

REVISED LEGISLATIVE DIGEST

(Substituted, 6/6/2017)

[Administrative Code - Owner Move-In Evictions and Other Landlord-Tenant Matters]

Ordinance amending the Administrative Code regarding owner and relative move-in (“OMI”) evictions to require a landlord seeking to recover possession of a unit for an OMI to provide the tenant with an approved form to advise the Rent Board of address changes; clarify the evidentiary standard for finding that an OMI was performed in good faith; require a landlord to file documentation with the Rent Board regarding the status of the OMI, with a penalty for not filing such documentation, and requiring the Rent Board to transmit a random sampling of such documentation to the District Attorney; extend from three to five years the time period after an OMI during which a landlord who intends to re-rent the unit must first offer the unit to the displaced tenant; and provide that a landlord who charges above the maximum allowable rent during the five-year period after an OMI is guilty of a misdemeanor and, as to matters not limited to OMI evictions, provide that a landlord’s failure to timely file a copy of the notice to vacate with the Rent Board is a defense in an unlawful detainer proceeding; provide that a tenant waiver of rights in a buyout agreement is not enforceable if the buyout is not timely filed with the Rent Board; extend from one to three years the statute of limitations for wrongful eviction claims; authorize a tenant who has been charged excess rent to sue for treble damages; authorize interested non-profit organizations to sue for wrongful eviction and collection of excess rent; and making clarifying changes.

Existing Law

The City’s Residential Rent Stabilization and Arbitration Ordinance allows a landlord to perform an owner move-in (“OMI”) to recover possession of a rental unit if the landlord has a good faith intent to occupy the rental unit as his or her principal residence for a period of at least 36 continuous months. (A landlord can also perform an OMI on behalf of a relative, under certain conditions.)

A landlord formally initiates the eviction process by serving the tenant a notice to vacate. A landlord must file a copy of the notice to vacate with the Rent Board within 10 days of service (unless the notice is based on the tenant’s failure to pay rent). For OMIs, the Rent Board is required on a monthly basis to compile a list at random of 10 percent of all notices to vacate filed with the Rent Board, and transmit that list to the District Attorney for investigation. The Rent Board must also record a notice of constraints on a unit whose occupant received an OMI notice, within 30 days of the notice’s effective date. If the landlord offers the unit for rent during the three-year period after service of the OMI notice, the landlord must first offer the unit to the original tenant. And the landlord may not charge the original tenant (or any other tenant) a rent higher than what the original tenant would have been required to pay had the original tenant remained in the unit, for a period of five years after service of the notice. See Admin. Code § 37.3(f)(1).

If the OMI leads to an unlawful detainer action, it falls to a court to determine issues such as whether the landlord served a proper notice to vacate, and whether the landlord satisfies the underlying requirement of having a good faith intent to occupy the unit as the landlord or the relative's principal residence for a period of 36 continuous months. Landlords are not currently required to report to the Rent Board regarding the use of a unit following an OMI.

If the OMI leads to a buyout agreement, the landlord must wait 45 days so that the tenant has the opportunity to rescind, and must then file the buyout agreement with the Rent Board before the 60th day.

A landlord can be sued by a tenant for wrongful eviction but such suit is subject to a one-year statute of limitations. A landlord who charges excess rent can be liable to affected tenant for damages and/or be liable for a misdemeanor.

Amendments to Current Law

The proposed ordinance would give the tenant a defense to an action for unlawful detainer if the landlord did not file the notice to vacate with the Rent Board within 10 days. In addition, when serving an OMI notice on the tenant, the landlord would be required to attach a Rent Board form that the tenant could use to advise the Rent Board of any change in address. The ordinance would also (1) clarify that existing law limits the initial rent that a landlord may charge a new tenant for a period of five years after service of an OMI notice; and (2) extend from three years to five years the time period during which a landlord who intends to re-rent the unit must first offer the unit to the displaced tenant.

The legislation would create a reporting obligation by requiring a landlord to file a "statement of occupancy" under penalty of perjury with the Rent Board. Initially, the landlord would only have to disclose whether he or she was still endeavoring to recover possession of the unit. The first disclosure would be due within 90 days after service of the notice and an update would be due every 90 days thereafter. Once a landlord reported that he or she had recovered possession of the unit, updates would be due only once a year, but would have to include additional information regarding the date of recovery of possession, the date of move-in (or reasons for not moving in), the rent charged if any, and such other information and documentation as required by the Rent Board. The Rent Board would be required to send a copy of the statement of occupancy to the displaced tenant; transmit a random sampling of statements of occupancy to the District Attorney on a monthly basis; and assess a \$500 administrative penalty on any landlord for a first failure to file a required statement of occupancy and a \$1,000 administrative penalty for every subsequent failure.

The proposed ordinance would also clarify what kind of evidence is relevant towards proving that the landlord did not perform the OMI in good faith. Such evidence could include, but would not be limited to, the following: (1) the landlord or relative did not move into the unit within three months after the recovery of possession and then occupy the unit as their

principal residence for at least 36 continuous months; (2) the landlord or relative lack a legitimate, bona fide reason for not moving in within three months after recovery of possession and/or maintaining a principal residence in the unit for 36 continuous months; (3) the landlord did not file a statement of occupancy with the Rent Board; (4) the landlord charged excessive rent during the five-year period following the service of the OMI notice; or (5) such other factors as a court or the Rent Board may deem relevant.

To secure compliance with existing law that requires the timely filing of buyout agreements with the Rent Board, the proposed ordinance would provide that a tenant waiver contained in buyout agreement that is not timely filed is unenforceable.

The proposed ordinance would extend the statute of limitations for wrongful eviction actions from one year to three years, and would authorize local nonprofits whose mission is to protect tenants to sue for wrongful eviction and/or collection of excess rent.

The proposed ordinance would strengthen existing law regarding misdemeanor prosecutions by expressly authorizing the District Attorney to sue landlords who charged an excess rent during the five-year period following an OMI notice when the initial rent is restricted. A tenant who was charged excess rent during the five-year period could also sue the landlord for treble damages.

Finally, the proposed ordinance deletes portions of Section 37.10A that were invalidated by the decision of the Court of Appeal in *Baba v. Bd. of Sup'rs of City & County of San Francisco* (2004)124 Cal. App. 4th 504.

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