



Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: November 15, 2004
TO: Honorable Members of the Rent Stabilization Board
FROM: Jay Kelekian, Executive Director
SUBJECT: Proposed Amendment to Regulation 1310 [All Evictions: Specificity of Good Cause in Notice and Complaint] to Conform to Measure P.

Recommendation:

That the Board adopt on first reading the attached proposal to amend Regulation 1310 to conform to Measure P.

Background and Need For Rent Stabilization Board Action:

On November 2, 2004, the voters of Berkeley passed Measure P, section 6 of which amended Section 13.A.2 of the Rent Stabilization Ordinance to specify that, notwithstanding a rental agreement's prohibition against subletting, a tenant may not be evicted for replacing a roommate provided: (1) the landlord unreasonably refused to consent to a roommate replacement; (2) the tenant remains an actual occupant of the unit and (3) the total number of occupants does not exceed the base occupancy level. Measure P (section 6) also provides standards for determining when a landlord's refusal to consent to a subtenant is unreasonable.

Prior to Measure P, Section 13.A.2 simply provided that a tenant's "substantial" violation of a "material" term of a rental agreement is good cause for eviction provided the material term was "reasonable and legal." Some landlords had interpreted this language as allowing eviction of a tenant who replaced a roommate without the landlord's consent, even if the consent was unreasonably withheld, if the rental agreement contained a "no subletting" clause. The Rent Board, however, interpreted Section 13.A.2 differently and amended its Regulation 1310 to add subdivision (D) to clarify that Ordinance Section 13.A.2 did not allow eviction under these circumstances. The provisions of Regulation 1310(D) provided the basis for Measure P (section 6), which, having been adopted by the voters, now renders Regulation 1310(D) obsolete and redundant. Accordingly, it is recommended that Regulation 1310 be amended by deleting subdivision (D).

Name and Telephone Number of Contact Person:

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1310. All Evictions: Specificity of Good Cause in Notice and Complaint

(A) The specific good cause and every element of that good cause as set forth in Section 13(A)(1) through (10) shall be stated in writing as part of the notice of termination or the notice to quit to the tenant.

(B) The notice of termination or notice to quit upon which an unlawful detainer or other possessory action is based shall be attached as an exhibit to the complaint filed in such action.

(C) A landlord's failure to specify good cause and every element of that good cause as set forth in Section 13(A)(1) through (10) of the Ordinance in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by this Ordinance.

~~(D) For purposes of Section 13(A)(2) of the Ordinance, it is not a substantial violation of a material term of a rental agreement that contains a covenant prohibiting sublease or assignment for a tenant to permit his or her rental unit to be occupied by a subtenant, provided:~~

- ~~(1) the landlord has unreasonably withheld consent to the subtenancy;~~
- ~~(2) the tenant remains an actual occupant of the rental unit; and~~
- ~~(3) the number of tenants and subtenants actually occupying the rental unit does not exceed the base occupancy level as provided in Regulation 1270(A).~~

[Effective Date of Subsections (A) and (B): November 26, 1980; of Subsection (C): March 25, 1981; of Subsection (D): May 11, 2001.]

[Original policy of subsections (A) and (B) adopted August 20, 1980, amended by rule adopted November 26, 1980]