlords to continue to provide all base year services for the entire tenancy. For tenancies that began before January 1, 1999, a base year service is any service that was included in the rent on May 31, 1980; for tenancies beginning on or after January 1, 1999, a base year service is any service that was included in the rent at the beginning of the tenancy. If a landlord discontinues a base year service, the tenants may be entitled to a corresponding rent ceiling reduction.

Is Your Unit Under Rent Control?

Some rental units are exempt from some or all of the provisions of the Rent Ordinance.

Partially Exempt

- Most single-family homes (i.e., a unit that can be sold separately), rented after 1/1/96.
- Section 8 units.
- Condominiums that were sold after their conversion.
- Units constructed after June 30, 1980.
- Units owned by a government agency.

Owners of partially exempt units must pay interest on security deposits and have good cause to

evict, but are not required to register the units and their rents are not controlled. While tenants and landlords of these units may seek advice from Rent Board Housing Counselors, the Rent Board's jurisdiction is limited.

Completely Exempt

- Units in which the owner shares kitchen or bath facilities with the tenant.
- Units rented for less than 14 consecutive days and subject to the hotel tax.
- Non-profit cooperative housing owned and controlled by a majority of the residents.
- Non-profit homes for the aged and skilled nursing facilities.
- A rental unit on a two-unit property where a 50 percent owner of record occupied one unit on December 31, 1979, whenever a 50 percent owner of record occupies either unit.
- Units rented by non-profit accredited institutions of higher learning to tenants who are faculty, staff, or students of the institution, or other schools of the Graduate Theological Union, as long as the institution owned the unit as of January 1, 1988. ■

Rent Law Changes Proposed

This November, Berkeley voters will have the opportunity to effect changes to the Berkeley Municipal Code that will impact landlords and tenants. Ballot Measure O, if passed, will change the way the annual rent increases (known as AGAs) for rent controlled units are calculated. Ballot Measure P, if passed, will make a number of minor changes to the rent ordinance. Please note that City staff and publications, such as this newsletter, are not permitted to make recommendations about the measures. The measures, as they will appear on the ballot, and the City Attorney's analyses of their impact, are set forth below:

Ballot Measure O

Shall the Berkeley Rent Stabilization and Good Cause for Eviction ordinance be amended to provide that the Annual General Adjustment (AGA) of base rent ceilings be 65%

of the increase in the prior year's Consumer Price Index in the San Francisco-Oakland-San Jose area with a cap of 7% and a floor of 0% per year?

CITY ATTORNEY'S ANALYSIS: The proposed ordinance would change the process by which the Berkeley Rent Stabilization Board annually increases base rent ceilings under the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance. Under the proposed amendment, the base rent ceiling for each rental unit eligible for an annual adjustment would be automatically increased by 65% of the increase in the prior year's Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose area. Any annual increase would be capped at 7% and the rent ceiling could not be reduced by the annual

Continued on Page 3

Help Take a Hard look at Soft Story Buildings

Many buildings with seismic weaknesses can be strengthened, Berkeley has been a leader in retrofitting single-family homes, city buildings and schools. Multi-story wood-framed apartment buildings, particularly those known as 'soft-story', are more complex structurally than smaller houses and often have greater earthquake vulnerabilities. Unfortunately, not many of these buildings, which are occupied by thousands of residents, have yet been retrofitted.

The City of Berkeley wants your ideas on how best to get larger soft story apartment buildings strengthened. The City has identified about 400 buildings of this type, which have large openings on the ground floor, usually for tuck-under parking or retail storefronts. Without retrofit, the 5,000 units in these buildings are at risk of damage or destruction in the major quake expected within the next 30 years. Soft story build-

ings have collapsed in the Loma Prieta and Northridge earthquakes. Most of Berkeley's soft story buildings were constructed in the 1960's or earlier when seismic design standards were much lower than they are at present. Watch for announcements of upcoming community meetings where you can learn more about earthquake vulnerable buildings and share your thoughts on a mitigation program proposed for City Council adoption this fall.

