



**MEMORANDUM**

CSFRA, Community Development Department

**DATE:** March 4, 2019

**TO:** Rental Housing Committee

**FROM:** Karen M. Tiedemann, Special Counsel to the Rental Housing Committee  
Justin D. Bigelow, Special Counsel to the Rental Housing Committee  
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**SUBJECT:** Study Session Regarding Potential Master/Sub-Tenant Regulations

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**RECOMMENDATION**

To provide direction to staff regarding potential regulations governing aspects of the relationships between and among master tenants, subtenants, and landlords to allow staff to draft regulation to be reviewed at a future meeting.

**BACKGROUND**

The Rental Housing Committee ("RHC") previously heard an appeal related to the application of the CSFRA to a tenant who continuously occupied one unit since the CSFRA was enacted. During that tenant's occupancy of the unit, the tenant had several different roommates who were jointly and severally liable to pay rent under the lease terms, which led to confusion regarding the relationship between the first tenant, subsequent cohabitants and the landlord. Could the landlord raise the rent on the original tenant, for the new tenant, for both each time a new tenant moved into the unit? The RHC is also receiving questions from both landlords and tenants on how the CSFRA applies to subtenants, roommates and master tenant situations.

Other rent stabilized jurisdictions have encountered situations where a master tenant subleases a portion of a unit to subtenants, who pay the master tenant more money than the master tenant owes to the landlord, which raises questions of the applicability of the rent stabilization provisions to the sub tenancy and fairness to the landlord.

Both State law and the CSFRA provide some guidance regarding master tenant, subtenant, and landlord relations. However, regulations can offer clarity and certainty to landlords and tenants regarding the CSFRA and the addition or substitution of new

occupants under an existing tenancy. Likewise, regulations could regulate the interaction between master tenants and their subtenants. Finally, adopting formal regulations would help ensure uniform application of the CSFRA by hearing officers.

## **ANALYSIS**

To guide the RHC's study session, this staff report poses various questions related to master tenants, subtenants, and landlords to determine what, if any, regulations may help landlords, tenants, and subtenants understand how the CSFRA and State law applies in various situations. The analysis section briefly reviews the CSFRA and State law provisions that impact relations between master tenants, subtenants, and landlords.

### **A. Just Cause for Eviction Protections under the CSFRA**

The CSFRA limits the reasons for which a landlord may terminate a tenancy, including for substantial violations of a material term of a rental housing agreement (CSFRA section 1705(a)(2)). Generally, a landlord must provide notice of and an opportunity to resolve violations of the lease.

The CSFRA also provides that lawful tenants have the right to sublease a rental unit if: (1) the tenant continues to reside in the unit as their primary residence, (2) the new occupant replaces a departing occupant, and (3) the tenant requests acceptance by the landlord of the new occupant, so long as the total number of occupants does not exceed state standards.<sup>1</sup>

In addition to the right to replace departing occupants, the CSFRA provides that a tenant must be allowed to add a new occupant to the tenancy, including a child, close family member, or a domestic partner or spouse, so long as the total number of occupants does not exceed state standards (CSFRA section 1705(a)(2)(B)). The CSFRA expressly authorizes the RHC to "promulgate regulations that will further protect families and promote stability for school-aged children."

### **B. State Law Defines when Landlords may Reset Rent**

The Costa-Hawkins Rental Housing Act allows landlords to re-set rents for units where there has been a complete turnover of tenants occupying the unit (Civ. section 1954.53).

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<sup>1</sup> Generally, residential rental units must have at least one room that is at least 120 square feet, other rooms used for living must be at least 70 square feet, and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two; different rules apply to studios or efficiency units (*see* Uniform Housing Code section 503(b)). For the exact requirements to replace an occupant *see* CSFRA section 1705(a)(2)(A).

As a general example, if a landlord rents a unit to Tenants A and B, and then Tenant A moves out of the unit and is replaced by Occupant C, generally the landlord cannot reset the rent for the unit because Tenant B was an original tenant and remains in the unit. However, if Tenant B later moves out and is replaced by Occupant D, then the landlord generally could renegotiate the rent to be paid by Occupants C and D for the unit.

### **C. State Law Requires Landlords to Accept Payment of Rent from Third Parties**

A new State law requires landlords to accept payment of rent from third parties in certain circumstances. Specifically, Civil Code section 1947.3 generally requires landlords to accept rent payments from non-tenants so long as the third-party payer acknowledges in a signed statement that the payment does not create a new tenancy with the third party.

This law is relevant because it would require a landlord to accept rent from a lawful occupant of the unit (among others), so long as the lawful occupant acknowledged that the payment did not create a new tenancy.

