CITY OF MOUNTAIN VIEW

MEMORANDUM

Rent Stabilization Program
Community Development Department

DATE: February 28, 2022

TO: Rental Housing Committee

FROM: Anky van Deursen, Program Manager
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SUBJECT: **Update on Relevant Legislation and Case Law in California**

RECOMMENDATION

Receive a presentation regarding updates on legislation adopted by the California Legislature during the 2021 legislative year related to landlord-tenant laws as well as recent court cases related to tenant relocation assistance and rent stabilization.

BACKGROUND

In 2021, the California Legislature adopted a few bills affecting landlord-tenant law, including an update to the Tenant Protection Act of 2019 that affects mobile home tenants. Additionally, several cases coming out of both State and Federal courts have addressed issues related to tenant relocation assistance and the validity of COVID-19-related eviction moratoria.

ANALYSIS

A. AB 832

Certain protections of AB 832, or the COVID-19 Tenant Relief Act, expired on September 30, 2021. Beginning October 1, 2021, landlords could evict: (1) tenants who failed to comply with the declaration and payment requirements of AB 832; and (2) tenants who failed to timely make their rental payments for October 2021 moving forward.

Tenants that complied with the declaration and payment requirements of AB 832 can never be evicted for any unpaid portion of their rent that became due between March 1, 2020 and September 30, 2021. However, on November 1, 2021, landlords

could begin to collect the unpaid portions of rent by suing their tenants in small claims court.

Until March 31, 2022, tenants continue to have the following two protections from eviction:

1. A landlord cannot evict a tenant unless they demonstrate to the court that: (a) their rental assistance application was denied; (b) they tried to apply but the tenant did not cooperate with the application; or (c) the tenancy started after October 1, 2021. If the landlord fails to demonstrate one of these conditions to the court within 60 days of filing their eviction lawsuit, the court must dismiss the unlawful detainer.

2. If a landlord tries to evict a tenant, but the tenant has an approved rental assistance application, the tenant can ask the court to delay the eviction lawsuit until the rental assistance is received. If the rental assistance resolves the lawsuit, then the court must dismiss the unlawful detainer.

These protections expire on April 1, 2022, and landlords can move forward with any eviction cases regardless of whether a tenant has a pending rental assistance application or outstanding rental assistance payment.

B. **AB 978**

AB 978 amends the provisions of the Tenant Protection Act of 2019 ("TPA") to cover tenants of mobile homes owned by "management of a mobile home park." The statute defines "management" as the "owner of a mobile home park or an agent or representative authorized to act on his behalf in connection with matters relating to a tenancy in the park."

1. Just Cause for Eviction

For background, the TPA prohibits residential rental property owners of covered units from terminating a tenancy unless the property owner has a "just cause." The bill contains two categories of just causes—at-fault causes (i.e., where the tenant is at fault for violating lease terms or State laws) and no-fault causes (i.e., where the property owner wants to recover possession of the property regardless of the tenant's actions). The TPA also requires that property owners provide tenants with one month's rent as relocation assistance in the event of a no-fault termination.

The just-cause provisions of the TPA apply to rental units after a tenant has continuously occupied the unit for 12 months. However, if an additional adult occupant is added to the lease before the tenant has occupied the unit for 24 months, the just-cause protections apply if either: (1) all of the tenants have continuously occupied the unit for 12 months or more; or (2) one or more tenants have continuously occupied the unit for 24 months or more.

AB 978 extends these protections to tenants of mobile homes owned by management of the mobile home park. Owner-occupied mobile homes continue to be exempt from the just-cause requirements of the TPA. Property owners must provide their tenants with a written notice of exemption. For mobile home tenancies commencing or being renewed on or after July 1, 2022, the notice must be provided in the rental agreement.

AB 978 permits cities to adopt "more protective" just cause for termination ordinances. "More protective" is statutorily defined to mean: (1) the just cause for termination ordinance is consistent with the TPA; (2) the ordinance further limits the reasons for termination of a tenancy, provides for higher relocation assistance, or provides additional tenant protections; and (3) the local government has made a binding finding within their ordinance that the ordinance is more protective than the TPA. The Mobile Home Rent Stabilization Ordinance (MHRSO) is more protective and, thus, will preempt AB 978.

2. Rent Increase Limitations

In addition to just-cause protections, the TPA established a cap on annual rent increases for covered units and limited the number of rent increases that can be imposed in any 12-month period to two increases. The annual cap on rent increases is 5% plus the increase in the CPI (April to April) but no more than 10% per year. AB 978 extends these rent cap protections to tenants of mobile homes owned by management of a mobile home park. The provisions do not apply to a homeowner of a mobile home, which is defined as "a person who has a [mobile home space] tenancy in a mobile home park under a rental agreement."

