



# HANDLING HABITABILITY PROBLEMS IN RICHMOND



**CITY OF RICHMOND RENT PROGRAM**

**November 14, 2020**

**Presented by:**

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# THE COVID-19 TENANT RELIEF ACT (“CTRA”) OF 2020

- The COVID-19 Tenant Relief Act of 2020 was signed by Governor Newsom on August 31, 2020.
- The Act provides that residential tenants who are unable to pay rent during the COVID-19 emergency cannot be evicted for rents that became due between March 1, 2020, and January 31, 2021, if certain requirements are met.
- The Act’s eviction protections apply only where the evictions are based on nonpayment of rent.

# THE COVID-19 TENANT RELIEF ACT OF 2020

- Under the COVID-19 Tenant Relief Act of 2020, Landlords may not evict Tenants for nonpayment of rent that became due between March 1, 2020, and August 31, 2020, if the Tenant returns a Declaration of COVID-19-related financial distress to the Landlord. Access the Declaration of COVID-19-related financial distress at the following link:  
<https://landlordtenant.dre.ca.gov/tenant/forms.html>
- Furthermore, Landlords may not evict Tenants for nonpayment of rent that became due between September 1, 2020, and January 31, 2021, if the Tenant returns a Declaration of COVID-19-related financial distress to the Landlord AND pay 25% of that rent due by January 31, 2021. Tenants must provide a Declaration for every notice of termination of tenancy for nonpayment of rent that they receive.
- In either case, Tenants have until the expiration of the notice of termination of tenancy for nonpayment of rent, to return the Declaration of COVID-19-related financial distress. In the event that no termination notice is issued or received, tenants are still encouraged to send the Declaration of COVID-19 financial distress for any month they cannot pay the rent in full due to COVID-19 related financial distress.
- Further information on the CTRA is available on our website including forms, a fact sheet (in English and Spanish), and links to the actual law.

# TOPICS COVERED

**Purpose and  
Overview of the  
Richmond Rent  
Ordinance**

**Properties Covered  
Under Rent Control  
and Exempt  
Properties**

**State Law  
Governing  
Habitability**

**Recommended  
Steps and Options**

**Petitioning the Rent  
Board**

**Relocation Payments**

**Habitability  
Problems and  
Evictions**

**Landlord Entry and  
Collecting Rent**

**Breach of Lease and  
Mediation**

# PURPOSE OF THE RENT ORDINANCE

The purpose of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, also known as the Rent Ordinance, is to promote **neighborhood and community stability, healthy housing, and affordability for renters** in the City of Richmond by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring Landlords a fair return.

# OVERVIEW OF THE RICHMOND RENT ORDINANCE (RICHMOND MUNICIPAL CODE 11.100 ET SEQ.)

## Rent Control

Rents are regulated. The Maximum Allowable Rent is calculated by taking the **Base Rent + Annual General Adjustments (cost-of-living increase) + any allowable Individual Rent Adjustment** that is ordered by a Hearing Examiner.

**Annual General Adjustment (AGA):**  
100% of the Consumer Price Index in the Bay Area (inflation rate)

**Petition Process:**  
A mechanism to increase or decrease the MAR based on reasons permitted by the Rent Ordinance

**Base Rent:** the rent in effect as of **July 21, 2015**, or the first rent charged for Tenants that moved in after that date

## Just Cause for Eviction Protections

a Landlord needs to have one of the eight "**Just Causes**" to terminate tenancy

- 1) Failure to Pay Rent
- 2) Breach of Lease
- 3) Nuisance
- 4) Failure to Give Access
- 5) Temporarily Vacate in Order to Undertake Substantial Repairs
- 6) Owner-Move-in/Owner Relative Move-In
- 7) Withdrawal from the Rental Market (Ellis Act)
- 8) Temporary Tenancy

# MAXIMUM ALLOWABLE RENT (“MAR”)

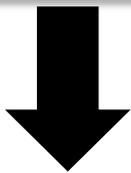
The maximum Rent that can be charged for a **Controlled Rental Unit**

A Rent increase cannot exceed the **Maximum Allowable Rent**, but it can be less. Even if the maximum Rent is not charged, the **Maximum Allowable Rent** remains the same. The Landlord may choose to raise the Rent to the maximum in accordance with state law and the Rent Board’s banking regulation.

