

Changes in Oakland Rent Control? **by Greg McConnell**

Landlord Alert

Watch For Changes in Oakland Rent Control

It is never easy to be a landlord in a city with rent control. It is especially hard when the economy goes down and regulation goes up. That is where we are right now. Rent control advocates are trying to change Oakland's rent control laws. This includes efforts to eliminate debt service, limit rent increases, extend the amortization period for capital improvements, and promote rent rollbacks.

With the city facing extreme budget problems that threaten reductions in virtually every service that it provides to its citizens, one would think that city leaders would not want to depress rents and reduce income that it receives from business investments. However, in recent months, we have seen the rent board respond to tenant pressure and attempt to do just that either with recommendations to the city council to change the laws or by "reinterpreting" the law in mysterious ways.

Debt Service

The Oakland Tenants Union wants to gut the debt service regulation. To them, debt service increases are proof that rent control is not aggressive enough in protecting tenants. The reality is to the contrary – when debt service rent increases are high it is because existing rents are too low.

Take a look at the regulation and the truth becomes apparent. Debt service ensures that owners "break even" so that 95% of their costs are covered by the income from the property. The formula is simple; it compares income to routine housing service costs which typically consist of taxes, utilities, insurance, 8% of income assigned to general maintenance, and 95% of the cost of monthly principal and interest payments. If income comes up short, owners are allowed a rent increase.

The stated purpose of the regulation is to ensure that owners are encouraged to invest in Oakland rental housing. If income does not support costs, they will not. So while activists grumble about the regulation, in reality it ensures that there will be investors who will maintain Oakland's housing stock.

The McConnell Group (TMG) expects that the Rent Board will ask the City Council to amend the regulation. Probably, it will recommend that the regulation provide for use of an imputed "standard loan calculation" based upon a 30 year fully amortized loan and interest payments that are in a range 7.2%. The may also ask for a phase in of rent increases of somewhere between 5 and 15% per year.

The problem we have with this recommendation is that many owners are not able to get these so called standard loans. If the rent board uses an imputed loan that does not correspond to actual costs, owners will suffer losses and the goal of encouraging investment will not be met.

We will fight major changes to the regulation. Maybe it makes some sense to protect truly vulnerable low income seniors from sudden rent increases, but what about others. Should tenants who can pay fair market rents be subsidized by owners? No way!

If tenants want to change the regulation to protect the needy then those who can afford to pay fair rents should take up the slack . . . which brings us to the next point.

Means Testing

The basic premise of rent control is that it protects low income tenants. If it did that and only that maybe owners would not be so opposed to rent control. But there is righteous outrage when rent control subsidizes high wage earners at the expense of property owners.

Our clients would probably be receptive to working with struggling tenants if others who can and should pay fair rents were not the beneficiaries of strong rent control rules.

TMG proposes means testing. No rent control protection for people who earn sufficient income to pay fair market rent. The major objection that we get to this idea from rent regulators is that it is difficult to administer means testing. To which we say “Nonsense.” It is as simple as requiring tenants to assert that they are low income and make them prove their wages. This is done all the time in thousands of different programs.

The truth is that tenants don't want means testing because it will end the charade that rent control helps the needy and prove that too many of the beneficiaries are really just greedy.

Capital Improvements

Capital Improvement increases under the law are pretty cut and dry. You take the cost of the work, divide it by sixty months and spread it out over all the units in the building (for building wide improvement) or apply it to the units that are affected. The rules have not changed, yet, but the process has become more difficult.

In a recent case the tenants attempted to argue that the amortization period (sixty months) is too short. The argument was rejected because the rent board found that “*there were no special circumstances to extend the period.*” Translation, even here where the law is clear and the amortization period is precisely stated, the rent board will reserve the right to interpret the law to extend the period in future cases.

We predict some owner will go to the rent board without professional representation and the board will “interpret” the law against them and try to create new precedent that could affect all owners.

Rent Rollbacks

In recent cases Hearing Officers have strictly applied the rent roll back provisions to allow tenants to challenge past rent increases where the owners did not give the required

Notice of the Rent Adjustment Program. This has resulted in rent rollbacks and refunds in the tens of thousands of dollars. The worst cases occur when new owners buy properties and don't have proof of past rent increase notices.

These problems can easily be addressed and we encourage new owners to contact us for strategies to resolve rent history problems **before** you attempt to raise rents and run the risk of major rent rollbacks.

News From the McConnell Group

Expansion of Consulting Services - The McConnell Group has been very active in Oakland rent control lately. We have increased our consulting staff and now we are again in a position to actively consult and advise Oakland Landlords on ways to add value to your holdings and reduce your risks. Feel free to give us a call at (510) 834-0400. Ask for Gregory, JR or Kimberley McConnell.

The McConnell Group is Oakland's premier consulting and advocacy firm. We represent the business community on a variety of issues that address the many facets of doing business in Oakland.

On rent control, we are considered the best. We are the ones who brought you the Costa Hawkins state wide preemption of strict rent control. For more than twenty years we have represented thousands of owners of rent controlled properties throughout the state, and we enjoy the highest reputation in the city when it comes to dealing with the Rent Adjustment Program, the Rent Board and the City Council.

Our services also include consultation on other regulatory issues that range from land use and building permit issues to condominium conversions. The McConnell Group is positioned to guide you through Oakland's regulatory programs to reach the best possible result. For more information, please see www.themcconnellgroup.com