For covered mobile home tenancies, AB 978 rolls back rent to the rent level of February 18, 2021, plus the maximum allowable increase. AB 978 does not require reimbursement to a mobile home tenant who received a rent increase between February 18, 2021 and the date that the law went into effect.

AB 978 prohibits a mobile home tenant from entering in a sublease that results in a total rent for the rental unit that exceeds the allowable rent authorized.

Lastly, the rent increase limit does not apply to units that are subject to local rent or price controls that restrict annual rent increases to an amount less than that allowed by AB 978. Therefore, any tenancies covered by Mountain View's Mobile Home Rent Stabilization Ordinance are not covered by these changes in AB 978.

C. **AB 838**

AB 838 imposes new rules on cities and counties related to the enforcement of complaints of substandard conditions or lead hazard violations. Upon receipt of a habitability complaint from a tenant, resident, or occupant, local agencies must promptly inspect the building or dwelling unit, document any substandard conditions or violations, and advise the owner or operator of the property of any violations and the action required to remedy the violation. Thereafter, the local agency must schedule a follow-up inspection to ensure that the owner has complied with the corrective actions.

A local agency is not required to perform an inspection if one of the following conditions are met: (1) the complaint does not allege a substandard condition; or (2) the same tenant, resident, or occupant submitted the same complaint about the property within the last 180 days and the prior complaint was determined to be frivolous or unfounded.

Most importantly for tenants or occupants, AB 838 provides that a local agency may not impose "unreasonable conditions" on the performance of the inspection or issuance of the report. "Unreasonable conditions" include, but are not limited to, any requirement that:

- The tenant, resident, or occupant first make a demand for correction upon the owner of the property;
- The tenant be current on their rent;
- The tenants otherwise be in compliance with their rental agreement; or
- The tenant, resident, or occupant not be involved in a legal dispute with the owner of the property.

A local agency official cannot unreasonably refuse to communicate with a tenant, resident, occupant, or their agent, regarding a complaint. Lastly, the local agency must provide free, certified copies of any inspection report or citations to the complaining tenant, resident, or occupant, or their agent. If any other tenants are potentially affected by the substandard conditions, they are also entitled to free copies of the reports and citations.

D. **CASES**

Multiple recent cases have challenged the validity of tenant relocation assistance ordinances around the State.

1. *Ballinger v. City of Oakland*, No. 19-16550 (2022)

Ballinger involves a challenge to the City of Oakland's tenant relocation assistance ordinance. The Plaintiff-Landlords in the case alleged that the tenant relocation assistance ordinance constituted an unlawful physical taking and an unlawful exaction in violation of the Takings Clause of the Fifth Amendment of the U.S. Constitution.

Upon the no-fault termination of a tenancy, the Oakland ordinance requires landlords to pay their tenants a relocation payment based on rental size, average moving costs, the duration of the tenants' occupancy, and whether the tenants earn a low income, are elderly or disabled, or have minor children. Half the payment is due at the time of the tenant's receipt of the notice to vacate and the other half upon move-out.

The Ninth Circuit Court of Appeal panel held that the relocation assistance ordinance was not an unconstitutional physical taking of a specific and identifiable property interest but was rather merely a regulation of the landlord-tenant relationship. In reaching its conclusion, the Court reasoned that the landlords had voluntarily chosen to lease their property and, thereafter, to evict their tenants, and the ordinance simply imposed a transaction cost on their decision to terminate the tenancy. As such, the relocation fee is a monetary obligation triggered by the landlord's own actions with respect to their elected use of their property, not a burden on the landlord's interest in the property.

Similarly, the panel held that the relocation ordinance did not impose an unconstitutional condition on the landlords' preferred use of their property. While the Court would have applied the Nollan/Dolan exaction analysis to

generally applicable legislation, it determined that because the relocation fee was not a compensable taking, it did not constitute an exaction. Lastly, the Court held that the relocation fee was not an unconstitutional seizure under the Fourth Amendment because the private actions of the tenants in collecting the relocation assistance payments under the ordinance did not have a "sufficiently close nexus" to be considered government or State action.

2. *San Francisco Apartment Ass'n. v. City and County of San Francisco*, No. CFP-19-516566

In SFAA, a group of landlords challenged an amendment to San Francisco's rent ordinance prohibiting a landlord from seeking to recover possession of a rental unit that is exempt from rent control by imposing a rent increase in bad faith to coerce a tenant to vacate the unit in circumvention of the ordinance's just-cause provisions. The Plaintiffs alleged that the provision violated the Costa-Hawkins Rental Housing Act by seeking to regulate the rent a landlord may charge on properties that are exempt from rent control.

