

CHAPTER 13. GOOD CAUSE REQUIRED FOR EVICTION

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1300. Obligation to Offer Vacated Unit to Tenants

(A) When the landlord seeks in good faith to recover possession of a rental unit for his or her own use and occupancy as his or her principal residence, or for the use and occupancy as the principal residence of the landlord's child or parent, pursuant to Ordinance 13.a(9) and the person for whose use recovery of the unit is sought already occupies a unit on the same property parcel and said unit will become vacant as a result of the landlord's recovery of possession; the landlord shall accord the tenant(s) who will be displaced by said recovery of possession the right of first refusal to occupy the unit to be vacated by the landlord or the landlord's relative.

(B) Said offer shall be upon substantially the same terms and conditions as the existing rental agreement between the landlord and the tenant(s) and at a rent not in excess of the current lawful rent ceiling for the unit vacated by the landlord or the landlord's relative pursuant to the provisions of the Ordinance and the regulations of the Board.

(C) If the number of persons who may, under applicable state law or local ordinance, lawfully occupy the unit vacated by the landlord or landlord's relative is less than the number of persons currently occupying the unit for which recovery of possession is sought, the landlord may condition the offer of the vacated unit upon the tenant's agreement to reduce the number of occupants to the maximum lawful level. In such circumstances, the determination as to which tenants shall occupy the vacated unit and which shall find other housing shall be made by the tenants themselves. In the event that no agreement can be reached among the tenants, the landlord shall have no obligation to offer the vacated unit to any of the tenants.

[Effective Date: August 24, 1983. Revised 9/6/01 to remove the wording "1301-1309 (Reserved)" from the bottom of the page.]

1301. Determination of the Initial Rent for a Non-Comparable Replacement Unit Required to be Offered to Displaced Tenant Pursuant to Berkeley Municipal Code Section 13.76.130.A.9e.

(A) Purpose: A landlord seeking to recover possession of a rental unit pursuant to Berkeley Municipal Code section 13.76.130.A.9, for use and occupancy by the landlord or the landlord's spouse, child or parent, must offer the tenant occupying that unit ("the occupied unit") any other dwelling unit owned by the landlord in the City of Berkeley that is available for occupancy as a replacement rental unit. The offer must be made when the landlord first becomes aware of the availability of the unit. Unless it has been cited as unsafe for human habitation by a governmental agency, a dwelling unit is available for occupancy as a replacement unit if it is not the subject of a rental agreement at the time the tenant is served with notice terminating the tenant's tenancy or at any time thereafter until the earlier of the tenant's surrender of possession of the premises or entry of a final judgment awarding possession of the premises to the landlord. The initial rent for the replacement unit shall be based on the current rent of the occupied unit with an adjustment based on differences in the replacement unit's condition, size, services, location, and other amenities.

(B) Procedure: Parties may agree on an initial rent for the replacement unit. If they do not agree, either party may file a petition requesting that the Rent Board determine the initial rent for the replacement unit. The petition shall be on a form approved by the Rent Board and shall be accompanied by (1) a completed Unit Comparison form on which the petitioner shall provide all requested information regarding the condition, size, services location and other amenities of both the occupied unit and the replacement unit and (2) any supporting evidence. The petition must be accompanied by proof that it has been served on the opposing party.

Upon receipt of the petition, the Rent Board shall send a blank Unit Comparison form to the opposing party who shall complete the form and file it with the Rent Board, along with any supporting evidence, within 10 days of the date it was mailed, which shall be clearly stated on an accompanying proof of service. A hearing shall be held on the petition in accordance with Regulation 1221 no later than 15 days from the date that the respondent's completed Unit Comparison form was filed with the Rent Board. The parties may present or may be required by the hearing examiner to provide evidence concerning the value differential of the condition, size, services, location, and other amenities of the two units. The proceedings under this regulation shall be conducted according to all provisions of Chapter 12, Subchapter B, not in conflict with a provision of this regulation.

