

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: September 20, 2017

Final Decision Date Deadline: September 20, 2017

STATEMENT OF THE ISSUE: On July 19, 2017, the Board adopted Regulation 17-04 regarding when notices of rent increases, changes in terms of tenancy and terminations of tenancy must be filed with the Board, and the requirement that rental units must be enrolled with the Board. In part, the Regulation provides that the notices are to be filed with the Board both before and after the tenant is served with such notice. In reviewing this matter further, staff now recommends the Regulation be revised to eliminate the need to file such notices with the Board before serving the tenant as no useful purpose for either the tenant or the Board is served by such filing. In addition, the Regulation, as proposed, would provide that a landlord's failure to file the notice with Board after serving the tenant renders the rent increase or change in terms of tenancy null and void. Also, the Regulation continues to encourage strongly such notices to be filed with the Board online but does not make it mandatory.

INDICATE APPROPRIATE BODY

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|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

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|---|--|---------------------------------|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) | | |
| <input type="checkbox"/> Public Hearing | <input checked="" type="checkbox"/> Regulation | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement | <input type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |

RECOMMENDED ACTION: ADOPT Regulation 17-10, rescinding and replacing Regulation 17-04 regarding the filing with the Board of notice of rent increases and termination of tenancies and enrolling Rental Units with the Board – Rent Program (Michael Roush 621-1202).

AGENDA ITEM NO:

I-2.

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AGENDA REPORT

DATE: September 20, 2017

TO: Chair Gray and Members of the Rent Board

FROM: Michael Roush, Legal Counsel

SUBJECT: REGULATION REGARDING FILING NOTICES AND ENROLLING UNITS WITH THE RENT BOARD

STATEMENT OF THE ISSUE:

On July 19, 2017, the Board adopted Regulation 17-04 regarding when notices of rent increases, changes in terms of tenancy and terminations of tenancy must be filed with the Board, and the requirement that rental units must be enrolled with the Board. In part, the Regulation provides that the notices are to be filed with the Board both before and after the tenant is served with such notice. In reviewing this matter further, staff now recommends the Regulation be revised to eliminate the need to file such notices with the Board before serving the tenant as no useful purpose for either the tenant or the Board is served by such filing. In addition, the Regulation, as proposed, would provide that a landlord's failure to file the notice with Board after serving the tenant renders the rent increase or change in terms of tenancy null and void.

RECOMMENDED ACTION:

ADOPT Regulation 17-10, rescinding and replacing Regulation 17-04 regarding the filing with the Board of notice of rent increases and termination of tenancies and enrolling Rental Units with the Board – Rent Program (Michael Roush 621-1202).

FISCAL IMPACT:

While there is no measurable fiscal impact to the City at this time, the provisions of Regulation 17-10 affect the administrative requirements of Rent Program staff members. For example, if Landlords of non-Rent Controlled units are not required to file notices of rent increases with the Rent Board, staff members will receive significantly fewer form submissions.

DISCUSSION:

Background

Under the Fair Rent, Just Cause for Evictions and Homeowner Protection Ordinance, adopted by the Richmond voters in November 2016, the Rent Board is empowered to issue rules and regulations to further the purpose of the Ordinance. Section 11.100.060 (f), Richmond Municipal Code. On July 19, 2017, the Board adopted Regulation 17-04 regarding when notices of rent increases, changes in terms of tenancy and terminations of tenancy must be filed with the Board. The Regulation provides such notices must be filed both before and after the tenant is served with the notice. The “before” requirement stems from unclear language in the Ordinance that says, “Within sixty (60) days after the adoption of this Chapter, all Landlords shall be required to file a copy of all rental increase notices, change of terms of tenancy and tenancy termination notices with the Board before serving the tenant with the notice. A proof of service with time and date of service of notice shall be included with notice filed with the City [sic].” Section 11.100.060 (s)(1).

Accordingly, staff’s prior recommendation to the Board to implement this subsection, which the Board adopted in Regulation 17-04, was to require the landlord to file with the Board the particular notices both before and after the tenant has been served. Staff has reconsidered this matter and as discussed below now recommends the Regulation be revised to delete the requirement that notices be filed with the Board before the tenant is served.

If a landlord fails to provide a copy of such notices to the Board and thereafter, as to a termination of tenancy, files an unlawful detainer action, the tenant may rely on that failure as a defense in the unlawful detainer action. Section 11.100.060 (s)(3). Neither the Ordinance nor Regulation 17-04, however, addresses whether rent increases or changes in the terms of a tenancy are effective if the landlord fails to provide a copy of notices thereof to the Board. Staff is recommending the revised Regulation address that issue as well.

Discussion

Requiring landlords to file with the Board a copy of a notice to increase rent, change the terms of a tenancy or terminate a tenancy *before* serving the tenant with such notice serves no useful purpose for either the tenant or the Board. Unless or until the tenant is served with the notice, the notice has no legal effect on the tenant. Because the tenant has not been served with such notice, it is not clear what, if anything, the Rent Board or Rent Board staff is supposed to do with a notice that has not been served other than filing it, which is an empty exercise. Moreover, it would be illogical (as well as speculative) for a landlord to file with the Board a proof of service with time and date of service of the notice before such notice had in fact been served on the tenant.

