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January 23, 2025

memorandum

To

Mountain View Rental Housing Committee

From

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Annual Update on Relevant Legislation and Case Law in California

In 2024, the California State Legislature adopted several bills affecting landlord-tenant law. In addition, there were a handful of decisions coming out of California courts relating to landlord-tenant law and tenant protections.

A. 2024 Legislative Updates

1. AB 2347: Extension of Time to Answer in Eviction Cases

AB 2347 extends the time for tenants to file an answer (or any other type of response) in an unlawful detainer case from five (5) days to ten (10) days, excluding Saturdays, Sundays, and judicial holidays, after the complaint is served on the tenant.

This bill also specifies additional procedures and deadlines for filing a demurrer or a motion to strike a complaint and any opposition or reply in support of such a motion.

2. AB 2801: Security Deposit Documentation Requirements

AB 2801 imposes new documentation requirements where a landlord is making deductions from a former tenant's security deposit.

Beginning April 1, 2025, a landlord must take photographs of the rental unit within a reasonable time after the possession of the unit is returned to the landlord, but prior to any repairs or cleanings for which the landlord will make a deduction from or claim against the departing tenant's security deposit. The landlord must also take photographs of the unit within a reasonable time after such repairs or cleanings are completed.

If a deduction is made from the security deposit for these repairs or cleanings, the landlord must send a copy of the photos taken, along with a written explanation of the cost of the

allowable repairs or cleanings, to the tenant at the same time that the landlord provides the itemized statement (i.e., typically within 21 days after the tenant vacates the unit). The photos may be provided to the tenant by mail, email, computer flash drive, or by providing a link where the tenant may view the photos online.

For tenancies that begin on or after July 1, 2025, landlords must now take photos of the unit immediately before, or at the inception of, the tenancy.

AB 2801 also makes several changes to security deposit law with the stated goal of ensuring "that landlords do not subsidize improvements to their rental properties with a former tenant's security deposit." For example, a landlord may only claim against the tenant or the tenant's security deposit for materials or supplies and for work performed by a contractor, the landlord, or the landlord's employee "a reasonable amount necessary to restore the premises back to the condition it was in at the inception of the tenancy, exclusive of ordinary wear and tear." A landlord may not require a tenant to pay for or assert a claim against the tenant or the tenant's security deposit, for "professional carpet cleaning or other professional cleaning services, unless reasonably necessary to return the premises to the condition it was in at the inception of tenancy, exclusive of ordinary wear and tear."

Finally, AB 2801 amends the law to explicitly prohibit a landlord from claiming any amount of the security deposit if the landlord has, in bad faith, failed to comply with the provisions of Civil Code Section 1950.5.

REMINDER: AB 12, which was passed during the 2023 legislative session, went into effect on July 1, 2024. For tenancies commencing on or after July 1, 2024, most landlords may not demand or receive a security deposit for a residential rental in an amount that exceeds one (1) month's rent for the rental housing unit. Where the landlord is a natural person or a limited liability company in which all the members are natural persons and the landlord owns no more than two residential rental properties that collectively include no more than four dwelling units offered for rent, the landlord may require a security deposit in an amount up to two (2) months' rent.

3. AB 2747: Rent Payment Credit Reporting

AB 2747 requires most landlords to offer any tenant who is responsible for rent payments the option of having the tenant's positive rental payment information reported to at least one nationwide consumer reporting agency. "Positive rental payment information" means information regarding the tenant's complete, timely payments of rent, and does not include an instance where the tenant did not completely or timely make a rental payment.

For leases entered on or after April 1, 2025, the landlord must make the offer at the time that the lease agreement is entered and at least once annually thereafter. For leases in existence as of January 1, 2025, the landlord must make the offer no later than April 1, 2025, and at least once annually thereafter. The statute outlines in greater detail the method of delivery by which the landlord must make the offer as well as the contents of the offer.