(C) Standards: The initial rent for the replacement unit shall be the same rental rate per square foot as the rental rate of the occupied unit, with appropriate adjustments based on the fair and reasonable value of the differences, if any, in condition, size, services, location, and other amenities of the two units.

(D) Decision: Within 10 days following the close of the record, the hearing examiner shall issue a written decision containing findings of fact that specify and ascribe a value for each of the differences between the two units and determine the initial rent for the replacement unit. Notice of the hearing examiner's decision shall be mailed to all parties. The notice shall also state that any party aggrieved by the decision may appeal the decision to the full Rent Board by filing an appeal within 10 days of the date the decision was mailed. The last date for filing an appeal shall be clearly stated on the notice. Any appeal shall be given precedence over other pending appeals and shall be heard and decided as expeditiously as possible.

[Effective Date: September 6, 2001; amended subsection (A) on June 20, 2005 to change the term "*rental unit*" to "*dwelling unit*" add the second sentence and add from Unless..... to.....agency, to the third sentence.]

1302 – 1309 (RESERVED)

1310. All Evictions: Specificity of Good Cause in Notice and Complaint

(A) The specific good cause and every element of that good cause as set forth in Section 13(A)(1) through (10) shall be stated in writing as part of the notice of termination or the notice to quit to the tenant.

(B) The notice of termination or notice to quit upon which an unlawful detainer or other possessory action is based shall be attached as an exhibit to the complaint filed in such action.

(C) A landlord's failure to specify good cause and every element of that good cause as set forth in Section 13(A)(1) through (10) of the Ordinance 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 this Ordinance.

[Effective Date of Subsections (A) and (B): November 26, 1980; of Subsection (C): March 25, 1981; of Subsection (D): May 11, 2001; December 6, 2004 eliminated (D)]

[Original policy of subsections (A) and (B) adopted August 20, 1980, amended by rule adopted November 26, 1980]

1311. Alleging Compliance in Complaint

- (A) In any action to recover possession of a rental unit covered by the Ordinance, except an action to recover possession under subsections 13(a)(7) and 13(a)(8), a landlord shall allege in the complaint for possession substantial compliance with the implied warranty of habitability and compliance with Section 10 (Rent Ceiling) of the Ordinance for the rental unit which is the subject of the action to recover possession, and a landlord shall allege in the complaint for possession compliance with Section 8 (Rent Registration) of the Ordinance for all rental units in the property which contains the rental unit which is the subject of the action to recover possession.
- (B) For purposes of this regulation, a landlord shall not be in compliance with Section 8 (Rent Registration) of the Ordinance until they have filed all registration statements as articulated in Regulation 801 including all Vacancy Registration Forms for fully controlled units and Registration Statements and Tenant Registration Forms for Partially Covered Units for all current tenancies.
- (C) A landlord's failure to comply with the requirements of this regulation shall be a defense to any action for possession of a rental unit covered by the Ordinance.

[Effective Date: May 13, 1981; Amended 1-20-22 to clarify that a landlord's failure to file registration statements shall be a defense to any action for possession]

1312. Filing of Notices and Complaints with Rent Board

(A) Pursuant to Ordinance section 13(d), landlords must file with the Board a copy of any notice of termination, notice to quit, and/or summons and complaint, within ten (10) days after the tenant has been served with such notice or summons and complaint. The purpose of this requirement is to provide the Board with information from which it may, among other things: (1) ensure compliance with the "good cause" provisions of Section 13(b) of the Ordinance; (2) determine what type of units are being removed from the rental housing stock, e.g., single family homes, condominiums, multi-unit buildings; (3) determine the reasons units are being removed from the rental market, e.g., owner occupancy, Ellis eviction, conversion to condominium, rehabilitation.

(B) A landlord's failure to file any notice of termination, notice to quit, and/or summons and complaint as set forth in Section 13(d) of the Ordinance shall be a defense to any action for possession of a rental unit covered by this Ordinance.