ITEM I-2

Most likely, the intent of the first sentence of (s)(1) was to put landlords on notice that once the Ordinance became effective, they had new requirements—beginning 60 days after the Ordinance went into effect--to provide information to the Rent Board about rent increases, changes in terms of tenancy and terminations of tenancy. This is evidenced by the second sentence of (s)(1): “A proof of service with time and date of service of notice shall be included with notice filed with the [Board]”.

Accordingly, sections 1 and 3 of Regulation 17-04 are proposed to be revised to eliminate the need for landlords to file with the Board notices of rent increases, changes in the terms of tenancy or termination of tenancies before such notices are served on tenants. See the redlined version of Regulation 17-04, Attachment 1.

As mentioned above, Section 11.100.060 (s)(3) sets forth the consequences for a landlord if the landlord has failed to file with the Board the notice of a termination of tenancy and thereafter files an unlawful detainer action, i.e., it is a complete defense to an unlawful detainer. The Ordinance, however, does not provide for consequences if the landlord fails to file with the Board notices of a rent increase or of a change in the terms of a tenancy. Staff recommends the Regulation be revised to provide that if a landlord fails to file such a notice with the Board, the rent increase or the change in the terms of the tenancy shall be deemed null and void. See Attachment 1, sections 1 and 3. A landlord may “cure” this deficiency by re-serving the tenant with a notice and filing a copy, along with the proof of service, with the Board but the effective date of the prior rent increase or change in the terms of a tenancy would necessarily be postponed.

Moreover, in order to aid tenants in mounting a defense when a landlord has filed an unlawful detainer action, a tenant may request confirmation from the Rent Program staff that the landlord has enrolled the tenant’s unit in the Rent Program and/or that the landlord has filed with the Board any required notice in a timely manner. If the landlord has failed to do so, the Rent Board staff will provide a Certification to the tenant to that effect which the tenant may then use in defending an unlawful detainer action. See Attachment 1, Section 6.

The revised Regulation (in Sections 1 and 3) also makes it clear that, absent extraordinary circumstances, landlords are to use the appropriate on line form when filing with the Board copies of their notices and proofs of service. Although the vast majority of landlords have access to online reporting, some landlords do not. The revised Regulation accommodates this latter group of landlords.

Finally, the Regulation replaces and rescinds Regulation 17-04. Attachment 1, Section 7.

DOCUMENTS ATTACHED:

Attachment 1 – Regulation 17-04 (Redlined)

Attachment 2 – Regulation 17-10

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ITEM I-2 ATTACHMENT 1

RICHMOND RENT BOARD REGULATION 17-~~XX~~04

Regarding the Filing with the Board of Notices of Rent Increases, Changes in Terms of Tenancy and Termination of Tenancies and Enrolling Rental Units with the Board

1. **Notices of Rent Increase – Controlled Rental Units.** Landlords of Controlled Rental Units, as defined in the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code, Section 11.100.030 (d), except those Rental Units that are “exempt” pursuant to Rent Board regulation, or are described in Section 2 of this Regulation, shall file with the Board ~~a copy of all notices of rent increase before serving the Tenant such notice, using the appropriate online form on the Rent Program website.~~ Within two (2) business days *after* the Landlord has served a Tenant with a notice of a rent increase, ~~the Landlord shall file with the Board~~ a copy of such notice with a proof of service, including time and date of service, ~~using, a~~ Absent extraordinary circumstances, ~~such form shall be filed using~~ the appropriate online form on the Rent Program website. If a Landlord does not file with the Board the notice and proof of service as provided in this Section, the rent increase shall be deemed null and void.

2. **Notices of Rent Increase – Rental Units Exempt from the Rent Control Provisions of the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance.** Landlords of Rental Units (a) which a government unit, agency, or authority owns, operates or manages, (b) in which governmentally subsidized Tenants reside if applicable federal or state law or administrative regulation specifically exempts such Units from rent control, (c) exempt from rent control pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code, section 1954.52) or (d) that are permitted, small second housing units built in compliance with the Small, Second Unit Ordinance of the City of Richmond (Section 15.04.810, RMC) [Section 11.100.030 (d) (3)(4) and (5)] are **not** required to file with the Board a copy of a notice of rent increase.