If a tenant elects to have their landlord report their positive renal payment information to a consumer reporting agency, then the landlord may charge the tenant a fee of not more than the actual cost to the landlord to provide the service or ten dollars ($10) per month, whichever is lesser. If the landlord does not incur any actual cost to do the reporting, then they may not charge the tenant. The payment or nonpayment of this fee by the tenant is not to be reported to the consumer reporting agency, and the landlord may neither evict the tenant for the nonpayment of this fee nor deduct the fee from the tenant's security deposit. Rather, if the fee remains unpaid for 30 days or more, the landlord may stop the reporting and the tenant is barred from requesting reporting again for a period of at least six (6) months from the date on which the fee became due.

A tenant may request that a landlord stop reporting at any time. However, if they do so, then they may not request that the landlord start reporting against for a period of at least six (6) months from the date that they made the stop request.

The requirement to offer to report a tenant's positive rental payment information to at least one nationwide consumer reporting agency does not apply to:

- A landlord of a residential rental building that contains 15 of fewer units, unless the landlord owns more than one residential building (regardless of the number of units in each building) **and** the landlord is a real estate investment trust, a corporation, or a limited liability company in which at least one member is a corporation; or

- An assisted housing development (as defined in California Government Code Section 65863.10).

4. AB 2493: Tenant Screening Fees

AB 2493 amends existing law (California Civil Code Section 1950.5) related to fees that landlords may charge prospective tenants when screening them for a vacant or available rental unit. Specifically, the new provisions provide that a landlord or their agent may not charge an application screening fee unless, at the time that the fee is collected, they offer one of the following:

- An application screening process that complies with all the following:

    - Completed applications are considered in the other in which they are received (with the landlord's screening criteria provided to the applicant in writing together with the application form);

    - The first applicant who meets the landlord's established screening criteria is approved for tenancy; and

- Applicants are not charged a fee unless or until their application is actually considered; OR

- An application screening process in which the landlord or their agent returns the entire screening fee to any applicant who is not selected for tenancy within seven (7) days of selecting another applicant, or thirty (30) days of when the application was submitted, whichever occurs first.

Moreover, rental housing applicants no longer need to request a copy of any consumer credit report that the landlord or their agent receives. The bill requires a landlord or their agent to automatically provide a copy of the consumer credit report to the applicant by personal delivery, mail, or email within seven (7) days of the landlord or their agent receiving the report.

5. SB 611: Fee Prohibitions

SB 611 amends several existing landlord-tenant statutes to limit the types of fees that a landlord may charge a tenant. A landlord may no longer charge a tenant a fee for any of the following:

- Serving, posting, or otherwise delivering any notice of termination of tenancy required by California Civil Code Sections 1946 and 1946.1;

- Serving, posting, or otherwise delivering any notice of termination of tenancy, notice to cure or quit, notice to pay rent or quit, notice to quit, or other notice required by California Code of Civil Procedure Section 1161; or

- The tenant's payment by check of rent or security deposit, as described in California Civil Code Section 1950.5.

6. AB 2579: Balcony Inspections

In 2021, the State Legislature adopted, and the Governor signed SB 607, which imposed new requirements for local code enforcement agencies to inspect balconies or decks (and associated waterproofing elements) in all multifamily residential dwelling units of three (3) or more units by January 1, 2025, and by January 1 every six (6) years thereafter. AB 2579 amends California Health and Safety Code Section 17973 to extend the initial inspection deadline from January 1, 2025, to January 1, 2026.

7. SB 1051: Protections for Survivors of Domestic Violence

SB 1051 expands certain existing state law protections for survivors of domestic abuse.

Prior to this legislation, state law provided that a landlord was required to change the locks of a protected tenant's dwelling unit upon the tenant's written request not later than twenty-

four (24) hours after the tenant provided the landlord with a copy of a court order or police report restraining a person who is not a tenant of the same dwelling unit as the protected tenant from contacting the protected tenant. If the landlord failed to change the locks within such time, the protected tenant could change the locks themselves. "Protected tenant" was defined as a tenant who obtained a court order, or a police report showing that the tenant or the tenant's household member is a victim of domestic violence, sexual assault, or stalking.

