



HANDLING HABITABILITY PROBLEMS IN RICHMOND (LANDLORD ORIENTED)

CITY OF RICHMOND RENT PROGRAM

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September 15, 2018

Agenda

How Rent Control Works In Richmond

State Laws Governing Habitability: “The Implied Warranty of Habitability”; Landlord Entry; Lease Breaking

Addressing Habitability Problems (Landlord Perspective)

How Habitability Problems Can Impact A Landlords Right To Evict

Habitability Problems Can Lead To A Housing Inspection

Tenants Can Petition 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

Habitability Problems Can Limit A Landlord Ability to Raise the Rent

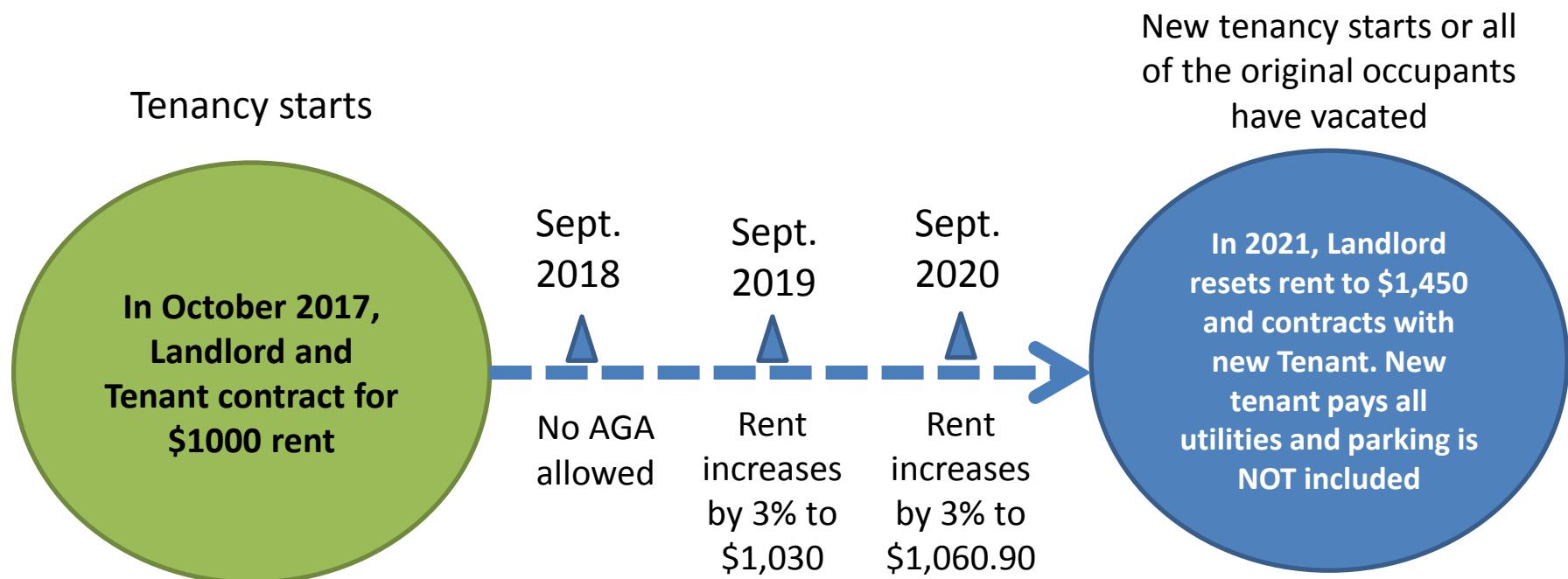
Additional Recommendations for Landlords