3. **Notices of Termination of Tenancy or Change in Terms of Tenancy – All Rental Units.** Landlords of Controlled Rental Units and Landlords of Rental Units as described in Section 2 of this Regulation shall file with the Board ~~a copy of all notices of termination of tenancy and change in terms of tenancy before serving the Tenant such notice, using the appropriate online form on the Rent Program website.~~ Within two (2) business days *after* service of ~~the~~ notice on ~~the~~ Tenant of a termination of tenancy or change in terms of tenancy, ~~the Landlord shall file~~ a copy of such notice, with a proof of service of the notice, including time and date of service, ~~using, a~~ Absent extraordinary circumstances, ~~such form shall be filed using~~ the appropriate online form on the Rent Program website. If a Landlord does not file with the Board the notice and proof of service concerning a change in the terms of a tenancy as provided in this Section, such change shall be deemed null and void. If a Landlord does not file with the Board the notice and proof of service concerning a termination of tenancy as provided in this Section, the failure is a complete defense in an unlawful detainer.

4. **Definition of Notice of Termination of Tenancy.** “Notice of Termination of Tenancy” as used in this Regulation shall mean any notice served on a Tenant in accordance with State law which seeks to recover possession of a Rental Unit. This includes, but is not limited to, three-day notices to pay rent or quit, notices to perform covenant or quit, and all other termination notices permitted under State law.

5. **Enrollment with the Richmond Rent Program.** Prior to filing with the Board, or serving any Tenant, ~~with~~ any notice of a rent increase, change in terms of tenancy or termination of tenancy, a Landlord must enroll with the Rent Board all of a Landlord’s Controlled Rental Units and those Rental Units set forth in Section 2 of this Regulation. Absent extraordinary circumstances, the

**ITEM I-2
ATTACHMENT 1**

I certify that the foregoing is a true copy of **Regulation 17-~~XX~~04**, finally passed and adopted by the Rent Board of the City of Richmond at a regular meeting held on- **July 19**, 2017.

PAIGE ROOSA
Rent Board Secretary

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**ITEM I-2
ATTACHMENT 2**

**RICHMOND RENT BOARD REGULATION 17-10
RESCINDING REGULATION 17-04**

Regarding the Filing with the Board of Notices of Rent Increases, Changes in Terms of Tenancy and Termination of Tenancies and Enrolling Rental Units with the Board

1. **Notices of Rent Increase – Controlled Rental Units.** Landlords of Controlled Rental Units, as defined in the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code, Section 11.100.030 (d), except those Rental Units that are “exempt” pursuant to Rent Board regulation, or are described in Section 2 of this Regulation, shall file with the Board within two (2) business days *after* the Landlord has served a Tenant with a notice of a rent increase, a copy of such notice with a proof of service, including time and date of service, using, absent extraordinary circumstances, the appropriate online form on the Rent Program website. If a Landlord does not file with the Board the notice and proof of service as provided in this Section, the rent increase shall be deemed null and void.

2. **Notices of Rent Increase – Rental Units Exempt from the Rent Control Provisions of the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance.** Landlords of Rental Units (a) which a government unit, agency, or authority owns, operates or manages, (b) in which governmentally subsidized Tenants reside if applicable federal or state law or administrative regulation specifically exempts such Units from rent control, (c) exempt from rent control pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code, section 1954.52) or (d) that are permitted, small second housing units built in compliance with the Small, Second Unit Ordinance of the City of Richmond (Section 15.04.810, RMC) [Section 11.100.030 (d) (3)(4) and (5)] are **not** required to file with the Board a copy of a notice of rent increase.

3. **Notices of Termination of Tenancy or Change in Terms of Tenancy – All Rental Units.** Landlords of Controlled Rental Units and Landlords of Rental Units as described in Section 2 of this Regulation shall file with the Board within two (2) business days *after* service of a notice on a Tenant of a termination of tenancy or change in terms of tenancy a copy of such notice, with a proof of service of the notice, including time and date of service, using, absent extraordinary circumstances, the appropriate online form on the Rent Program website. If a Landlord does not file with the Board the notice and proof of service concerning a change in the terms of a tenancy as provided in this Section, such change shall be deemed null and void. If a Landlord does not file with the Board the notice and proof of service concerning a termination of tenancy as provided in this Section, the failure is a complete defense in an unlawful detainer.

4. **Definition of Notice of Termination of Tenancy.** “Notice of Termination of Tenancy” as used in this Regulation shall mean any notice served on a Tenant in accordance with State law which seeks to recover possession of a Rental Unit. This includes, but is not limited to, three-day notices to pay rent or quit, notices to perform covenant or quit, and all other termination notices permitted under State law.

5. **Enrollment with the Richmond Rent Program.** Prior to filing with the Board, or serving any Tenant, any notice of a rent increase, change in terms of tenancy or termination of tenancy, a Landlord must enroll with the Rent Board all of a Landlord’s Controlled Rental Units and those Rental Units set forth in Section 2 of this Regulation. Absent extraordinary circumstances, the enrollment form must be completed and submitted online, using the form on the Rent Program website.

6. **Failure of a Landlord to Enroll or File.** If a Landlord has not enrolled the Landlord’s Rental Units with the Board as provided in this Regulation, and/or has not filed with the Board a notice of a rent increase, change in terms of tenancy or termination of tenancy as provided in this

**ITEM I-2
ATTACHMENT 2**

PAIGE ROOSA
Rent Board Secretary

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