

Four Ways San Francisco Landlords Take Advantage of Tenants

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Every few days, new court decisions affecting California attorney conduct are filed. We summarize these cases on the *What's New* page at www.fishkinlaw.com

Lindsay Slatter was on the team of attorneys that established the civil liability of a government entity whose police officer raped an arrestee, *Mary M. v City of Los Angeles* (1991) 54 Cal 3rd 202. Jerome Fishkin argued the successful quantum meruit case to the California Supreme Court, *Huskinson v Wolf* (2004) 32 Cal 4th 453. Together they represented Sergio Garcia, the first undocumented immigrant to be admitted to practice law, in *Re Garcia* (2014) 58 Cal 4th 440.

Housing is a basic human need. The housing crisis in San Francisco has created significant tension as home values skyrocket while the demand for housing continues unabated. To remedy past transgressions, San Francisco enacted Rent Control which limits the annual rental increase along with restricting the grounds for an eviction. Most properties constructed before 1979 have some form of protection. However, as the rental market becomes ever more competitive, the temptations for San Francisco landlords to evict long-term tenants to raise rents and maximize profits is at an all-time high. The numbers support this trend. In 2018, the San Francisco median income was \$118,400 for a family of four.¹ Individuals with an income between \$44,400 and \$88,750 qualify for affordable housing units in San Francisco. Yet, the median asking rent in San Francisco for a 2-bedroom is now \$4,680 a month, which at \$56,160 per year is far beyond the means of the average San Francisco resident.² Against this backdrop of astronomical rental rates, incidents of landlords going to extreme lengths to force out rent-controlled tenants are becoming unfortunately common. It is important that tenants know their rights and be aware of these various tactics so that they do not become victims of unscrupulous landlords.

San Francisco enacted rent control to address the shortage of decent, safe and sanitary housing. “The [San Francisco Rent] Ordinance addresses these problems by, among other things, imposing rent increase limitations for tenants in occupancy (§ 37.3)³ and limiting the grounds pursuant to which a landlord may lawfully recover or endeavor to recover possession of a residential rental unit from a tenant. (§ 37.9.)” The ordinance is also designed to encourage tenants to enforce the law by providing for attorney’s fees, costs and certain penalties when the law is violated. In a market that is constantly squeezing low-rent tenants, the enforcement of these laws is extremely important. This is especially true where the Rent Ordinance permits market rate rent increases whenever a rental unit becomes vacant.

Given the strong economic incentives to evict long term tenants, the statutory scheme places various limitations on a landlord’s ability to terminate a tenancy, including the requirement that the termination be in “good faith” or in the absence of “bad faith.” These good faith requirements are crucial to ensuring that landlords do not evict tenants to undermine rent control protections.⁴ Unfortunately, there are many bad actor landlords who are driven more by greed than a concern for the health, safety, and rights of tenants in San Francisco. The following are four ways that landlords wrongfully evict their tenants.

Illegal and Unpermitted Units

Landlords regularly build and rent additional dwelling units in any space they can without following building or housing codes. Many times landlords use unlicensed contractors to do the work. These units are often dangerous, unhealthy, and have significant defects.

These illegal units range from converted garages and attics to in-law units of various sizes. Common characteristics

of these units are:

- No separate address or mail box
- Shared PGE/water/trash/ utility bills
- No heat or no control over thermostat
- Low ceiling height
- Lack windows in bedrooms/common areas
- Entrance to unit is from the garage
- No secondary exit from unit
- No kitchen or kitchenette only

The result of renting illegal units is that landlords make money by renting unsafe and unregulated living spaces. However, tenants who rent these unpermitted units often face significant health risks. Additionally, since these units are illegal and therefore should not be rented out, these tenants can be displaced at any time due to a building inspection citation or if the landlord decides to demolish the unit. Tenants evicted from an illegal unit are then left to find new homes in today’s brutal housing market.

Fortunately, tenants have rights even if the units are illegal. The San Francisco Rent Ordinance applies equally to legal and illegal units as long as the basic eligibility criteria are met. Thus, a tenant in an illegal unit is still entitled to just cause eviction protections and rent control.

Fraudulent Owner Move-In Eviction

In San Francisco, landlords can legally evict their tenants if they want to move into units they own. This is called an Owner Move-In Eviction or OMI for short. SFRO Section 37.9(a)(8) provides that a landlord may recover possession of a rental unit if he or she “seeks to recover possession in good faith, without ulterior reasons and with honest intent; For the landlords use or occupancy as his or her principal residence for a period of at least 36 continuous months.” To effectuate an OMI a landlord must follow a specific set of procedures that includes 60-days’ notice to the tenant, the payment of relocation benefits based on the number of tenants in the unit, and compliance with certain restrictions placed on the property for a period of three years after the termination of the tenancy. Nevertheless, landlords have found new loopholes in the law to take advantage of this “no fault” recovery of possession to evict lower paying tenants. A recent NBC Bay Area investigation found that landlords frequently abuse the owner move in eviction provision.⁵

