



HANDLING HABITABILITY PROBLEMS IN RICHMOND (TENANT ORIENTED)

CITY OF RICHMOND RENT PROGRAM

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Agenda

How Rent Control Works In Richmond

How Rent Levels And An Apartments Condition Are Connected

State Law Governing Habitability: “The Implied Warranty of Habitability”

How Habitability Problems Can Impact A Landlords Right To Evict

How To Request A Housing Inspection From The City When Landlord Is Not Responsive

Petitioning The Rent Board For A Rent Reduction To Compel Repairs

How Habitability Problems Can Lead To The Landlord Having To Pay Relocation Assistance To Tenant

Addressing Habitability Problems (Tenant Perspective)

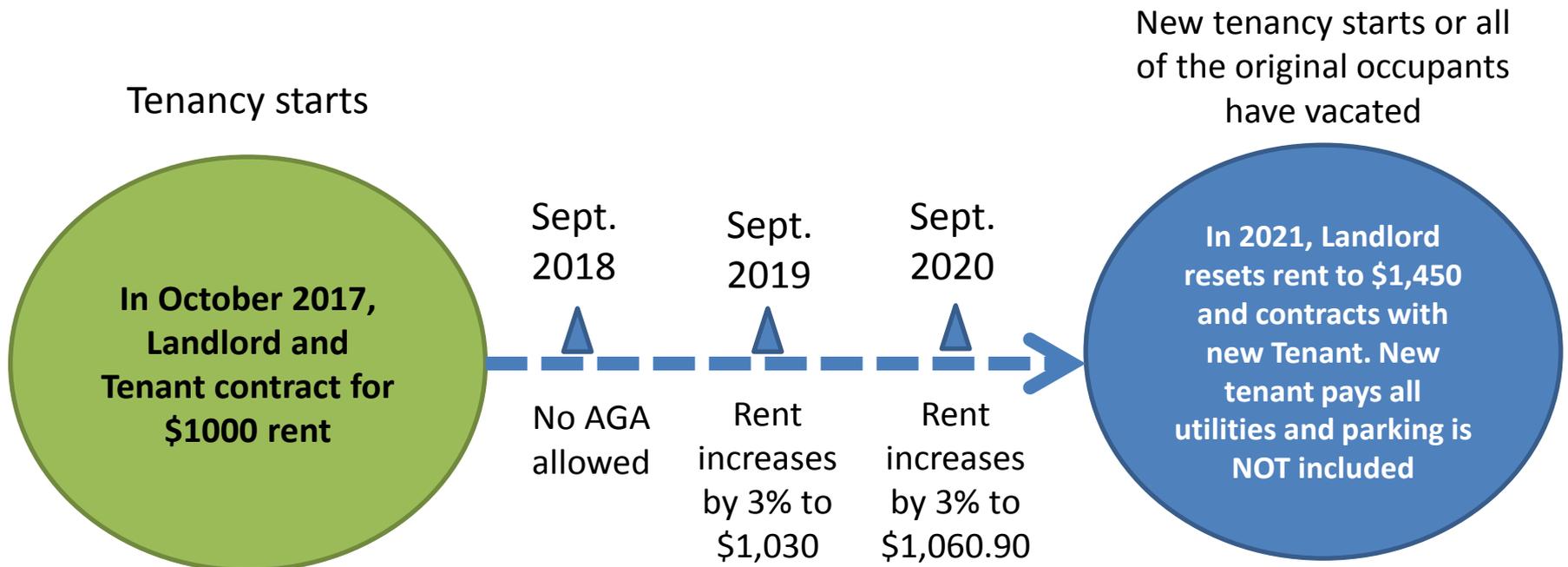
Address Habitability Problems (Landlord Perspective)

How rent control
and eviction
protections work
in Richmond.

