



Rent Stabilization Board

COURT OF APPEAL UPHOLDS BERKELEY RENT CONTROL REGULATION PROHIBITING MARKET RATE RENT INCREASE AFTER EVICTING TENANT UNDER FALSE PRETENSE

****FOR IMMEDIATE RELEASE****

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Berkeley, CA – Characterizing the landlord’s eviction notice as a “transparent attempt to circumvent the provisions of local rent control” protections, the California Court of Appeal for the First Appellate District upheld a ruling by the Berkeley Rent Board and the Superior Court (Alameda County Case No. RG 13702962) that a landlord who makes a “false representation that [he] intend[s] to occupy the premises” cannot then “re-rent the premises at a higher rental rate than could have been charged to the former tenant.” The case (A 143671) has been certified for publication – <http://www.courts.ca.gov/opinions/documents/A143671.PDF>.

After serving his long-term tenant an eviction notice stating that he would move into the rental unit and after the tenant agreed to move out, the landlord “withdrew” the notice and did not move in. Instead, he re-rented the unit for more than twice what the evicted tenant was paying. Berkeley Rent Board Regulation 1016 explicitly prohibits such rent increases.

The court upheld the Berkeley Rent Board’s regulation, calling it “a reasonable means of discouraging a landlord from evicting a tenant based on the false representation.” Rent Board chief staff attorney, Matt Brown, called the victory “important affirmation by the court that landlords must operate within the regulatory structure set forth by Berkeley voters. Without Regulation 1016, landlords like this could displace tenants without good cause and contrary to the established protection of state and local law. Skyrocketing rents give landlords increased incentive to displace long-term tenants and then charge new tenants significantly higher rents.”

According to state law, when a tenant “voluntarily vacates” a rent controlled apartment, the landlord is entitled to raise the rent to whatever the market will bear. Additionally, when a landlord serves a no-fault eviction notice, such as a notice that the landlord intends to move into the property, the tenant has no choice but to move out or face a lawsuit. The court ruled that when a landlord uses an eviction notice as “negotiating leverage” to secure an agreement that the tenant would “voluntarily vacate” the unit, the tenant did not actually vacate voluntarily.

Calling the landlord's approach a "bad faith assertion" that constituted "subterfuge", the court ruled that the Berkeley Rent Board "can create an administrative deterrent to discourage landlords from serving less than good faith owner move-in notices." The court also reasoned that "[m]aintaining the rent level of the former tenant is a rational and proportional deterrent to the use of such an artifice in the future."

Rent Board Executive Director, Jay Kelekian, was pleased with the ruling. "A woman who made this apartment her home for 28 years was forced to move without good cause. The landlord never intended to move in but instead claimed his constitutional right to occupy the unit as cover for his true motivation – significant financial gain. In the current rental market, long-term tenants are ever more vulnerable to this kind of subterfuge. The court has sent a clear message that Regulation 1016 is not only legal but a necessary tool to prevent landlords from engaging in this behavior. This is a significant victory for rent control and underscores the need to protect the ever diminishing supply of affordable housing," he said, "as well as a victory for local control at a time when gentrification purges valued members of our community."

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