

SPOSFI Member Wins a \$2,000 Monthly Rent Increase in Rent Control Abuse Case

By Andrew Solow

An 84-year-old retired member of Small Property Owners of San Francisco Institute (SPOSFI) whose rent-controlled apartment was generating nearly \$2,000 per month less than market rent became suspicious that her tenant was living elsewhere, and hired our firm to investigate. Our initial inquiries revealed that the tenant (“Tenant”) owned a condo in Florida, and also:

- Claimed a homeowner’s exemption for this property
- Obtained a Florida driver’s license, registered a motor vehicle, and registered to vote at his Florida address
- Twice swore under penalty of perjury that he would occupy his Florida condo as his principal and primary residence in order to obtain first and second mortgages with owner-occupied loan rates
- Identified himself with a Florida driver’s license when he signed the loan papers for his second mortgage in San Francisco

How the Rent Board Determines That a Tenant Occupies a Rental Unit as a Principal Place of Residence

- Are the subject premises listed as the individual’s place of residence on any motor vehicle registration, driver’s license, or voter registration document, or with any other public agency, including federal, state, and local taxing authorities?
- Are utilities billed to and paid by the individual at the subject premises?
- Have all of the individual’s personal possessions been moved into the subject premises?
- Has a homeowner’s tax exemption for the individual been filed for a different property?
- Are the subject premises the place the individual normally returns to as his/her home, exclusive of reasonable temporary periods of absence; and/or
- Is there credible testimony or other credible evidence that the tenant actually occupies the rental unit as his principal place of residence?

What the San Francisco Rent Ordinance Says

Rules and Regulations Section 1.21 of the San Francisco Rent Ordinance allows a landlord to impose an unlimited rent increase when a rental unit has no tenant in occupancy – i.e. a person who occupies the rental unit as his or her principal place of residence. The tenant need not be physically present in the unit at all times or continuously, but the unit must be the tenant’s usual place of return.

In response to the landlord’s petition for a \$2,000 per month rent increase:

- Tenant, a former bank vice-president, claimed that he was told by his loan officer that it was okay to promise to occupy his Florida condo as his principal and primary residence because it was his second home. Tenant’s claim was adjudged “not credible.”
- Tenant claimed that he received no financial benefit from claiming a homeowner’s exemption for his Florida condo. When we submitted evidence that Tenant had received a \$903 exemption benefit during the previous 24 months, he attempted to rewrite history by refunding the money to his Florida county assessor.
- Though fluent in four languages, Tenant claimed that when he cancelled his San Francisco voter registration, he actually believed that he had filled out a change of address form. We submitted blank voter registration cancellation and change of address forms as rebuttal

evidence. The two forms were so dissimilar that Tenant's claim was adjudged "not credible."

- Tenant claimed that because his Florida condo had been rendered uninhabitable by a hurricane, it could not be his principal place of residence, and that his rent-controlled San Francisco apartment was his usual place of return.
- Tenant further claimed that he had contracted for \$70,000 worth of repairs for his Florida condo. We determined that he had failed to obtain a building permit, and he was subsequently fined.

Although we were unable to determine precisely where Tenant had been living for the 12 months preceding our client's petition, Tenant's own evidence established that he had spent 212 of those 365 days in Florida.

The administrative law judge found that Tenant's rent-controlled apartment was not his principal place of residence. Landlord's petition for a \$2,000 per month rent increase was granted retroactively and Tenant subsequently vacated the premises.

Andrew Solow is VP of Gladding & Michel, Inc., Investigative Offices, Tel: (415) 722-3047, www.gladding-michel.com. Landlord's attorney: Law Offices of Brenda Cruz Keith, Tel: (415) 626-6494.

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