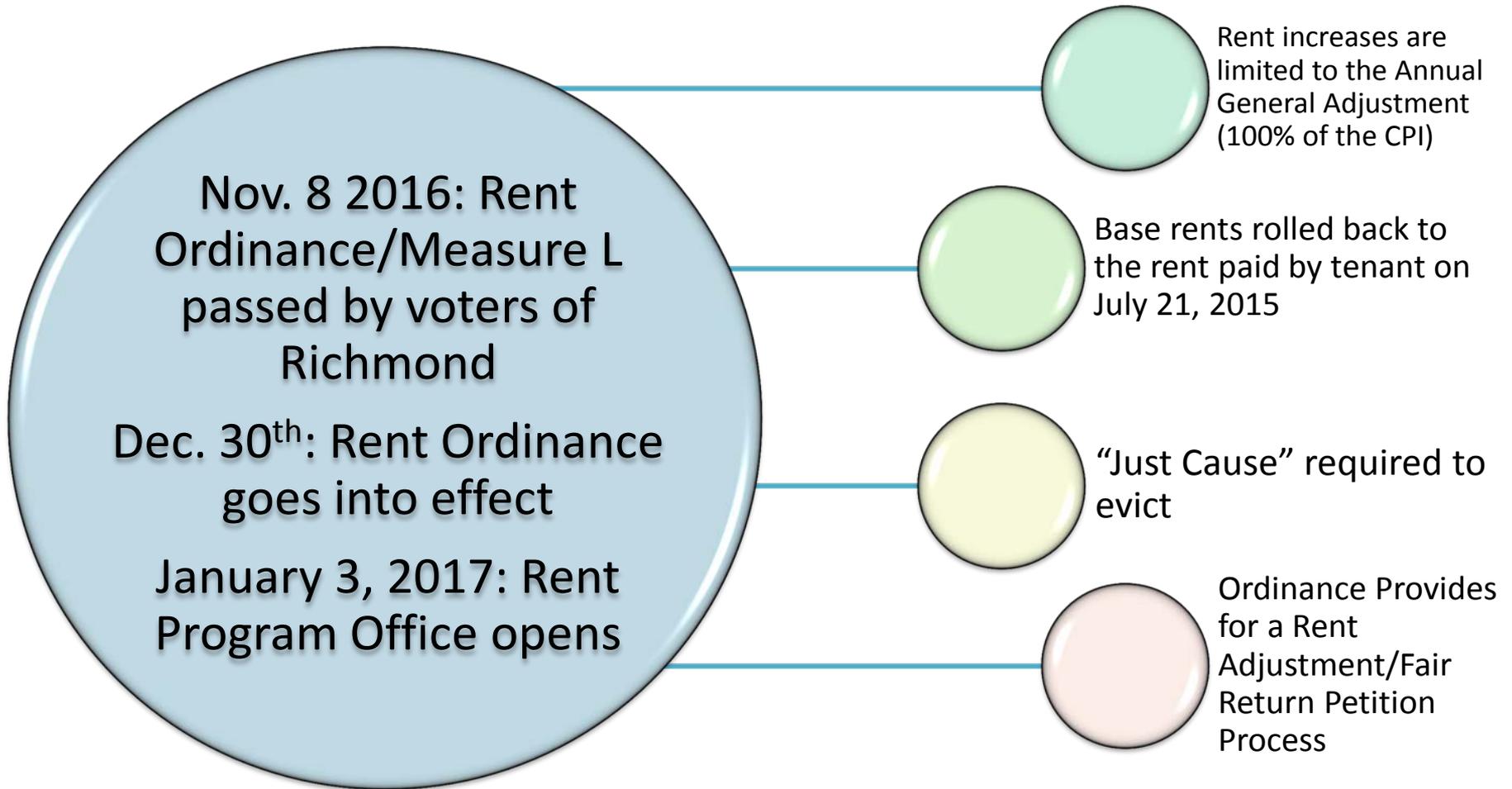
How does rent control work in Richmond?

Currently, rent control cities in California operate under the **Costa Hawkins Rental Act**, also known as vacancy decontrol/re-control.

What is vacancy decontrol and re-control?

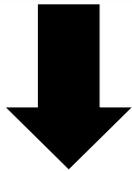


Rent Control and Just Cause Eviction Protections in Richmond



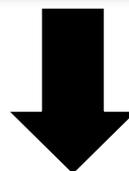
Which properties are covered by the Richmond Rent Ordinance?

Fully covered: Rent Controls and Just Cause Eviction Protections



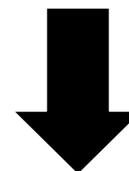
- ✓ Multi-Unit Properties built before Feb. 1 of 1995

Partially Exempt: Only Just Cause Eviction Protections (No rent controls)



- ✓ Subsidized Units/ Section 8 Tenancies
- ✓ Single family homes
- ✓ Condos
- ✓ "New Construction" or post Feb.1 of 1995 construction w/Permits and Certificate of Occupancy

Fully Exempt: No rent controls and no Just Cause Eviction Protections



- ✓ Where Landlord and Tenant share kitchen and or bath
- ✓ Single family homes where a small second unit was added w/permits and the main house is owner-occupied.
- ✓ Senior Housing

Maximum Allowable Rent (MAR) is....