[Effective April 21, 1995]

1313 Evictions under Berkeley Municipal Code Section 13.76.130A.2.

(A) Background and Purpose. The Board seeks to clarify its long-standing policy that landlords may not evict tenants if they fail to adhere to a landlord's unilateral changes in terms of tenancy. While all unilateral changes in terms of tenancy are prohibited, this Regulation makes clear that landlords are not allowed to evict tenants for refusing to agree to or abide by a new prohibition on smoking in the rental unit imposed by the landlord pursuant to California Civil Code Section 1947.5 for tenancies that began prior to January 1, 2012.

(B) Prohibition on imposition of unilateral changes in terms of tenancy. A landlord may not unilaterally change the terms of tenancy under Civil Code Section 827 and then evict the tenant for violation of the changed term unless the tenant has expressly agreed to it. An express agreement must be in writing, signed by both parties, and the tenant must have knowingly consented to the change.

[Adopted on December 20, 2011.]

1314 – 1379 (RESERVED)

1380. Evictions for Occupancy by Landlord or Relative

(A) The landlord shall specifically identify in writing in the notice of termination and in the complaint for unlawful detainer the name(s) and relationship(s) to the landlord of all individual(s) for whom the landlord seeks to recover possession of the property for occupancy as a principal residence. Failure to comply with this requirement shall constitute a defense to the eviction action and shall render the notice of termination legally invalid.

(B) Inclusion of the name(s) and relationship(s) of the person(s) for whom the landlord seeks to recover possession in the notice of termination and the complaint for possession shall be one element to be considered in the determination of whether or not the good faith requirement of Section 13(a)(9) has been met.

(C) If the individual(s), named in the notice of termination, for whom possession was recovered under Section 13(a)(9) occupies the rental unit as his/her/their principal place of residence for a period of less than thirty-six (36) consecutive months following the date that the tenant vacated the unit, there shall be a rebuttable presumption that the eviction was not in good faith.

(D) The requirement that the landlord 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 is an essential element of an eviction for occupancy by the landlord or landlord's relative. A landlord's failure to offer an available non-comparable unit or a landlord's deliberately causing an otherwise available unit to be unfit for human habitation shall each constitute a defense to the eviction action. (This subparagraph is a clarification of existing law and does not constitute a change in the law.)

[Original policy adopted November 20, 1980, amended by rule adopted November 26, 1980, amended September 23, 1998 and October 22, 1999.]

[Reference: See also Ordinance Section 15(b) regarding good/bad faith of landlord.]
Amended September 8, 2005 [changing Subsection (C) twenty four (24) to thirty six (36) consecutive months and adding Subsection (D)].

1381. Evictions for Occupancy by Landlord, Lessor, or Relative: Definition of Principal Residence

Regulation 503 shall apply to define principal residence for purposes of Ordinance Sections 13(a)(9) and 13(a)(10).

[Effective Date: November 26, 1980][Corrected 4/02: clerical error only changing “Regulation 550” to “503”]

Regulation 1382. Ownership Interests in Property

- A. A married couple who together hold at least a recorded 50% ownership interest in a property, as community property or otherwise, satisfies the ownership requirement of Sections 13.76.050.H and 13.76.130.A9 of the Rent Ordinance.
- B. An unmarried couple in a registered domestic partnership, who together hold at least a 50% recorded interest in a property, satisfies the ownership requirement of Sections 13.76.050.H and 13.76.130.A9 of the Rent Ordinance.
- C. Other than as set forth in Paragraphs (A) and (B), ownership interests in property may not be combined to satisfy the 50% ownership requirement of Sections 13.76.050.H and 13.76.130.A9 of the Rent Ordinance.

[Effective date: December 14, 2000]

1383. Owner Move-In and Ellis Act Relocation Assistance Disputes. (B.M.C. 13.76.130.A.9 and 13.77.055)

A) Scope and Purpose

Berkeley Municipal Code subsections 13.76.130.A.9(p)(iii) (Owner Move-In evictions) and 13.77.055.D.2 (Ellis Act evictions) provide that in the event of a dispute over a tenant's eligibility for relocation assistance, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. This Regulation sets forth the procedures and grounds for a Rent Board petition to determine a tenant's eligibility for relocation assistance and/or seeking release of disputed funds.

