

CHAPTER 15. REMEDIES

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1501 - 1509. Procedures Applicable to Rent Withholding Proceedings.

1501. Petitions for Rent Withholding

(A) Any tenant seeking Board authorization for rent withholding pursuant to Section 15.a(1) of the Rent Stabilization Ordinance shall file a petition on a form provided by the Board. A petition alleging that a landlord has failed to register a rental unit covered by the Ordinance shall include a brief explanation of the basis for the petition including a statement why the rental unit does not qualify for an exemption from the Ordinance that is claimed by the landlord. Proof that the petition has been served on the landlord shall be submitted with the petition. No fee shall be charged for the filing of a petition for rent withholding.

(B) A copy of any rent withholding petition alleging failure to register a covered rental unit shall be referred to the Board's administrative staff who shall thereafter investigate the basis for the petition and prepare a report stating the findings of the investigation. Such investigation may include inspection of the property, investigation of public records and any other reasonable means of ascertaining the status of the property.

(C) A hearing on the petition shall be held before a hearing examiner.

[Effective Date: 12/10/80; Amended 6/10/81; Amended 4/10/98]

1502. Parties. The parties to a proceeding on a rent withholding petition that alleges a failure to register a non-exempt rental unit shall be the petitioner, the tenants of any unit affected by the petition, the landlord and the Rent Board as represented by administrative staff. The parties to a proceeding on a petition that alleges only rent ceiling violations shall be the petitioner and the landlord.

1503. Notice of Hearing

(A) Notice of the time, date and place of the hearing shall be mailed to all parties at least 10 days before the scheduled date of the hearing. The hearing on the petition shall be held no later than 45 days after the receipt of the petition, except pursuant to Section 1505.

(B) No later than five days prior to the date of the hearing, staff shall mail to the parties a summary of the findings of the Board investigation regarding the petition and include, when appropriate, a description of the actions the landlord must take to register and the penalties for continued non-compliance.

[Effective Date: 12/10/80 (formerly numbered 1504); Amended and Recodified: 6/10/81:
Amended 4/10/98]

1504. Consolidation

The Board may consolidate the petitions filed by tenant(s) occupying the same building or buildings owned by the same landlord for the hearing.

[Effective Date: 12/10/80 (formerly number 1505; Recodified: 6/10/81)]

1505. Continuances

The Board, on its own motion, or upon written request from any of the parties, may for good cause continue the date of the hearing for a reasonable time, not to exceed 45 days. Any request for a continuance shall comply with Regulation 1224, the terms of which are incorporated herein. All parties shall be notified of the continued hearing date. The parties may also file a written stipulation continuing the date of the hearing after confirming an alternative date acceptable to the Board.

[Effective Date: 12/10/80 (formerly numbered 1506); Recodified 6/10/81; Amended 4/10/98]

1506. Hearing Procedure

Proceedings on rent withholding petitions shall be conducted according to all provisions of Chapter 12, Subchapter B, not in conflict with a provision of this chapter.

[Effective Date: 4/10/98]

1507. (RESERVED)

1508. Board Action in lieu of Tenant Petition

The Board, in lieu of a tenant petition pursuant to Section 1501, may initiate the rent withholding authorization process pursuant to this subchapter or may continue with a proceeding initiated by a tenant even if the petitioner requests dismissal of the petition, fails to appear at the hearing or otherwise fails to prosecute the petition.

[Effective Date: 12/10/80 (formerly numbered 1513); Recodified 6/10/81; Amended 4/10/98]

1509 - 1526. (RESERVED)

1527 – 1531. Failure to Register.

1527. Failing to Register

In determining whether a unit(s) is(are) registered for the purposes of this regulation, the Board shall apply the criteria for substantial compliance specified in Regulation 801(G).

[Revised in entirety effective 3/3/86]

1528. Compliance with Registration Requirements Before Hearing

If the Board determines that the landlord has registered the subject unit before the hearing, the petition shall be dismissed and all parties notified of the dismissal.

[Effective Date: 12/10/80 (formerly numbered 1507); recodified: 6/10/81]

1529. Decision

(A) Following the conclusion of the hearing, the hearing examiner shall issue a written decision containing findings of fact and legal conclusions. If the hearing examiner determines that the landlord has willfully and knowingly failed to register the subject unit, the hearing examiner shall issue an order directing the landlord to register the subject unit and authorizing the petitioning tenant(s) to withhold payment of rent beginning with the next regularly scheduled rent payment after the effective date of the order, until such time as all covered units on the property are registered. Any rent withheld pursuant to this section shall be paid into escrow pursuant to Regulation 1532.