The maximum rent that can be charged for a **Controlled Rental Unit**

Can be adjusted downwards if there is a decrease in habitability or a reduction in space or services.

Equals the **Base Rent + Annual General Adjustments (AGA)** + Individual Rent Adjustments (approved through the petition process)

The Base Rent includes the initial rent paid by the Tenant plus any services that are included in the initial rent (water, garbage, appliances provided, etc.)

State Law Governing Habitability

State law requires that Landlord provide rental units that meet certain standards for habitability. This law is also known as the Implied Warranty of Habitability (Civil Code 1941.1).

Local Housing Code (Richmond Municipal Code) mirrors State habitability standards but provides clarity and detail about those habitability standards (e.g. minimum temperature required to provide “hot water”).

Implied Warranty of Habitability

Civil Code 1941.1

Landlords must provide rental units that are in "habitable" condition and fit to live in. In order for the property to be habitable, it must have all of the following:

- ✓ Effective waterproofing/weather protection of roof and exterior walls, including unbroken windows and doors.
- ✓ Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- ✓ Gas facilities in good working order.
- ✓ Heating facilities in good working order.
- ✓ An electrical system, including lighting, wiring and equipment, in good working order.
- ✓ Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) which are free from debris, filth, rubbish, garbage, rodents and vermin.
- ✓ Adequate trash receptacles in good repair.
- ✓ Floors, stairways and railings in good repair.
- ✓ A working toilet, wash basin, and bathtub or shower. The toilet and bathtub/shower must be in a room that is ventilated, and that allows for privacy.
- ✓ A kitchen with a sink, which cannot be made of an absorbent material (for example, wood).
- ✓ Natural lighting in every room through windows or skylights. Unless there is a ventilation fan, the windows must be able to open at least halfway.
- ✓ Safe fire or emergency exits leading to a street or hallway. Stairs, hallways and exits must be kept litter free. Storage areas, garages, and basements must be kept free of combustible materials.
- ✓ Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.
- ✓ Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.

Tenant's Responsibilities

Civil Code 1941.2

A tenant must take reasonable care of the rented property and common areas, such as hallways. This means that the tenant must keep those areas in good condition. A tenant must also repair all damage that he or she causes, or that is caused by the tenants' guests, children or pets. California Civil Code section 1941.2 requires the tenant to do all of the following:

- ✓ Keep the premises "as clean and sanitary as the condition of the premises permits."
- ✓ Use and operate gas, electrical and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets, flushing large foreign objects down the toilet, and allowing any gas, electrical, or plumbing fixture to become filthy.)
- ✓ Dispose of trash and garbage in a clean and sanitary manner.
- ✓ Not destroy, damage, or deface the premises, or allow anyone else to do so.
- ✓ Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenances, or allow anyone else to do so.
- ✓ Use the premises as a place to live, and use the rooms for their proper purposes. For example, the bedroom must be used as a bedroom and not as a kitchen.
- ✓ Notify the landlord when deadbolt locks and window locks or security devices do not operate properly.

Steps for Addressing Habitability Problems



Document the problem and Inform Landlord

- Write letter(s) of complaint (keep signed copies) and consider proof of mailing
- Take photos or videos of the problem and attach them to the letter(s) of complaint



Learn about your rights by contacting a Rent Program Services Analyst

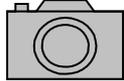
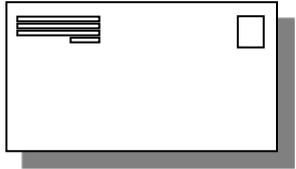


If landlord is nonresponsive, consider scheduling a Housing Inspection by the City of Richmond



File a petition to reduce the rent or may request mediation with the Landlord (through the Rent Program) to resolve the problem

Tips for Documenting Habitability Problems



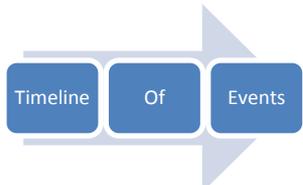
Writing letters or emails of complaint to the Landlord and or property manager. Attaching photos or videos to the letter or email is an effective way to hold a Landlord accountable



If you have a verbal communication with the Landlord that is important, following up and summarizing the verbal communication in writing may be helpful to avoid unnecessary disputes or misunderstandings.