In the event that both a Rent Board petition and a claim in a court of competent jurisdiction (lawsuit) are filed regarding the same disputed funds, the Rent Board will proceed only on petitions served *before* service of the lawsuit for release of funds. Petitions served *after* the service of any lawsuit for release of funds will be dismissed without prejudice. In the event that the date of service of the lawsuit is unclear or unavailable to the hearing examiner, the filing dates for the respective proceedings may be used in lieu of the dates of service. An unlawful detainer action shall not stay the Rent Board petition, because state law prohibits the plaintiff in that type of action from recovering disputed relocation funds without filing a separate lawsuit.

Except as provided herein, proceedings on petitions filed under this section shall be taken according to all provisions of Chapter 12, Subchapter B.

(B) Standard Relocation Assistance Disputes.

As provided in subsections 13.76.130.A.9(p)(i) and 13.77.055.D.2, a landlord alleging that the tenant is not eligible for the standard relocation assistance must notify the Rent Board in writing that he/she disputes the tenant's eligibility before the funds are released to the tenant. The sole ground for dispute of release of standard relocation assistance is the duration of the tenancy. A tenant who has not resided in the unit for at least one year as of the expiration date of the Notice Terminating Tenancy is not eligible for the standard relocation assistance.

(C) Additional Relocation Assistance Disputes

As provided in subsections 13.76.130.A.9(p)(ii) and 13.77.055.D, a tenant who is eligible for additional relocation assistance must notify the landlord and the Rent Board in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 within 30 days of receipt of the notice of termination of tenancy. A landlord may dispute a tenant's eligibility for additional relocation assistance. In the event that the landlord disputes the tenant's eligibility or fails to deposit additional relocation funds after notice of a tenant's eligibility, either party may file a petition seeking that the Rent Board determine the tenant's eligibility and/or release the funds.

The grounds for claiming eligibility for additional relocation assistance and for filing a tenant petition for release of disputed additional relocation assistance funds are as follows:

(1) The tenant's household 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;

(2) The tenant is disabled, meaning that he or she has a physical or mental impairment than limits one or more of his or her major life activities within the meaning of the California Fair Housing and Employment Act (Government Code Section 12926);

(3) The tenant will be sixty years of age or older at the time of the expiration of the notice of termination of tenancy;

(4) The tenant household includes a minor child under the age of 18 years of age at the time of the expiration of the notice of termination of tenancy; or

(5) The tenancy began prior to January 1, 1999;

A landlord may file a petition for release of disputed additional relocation assistance funds by alleging that the applicable tenant eligibility claim, as stated above, is false.

(D) Petitions; Notice.

Where a landlord disputes the eligibility of a tenant for relocation assistance either party may petition for release of the funds from escrow. Petitions filed under this section shall be expedited so that a hearing on the petition is held within 30 days of filing and a decision rendered within 30 days of the hearing. The parties shall be given at least 15 days' notice of the hearing.

(E) Evidence in support of petition.

Evidence that a tenant is or is not eligible for additional relocation assistance includes, but is not limited to, documentation of the following:

(1) Receipt of means-tested government benefits such as CalFresh, Medi-Cal, Supplemental Security Income; documentation of actual income, such as W-2 forms, appropriately redacted tax returns, and/or Social Security payments;

(2) Correspondence from a medical provider, documentation of receipt of disability-related benefits such as Supplemental Security Income, Social Security Disability Insurance, and/or department of motor vehicles records;

(3) Birth certificates, passports, and/or Department of Motor Vehicles records;

(4) School registration paperwork, medical records, caregiver's affidavits, and/or guardianship paperwork;

(5) The original lease agreement and any relevant addenda; correspondence between the parties and/or previous landlords; and/or other circumstantial evidence showing when a tenancy began.

[Adopted April 24, 2017]

1384 – 1399 (RESERVED)