(B) The rent withholding order shall become effective 35 days following the date on which it is mailed to the parties by the Board unless, within that time, the landlord registers the property or an appeal of the hearing examiner=s decision is filed. The filing of an appeal stays the effectiveness of the rent withholding order.

(C) Notice of the hearing examiner=s decision and order, shall be sent to all parties. The notice shall also state that any party aggrieved by the decision and order may appeal the decision to the full Rent Board by filing an appeal within 35 days of the date the decision was mailed. The provisions of Regulation 1242 shall apply to all appeals.

[Effective Date: 12/10/80 (formerly numbered 1510; Recodified: 6/10/81; latest revisions adopted 7/13/83; amended 4/10/98]

1530. Compliance after Hearing

Upon registration of the subject unit(s), the hearing examiner shall issue a decision finding the landlord in compliance, dissolving the rent withholding order and ordering that monies held in escrow be disbursed according to the schedule set out in Regulation 1531. The hearing examiner=s decision shall become effective ten days after mailing unless a compliance hearing is requested (see Regulation 1250) within that time. Unless a compliance hearing is timely requested, the tenant(s) shall resume regular rent payments beginning with the next regularly scheduled rent payment due after the effective date of the hearing examiner=s compliance decision. In addition, the tenant shall, within ten days of notification by the Board, pay to the landlord rent withheld that was not paid into escrow.

[Effective Date: 12/10/80 (formerly number 1511); Amended and Recodified: 6/10/81;
Amended 4/10/98]

1531. Right to Retain Withheld Rent

If the landlord fails to register on or before the effective date of the order, the tenant(s) may retain rent withheld pursuant to this subchapter according to the following subsections:

(A) If the landlord registers within 60 days of the effective date of the rent withholding order, the tenant(s) may keep 50% of the rent withheld pursuant to the order.

(B) If the landlord has not registered within 60 days of the effective date of the rent withholding order, the tenant(s) may keep all of the rent withheld pursuant to the order to the date on which the landlord registers.

[Effective Date: 12/10/80 (formerly numbered 1512; Recodified: 6/10/81; latest revisions adopted 7/13/83]

1532. Establishment of Escrow Accounts in Rent Withholding Matters

Whenever the withholding of rent is authorized pursuant to Regulation 1529, the Hearing Examiner shall order that all withheld rent be paid into an escrow account maintained by the Board pending the landlord's compliance. The requirement that withheld rent be paid into escrow shall in no event be construed as a determination that the amount of rent demanded or charged by the landlord is lawful. Following the landlord's compliance, the Hearing Examiner shall determine what, if any, portion of the withheld rent is due and owing the landlord and shall order that the monies held in escrow be distributed accordingly. If the landlord has not registered within sixty (60) days of the effective date of the rent withholding order, the Hearing Examiner shall order that the funds held in escrow be disbursed to the tenant and that the tenant is authorized to continue to withhold rent until the landlord completes registration. In the event of an appeal of a decision to withhold rent, the provisions of Regulations 1252 and 1253 shall apply.

[Effective 4/10/98]

1533 - 1542 (RESERVED)

1543 – 1546. Violations of Rent Ceilings.

1543. Rent Ceiling Violations

A landlord is deemed to violate the rent ceiling if the landlord, on or after June 29, 1980, demands, accepts, receives or retains payment in excess of the maximum allowable rent permitted by the Rent Stabilization Board Ordinance and Regulations.

[Effective Date: 6/10/81]

1544. Effect on Rent Adjustment Petitions

The filing or pendency of a petition for rent withholding for rent ceiling violations may be good cause for an extension of time for decision on a rent adjustment petition, pursuant to Section 1243, pending disposition of the rent withholding petition.

[Effective Date: 6/10/81]

1545. Decision

(A) Findings. Within a reasonable time after the hearing, the hearing examiner shall issue a written decision that includes the following findings for each unit involved in the petition:

- (1) Base Rent Ceiling, pursuant to Section 10(a) of the Ordinance, or the lawful initial rent established pursuant to Regulation 1013;
- (2) the maximum lawful rent on the date the petition was filed; and
- (3) the amount of rent illegally demanded and retained, if any.