If the Landlord is not being responsive, consider documenting the habitability problem through an inspection by the City so that the City can compel Landlord to fix the problem(s).



Using a chronological approach to memorializing the problems is important in framing the narrative, if the case were to go to a Rent Board hearing or court.



Be mindful that anything you write can be in front of a judge someday. In other words, you may hurt your credibility if your letter or email makes you seem unreasonable or abusive in tone.

Requesting a Housing Inspection



To request a housing inspection, contact the City of Richmond Residential Rental Inspection Program at 510-690-8260 or richmondrrip@ci.richmond.ca.us. The Landlords contact information must be provided at the time the request is made.



Upon determination that an inspection is needed, generally, it may take up to 10 days after making request for the inspection to take place.



The inspector will notify the Landlord if code violations are found and the Landlord may face fees or fines for failure to correct the violations.

Filing a Petition to Reduce the Rent

One way to compel a Landlord to fix habitability problems is to file a petition to reduce the rent and or receive a retroactive rent refund. **A Tenant can petition to reduce their rent and may qualify for a rent reduction/rent refund if there is a decrease habitability or a reduction of space or services.**

Note: The Landlord must have been informed about the problems for a rent reduction to be granted.

- Only Tenants in Controlled Rental Units can file a petition.
- Tenants in single family homes, rental units built post-Feb. 1- 1996 and Tenants in subsidized units cannot file a petition to reduce the rent due to the fact that their rents are not regulated by the Rent Board

A Rent Adjustment Petition May Lead to Hearing



After filing a petition to reduce the rent, the Landlord and Tenant may be required to attend a hearing, where both parties can present their evidence. The Hearing Examiner may also opt to issue an Administrative Decision if there are no objections by the opposing party.



A Rent Program Hearing Examiner examines evidence submitted in the petition and the opposing party's objections and hears testimony from both sides. A decision to award a rent refund and an order to reduce the rent generally occurs some weeks after the hearing is held. Both parties may appeal the Hearing Examiner's decision within 35 days of the date of the decision.

The Connection Between Habitability Problems and Evictions

Just Cause for Eviction

RMC 11.100.050

Residential tenants can only be evicted for one of the following “Just Causes”(notice must state the reason):

- Failure to Pay Rent
- Breach of Lease
- Nuisance
- Failure to Give Access
- Temporarily Vacate in Order to Undertake Substantial Repairs*
- Owner Move-In*
- Withdrawal from Rental Market*
- Temporary Tenancy

*Relocation Payment required – See Relocation Ordinance established by the City Council (RMC 11.102)

Habitability Problems and Evictions

Habitability problems can be used as a defense to an eviction lawsuit. Retaliatory evictions are illegal.

If a Controlled Rental Unit is deteriorating and the owner is attempting to terminate the tenancy, a Tenant may use the habitability problem(s) as a defense to an eviction lawsuit. Attempt to evict because a Tenant requests a housing inspection is generally considered retaliatory and therefore unlawful.

Chronological documentation is key to protecting Tenancy

It is important to chronologically document habitability problems as it may show a pattern or effort on the part of the Landlord to illegally force a Tenant to move out or “**constructively evict**”.

Landlord must be in compliance with Rent Ordinance to evict

If a Hearing Examiner issues a decision to refund or reduce the rent until a habitability problem is fixed, and the Landlord fails to issue the refund, reduce the rent and fix the problem, a Tenant may use the Landlord’s non-compliance as a defense to an eviction lawsuit.

Habitability Problems and Temporary Relocation Payments

Temporary Relocation Assistance

Under the Relocation Ordinance, if habitability problems are such that repairs and abatement require the Tenant to temporarily relocate, the Landlord must pay temporary relocation.

Permanent Relocation Assistance

A Landlord and Tenant may agree to a permanent relocation payment if, after the temporarily relocation period is over and the Tenant doesn't want to move back in to the unit.

