

LEGISLATIVE DIGEST
(4/13/15 - Amended in Committee)

[Administrative Code - Relocation Payments to Evicted Tenants]

Ordinance amending the Administrative Code to modify the calculation of the difference between the rent paid by an evicted tenant and market rent (rental payment differential) by having the Controller use data from RealFacts based on number of bedrooms, or another data source providing reliable market data; to cap relocation payments based on the rental payment differential at \$50,000 for each unit; to require the tenant to submit to the landlord a sworn statement of intent to use the relocation payment solely for housing or other relocation costs; to require the tenant to keep proof of expenditures on relocation costs for at least three years after vacating the unit, and to make copies available to the landlord within 10 business days of a request; and to require the tenant to reimburse the landlord any portion of the relocation payment not expended on relocation costs within three years after vacating the unit.

Existing Law

As of June 1, 2014, Administrative Code Section 37.9A(e)(3)(E) requires landlords to pay an evicted tenant the greater of amounts specified in Subsections 37.9A(e)(3)(A)-(D) (the "Subsection 37.9A(e)(3)(A)-(D) Amount") and an amount equal to the difference between the monthly rental rate of the tenant's rental unit at the time the landlord files with the Rent Board the notice of intent to withdraw the unit from the rental market, and the monthly market rental rate for a comparable unit in San Francisco as determined by the Controller's Office, multiplied by 24 (for a two year period), and divided by the number of the tenants in the unit. One half of the rental payment differential calculated by the Controller is paid when the landlord serves the notice of termination of tenancy and the other half is paid when the tenant vacates the premises. The existing law neither limits the amount that might be paid to a tenant nor states the purposes for which the payments may be spent.

Amendments to Current Law

The amendments to the Administrative Code modifies the method of calculating the relocation payment to be paid tenants as of June 1, 2014, cap the maximum amount of the payment at \$50,000 for each unit, specify the purposes for which the payment can be expended, and impose additional requirements on landlords and tenants regarding the receipt and expenditure of the payment.

The amendments require landlords to pay an evicted tenant the difference between the Subsection 37.9A(e)(3)(A)-(D) Amount and the payment calculated based on the Rental Payment Differential. The Rental Payment Differential is equal to the difference between the

monthly rental rate of the tenant's rental unit at the time the landlord files with the Rent Board the notice of intent to withdraw the unit from the rental market and the market rental rate for the unit in San Francisco as determined by the Controller based on data from the posting or publication of RealFacts or other analysis or analyses of the San Francisco rental market providing reliable average market rental rates in San Francisco for the immediately prior calendar year, and if that year's data is unavailable, for the most recent prior calendar year that is available. The relocation payment for each unit shall be an amount equal to the Rental Payment Differential multiplied by 24 to cover a two-year period. The relocation payment for a unit shall not exceed \$50,000. Each tenant of a unit as of the date the landlord files the notice of intent to withdraw the unit shall be entitled the relocation payment for that unit divided by the number of tenants in the unit. The Controller is required to provide the Rent Board the Controller's determination of the average rental values to be used in calculating the Rental Payment Differential for units within 5 business days of the effective date of this amendment, and by March 1 of each calendar year thereafter.

When using RealFacts data to determine the average rental values, the Controller shall use the number of "Bedrooms" in the unit to determine the rental rate, in the following manner: (1) the rental rate for units with 1 Bedroom shall be based on data from RealFacts for units with 1 bedroom and 1 bath; (2) the rental rate for units with 2 Bedrooms shall be based on data from RealFacts for units with 2 bedrooms and 2 baths; (3) the rental rate for units with 3 or more Bedrooms shall be based on data from RealFacts for units with 3 bedrooms and 2 baths; and (4) the rental rate for units without a Bedroom shall be based on data from RealFacts for a studio. The amendment defines "Bedroom" to mean a room that is primarily used as sleeping quarters, is at least 70 square feet in area, exclusive of closets and similar spaces, and has at least one window opening to an area leading to a street, light well, courtyard or rear yard.

A landlord does not have an obligation to make any payment of any portion of the relocation payment to a tenant until the landlord receives from the tenant a written statement, executed under penalty of perjury, stating that the tenant will use the payment solely for Relocation Costs, as defined in the amendments, and providing the address of the unit, the name of the landlord, the name of the tenant, and the date of the eviction (the "Declaration"). On or before the date a landlord serves a tenant with the notice of termination of tenancy, the landlord must provide the tenant any Declaration form that the Rent Board has prepared and made available on its website, and notify the tenant in writing that the landlord does not have an obligation to make any relocation payment until the landlord has received the completed Declaration. If a landlord receives the Declaration on or after serving the notice of termination of tenancy, but before the tenant vacates the unit, the landlord must pay one half of the tenant's relocation payment on receipt of the Declaration and the remaining half on the tenant's vacation of the unit. If the landlord receives the Declaration on or after the date that the tenant vacates the unit, the landlord must pay the full amount of the relocation payment on receipt of the Declaration. The amendments define Relocation Costs as meaning rent payments for a replacement dwelling, the purchase price of a replacement dwelling, and cost incurred by the tenant in moving to a replacement dwelling, or any cost that were incurred to mitigate adverse impacts on the tenant of the eviction.

Each tenant is required to maintain any documented proof of expenditures for at least three years after the date the tenant vacates the unit. During this period, the tenant must provide the landlord, on written request, copies of the documented proof within 10 business days of the receipt of the request. But the landlord may not make more than two requests for records in any 12-month period. Within three years of vacating the unit, the tenant must reimburse to the landlord any portion of the payments not expended on Relocation Costs.

Background Information

Landlords have sued the City (*Levin v. City and County of San Francisco*, (United States District Court, Northern District of California, 3:14-CV-03352-CRB, 2014)), seeking declaratory and injunctive relief from current ordinance, which required each to make relocation payments they deemed excessive. Under the ordinance, the landlords were required to make relocation payments in excess of \$100,000 per tenant. The Court determined that there was insufficient nexus between the landlords' conduct and the harm to the tenants (that the landlord did not cause the high rental market in San Francisco), and that the payments were not roughly proportional to the harm because the plaintiffs were not required to spend the payments on costs related to the eviction. The Court enjoined the City from enforcing the ordinance. The City has appealed to the Ninth Circuit. The amendments to the legislation attempt to address the Court's concerns.

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