**How rent control
and eviction
protections work
in Richmond.**

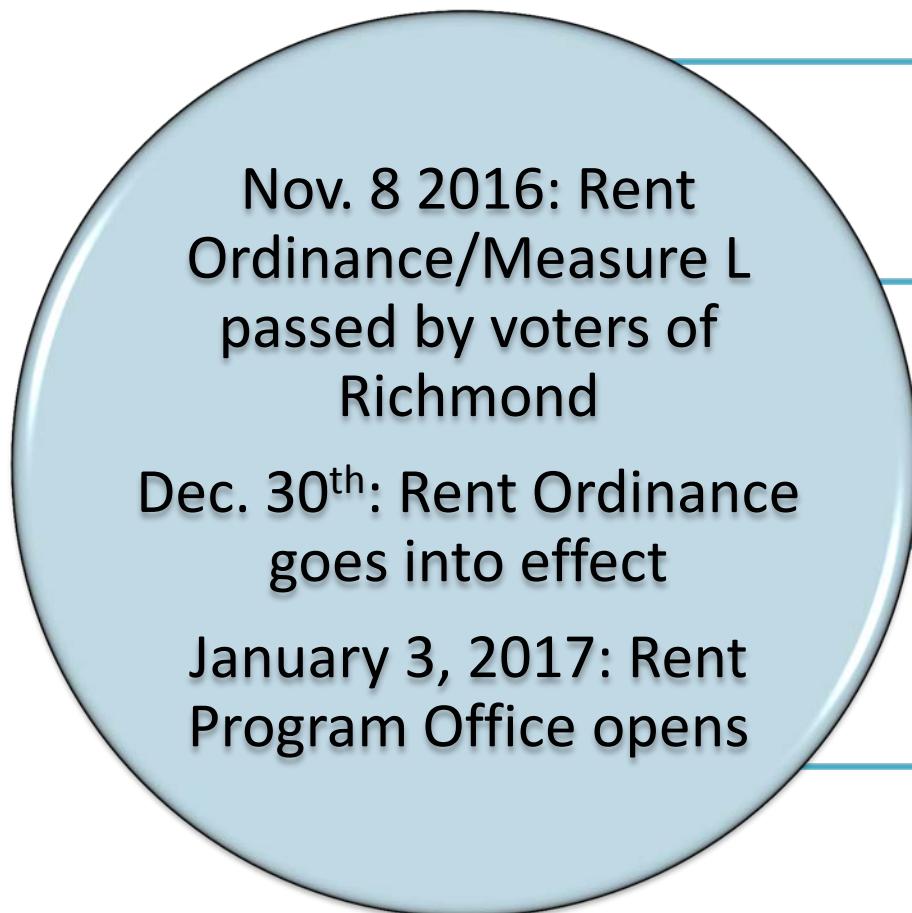
How does rent control work in Richmond?

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



Rent increases are limited to the Annual General Adjustment (100% of the CPI)

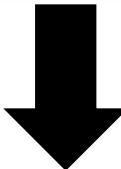
Base rents rolled back to the rent paid by tenant on July 21, 2015

“Just Cause” required to evict

Ordinance Provides for a Rent Adjustment/Fair Return Petition Process

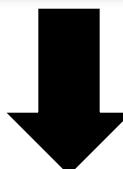
Which properties are covered by the Richmond Rent Ordinance?

Fully covered: Rent Controls and Just Cause Eviction Protections



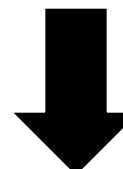
- ✓ Multi-Unit Properties built before Feb. 1 of 1995

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)

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

Can be adjusted downwards if the premises is not maintained in a habitable condition, or if a reduction in space or services occurs.

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”).

Landlords Responsibilities:

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



If a tenant complains about habitability problems....

- Respond in writing (even if you also respond verbally) and schedule repairs as soon as possible. If the repairs are going to be delayed or if they will take some time before the problem can be fixed, consider offering the tenants a rent reduction for the time period the habitability problem was reported and the time it will be corrected.
- Keep good documentation: Take photos or videos of the problem when necessary and keep them for your records

Learn about your rights by contacting a Rent Program Services Analyst

Don't lose sight of the big picture or the long term needs of the property. Taking care of longer term capital improvements and repairs will save you from having to regularly put "band aids" over repair problems, of which in the end may cost you more.

Landlords may request mediation with the Tenant (through the Rent Program) to resolve the problem(s) especially if the issue revolves around negotiating relocation assistance or to negotiate a rent reduction to avoid a rent reduction petition.

Habitability Problems May Lead to A Rent Reduction Hearing



Tenants who are living in substandard conditions or who have experienced a reduction in space, services or habitability can file a petition to reduce the rent as a means to compel repairs. Landlords could be liable to reduce the rent or offer a rent reduction from the time period that they knew about the problem(s) until they are corrected.



After filing a petition, the Rent Board may hold a Hearing where both the Landlord and the Tenant can testify and present evidence to a Hearing Examiner. After the Hearing, the Hearing Examiner will issue a decision either granting or denying the request for a rent reduction/rent refund. Either party may appeal a Hearing Examiners decision. The appeal would be heard by members of the Richmond Rent Board. Either party can subsequently file a writ in superior court to challenge the appeal decision.