Landlords often go to great lengths to give the appearance that evictions are legitimate. For example, landlords deed a 25% ownership interest in the property (the minimum required) to family, friends, and acquaintances to remove a tenant without themselves having to move. When unscrupulous landlords cannot get someone else to move in



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for them, they use deception to give the impression that they occupy the premises. For instance, a landlord will maintain a primary residence elsewhere (whether in San Francisco or in another city) while moving in some personal items or changing the address on some bills and mail to the tenant's former unit making it difficult to know where the landlord actually lives and whether he is truly living in the tenant's former unit. A landlord may also attempt to leave a unit vacant for several months with the goal that their former tenant will move on and forget about their former unit.

Additionally, landlords may time an OMI eviction so that they do not have to offer another unit to their tenants. The timing of an OMI is critical because if another unit becomes vacant and available during the 60-day notice period, landlords must either rescind the eviction notice and move in to the vacant unit themselves, or (if it is a non-comparable unit) offer that unit to the tenant. Timing an eviction to avoid it coinciding with another vacancy is evidence of bad faith, but it can be difficult to discover or prove without the time and resources that an attorney can dedicate to investigating a case. The underlying issue is that these techniques are counter to the purpose and spirit of the rent ordinance, which is to limit the instances where a rent-controlled tenant may be evicted.

Fraudulent Relative Move-in Evictions

Similar to the OMI, a relative move-in eviction or RMI

allows a landlord to recover possession of a rent controlled unit "For the use or occupancy of the landlords [relative] as their principal place of residency for a period of at least 36 months, in the same building in which the landlord resides as his or her principal place of residency." (Section 37.9(a) (8). This provision provides new opportunities for landlords to get creative with their evictions by utilizing their family members as tenants.

Here, unscrupulous landlords will either conspire with a relative or simply use a relative's name to effectuate the RMI. For instance, relatives may never move in or move in temporarily while maintaining their primary residences with no intention of staying for 36 continuous months. In one case, a landlord named his elderly mother as the tenant that was moving in, when in reality the elderly mother was permanently living in a long-term care facility. Another scenario is where family members conduct simultaneous OMI and RMI evictions into separate units in the same building, claiming that they will be living there long term.

Often the RMI violation is much simpler for instance where a landlord emails or texts her tenant saying that a relative will be moving back to the city and the tenant will have to move. These evictions are not accompanied by any formal paperwork or relocation benefits but can be very effective, precisely because the tenant does not become aware of her many rights under the rent ordinance. Many tenants, without researching their rights or questioning the truth of their landlords' statements will simply move out of their rent-controlled units. The landlords will then turn around and

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re-rent the units at market rate without any record of the eviction or restrictions on the use of the property going forward.

Tenant Harassment and Intimidation

Another way landlords attempt to pressure tenants to leave is through harassment of the tenant or neglect of the unit. SFRO 37.10B also known as San Francisco Proposition M is the tenant harassment provision of the rent ordinance, and is intended to protect tenants from harassment by landlords. Prop M prohibits a landlord from engaging certain acts in bad faith. This provision covers a broad range of prohibited activities that a landlord may not engage in. Among the most common offenders are landlords who refuse to make critical repairs to rental units including water leaks and mold outbreaks, serious vermin infestations, or broken doors and windows. In many cases, the lack of repairs is accompanied by threats or demands that tenants move out if they don't like the conditions. It is a question of fact whether a landlord's actions rise to the level of bad faith and whether they violate the rent ordinance. Thorough investigations of the circumstances, including an inspection of the unit itself and a review of the communications between the landlord and tenant are necessary to establish whether a violation has occurred. Tenants often downplay the difficulties they face in order to avoid uncomfortable confrontations, but they end up losing their units and are often forced into homelessness or to leave San Francisco in search of more affordable housing.

Conclusion

Landlords often flaunt the law to turn a quick profit at the expense of long-term tenants that rely on rent-controlled units to be able to remain in San Francisco. Tenants should know their rights and contact an attorney if they believe their landlord has violated the law. ¹¹

End Notes

1 https://sfmohcd.org/sites/default/files/Documents/MOH/Asset%20Management/2018%20AMI-IncomeLimits-HMFA_04-06-18.pdf

2 <https://wolfstreet.com/2018/06/29/us-cities-with-biggest-rent-increases-declines/>

3 *Baba v. Board of Supervisors* (2004) 124 Cal.App.4th 504, 509.

4 *Rental Housing Ass'n of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 759.

5 <https://www.nbcbayarea.com/news/local/Despite-Numerous-Potentially-Wrongful-Owner-Move-In-Evictions-San-Francisco-Fails-to-Prosecute-a-Single-Landlord-over-Past-Decade-412948583.html>

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