Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: July 7, 2003

TO: Honorable Members of the Rent Stabilization Board

FROM: IRA/AGA Committee

SUBJECT: Proposed Amendment to Regulation 1269

Recommendation:

That the Board adopt first reading of proposal to amend subdivision (B)(1) of Regulation 1269 to (1) provide that, in addition to being entitled to a rent decrease where a landlord decreases the housing services or living space provided on May 31, 1980, a pre-Costa-Hawkins tenant may receive a rent ceiling decrease where the landlord causes a reduction in any additional housing services or living space that were provided at the beginning of the tenancy pursuant to the rental agreement and (2) establish a presumption that any space or service provided at the beginning of the tenancy was provided pursuant to the rental agreement.

Background and Need For Rent Stabilization Board Action:

The Rent Ordinance provides that an individual rent adjustment may be granted for:

> "[D]ecreases in … living space, furniture, furnishings, equipment, or other housing services provided …" (BMC Sec.13.76.120.C.4.)

Rent Board Regulation 1269(B) implements this subdivision by providing that:

> Rent ceilings shall be adjusted downward where a landlord causes a tenant to suffer a decrease in housing services or living space, from that which was provided on May 31, 1980, or, for tenancies beginning after January 1, 1999, from that which was provided at the beginning of the tenancy.

Thus, under the present regulation, there is no entitlement to a rent decrease for a pre-1999 tenant who suffers a decrease in living space or a housing service that was not provided on May 31, 1980, even if the space or service was provided at the beginning of the tenancy.

Recently, the Rent Board has heard cases of pre-Costa-Hawkins tenants who have suffered a loss of space or of a service that had been provided since the beginning of their tenancy but that could not be shown to have been provided to their unit on May 31, 1980. Because a petitioner bears the burden of proving entitlement to a rent adjustment, such tenants have not been entitled to a rent decrease even where they are able to show that the space or service was provided under the terms of their rental agreement.

The Rent Ordinance also provides that an individual rent adjustment may be granted for:

> Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, **or the rental agreement**. (BMC 13.76.120.C.6 [emphasis added].)

Thus, under the Ordinance, a tenant would be entitled to a rent adjustment where the landlord fails to "comply substantially with ... the rental agreement. " Currently, however, the Board's regulations do not expressly authorize a rent reduction for a landlord's failure to comply with a rental agreement covering a pre-Costa-Hawkins tenancy.[1]

The IRA/AGA Committee recommends that the Rent Board correct this oversight with respect to living space and housing services that were provided to a tenant at the beginning of the tenancy pursuant to a rental agreement by adopting the proposed amendment to Regulation 1269(B)(1). The proposed amendment would expressly provide that a tenant is entitled to a rent decrease where a landlord reduces space or services from that which was provided on May 31, 1980 "or from any additional services or space provided at the beginning of the tenancy pursuant to the rental agreement." Thus, in exchange for the legal rent, a tenant would be entitled to the space and services provided to the unit on May 31, 1980, plus any additional space or services that the landlord agreed to provide at the beginning of the tenancy. The Committee believes that this is consistent with the language and the intent of the Rent Ordinance.

In addition, the Committee recommends that the regulation be further amended to provide that "[i]t shall be presumed that any space or service provided at the beginning of the tenancy was provided pursuant to the rental agreement." This presumption would include written, oral and implied rental agreements and would apply to all tenancies whenever created. For pre-Costa-Hawkins tenancies, the presumption is a fair one because any space or service that was provided at the beginning of a tenancy but was not intended to be part of the rental agreement could have been the subject of a separate agreement under Regulation 1012. For post-1999 tenancies, the presumption merely reflects the legal reality that the initial rent established by a landlord for a rental unit includes any living space, amenities and housing services held out for the tenant's use at

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1 Many types of breaches of a rental agreement are covered by other provisions of the regulations, such as where a landlord breaches the rental agreement by failing to provide adequate services or maintenance or by failing to comply with the warranty of habitability.

the beginning of the tenancy. Any space or service provided to the tenant *after* the beginning of the tenancy would not be covered by these amendments.

Financial Impact:

None

Name and Telephone Number of Contact Person:

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1269 Changes in Space or Services

(A) Increase in Space or Services. Rent ceilings may be adjusted upward when there is an increase to the usable space or the housing services beyond that which was provided to a unit on May 31, 1980 or when the base rent was first established.