(B) Authorization of Rent Withholding. If the hearing examiner determines that the landlord is in violation of the rent ceilings, the hearing examiner shall authorize the petitioning tenant(s) to withhold payment of all or a portion of the rent, beginning with the next regularly scheduled rent payment after the date of the order. Such authorization shall remain in effect until such time as the landlord ceases to demand, receive, or accept rent in excess of the maximum lawful rent ceiling, and the tenant has recovered all rent payments made by the tenant which have been illegally retained by the landlord.

(C) Refund Order. If the Board determines that the landlord is in violation of the rent ceilings, the Board shall also order the landlord:

- (1) to cease demanding, accepting or receiving rent in excess of the maximum lawful rent;
- (2) to refund to the tenant(s) of the affected unit that portion of the rent payments made by such tenant(s) which have been illegally retained by the landlord; and
- (3) to make reasonable efforts to find any former tenant(s) from whom illegal rent payments were retained by the landlord and refund such overcharges, and to notify the Board in writing of the nature, extent and result of these efforts within 60 days of the overcharge refund order. If the landlord does not refund any past overcharges retained from such former tenant(s) within 60 days, or has made reasonable but unsuccessful efforts to locate such former tenant(s), then the landlord shall be ordered to pay the overcharge over an appropriate period of time to a Housing Assistance Fund, which shall be used to benefit low and moderate income tenants in the City of Berkeley.

(D) Notice. Notice of the hearing examiner's decision and order shall be sent to all parties.

[As amended 4/10/98]

1546. Standards for Determining Lawful Rent Ceilings and Refund Orders

(A) Violation of Base Rent Ceiling. If the lawful base rent ceiling is in dispute, it shall be computed in accordance with Section 10 of the Ordinance (B.M.C. Sec.13.76.100). If the lawful base rent ceiling is determined to be less than the rent actually charged by the landlord on May 31, 1980 (or on the date set forth in Section 10 of the Ordinance (B.M.C. Sec. 13.76.100) for the determination of lawful base rent ceilings) as a result of the landlord's violations of Measure I or Ordinance No. 5212-N.S., the lawful rent ceiling for each year since the enactment of the Ordinance shall be computed by taking the lawful base rent ceiling for the unit and adjusting it by the amount of any Annual General Adjustment for which the landlord was otherwise eligible.

(B) Rent Ceiling Violation Resulting from Collection of Excess Rent. If the landlord establishes that the collection of rent in excess of the lawful rent ceiling resulted from a good faith error by the landlord, the lawful rent ceilings shall be calculated to include any Annual General Adjustments for which the landlord would have been otherwise eligible if the landlord had not charged excess rent. A landlord who asserts that his/her violation of the lawful rent ceiling resulted from a good faith error shall have the burden of proof as to this issue.

(C) Rent Ceiling Violations Resulting from Non-Registration. If the landlord establishes that the failure to register his or her property with the Board resulted from a good faith error by the landlord, the lawful rent ceilings shall be calculated to include any Annual General Adjustments for which the landlord would have been otherwise eligible if the landlord has timely registered his or her property. The landlord who asserts that his/her non-registration resulted from a good faith error shall have the burden of proof as to this issue.

(D) This regulation shall apply to all petitions administratively pending or filed after the effective date of the regulation.

[Revised Regulation 1546 effective July 5, 1991]

1547 - 1555 (RESERVED)

1556. Tenant Rent Withholding Without Board Authorization

The remedy of rent withholding provided to tenants under Section 15(a)(2) of the Ordinance shall not be construed to relieve the tenants of the obligation to pay whatever rent is subsequently deemed lawfully owed for the time period for which the rent was withheld.

[Effective Date: 9/24/80 (formerly numbered 1550); Recodified: 6/10/81; Amended Title 4/10/98]

1557 - 1565 (RESERVED)

1566. Remedies for Violation of Eviction Procedures - Good Faith of Landlord

Regulation 1380(B) and (C) shall apply to interpret the good faith of the landlord for purposes of Ordinance Section 15(b).

[Effective Date: 3/25/81 (formerly numbered 1560); Recodified: 6/10/81; Amended Title 4/10/98]

1567 - 1599 (RESERVED)