Habitability Problems May Lead to A Housing Inspection



Tenants who are living in substandard conditions can request a housing inspection from the City of Richmond. Generally, it takes several weeks for an inspection to take place after being requested by the Tenant.



After a City of Richmond Housing Inspector inspects a rental unit, they can cite the Landlord and require they correct the problem(s) within a certain time period before facing fines.

An inspection report from the City can be used as solid evidence in a Rent Board rent adjustment hearing.

City of Richmond

Rental Inspection Program

Overview of the City of Richmond Rental Inspection Program

- The Rental Inspection Program is overseen administered by both the Planning Department and the Department of Infrastructure, Maintenance and Operations.
- Rental Units are inspected every 3 years.
- Owners of 3 or more rental units conduct self-inspections and “certify” that each of their residential rental units are well-maintained.
- Owner of 1 or 2 rental units are not eligible for self-certification.
- Upon the City's receipt of the signed Self-Certification and payment for the inspection program, the 20% of property owner will receive an inspection notice with the scheduled date and time.
- What happens if violations are noted in the inspection?
 - Owners receive inspection fail notice with time period to correct
 - If upon re-inspection the owner has not complied with the inspection fail notice, the City will initiate enforcement action (assessment of citations, charging re-inspection fees or actual abatement cost fees)
- What happens if violation occur during the 3 year period after self-certification?
 - If violations are found the owner may lose their right to self-certify.

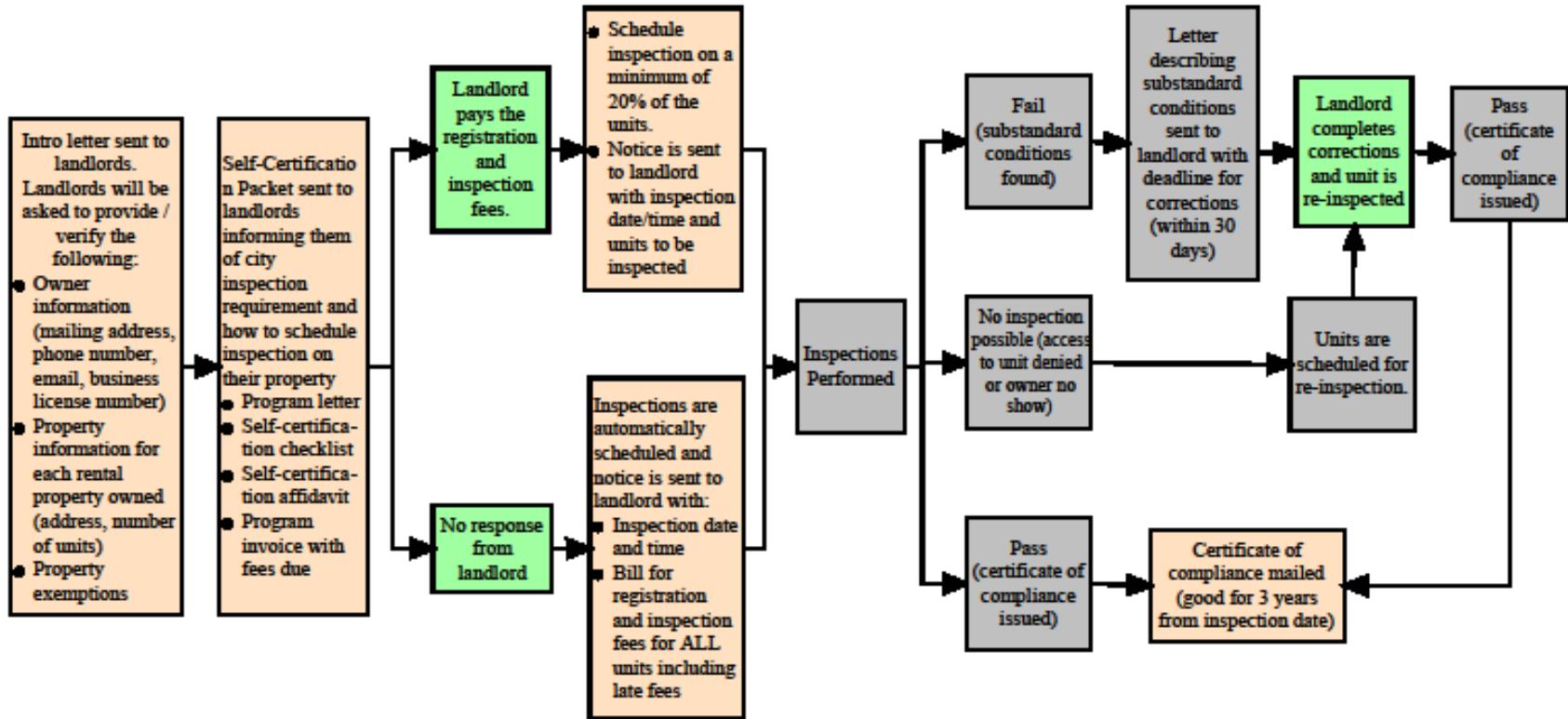
Got questions
about the
Rental
Inspection
Program?