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

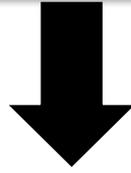
# WHICH PROPERTIES ARE COVERED BY THE RENT ORDINANCE?

**Fully Covered**  
("Controlled Rental Units"): Rent Control and Just Cause for Eviction Protections



- ✓ Multi-Unit Properties built on or before February 1, 1995

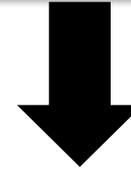
**Partially Covered:**  
Only Just Cause for Eviction Protections (Not Rent-Controlled)



- ✓ Subsidized Units, including Section 8 Tenancies
- ✓ Properties with one dwelling unit on one parcel
- ✓ Condominiums
- ✓ "New Construction" constructed after February 1, 1995\*

\*Costa Hawkins requires units be permitted with a certificate of occupancy (i.e., permits are final and unit is fit for residential habitation).

**Fully Exempt:** No Rent Control and no Just Cause for Eviction Protections



- ✓ Landlord and Tenant share kitchen and/ or bath
- ✓ Single family homes where a permitted ADU was added and the main house is owner-occupied.
- ✓ Retirement Homes

# STATE LAW GOVERNING HABITABILITY

Implied in every California residential lease is an implied warranty of habitability. This law requires that a Landlord provide rental units that meet certain standards for habitability. This law is also known as the Implied Warranty of Habitability. This law has been codified under several statutes but is mainly under California Civil Code 1941.1 and Health and Safety Code 17920.3.

# CALIFORNIA CIVIL CODE 1941.1

Landlords must provide rental units that are in "habitable" condition and fit to live in. A dwelling shall be deemed untenantable for purposes of Section 1941 if it substantially lacks any of the following affirmative standard characteristics:

- ✓ (1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- ✓ (2) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order.
- ✓ (3) A water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.
- ✓ (4) Heating facilities that conformed with applicable law at the time of installation, maintained in good working order.
- ✓ (5) Electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order.
- ✓ (6) Building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
- ✓ (7) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being responsible for the clean condition and good repair of the receptacles under his or her control.
- ✓ (8) Floors, stairways, and railings maintained in good repair.
- ✓ (9) A locking mail receptacle for each residential unit in a residential hotel, as required by Section 17958.3 of the Health and Safety Code. This subdivision shall become operative on July 1, 2008.

# TENANT'S RESPONSIBILITIES:

## CALIFORNIA CIVIL CODE 1941.2

No duty on the part of the landlord to repair a dilapidation shall arise under Section 1941 or 1942 if the tenant is in substantial violation of any of the following affirmative obligations, provided the tenant's violation contributes substantially to the existence of the dilapidation or interferes substantially with the landlord's obligation under Section 1941 to effect the necessary repairs:

- ✓ (1) To keep that part of the premises which he occupies and uses clean and sanitary as the condition of the premises permits.
- ✓ (2) To dispose from his dwelling unit of all rubbish, garbage and other waste, in a clean and sanitary manner.
- ✓ (3) To properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits.
- ✓ (4) Not to permit any person on the premises, with his permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing.
- ✓ (5) To occupy the premises as his abode, utilizing portions thereof for living, sleeping, cooking or dining purposes only which were respectively designed or intended to be used for such occupancies.

\*Note: Paragraphs (1) and (2) of subdivision (a) shall not apply if the landlord has expressly agreed in writing to perform the act or acts mentioned therein.

# RECOMMENDED STEPS FOR ADDRESSING HABITABILITY PROBLEMS



Contact the Rent Program to become informed about your rights under the Richmond Fair Rent, Just Cause For Eviction, Homeowner Protection Ordinance and applicable state law.



Document the problem.

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

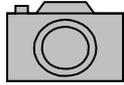


If you as a landlord are nonresponsive to complaints, the tenant may schedule a Housing Inspection with the Richmond Rental Inspection Program. Tenants who reside in subsidized housing, such as Section 8, may contact the Housing Authority to schedule an inspection.



If the property is fully covered under rent control, a tenant also has the option to file a petition for rent reduction. If the property is fully or partially covered, the tenant or landlord have the option to request mediation services. Filing of petition for rent reduction and mediation services are available through the Rent Program.