Under the new provision, evidence of a bad-faith rent increase includes, but is not limited to, a rent increase substantially in excess of the market rate for comparable units, a rent increase within six months after an attempt to recover possession of unit, or other factors determined by the Court of the city's rent board. The city simultaneously amended the definition of "tenant harassment" in its municipal code to include the same prohibited conduct, thereby allowing a tenant to assert the conduct as a defense in an eviction case.

In upholding the measure, the Court stated that the measure was within the reasonable exercise of the city's authority to regulate the grounds for eviction. Moreover, the Court reasoned that the measure was intended to deter landlords from attempting to avoid the just-cause protections in the city's rent ordinance. The Court further held that the provision did not impose a rent cap or constitute rent control because it neither generally prohibited above-market-rate increases or rent increases that closely follow attempts to recover possession.

3. *Southern California Rental Housing Assn. v. County of San Diego*, No. 3:21cv912-L-DEB

The U.S. District Court for the Southern District of California denied a landlord association's motion to enjoin the County of San Diego's COVID-19

eviction moratorium. The Southern California Rental Housing Association (SCRHA) sought to enjoin the moratorium on the basis that it had caused financial harm to the landlords in the County of San Diego.

The County of San Diego's eviction moratorium sought to prevent landlords from taking action to recover possession of rental units unless the tenant was in an "imminent health or safety threat." The moratorium was set to go into effect on June 3, 2021 and would end 60 days after the Governor lifted all COVID-19 stay-at-home and work-at-home orders.

The Court rejected the landlord's motion for preliminary injunction, holding that they were unlikely to succeed on the merits of their case at trial. In particular, the Court found that the Plaintiffs were unlikely to succeed on the merits of their claims at trial.

On the Contract Clause claim, the Court noted the eviction moratorium was intended to further a legitimate government interest in public health and safety. Moreover, the moratorium was reasonably tailored—it was of limited duration and continued to allow landlords to evict tenants that pose an imminent health and safety threat. Lastly, the Court found that the moratorium provisions were reasonable and appropriate measures for preventing homelessness and displacement and the further spread of COVID-19.

The Court also assessed the merits of the Plaintiff's Takings Clause claims. First, the Court noted that injunctive relief is typically barred for Takings Clause claims because the proper remedy is monetary damages. Further, the Court determined that there was no per se physical taking because the moratorium is time-limited, and there was no noncategorical regulatory taking because the moratoria did not prevent a landlord from collecting rent from non-COVID-impacted tenants or from a rental assistance fund.

Lastly, the Court evaluated the Plaintiff's claim that the County of San Diego violated the California Constitution by extending its reach beyond the unincorporated areas of the County and applying the moratorium to cities within the County. The Court determined that the California Emergency Services Act authorized a county to pass measures necessary for the protection of property during a State or local emergency and to apply those provisions to all cities in the County. Therefore, the County was acting within its authority under the California Emergency Services Act when it passed the moratorium and provided that it applied throughout all areas of the County.

4. *Apartment Assn. of Los Angeles County., Inc. v. City of Los Angeles*, No. 20-56251

In August, a Ninth Circuit panel upheld the City of Los Angeles's COVID-19 eviction moratorium against a challenge from a landlord association. The landlord association alleged in their challenge that Los Angeles' eviction moratorium violated the Contracts Cause of the U.S. Constitution by impairing provisions of and obligations under their residential lease agreements.

Like many local eviction moratoria, the Los Angeles ordinance imposed certain restrictions on residential landlords' ability to evict tenants during the COVID-19 pandemic. Specifically, the moratorium: (1) provided that tenants could not be evicted for nonpayment of rent due to COVID-19-related circumstances; (2) provided that tenants could not be evicted for a "no-fault reason" such as an owner move-in or substantial renovations; and (3) provided that tenants could not be evicted based on the presence of unauthorized occupants or pets, or for nuisance related to COVID-19.

In reaching its decision, the Court explained that, even if the moratorium did impair contracts, the City of Los Angeles had properly tied the provisions of its moratorium to its stated goal of preventing displacement which would exacerbate the public health-related issues arising from the pandemic. Moreover, the Court stated that given the unique challenges posed by the COVID-19 pandemic, the moratorium constituted an "appropriate and reasonable way" to advance this important public purpose. Lastly, the Court noted that an eviction moratorium need not require or contemporaneously provide fair rental compensation to be upheld as constitutional.

FISCAL IMPACT

Receiving a report on State legislative and case law changes related to landlord-tenant law is not anticipated to have a fiscal impact for the RHC.

PUBLIC NOTICING—Agenda posting.

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