SB 1051 revises these protections and expands them to apply to all "eligible tenant(s)," defined as either a tenant who is a victim of abuse or violence, as defined by California Code of Civil Procedure Section 1161.3(a)(1), or a tenant whose immediate family member or household member is a victim of abuse or violence. A landlord must, at the landlord's expense, change the locks of an eligible tenant's dwelling unit upon the tenant's written request not later than twenty-four (24) hours after the tenant provides the landlord with a written request and a copy of any of the following:

- A temporary restraining order, emergency protective order, or protective order lawfully issued that protects the eligible tenant, household member or immediate family member from abuse or violence;

- A written report of a state or local peace officer stating that the tenant, household member, or immediate family member has filed a report alleging that the tenant, the household member, or the immediate family member is a victim of abuse or violence;

- Documentation from qualified third party (as defined in California Civil Code Section 1941.5(f)(7)) based on information received by that third party while acting in their professional capacity to indicate that the tenant, the immediate family member, or the household member is seeking assistance for physical or mental injuries or abuse resulting from an act of abuse or violence (in substantially the same form required by California Civil Code Section 1941.5(d)(3)(A));

    - This documentation may be signed by a person who meets the requirements for a sexual assault counselor, domestic violence counselor, a human trafficking caseworker, or a victim of violent crime advocate only if the documentation displays the letterhead of the office, hospital, institution, center, or organization, as appropriate, that engages or employs, whether financially compensated or not, this counselor, caseworker, or advocate; or

- Any other form of documentation that reasonably verifies that the abuse or violence occurred, including, but not limited to, a signed statement from the eligible tenant.

If the landlord fails to change the locks as required, the eligible tenant, without the landlord's permission, may change the locks. The tenant must (1) change the locks in a workmanlike manner with locks of similar or better quality than the original lock, (2) notify

the landlord within twenty-four (24) hours that the locks have been changed, and (3) provide the landlord with a key by any reasonable agreed-upon method. Within twenty-one (21) days after the eligible tenant changes the locks, the landlord must reimburse the tenant for the expenses that the tenant incurred in changing the locks.

SB 1051 also adds Section 1946.9 to the California Civil Code to prohibit a landlord or their agent from taking an adverse action against a tenant based on, among other things, the prospective tenant having previously requested to have their locks changed due to abuse or violence, or the prospective tenant, or an immediate family member or household member of the prospective tenant, having been a victim of abuse or violence. "Adverse action" means either of the following:

- Denial of a prospective tenant's rental application; or

- Approval of a prospective tenant's rental application, subject to terms or conditions different and less favorable to the tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the landlord or landlord's agent to a prospective tenant.

A landlord or their agent who violates these provisions is liable to the prospective or current tenant in a civil action for actual damages and statutory damages of not less than one hundred dollars ($100) and not more than five thousand dollars ($5,000).

8. AB 846: Rent Increase Limits in Tax Credit Properties

AB 846 limits rent increases for tenants in low-income housing tax credit (LIHTC) developments in California.

On April 3, 2024, the California Tax Credit Allocation Committee (CTCAC) passed regulations limiting increases on rents to developments that receive an allocation of tax credits after April 3, 2024, and developments seeking to transfer ownership within the next five years. AB 846 expands the limitation on rent increases to cover all LIHTC developments in the state.

Under this bill, CTCAC has until June 30, 2025, to establish and adopt regulations limiting annual rent increases for tenants in LIHTC properties that received an allocation of housing credits prior to April 3, 2024, and that are subject to a regulatory agreement. CTCAC is required to assess the limit established on an annual basis and is authorized to adjust the limit if it deems it necessary based on its assessment.

B. 2024 Case Law Updates

1. *San Francisco Apartment Assn. v. City and County of San Francisco* (2024) 104 Cal.App.5th 1218

In 2022, the San Francisco Board of Supervisors ("Board") amended the City and County of San Francisco's (the "City") Rent Ordinance to:

- Amend Section 37.9(c) to provide that for notices to vacate under the first six "just cause" requirements for evictions where a tenant is at fault, a landlord "shall prior to serving the notice to vacate provide the tenant a written warning and an opportunity to cure as set forth in Section 37.9(o)"; and

- Add Section 37.9(o) to provide that the six at-faut just causes "shall not apply unless the violation is not cured within ten days after the landlord has provided the tenant a written warning that describes the alleged violation and informs the tenant that a failure to correct such violation within ten days may result in the initiation of eviction proceedings."