# TIPS FOR DOCUMENTING HABITABILITY PROBLEMS



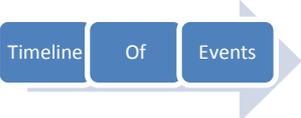
Because tenants are advised to document their habitability complaints, landlords should respond within a reasonable time to determine the situation and what may be required on your part. Attaching photos or videos to the letter or email is an effective way to document the problem. Expect these complaints and communications and keep copies for your own records.



If you are engaged in verbal communication with a tenant, it is recommended that you summarize the conversation in writing to avoid unnecessary disputes or misunderstandings.



If the Landlord is not responsive to legitimate complaints, the tenant may consider documenting the habitability problem through an inspection by the City so that the City can compel the 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 may become part of a court action wherein you would be required to appear before a judge to explain your complaint. 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](mailto:richmondrrip@ci.richmond.ca.us).



Landlords may contact the Richmond Rent Program to speak to a housing counselor and request a referral for an inspection.

**Section 8 Tenancies:** If the landlord wants to request an inspection for a Section 8 tenancy, they can contact the Contra Costa County Housing Authority at (925) 957-7000.



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. As the Owner you may face fees or fines for failure to correct the violations.

# CRITERIA FOR FILING A PETITION TO REDUCE RENT DUE TO HABITABILITY PROBLEMS

Be aware that Tenants who live in fully covered rental units can file a petition for rent reduction if they believe the Landlord is not upholding the promise of implied warranty of habitability. A Tenant can petition to reduce their rent if the following criteria is met:

- The Landlord has been informed about the problems.
- There is a decrease in habitability or a reduction of space or services.
- Tenant resides in a multi-unit property built on or before 1995, which is defined as a fully covered or controlled rental unit under the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance.

# FILING A PETITION MAY LEAD TO A HEARING



After filing a petition for habitability problems, the Landlord and Tenant, or their representatives, are required to attend a hearing, where both parties can present their evidence. Alternatively, the Hearing Examiner may also opt to issue an Administrative Decision if there are no objections by the opposing party.



The 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 several weeks after the hearing is held. Both parties may appeal the Hearing Examiner's decision within 35 days of the date of the decision.

# HABITABILITY PROBLEMS AND RELOCATION PAYMENTS

## Temporary Relocation Payments

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. If the work to the Rental Unit does not get completed within 60 days, and regardless of whether the Tenant received Temporary Relocation Payments or elected not to receive such Payments, the Landlord shall immediately make Rent Differential Payments to the Tenant until the Tenant re-occupies the Rental Unit.

## Permanent Relocation Payments

If the work to the Rental Unit does not get completed within 120 days, the Landlord shall continue to make Rent Differential Payments to the Tenant until the Tenant re-occupies the Rental Unit or finds alternative, permanent housing. If the Tenant finds permanent, alternative housing, the Landlord shall make a Permanent Relocation Payment to the Tenant, in addition to other Relocation Payments or Rent Differential Payments.

# TEMPORARY RELOCATION PAYMENTS

R.M.C. 11.100.050

R.M.C. 11.102.030

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

## 2020 Temporary Relocation Payment Amounts

Per Diem Description	Amount	Term (a)
Hotel or Motel	\$161	Per day per household
Meal Expenses	\$32	Per day per person
Laundry	\$1	Per day per household
Pet Accommodations	Cat - \$31 Dog - \$56	Per day per animal

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. (RMC Section 11.102.030(g))

The Landlord shall immediately make Temporary Relocation Payments to the Tenant . (Relocation Ordinance, Section 11.102.030(a)(1))

## 2020 Permanent Relocation Payment Amounts

Owner Move-In (R.M.C. 11.100.050(a)(6))		
Maximum Cap per Unit Type (a) (b)	Base Amount	Qualified Tenant Household Amount
Studio	\$3,774	\$4,384
1 Bedroom	\$5,826	\$6,713
2+ Bedroom	\$7,934	\$9,100

- (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).

# HABITABILITY PROBLEMS AND EVICTIONS

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

If a Rent Controlled 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. An attempt to evict a Tenant on the basis of the Tenant submitting a request for a housing inspection is generally considered retaliatory and, therefore, unlawful.