Because of the issue's direct impact on a large number of tenants, rental property owners, and the city's housing units, the Rent Stabilization Program has been assisting in the study of these buildings and is now helping to inform the community of an opportunity to take part in developing solutions. Addressing this problem is important to tenants because it can dramatically impact

Continued on Page 3

City of Berkeley Habitability Guide

For the past several years, preserving, maintaining and improving the quality and safety of Berkeley's housing stock has been a priority for the City. This is not an easy task, as many homes and apartment buildings in Berkeley are aging (some over a hundred years old) and require constant care and maintenance.

The City, with the support of the Rent Board, has implemented a series of initiatives to improve the safety of Berkeley housing stock. Since the early 1990's, a major focus for the City's elected and appointed officials has been reducing the risk of death, injury and/or damage in a large earthquake (see Soft Story article). More recently, Berkeley residents have seen increased efforts to enforce and strengthen City housing codes for rental units. To further this goal, in 2001 the City established the Rental Housing Safety Program, which requires virtually all owners of rental housing to annually inspect and certify that rental units meet prescribed safety requirements.

Initial Steps for Avoiding or Resolving Repair Problems:

Tenants:

1. Inspect the unit at the beginning of the tenancy and note problems to the owner in writing.
2. Keep the rental unit clean and sanitary.
3. Expect for your unit to be inspected by the owner by July 1st every year as required by the Rental Housing Safety Program. Review the RHSP certification, and contact your owner and the City if it is inaccurate.
4. Request repairs immediately when a problem arises.
5. Send the owner a written follow-up to document your request. Sample letters are available at the Rent Board. Keep copies of all correspondence.
6. Allow the owner access to enter the unit during normal business hours to perform repairs.
7. Avoid making any alterations to the unit or any structure on the rented property without written permission from the owner.

Owners:

1. When contacted by the tenant, arrange for repairs right away.
2. Give tenants 24 hours written notice before entering a unit to make repairs.
3. Complete Rental Housing Safety Program certification each year in a timely manner. Give a copy to the tenant by July 1st. You may wish to send it with a Certificate of Mailing for proof that the inspection was performed timely.
4. Comply with the City Noise Ordinance when making repairs. Permissible hours for construction noise are 7a.m. – 7 p.m. Respect the tenants right to quiet enjoyment.
5. Always get necessary permits when making repairs



Generally, it is in both the tenant's and the owner's interest to address repair issues as soon as they arise. Tenants clearly benefit because the sooner a repair is made, the sooner s/he has full use of a safe and livable unit. Owners also benefit because the rental unit is a substantial investment and the sooner a repair is made, the less damage to the building and potential cost for making the repair. In addition, quick repairs reduce the owner's potential liability to the tenant for damage or impairment.

We have found that, in most cases, tenants and owners are able to resolve issues of repair and maintenance without complications. The section below provides some tips for both owners and tenants about how to avoid habitability problems, and when they do arise, how to get the repairs made quickly. If a problem arises, you should not ignore it - instead, we recommend that you communicate directly and politely with the person responsible. In most cases, using the techniques suggested below will resolve the problem.

If the other party is not responsive or the problem persists, you may need to take more formal action to get the situation resolved. We have included some options if you find that you are unable to resolve a repair issue with your owner or tenant. Rent Board counselors are always available if you have questions about who to call or what to do so that the appropriate repairs get made.

Possible Steps if You Are Unable to Resolve a Repair Issue:

Tenants:

1. Request a housing inspection with Housing Code Enforcement. Show the inspector all the problems in the unit, and ask him/her to make note of each problem in their report even if it is not considered a code violation.
2. Repair and deduct in accordance with Civil Code 1942. (See step-by-step guide on how to do this properly below.)
3. File a Rent Board petition for a rent reduction if the owner has failed to provide adequate housing services, comply with housing codes or the warranty of habitability, or if substantial deterioration of the unit has occurred.
4. File a claim in Small Claims Court if the matter can't be resolved directly with the owner.

Owners:

1. Request that the City do Rental Housing Safety Program certification if the tenant will not allow entry in order for the inspection to be performed.
2. Use the City Relocation Program as a resource to determine your obligations when extensive repair work is necessary and may require the tenant to move out.
3. If the tenant has made the repair necessary by causing damage to the unit, make a written request for payment for the reasonable cost of repairing the damage. While deduction from the security deposit is permitted for damage, consider filing a claim in Small Claims Court for earlier restitution. Causing damage to the rental property, and refusing to pay for the repairs could constitute a good cause for eviction.