Temporary Relocation Payment

RMC 11.100.050

RMC 11.102.030

- **Must be provided to Tenants when they must temporarily vacate for the landlord to undertake substantial repairs**
- Notice of Entitlement to Relocation Payment must be provided with the notice of termination of tenancy
- Amount determined by a resolution of the City Council

Per Diem Description	Amount	Term (a)
Hotel or Motel	\$145	per day per household
Meal Expenses	\$29	per day per person
Laundry	\$1	per day per household
Pet Accommodations	Cat - \$28 Dog - \$51	per day per animal

(a) Applicable amounts shall be paid on a weekly basis, calculated on a daily basis, at a minimum. Alternatively, the Landlord may provide comparable housing located in Richmond. In such case, the Landlord shall provide per diem payments until the Tenant and their possessions have been moved into the comparable Rental Unit.

Permanent Relocation Payment

RMC 11.100.050

RMC 11.102.030

Owner Move-In (R.M.C. 11.100.050(a)(6))

Maximum Cap per Unit Type (a) (b)	Base Amount	Qualified Tenant Household Amount (c)
Studio	\$3,400	\$3,950
1 Bedroom	\$5,250	\$6,050
2+ Bedroom	\$7,150	\$8,200

Withdrawal from Rental Market (R.M.C. 11.100.050(a)(7))

Maximum Cap per Unit Type (a) (b)	Base Amount	Qualified Tenant Household Amount (c)
Studio	\$6,850	\$7,850
1 Bedroom	\$10,500	\$12,100
2+ Bedroom	\$14,250	\$16,400

(a) If a Rental Unit is occupied by one Tenant then the entire per unit Relocation Payment shall be paid to the Tenant. If more than one Tenant occupies the Rental Unit, the total amount of the Relocation Payments shall be paid on a pro-rata share to each Eligible Tenant.

(b) The Relocation Payments will be calculated on a per Rental Unit basis, distributed on a per Tenant basis, and includes a maximum cap per Rental Unit.

(c) A "Qualified Tenant Household" is any household that includes at least one Tenant that is a Senior Citizen, Disabled, or has at least one minor dependent child as defined in R.M.C. 11.102.020(a) and (l). Sources: City of Santa Monica, 2016; American Community Survey, 2011-2015 (Table B25064).

Habitability Problems and Lawful Landlord Entry to Make Repairs

Lawful Landlord Entry

Civil Code 1954

- Landlord may only enter for necessary or agreed upon repairs, cleaning to bring the unit back to the same level of cleanliness that existed when the tenant moved in, or to replace any landlord property (stove, refrigerator, etc.)
- Landlord must give the tenant written notice to enter, at least 24 hours prior to entry
- Landlord does not need to provide written or verbal notice to enter in cases of emergency (such as fire, flooding, etc.)
- The tenant cannot demand that they be there when the landlord enters
- Entry must be during “normal business hours”
- Landlord must state the time and date, as well as the purpose of the entry in the written notice
- In Richmond, it is “Just Cause” to evict a tenant who denies a landlord lawful entry, after the tenant has been warned to cease denying lawful access and continues to do so.

Habitability Problems and Lawful Landlord Entry to Make Repairs

24 HOUR
NOTICE TO
ENTER
REQUIRED

If a Tenant informs the Landlord about a habitability problem, the Landlord has an obligation to make the necessary repairs. The Landlord has a right to enter the rental unit to make repairs after giving the Tenant at least 24-hrs written notice.

Abused of the
Right to Enter
Can Lead to
the Rent
Being Frozen

A Landlord may not abuse the right to enter and must follow the specific rules laid out in Civil Code 1954. Abuse of the right to enter can lead to the Landlord being unable to reset the rent to market when the Tenant leaves. The next slide highlights the Landlord's and Tenant's responsibilities under Civil Code 1954.

Tenant need
not be
present for
Landlord to
lawfully enter

A Tenant has a right to be present during the inspection, but Civil Code 1954 does not give a Tenant the right to deny entry because the Tenant is unable to be present at the time of the entry. Denying the Landlord lawful entry because the Tenant can't be there at the time of the entry may give the Landlord the right to evict the Tenant under the Just Cause provisions of the Rent Ordinance.

