



Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: November 15, 2004
TO: Honorable Members of the Rent Stabilization Board
FROM: IRA/AGA Committee
SUBJECT: Proposed Regulation 1241.5, Effect of Landlord's Offer to Comply With Rent Overcharge Refund Order

Recommendation:

That the Board adopt on first reading proposed Regulation 1241.5, Effect of Landlord's Offer to Comply with Rent Overcharge Refund Order, to provide that where a landlord offers to pay the full amount of a hearing examiner's rent refund order, (1) the tenant's acceptance of the payment constitutes a waiver of the tenant's appeal rights provided the tenant received written notification of the consequences of acceptance and (2) if the offer is not accepted, the landlord will nonetheless be deemed in compliance with the order provided the landlord deposits the payment into a Board maintained escrow account.

Background and Need For Rent Stabilization Board Action:

In a recent case, the hearing examiner found that the tenant was entitled to a rent refund based on past habitability violations. Shortly after the decision was issued, the landlord sent the tenant a check for the full amount of the overcharges, which the tenant accepted. After cashing the landlord's refund check with no reservations, the tenant filed an appeal of the hearing examiner's decision, contending that the hearing examiner had not given adequate rent reductions for the various habitability problems and, therefore, he was entitled to a greater refund. The landlord objected that the tenant's acceptance of the refund award constituted a waiver of the right to appeal. The Board did not consider the landlord's objection because the proof of payment was not part of the record and the Board eventually granted the tenant's appeal, modifying the hearing examiner's decision to substantially increase the refund award.

The landlord went to Superior Court and obtained a writ ordering the Rent Board to consider whether, in light of the tenant's acceptance of the overcharge payment as ordered by the hearing examiner, it was proper under civil law principles for the Rent Board to consider the tenant's appeal. After the writ was issued, the landlord and tenant settled the case and the Board was never required to comply with the writ. However, because the underlying issue remained unresolved, the IRA Committee directed legal staff to research the issue.

Proposal to Adopt Regulation 1241.5

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Staff reported that, in the absence of any specific Board regulations to the contrary, it was likely that a court would hold that a tenant's unconditional acceptance of the full amount of overcharges awarded by a hearing examiner would constitute a waiver of the right to appeal the hearing examiner's decision under the legal doctrines set out in *Turner v. Markham* (1907) 152 C. 246 and Code of Civil Procedure section 2076. The Committee decided that, in the interests of fairness to all parties, that it is advisable for the Board to adopt regulatory language that spells out the respective parties rights and responsibilities when a landlord offers to satisfy a hearing examiner's overcharge award prior to the termination of the appeal process.

Under subdivision (A) of proposed Regulation 1241.5, where a hearing examiner determines that a tenant is entitled to receive a refund of rent overcharges and the landlord offers to pay the full amount as determined, the tenant's acceptance of the offered payment will constitute a waiver of the tenant's appeal rights so long as the tenant has first received written notification, in language approved by the Board, that such acceptance constitutes a waiver. The Committee believes that this provision is fair to both sides because it assures that no rights will be lost inadvertently or unknowingly.

Under proposed subdivision (B), if a tenant rejects the landlord's offer of payment, the landlord's payment of the overcharges into a Rent Board escrow will constitute compliance with the hearing examiner's order even if the tenant successfully appeals the order and is granted a greater recovery by the Board. Thus, upon the landlord's payment being received, the landlord will be entitled to the full rent ceiling, including any AGAs or rent reductions that were awarded by the hearing examiner pending compliance. This provision allows a landlord who in good faith attempts to comply with the decision to be protected from having to receive reduced rents while the case travels through the appeals process. The proposed regulation further provides that, in the event that the Board modifies the hearing examiner's decision to award greater relief to the tenant, the landlord who has paid the overcharges into escrow will still be considered in compliance as long as the additional amount is tendered within 30 days of the Rent Board's decision.

Financial Impact:

None

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1241.5

Effect of Landlord's Offer to Comply with Rent Overcharge Refund Order

(A) *A tenant who accepts a full refund of rent overcharges, pursuant to Regulation 1271, after receiving written notification that acceptance of the refund will extinguish the tenant's right to appeal the amount of rent overcharges, is deemed to have waived the right to appeal the amount of the refund order. The written notification shall be in language approved by the Board.*

(B) *Notwithstanding a tenant's appeal of the hearing examiner's decision, the landlord's tender of the full amount of rent overcharges as ordered by the hearing examiner shall constitute compliance with the refund order provided that the amount tendered, if not accepted by the tenant, is deposited into an escrow account established and maintained by the Rent Board. If, on appeal, the Rent Board modifies the hearing examiner's decision and orders additional amounts refunded, a landlord who has tendered the full amount of the original refund order remains in compliance with the refund order so long as the landlord tenders to the tenant the additional amount of rent overcharges within 30 days of the date of the Rent Board's decision on appeal.*