1. Additional space. Where a landlord adds habitable living space to a unit, other than by merely reconfiguring existing residential rental space, the lawful rent ceiling for such unit shall be permanently increased by 1.042% of the cost of adding such additional space to the existing unit. The supporting documentation must substantiate the nature and cost of the claimed additional space and may include copies of invoices, signed contracts, material and labor receipts, self labor logs, proof of entitlement to skilled labor rate (if claimed), canceled checks or any other items of documentation accepted and used in the normal course of business. Reports which merely summarize or refer to undocumented expenditures are not, by themselves, adequate substantiation. Hearing Examiners shall weigh and evaluate the nature of the documentation submitted as substantiation, and may require additional proof. Evidence of compliance with applicable permit requirements and correction of any cited code violations may also be required.

For increases in space for which on-site construction commenced before April 17, 1995, the owner may elect, as an alternative to the rent adjustment set forth above, a permanent rent increase equal to $1.00 per square foot of habitable living space added to the unit.

2. Additional services. Where a landlord adds non-habitable space or increases the services provided to a unit, the lawful rent ceiling for such unit shall be increased by an amount representing the market value of the additional space or increased services.

If the additional services and proposed rent adjustment are agreed to in writing by the landlord and tenants, the Board shall approve the proposed rent increase unless it can be shown that the agreement clearly violates the Ordinance. Increases may be denied if a tenant objects and the added space or services do not clearly benefit a majority of the affected tenants. If the additional space or services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. If a rent increase is granted under this subsection, no additional rent increase shall be granted under Regulation 1264 or 1267 for materials or labor involved in providing the space or service. Any increase for an additional bedroom shall result in an increase to the base occupancy level for an additional occupant.

The addition of furniture or furnishings will not be considered an increase in services eligible for a permanent rent increase, but may be the subject of a separate agreement under Regulation 1012.

(B) Decrease in Space or Services; Substantial Deterioration; Failure to Provide Adequate Services; Failure to Comply with Codes, ~~or~~ the Warranty of Habitability *or the Rental Agreement*.

1. Decreases in Space or Services. Rent ceilings shall be adjusted downward where a landlord causes a tenant to suffer a decrease in housing services or living space, from *the services and space* that ~~which was~~ *were* provided *at the unit* on May 31, 1980, or *from any additional services or space provided at the beginning of the tenancy pursuant to the rental agreement. F*or tenancies beginning after January 1, 1999, *rent ceilings shall be adjusted downward only where a landlord causes a tenant to suffer a decrease in housing services or living space* from that which was provided at the beginning of the tenancy *pursuant to the rental agreement. It shall be presumed that any space or service provided at the beginning of the tenancy was provided pursuant to the rental agreement*. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the reduction in living space or housing services) by the rent ceiling in effect at the time of the impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the downward rent adjustment by the percentage of impairment of use/benefit method, the hearing examiner may consider the reasonable replacement cost of the space or service in question. Any rent ceiling reductions pursuant to this subsection shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the space or service has been restored.

2. Substantial Deterioration, Inadequate Services. Rent ceilings shall be adjusted downward for any substantial deterioration in a rental unit and/or for any failure to provide adequate housing services occurring during the petitioner's tenancy. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service) by the rent ceiling in effect at the time of the impairment. For purposes of this subsection, "substantial deterioration" means a noticeable decline in the physical quality of the rental unit resulting from a failure to perform reasonable or timely maintenance and "adequate housing services" means all services necessary to operate and maintain a rental property in compliance with all applicable state and local laws and with the terms of the rental agreement.

3. Code Violations, Breach of the Warranty of Habitability. Rent ceilings shall be adjusted downward for any failure to substantially comply with applicable state rental housing laws, the warranty of habitability or local housing and safety codes. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the violation, breach or failure to comply) by the rent ceiling in effect at the time of the impairment. Where a condition at the rental unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the rent ceiling decrease shall be in an amount that reflects the reduction in value of the premises due to the

unsafe or unhealthy condition. A substantial lack of any of the affirmative standard characteristics for tenantability set forth in Civil Code section 1941.1 shall be deemed a violation of the warranty of habitability and the rent ceiling shall be decreased by no less than 10% or, for a violation of subsections (b), (c) or (d) of Civil Code section 1941, no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a tenant's use of or benefit from the unit. The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of tenants (e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within 35 days of mailing of the hearing examiner's decision unless the landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the landlord's control. For purposes of this subsection, a breach of the warranty of habitability occurs when the rental premises are not in substantial compliance with applicable building and housing code standards which materially affect health and safety. Minor housing code violations which do not interfere with "bare living requirements" do not constitute a breach of the warranty of habitability.

4. Rent ceiling reductions pursuant to subsections (2) and (3) shall be effective from the date the landlord first had notice of the deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists. A tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the landlord first received notice of the decreased service, deterioration, code or habitability violation. Notice may be actual or constructive. A landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the premises. A copy of a housing code inspection report from the City of Berkeley department responsible for the residential rental inspection program should be submitted with the petition.