Habitability Problems and a Landlord's Ability to Raise or Collect Rent

California Law and a Tenant's Right to Withhold Rent Due to Habitability Problems

California Civil Code Section 1942.4 prevents a landlord from demanding rent, collecting rent, issuing a notice of a rent increase, or issuing a 3 day notice to pay rent or quit where all of these four factors exist:

- The Rental unit lacks any habitable characteristic as listed in Civil Code 1941.1, or violates health and safety code 17920.10 (which deals mainly with lead) or is deemed and declared substandard as explained in Health and Safety Code Section 17920.3, because the conditions listed in that section exist to the extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants.
- A Public Officer or employee who is responsible for the enforcement of any housing law (this could include RHA employees who do HQS inspections), after inspecting the Rental Unit, notifies the Landlord or his/her agent in writing to abate the nuisance or repair the substandard condition.
- The condition continues to exist without abatement for 35 days beyond the date of written notice provided by the public officer or employee responsible for enforcing housing laws.
- The complained of condition was not caused by the Tenant.

IMPORTANT NOTE: BEFORE A TENANT WITHHOLDS RENT PURSUANT TO CC 1942.5, THEY SHOULD SEEK THE ADVICE OF AN ATTORNEY OR SPEAK WITH A RENT PROGRAM SERVICES ANALYST ABOUT THE POSSIBLE CONSEQUENCES OF WITHHOLDING RENT, NAMELY THE POSSIBILITY THAT THE LANDLORD MAY ATTEMPT TO EVICT FOR NON-PAYMENT OF RENT.

Habitability Problems May Lead to the Landlord Being Unable to Raise the Rent

A Hearing Examiner may deny a Landlord from taking a future vacancy rent increase if there is evidence that there was intent by the Landlord to force the Tenant by not fixing things

Non-compliance with a Hearing Examiner's order can result in denial of AGA increases

Under Rent Board regulations, if a Tenant moves out of a Controlled Rental Unit due to unabated habitability problems, the Rent Board may consider this a non-voluntary vacancy. If a Tenant leaves as a result of the unabated habitability problems the rent level of the next Tenant remains at the same level that the Tenant who was forced to vacate was paying.

If the Rent Board Hearing Examiner orders a Landlord to make repairs, reduce the rent or refund rent overcharges and the Landlord fails to comply with the Hearing Examiner's decision, the Hearing Examiner may deny Annual General Adjustment Increases until the Landlord comes into compliance

Habitability Problems and Breaking A Lease

Lease Breaking Law

Civil Code 1951.2

If a tenant breaks a lease they are liable for unpaid rent remaining on the lease, but only if:

- The landlord attempts to mitigate unpaid rent damages by making a reasonable effort to re-rent the unit
- In other words, if a tenant breaks a lease, the landlord cannot make the tenant pay for the remaining unpaid rent unless the landlord can show that they made a reasonable effort to re-rent and were still unable to find a replacement/new tenant

Habitability Problems and Breaking a Lease

Significant habitability problems may allow a Tenant to vacate without proper notice

If a Tenant vacates a rental unit due to habitability problems and in doing so breaks their lease, the law may allow them to end their tenancy without giving 30-days written notice. Ultimately, a Tenant's right to vacate without proper notice under state law would be decided in court.

Significant habitability problems may allow a Tenant to break a lease without being liable for unpaid rent remaining on lease

If a Tenant vacates their rental unit due to significant habitability problems, they may be allow them to break the lease without being liable for unpaid rent remaining on the fixed term lease. Ultimately, a Tenant's right to break their lease would be decided in court.

Because each lease breaking situation is different, Tenant's are advised to speak with an attorney prior to taking any action.

Resolving Habitability
Problems
Through Mediation

Mediation As Option to Resolve Habitability Problems

- Either a Landlord or a Tenant may request mediation through the Rent Program to resolve habitability disputes.
- Mediations (informal or formal) can be scheduled within weeks, whereas a rent adjustment petition can take months.
- Mediations are generally less adversarial in nature and participants often improve their relations in the future due to better communication and understanding.

Additional Recommendations

- Tenants should consider getting renters insurance. Generally renters insurance is relatively affordable (around \$10/month) and can protect against personal property damage caused by habitability problems such as mold, water leaks, vermin (rats, bedbugs, etc.)
- Doing a walk-through inspection at the beginning and end of a tenancy (taking photos and or videos to document the condition of the unit) provides documentation regarding the condition of the unit in case there is a dispute over deductions made from the security deposit.

THANK YOU!

This and past presentations can be found at:
RichmondRent.org/workshops

Please call 510-234-RENT (7368) for questions about the Richmond Rent Ordinance. You can also email a Rent Program Services Analyst at:
rent@ci.richmond.ca.us