An apartment association and group of small property owners filed suit seeking to enjoin the City from enforcing these provisions on the basis that they were preempted by state law unlawful detainer statutes.

The court agreed with the plaintiffs as to Section 37.9(o), but not as to Section 37.9(c). Specifically, the court held that pursuant to the framework established by the California Supreme Court in *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129 (*Birkenfeld*), Section 37.9(o) improperly extends the procedural timelines for eviction proceedings established by state law by requiring a written warning with 10 days to cure prior to serving any notice under Code of Civil Procedure Section 1161. In relevant part, the court explained that the City's amendments were different from similar requirements in prior or other just cause laws as follows:

> "In short, unlike the ordinance in [*San Francisco Apartment Assn. v. City and County of San Francisco* (2018) 20 Cal.App.5th 510 (*Educators*)], Ordinance No. 18-22 did not add a substantive defense to eviction for a protected group without imposing any affirmative procedural requirement on landlords. (*Educators*, supra, 20 Cal.App.5th at p. 518.) Unlike the initiative in [*Rental Housing Association of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741 (*Rental Housing*)], Ordinance No. 18-22 did not add substantive "good cause" grounds for eviction with unspecified notice requirements contained in some of those grounds. (*Rental Housing*, *supra*, 171 Cal.App. 4th at p. 762.) Instead, Ordinance No. 18-22 imposed a procedural notice requirement on landlords and created a procedural barrier across all grounds for at-fault evictions. It did so with the explicit purpose of adding more days to the three-day timeline under section 1161. We thus conclude that Ordinance No. 18-22 is procedural under *Birkenfeld*..." (104 Cal.App.5th at 638-39.)

Based on this, the court held that the provisions were preempted by state law to the extent that they change the required notice period for unlawful detainers/evictions based on the at-fault grounds enumerated in the City's Rent Ordinance.

2. *City of Alameda v. Sheehan* (2024) 105 Cal.App.5th 68

In this case, the tenant received a three-day notice to pay rent or quit as required by Unlawful Detainer Law, namely California Code of Civil Procedure Section 1161(2). Pursuant to CCP Section 1161(2), a valid three-day notice to pay rent or quit must "include the name, telephone number, and address of the *person* to whom the rent shall be made, or other specified information...." In the unlawful detainer action, the tenant raised as an affirmative defense that the three-day notice to pay rent or quit was defective on the basis that it named a corporation, rather than a natural person, to whom rent must be paid.

The court rejected the tenant's argument, holding that "person" as used in CCP Section 1161(2) includes a corporation as well as a natural person. The court determined that this interpretation was consistent with the purpose of the unlawful detainer statutes and supported by the specific language of CCP Section 1161 and its statutory and legislative context.

3. *Campbell v. FPI Management, Inc.* (2024) 98 Cal.App.5th 1151

Two classes of tenants in federally-subsidized housing – tenants in units subsidized pursuant to the HOME Investment Partnerships Program ("HOME tenants") and tenants in units subsidized by section 8 of the United States Housing Act of 1937 ("Section 8 tenants") - brought an unfair competition law action against their property manager for giving less than thirty (30) days' notice of termination where they sought to recover possession of the unit on the basis that the tenants had defaulted on the payment of rent.

The property owner and property manager challenged the tenants' lawsuit on the basis that the tenants lacked standing to bring a lawsuit under the California Business and Professions Code Section 17204. The court found that the HOME tenants had standing under Section 17204, that the federal notice requirement did not conflict with the three-day notice requirement under California Code of Civil Procedure Section 1161, and therefore they were entitled to seek restitution from the property manager and property owner. On the other hand, the court determined that the Section 8 tenants' claim under the federal Section 8 program failed due to the lack of a statute requiring thirty (30) days' notice to terminate their tenancies.