Richmond Rental Inspection Program
PO Box 2089
Richmond, CA 94802-1089

Help Line:
(510) 690-8260
Email:
RichmondRRIP@ci.richmond.ca.us
Fax:
(510) 690-8201



City of Richmond - Rental Inspection



Habitability Problems Caused By the Tenant

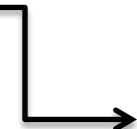


When a Tenant damages their rental unit, the Landlord can hold the tenant liable for the cost of repairs. A Landlord may have good cause to evict if the Tenant refuses to pay for or repair the damage. A warning letter with an opportunity to correct must be served on the Tenant before proceeding with an official termination of tenancy notice.



Even if the Tenant causes the damage, a Landlord is still required under CC 1941.1 and local housing codes to make repairs to the damage.

RENT



A Tenant cannot request a rent reduction for damages that they caused.

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.

Unabated habitability problems can lead to claims of attempted constructive eviction

If a Tenant can demonstrate to the courts a pattern or effort on the part of the Landlord to illegally force a Tenant to move out or “**constructively evict**” due to unabated serious habitability problems, a Landlord could face significant financial liability.

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 Evictions continued.....

Damage caused by the Tenant may lead to a Just Cause for Eviction

Tenants who cause nuisance or damage to a Rental Unit; or who are in violation of their lease agreement due to damage or nuisance, may open themselves up to a Just Cause for Eviction.

Tenants who have caused damage to a Rental Unit; who are causing a nuisance or violating their rental agreement, must be given a **written warning** notice with an opportunity to correct in a reasonable time period

The **written warning** must :

- 1) Inform the Tenant that failure to cure may result in an the initiation of eviction proceedings.
- 2) Inform the Tenant of the right to request a reasonable accommodation.
- 3) Provide the Tenant with the contact number of the Rent Program.
- 4) Include sufficient details allowing a reasonable person to comply.
- 5) Include any information necessary to determine the date, time, place, witnesses present, and other circumstances concerning the reason for the notice.

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

Temporary Relocation Payment (2018)		
Per Diem Description	Amount	Term (a)
Hotel or Motel	\$149	Per day per household
Meal Expenses	\$30	Per day per person
Laundry	\$1	Per day per household
Pet Accommodations	Cat - \$29 Dog - \$52	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)) (2018)

Maximum Cap per Unit Type (a) (b)	Base Amount	Qualified Tenant Household Amount
Studio	\$3,492	\$4,057
1 Bedroom	\$5,392	\$6,213
2+ Bedroom	\$7,343	\$8,421

Withdrawal from Rental Market (R.M.C. 11.100.050(a)(7)) (2018)

Maximum Cap per Unit Type (a) (b)	Base Amount	Qualified Tenant Household Amount (c)
Studio	\$7,035	\$8,062
1 Bedroom	\$10,784	\$12,427
2+ Bedroom	\$14,635	\$16,843

(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 to make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors or to make an inspection pursuant to Section 1950.5 (Security Deposit Law).
- 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.

Abuse 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.

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

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.

Non-compliance with a Hearing Examiners order can result in denial of AGA increases

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 Examiners 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, that may 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 an Option to Resolve Habitability Problems

- Either a Landlord or a Tenant may request mediation through the Rent Program to resolve habitability disputes or negotiate settlements.
- 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.

Recommendations

- Landlords should consider having all new tenants sign a lease that includes a requirement to have 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!

Rent Program Workshop 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