Returning to the example above (where Tenant A moved out, but Tenant B and Occupant C live in a rental unit), a landlord must accept the rent payment from Occupant C. However, Occupant C's rental payment would not entitle Occupant C to continue Tenant B's tenancy when Tenant B moves out. This process could be clarified in regulations.

### **D. Potential Regulations**

Although the CSFRA and State law govern the replacement and addition of occupants to a tenancy, as well as third party rent payments, the RHC may consider regulations to clarify the application of the laws and provide further guidance.

#### **1. Codify and Simplify Rules**

The RHC could adopt regulations that summarize and simplify the rules from the CSFRA and State law outlined above, so that there would be one source for information regarding the relationships among master tenants, subtenants, new occupants, and landlords that are applicable in Mountain View.

Potential regulations could include:

- the right to replace lawful tenants with lawful replacement occupants.
- the right of lawful tenants to add new lawful occupants to an existing tenancy such as a child, close family member, and/or spouse or domestic partner.

- the process to request the new occupant be considered a lawful occupant by the landlord and a description of the legal status of the new occupant.
- the application of vacancy decontrol and resetting of rents upon complete turnover of lawful tenants in a unit.
- the payment of rent by a lawful occupant or other third party.
- Other: \_\_\_\_\_

## 2. Qualifying Additional Occupants

State law defines maximum occupancy of rental units with reference to Uniform Housing Code section 503(b). The CSFRA allows lawful tenants to add one or more certain family members as additional occupants to live in a rental unit so long as the total number of occupants does not exceed maximum occupancy under state law.

Accordingly, one question is: What information may a landlord request to verify the new occupants are related to a tenant so they may be added as a lawful occupant? The RHC could consider the following regulations to address this question:

- Identifying specific documents or information to demonstrate the familial or legal relationship between a tenant and the proposed, new occupant.
- Creating a presumption that a new occupant proposed by a tenant would be in the best interest of the tenant and that tenant's family, in furtherance of CSFRA section 1705(a)(2)(B), which presumption would not require additional proof of a qualifying relationship; and/or
- Other: \_\_\_\_\_

## 3. Regulate Rent Charged by Master Tenant to Subtenants

The CSFRA limits rent increases for "Covered Rental Units" (CSFRA section 1706(b)). This means that rents are limited on a per-unit basis; the CSFRA does not anticipate that separate rents will be charged to tenants or occupants of one Covered Rental Unit. In other rent stabilized jurisdictions, there have been circumstances in which an original tenant will sublease a unit to additional tenants and charge the new tenants more than a proportional share of the rent stabilized rent for the unit.

The RHC could potentially regulate rents charged by master tenants to subtenants as follows:

- Prohibit master tenants from charging subtenants more than the total rent due for the unit.

- Affirmatively require master tenants receive no more than a proportionate share of the total rent due for the unit from a subtenant. If an affirmative obligation is defined in the regulations, one or more methodologies for defining the proportionate share of rent would be appropriate (e.g. based on number of bedrooms, square footage, etc.).
- Other: \_\_\_\_\_

4. Other Issues

The RHC may identify other issues arising from or related to the relationship between master tenants, subtenants, and landlords that warrant regulations or clarity.

- Other: \_\_\_\_\_

**SUMMARY**

Does the RHC wish for staff to draft any or all of the following regulations for consideration and potential adoption?

1. Codifying and clarifying existing rights and responsibilities under the CSFRA and State law, such as:
  - a. Replacement of lawful tenants with lawful replacement occupants
  - b. Adding new lawful occupants to an existing tenancy, such as a child, close family member, and/or spouse or domestic partner
  - c. The process to request the new occupant be considered a lawful occupant by the landlord
  - d. A description of the legal status of the new occupant
  - e. When vacancy decontrol occurs
  - f. the payment of rent by a lawful occupant or other third party
  - g. Other: \_\_\_\_\_
2. Clarifying the qualification of additional occupants in an existing tenancy, by:
  - a. Identifying specific documents or information to demonstrate the familial or legal relationship between a tenant and the proposed, new occupant
  - b. Creating a presumption that a new occupant proposed by a tenant would be in the best interest of the tenant and that tenant's family, in furtherance of CSFRA section 1705(a)(2)(B), which presumption would not require additional proof of a qualifying relationship
  - c. Other: \_\_\_\_\_

3. Regulate payments from subtenants and/or occupants to master tenants, by:
  - a. Prohibiting master tenants from charging subtenants more than the total rent due for the unit
  - b. Requiring master tenants receive no more than a proportionate share of the total rent due for the unit from a subtenant; providing one or more definitions of proportionate share of rent
  - c. Other: \_\_\_\_\_
  
4. Other: \_\_\_\_\_

**FISCAL IMPACT** – None.

**PUBLIC NOTICING** – Agenda posting.