Note: Section 8 housing guidelines may differ. Contact the Berkeley Housing Authority for more information at (510) 981-5470.

According to State Law and Berkeley Municipal Code Chapter 13.76,

All Rental Units Should Have:

- | | |
|------------------------------|---|
| 1. Smoke Detectors | 6. Hot and Cold Running Water |
| 2. Operable Windows | 7. Easy Access to Exits |
| 3. Appropriate Door Locks | 8. A Functional Heating System |
| 4. A Roof with no Leaks | 9. A Functional Electrical System |
| 5. A Functional Sewer System | 10. A Resident Manager (if the building has 16 or more units) |

Repair and Deduct

Review the risks and limitations that are associated with using this remedy at: www.dca.ca.gov/legal/landlordbook/repairs or call the Rent Board to discuss your options with a Housing Counselor.

Step 1: Write a letter to your landlord requesting the repairs that are needed, and state that he/she must have them made within a reasonable timeframe. Thirty days is standard for non-urgent repairs.

Step 2: Make a photocopy of the letter for yourself and send the original to the owner after getting a Certificate of Mailing from the Post Office. Store the letter and the Certificate of Mailing in a safe place.

Step 3: If your landlord has not made the repairs within 30 days of your written request, arrange for the repairs yourself. Photograph the area needing repairs both before and after the repairs are made. Store the receipt for the repairs along with the original request and Certificate of Mailing.

Step 4: When your next rent payment is due, deduct the cost of the repairs you arranged for and include copies of the receipts.



Rent Law, continued from Page 1

adjustment. Under current law, the formula for granting an annual adjustment of the base rent ceiling is established by the Rent Board after it conducts a study of rental housing-related costs increases and obtains input from the public.

Financial Implications

The Rent Stabilization Board expects to save approximately \$15,000 to \$20,000 per year in economic consultant and administrative costs for preparing the cost study and conducting the public process that results in establishment of the Annual General Adjustment.

Ballot Measure P

Shall the Berkeley Rent Stabilization and Good Cause for Eviction Ordinance be amended to: regulate Section 8 rent above the federal payment standard; exempt certain subsidized units; specify rent deposit interest rate reimbursement; permit City use of Rent Board information; set base rent for certain units; limit eviction of tenant for replacement roommate; and eliminate most criminal penalties?

CITY ATTORNEY'S ANALYSIS:

The proposed ordinance, if adopted, would amend the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance to have the following material effects:

1. The measure would regulate units rented under the federal Section 8 program where the rent exceeds the

maximum rent that is subject to federal subsidy i.e. "the payment standard". Under current law all Section 8 units are exempt because under the old federal Section 8 program, the rent that could be charged was limited to the payment standard.

2. Subsidized units rented by non-profit housing corporations to low-income tenants pursuant to a regulatory agreement with a governmental agency would be exempt from the registration and rent regulation provisions of the Rent Stabilization Ordinance.

3. Transitional housing units rented by non-profit organizations as an incident to recovery and shelter programs would be exempt from all but the Good Cause for Eviction provisions of the Rent Stabilization Ordinance except as preempted by the Transitional Housing Participant Misconduct Act. The eviction controls would continue to apply as long as the tenant remains eligible for the organization's program.

4. Interest on security deposits would have to be paid to tenants at the Federal Reserve rate for 6-month certificates of deposit. Current law requires landlords to place security deposits in federally insured bank accounts and pay tenants the actual amount of interest earned.

5. The City would be allowed to use information in Rent Board files for the enforcement of other City ordinances. The current ordinance prohibits such use of this information.

6. The base rent ceiling for a unit that was not rented on the operative base date would be the first rent charged, unless another rent was previously certified by the Rent Board. Under current law, the owner is required to set the base rent as a good faith estimate of the median rent for comparable units.

7. A landlord may not evict a tenant for violation of a lease's prohibition on subletting if the tenant replaces a roommate with a tenant who meets the landlord's customary occupancy qualifications and the landlord fails to articulate a well-founded reason for the refusal. Current law does not expressly restrict eviction under these circumstances.

