

RENT STABILIZATION BOARD

Rent Stabilization Board

13.76.130

Good cause required for eviction.

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
 - (i) The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy;
 - (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information; and
 - (iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and
 - (iv) The landlord has not articulated in writing a well-founded reason for refusing consent.

3. The tenant has wilfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

7a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good

faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of service of the written notice terminating the tenancy, or at any time thereafter until the earlier of the tenant's vacating the premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating the tenant's tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record. A landlord who endeavors to recover possession under this subsection shall, at the time of giving notice terminating the tenant's tenancy, notify the tenant in writing of the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater and, within ten days of giving notice, file a copy of the notification of such ownership interest with the Rent Board.

d. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that

such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

e. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

f. Where a landlord recovers possession of a unit under Subsection 13.76.130A.9, the landlord is required to provide relocation assistance to any low-income tenants who have resided in the unit for one year or more in the amount of \$4500. For the purposes of this subsection (13.76.130A.9f) "low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5. The procedures for payment of this relocation assistance are set forth below in Subsection 13.76.130A.9n(i) through (iv).

g. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

h. Once a landlord has successfully recovered possession of a rental unit pursuant to this subsection (13.76.130A.9), then no other current or future landlords may recover possession of any other rental unit on the property pursuant to Subsection 13.76.130A.9a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under Subsection 13.76.130A.9a and that once a unit is used for such occupancy, all future occupancies under Subsection 13.76.130A.9a must be of that same unit.

i. A landlord may not recover possession of a unit from a tenant under Section 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more. For the purposes of this subsection (13.76.130A.9i) a person is "disabled" if he/she has a physical or mental impairment that substantially limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12955.3.); or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

j. A tenant who claims to be a member of one of the classes protected by Subsection 13.76.130A.9i must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by Subsection 13.76.130A.9i. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

k. The provisions of Subsection 13.76.130A.9i shall not apply to the following situations:

(i) Where a person is a landlord of three or fewer residential rental units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential rental unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by Subsection 13.76.130A.9i and the landlord's qualified relative who is seeking possession of a unit subject to Subsection 13.76.130A.9b is 60 years of age or older or is disabled as defined in Section 13.76.130A.9i(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by Subsection 13.76.130A.9i, the landlord has owned the unit for which possession is being sought subject to Subsection 13.76.130A.9a for five years or more and is 60 years of age or older or is disabled as defined in Subsection 13.76.130A.9i(ii).

l. The provisions established by Subsection 13.76.130A.9i include, but are not limited to, any rental unit where a notice to vacate/quit has been served as of the date this amendment takes effect but where the rental unit has not yet been vacated or an unlawful detainer judgment has not been issued.

m. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

n. When a landlord is required to provide a relocation assistance payment subject to Subsection 13.76.130A.9f above, the payment shall be divided equally among all low-income tenants occupying the rental unit at the time of service of the notice to terminate tenancy. Only those persons who have a written or oral agreement with the owner for possession of the rental unit or who have paid rent to the landlord shall be deemed low-income tenants for purposes of Subsection 13.76.130A.9f.

(i) In order to claim entitlement to relocation assistance under Subsection 13.76.130A.9f, a tenant must notify the landlord and the City or its designated agent in writing that he/she is claiming "low-income tenant" status within the meaning of Subsection 13.76.130A.9f within 30 days from receipt of the notice of termination of tenancy. The landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for any tenants who claim low-income status within ten days after such notice claiming low-income status is mailed. Thereafter, the City or its designated agent shall distribute amounts held in escrow as follows: 1. If no written challenge is made to the tenant's claim of low-income status within ten days after the notice claiming such status is mailed, the City shall release the relocation assistance to the tenant. 2. If the City receives conflicting information or assertions which indicate that there is a dispute or uncertainty concerning the tenant's qualification or status as low-income, the City shall continue to retain the disputed relocation assistance funds in escrow. The City then shall release the relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant or an order of a court of competent jurisdiction.

(ii) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the low-income tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the low-income tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the low-income tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the low-income tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(iii) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the low-income tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the low-income tenants if the low-income tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the low-income tenants shall be made within ten days of the effective date of this amendment.

(iv) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the low-income tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant

to this subsection (13.76.130.A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the low-income tenants for three times the amount of the payment as well as reasonable attorney fees.

o. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

p. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection within the prior 36 months.

q. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of Subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in Subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under Subsection 13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and/or summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

(Ord. 6833-NS § 6 (part), 2004: Ord. 6602-NS § 1, 2000: Ord. 6007-NS § 1, 1990: Ord. 5467-NS § 13, 1982: Ord. 5261-NS § 13, 1980)

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