Chronological documentation is key

It is important to chronologically document your response and action taken for habitability problems that the tenant notified you about as failure to do so may show a pattern or effort on the part of the Landlord to illegally force a Tenant to move out or “constructively evict” the tenant.

Landlord must be in compliance with the 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.

# **Landlord Entry and Collecting Rent**

# LAWFUL LANDLORD ENTRY

## CIVIL CODE SECTION 1954

### Landlord may enter:

- In case of emergency.
- 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 subdivision (f) of Section 1950.5.
- When the tenant has abandoned or surrendered the premises.
- Pursuant to court order.
- For the purposes set forth in Chapter 2.5 (commencing with Section 1954.201)(To check water submetering)
- To comply with the provisions of Article 2.2 (commencing with Section 17973) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code. (To ensure compliance for patios, balconies, etc.)

# TIPS FOR LAWFUL LANDLORD ENTRY

- Landlords may not enter for general inspections.
- 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 to respond to an emergency (such as fire, flooding, etc.), abandonment or if the tenant is present and consents during entry.
- 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. The next slide highlights the Landlord's and Tenant's responsibilities under Civil Code 1954.

Tenant does  
not need to  
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.

# CALIFORNIA LAW: WITHHOLDING RENT DUE TO HABITABILITY PROBLEMS

California Civil Code Section 1942 allows a tenant to pay for repairs and deduct those expenses from the next month's rent. But there are requirements and restrictions regarding this remedy such as:

1. The tenant must provide oral or written notice of dilapidations rendering the premises untenable which the landlord ought to repair, the landlord neglects to do so;
2. The tenant must provide oral or written notice and wait at least 30 days to determine if the landlord will remedy or repair the problem(s). Shorter wait periods may be warranted depending on the circumstances of the problem(s);
3. The tenant may pay for the repairs and so long as the repairs do not cost more than one month's rent, they may deduct those expenses from the following rent due;
4. The tenant may also choose to vacate the premises without any further obligation to pay rent.
5. Tenants may only use this remedy twice in any 12-month period.

**IMPORTANT NOTE:** If a tenant decides to withhold rent due to this law, landlords are encouraged to seek the advice of an attorney.

# CALIFORNIA LAW: THE LANDLORD'S INABILITY TO COLLECT 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 (now 15-day) notice to pay rent or quit where all of these four factors exist:

1. 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.
2. 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.
3. 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.
4. The complained of condition was not caused by the Tenant.

# 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 problems

Non-compliance with a Hearing Examiner's order can result in denial of future 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.

**Breach of the Lease  
Agreement  
and  
Mediation**

# **LEASE BREAKING LAW: CALIFORNIA CIVIL CODE SECTION 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 any of 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 for every month of rent allegedly owed.

Even if a tenant breaks a lease, a landlord may not charge the tenant for ALL of the rent still due on the contract. For example, if a tenant breaks a lease six months in, a landlord cannot charge the tenant for the remaining six months of rent. A landlord may only charge rent as it becomes due, during which, they must continue to make a reasonable effort to re-rent the unit.

# 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 substantial and ongoing habitability problems, the law may allow them to end their tenancy without giving 30-days written notice. If a tenant vacates the property and is sued by the Landlord for unpaid rent, ultimately a Tenant's right to vacate without providing notice, 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 unit due to significant habitability problems, they may be allowed by law to vacate the unit without being liable for unpaid rent remaining on the fixed term lease. Since the landlord (impliedly) promises to comply with the implied warranty of habitability when they sign a lease agreement, the tenant may argue that the landlord breached the lease agreement by failing to follow the implied warranty of habitability. Ultimately, liability for breaking a lease would be decided in court\*.

**\*Because each lease breaking situation is different, it is recommended that Landlords consult with an attorney prior to taking any action.**

# **MEDIATION: AN OPTION TO RESOLVE HABITABILITY PROBLEMS**

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

# THANK YOU!

**Richmond Rent Program**

**510-234-RENT (7368)**

**[rent@ci.richmond.ca.us](mailto:rent@ci.richmond.ca.us)**

**Or**

**Visit us at:**

**[www.richmondrent.org](http://www.richmondrent.org)**

# **Q&A SESSION**

**If you have a question,  
please type it in the Q&A  
section in Zoom.**