8. Criminal penalties for violations of the Rent Stabilization Ordinance would be mostly eliminated except where a landlord is found guilty of willfully violating the eviction controls and the maximum penalty would be modified to conform to state law. Under current law, a landlord is subject to criminal penalties for the willful violation of any provision of the Rent Stabilization Ordinance.

9. Obsolete references to an "appointed" Rent Board will be eliminated.

Financial Implications

The Rent Stabilization Board's revenue may decrease by up to \$20,000 annually due to loss of registration fees from units newly exempted from registration. ■

Success Story of Staff Mediation



The Rent Board is now conducting mediations for landlords and tenants who are willing to attempt to resolve their disputes without filing a petition. Rent Board staff do not have authority to decide the outcome of these cases, but many times landlords and tenants are able to resolve their disputes by participating in these sessions.

In June a group of tenants and a landlord successfully mediated their issues with the assistance of a Rent Board employee. The landlord had filed an eviction lawsuit against the tenants, and the tenants were denying access to the unit. By the end of the mediation session, the landlord had agreed to dismiss the lawsuit against the tenants, and the tenants had agreed to a reasonable schedule to make the apartment available for the landlord to make necessary repairs and show the house to prospective tenants. The parties, who would not even talk to each other before the mediation, left with a concrete agreement that they worked out amongst themselves.

Soft Story, continued from Page 1

your chance of surviving the coming major quake without injury and/or loss of home. It's important to owners because it reduces your potential liability and protects your property and residents and the long-term viability of your investment. And it's important to the city as a whole because the loss of these units would be a devastating blow to the economy and character of our community.

At the planned community meetings, City staff will give a slide presentation on the earthquake threat to existing housing in Berkeley. Staff's presentation will include information on the soft story assessment project, partially funded by the Federal Emergency Management Agency and the Rent Stabilization Board in 2001. The project found that over 95% of these buildings might not be able to be occupied immediately following an earthquake.

Staff will also present a proposal for a two-phased program to address the situation. Phase 1 would add the 400 identified buildings to the city's official Inventory of Potentially Hazardous Buildings, provide for notification of owners and occupants and appeals of the building's inclusion, adopt technical standards, and require an engineering analysis. The purpose of Phase 1 is to gain more detailed information on the



Soft story building collapsed by the 6.8 magnitude Northridge Earthquake on January 17, 1994. (Photo: USGS)

actual vulnerabilities of specific buildings and the needed corrections and their cost so the city can better determine what type of retrofit program, is appropriate. Phase 2 would involve implementing the retrofit plan appropriate for each building.

This proposal is based on a Berkeley program nearing completion that has reduced the existing Inventory of Potentially Hazardous Unreinforced Masonry (URM) Buildings, which initially contained over 500 buildings made of brick, stone, block, or tile, to fewer than 80. Staff has also investigated programs to address seismic mitigation adopted by several other California

cities. The programs range from just providing notification to mandating an engineering analysis and retrofit. Voluntary programs have not proven to be as effective as ordinances requiring retrofit.

Whether dividing the program into two phases is the best approach will also be discussed. Dividing the program into two phases would limit the initial financial impact on the City and the property owners while providing valuable information on the need for and cost of retrofitting each building. On the other hand, it might take longer to actually get buildings retrofitted.

The required engineering analysis is

expected to cost from three to seven thousand dollars per building, with retrofit costing substantially more. A recent tax measure to provide funds to assist owners with retrofit was defeated at the polls. Under current Rent Board regulations, once the retrofitting work is completed an owner may seek to have some or all of the costs of the improvements passed along to tenants. If, and how much, the rent would be allowed to increase would be determined by a Rent Board Hearing Examiner and would, in part, be guided by how much rent levels in the building have already increased since 1999. The City is interested in identifying other assistance and incentives that could feasibly be provided.

Comments raised at the meeting(s) and other community input will be used to develop the program to take to relevant boards and commissions for review and comment, with a public hearing before the Housing Advisory Commission being planned for early fall. Then, the ordinance for the first phase would be presented to the City Council. After the completion of Phase 1, staff will go through a similar process to develop a Phase 2 plan to deal with retrofitting the building.

FOR MORE INFORMATION CONTACT DAN LAMBERT, URM COMPLIANCE PROJECT COORDINATOR, AT 981-7406. ■