

Federal Courts Determine That Rent Control Ordinance Applies to Eviction of Section 8 Tenants!
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In an important decision that has crucial implications for landlords in jurisdictions with rent control, the Ninth Circuit Court of Appeals recently determined that local rent control ordinances are not preempted by HUD's "Section 8" program. In *Barrientos v. 1801-1825 Morton LLC*, a landlord evicted tenants who were Section 8 recipients because he desired to raise rents to market rates.¹ However, the landlord's units were subject to Los Angeles' rent control provisions (known as the "Los Angeles Rent Stabilization Ordinance" or "LARSO"²), and the Ninth Circuit ruled that the provisions of LARSO prohibited such evictions. This ruling serves as a warning to landlords in rent control jurisdictions because it recognizes that local rent control provisions may be applied separately from Federal housing policies, such as HUD's Section 8 program.

HUD's Section 8 program provides rent subsidies for low and moderate income families. Although it is a Federal program overseen by HUD, it is administered locally through public housing authorities. A landlord who participates in the Section 8 program enters into a lease agreement with tenants, but also contracts with the local public housing authority that administers the Section 8 program. Among other things, the contract prohibits the landlord from terminating the tenancy except for serious or repeated violations of the terms and conditions of the lease agreement; for violation of Federal, State, or local laws; or for other "good cause." Among the matters constituting "good cause" are business or economic reasons for terminating a tenancy, including the landlord's desire to lease the unit at a higher rent.³

In the *Barrientos* case, because the property in question was located in the City of Los Angeles, the City's rent control ordinance (LARSO) applied to the landlord's units. While LARSO does *not* apply to public housing, it *does* apply to rental units *where rental assistance is paid pursuant to the Section 8 program*. LARSO restricts possible grounds for eviction to thirteen enumerated reasons, including breaking material terms of the lease, damage to the property, criminal activity, placement of a family member in the unit, or major renovation. *Desire to raise the rent to market rate is not a cause for eviction under LARSO*.

In 2006, the landlord in *Barrientos* served numerous Section 8 tenants with a "Notice of Withdrawal from Section 8 Assisted Housing Program and Notice of Change in Terms of Your Tenancy," informing them of his desire to withdraw from the Section 8 program. The tenants filed a lawsuit in Federal court and obtained an injunction to preventing the landlord from evicting them. The landlord appealed to the Ninth Circuit Court of Appeals.

¹ *Barrientos v. 1801-1825 Morton LLC* (9th Cir. October 9, 2009) Case No. 07-56697.

² Los Angeles Municipal Code § 151.01

³ 24 CFR § 982.310(d)(1)(iv). PLEASE PUT THIS AT THE BOTTOM OF ARTICLE B4 BYLINE

On appeal, the landlord's main argument was that the provisions of the Section 8 program "preempt" local rent control restrictions, such as LARSO. In general, preemption occurs when the laws of a higher level of government authority conflict with or override those of lower-level governments – for example, Federal laws may preempt the laws of the states, and state laws may preempt those of cities or counties. However, in *Barrientos*, the Ninth Circuit found the LARSO was *not* preempted by the Section 8 law, even though Section 8 provisions are enacted by the Federal government and LARSO is merely a city ordinance. The Court reached this decision by finding that Section 8 Program rules and regulations govern separate issues than those addressed by LARSO and similar local rent control regulations and, thus, Section 8 does not override or "preempt" such local rent control provisions.

Additionally, the Court pointed to the interplay between Section 8 provisions and local ordinances, noting that Section 8 contracts between landlords and public housing authorities require the landlord to comply with local laws, and require the landlords to utilize state and local eviction procedures, in addition to Federal law requirements. In evictions, what constitutes "good cause" is defined by those state and local laws, not Federal law. Eviction of a Section 8 tenant for business or economic reasons is not prohibited under Section 8 provisions, but state and local rules nevertheless apply even if the result would be to bar such evictions.

This case has important implications for landlords in Los Angeles and other rent control jurisdictions. Most landlords believe that they are able to "opt out" of the Section 8 program at any time after their lease has terminated. ***However, a landlord must still comply with rent control ordinances that address evictions prior to evicting any tenants on Section 8.*** Being a participant of the Section 8 program does not exempt one from rent control laws.

Another important concern landlords should be aware of is the issue of attorneys' fees in this case. The tenants won all attorneys' fees because the lease agreement between the landlord and tenants contained two attorneys' fees provisions. One must understand that contractual attorneys' fee clauses typically go both ways – if the landlord wins, he or she may receive attorneys' fees but if a tenant wins, he or she has the right to receive them.

Although this case addressed the City of Los Angeles' Rent Stabilization Ordinance, the reasoning would apply to other jurisdictions with rent control ordinances that require landlords to have specific reasons for evictions. However, a landlord is still able to evict a tenant participating in the Section 8 program for any reason allowed for in the ordinance similar to any other tenant. Consequently, landlords where there are rent control ordinances addressing evictions who participate in the Section 8 program or desire to participate in the Program should be aware that they cannot later evict a tenant on the Program simply because they desire to raise the rent on the unit.

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