

SANTA MONICA RENT CONTROL BOARD – MEMO

TO: Board Commissioners

FROM: Legal Staff

BOARD MEETING: January 13, 2011

RE: Proposed Regulation 8066 – Time of Decision for Excess Rent Complaints

INTRODUCTION

Staff is recommending that the Board adopt the attached proposed Regulation 8066, which provides for final action on excess rent complaints within 120 days of the filing of the complaint. The proposed regulation reflects the Board's current policy and practice, and complies with a court order that the Board adopt a regulation to comply with Charter Amendment section 1809(b)(1), which requires that the rules and regulations governing excess rent complaints provide for final Board action within 120 days after the excess rent complaint has been filed.

Charter Amendment section 1809(b) requires the Board to establish hearing procedures for excess rent complaints. The Chapter 8 regulations provide detailed procedures governing excess rent complaints. The regulations do not, however, contain a specific regulation that provides for final Board action within 120 days. Staff is mindful of the 120-day provision in section 1809(b)(1), and endeavors to resolve excess rent complaints within that time period whenever possible.

The procedures in Chapter 8 provide alternative means of resolving excess rent complaints prior to a full administrative hearing. The pre-hearing procedures are designed to expeditiously resolve excess rent complaints, in furtherance of the purposes of the Rent Control Law. They encourage early and efficient resolution by allowing landlords to comply before a hearing is set to avoid the necessity of the hearing and assessment of interest and possibly penalties on the excess rent amount. The procedures in Chapter 8 also encourage pre-hearing settlement by providing a voluntary settlement conference with the Board's mediator. These procedures have been very successful in disposing of two-thirds of the excess rent complaints filed from 2007 through 2009. But these procedures can also extend the time it takes for some complaints to resolve.

The Rent Control Law provides no consequences to either party if an excess rent complaint is decided or otherwise disposed of after expiration of the

120-day period. Under settled case law, where a statute provides no consequences for exceeding the time limit, the courts have found such provisions to be directory rather than mandatory.¹ No purpose would be served if tenants' rights to recover excess rent were cut off after 120 days where the law is designed to benefit tenants who have legitimate excess rent claims. If either party objects to a delay in the Board rendering a final decision on a complaint beyond 120 days, they may seek an order from the superior court mandating that the Board take final action.² In most cases that have taken longer than 120 days to resolve the parties agreed to continue the proceedings, or there was otherwise good cause for the delay.

In a recent superior court case, in which a landlord appealed the Board's excess rent decision against her, the landlord raised the issue that the Board had not enacted a regulation consistent with section 1809(b)(1) and sought a writ ordering the Board to do so. The judge granted the writ. The judge also upheld the interpretation that the 120-day provision is directory, not mandatory. Thus, in order to comply, the Board must enact such a regulation, although the court may not interfere with the Board's discretion in determining the content of the regulation.

RECOMMENDATION

Staff recommends that the Board adopt the proposed regulation after the public hearing.

Attachments: Proposed Regulation 8066.

¹ *Edwards v. Steele* (1979) 25 Cal. 3d 406.

² Where the Rent Control Law intends that a deadline is mandatory, it is expressly stated. For example, section 1801(c)(7) requires that if an application for exemption is not acted on within 90 days it is deemed approved. Section 1809(b)(1) does not contain similar consequences.

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ADDITIONAL DISCUSSION

This supplemental staff report is provided in response to the letter dated January 10, 2011 submitted by James L. Jacobson opposing the language in proposed regulation 8066 and suggesting instead that the Board use language from regulation 4039, which governs the time for decision in rent increase proceedings.

The court order requiring the Board to adopt rules and regulations providing for final Board action on any complaint for excess rent within 120 days does not limit or control the Board's discretion in determining the proper language for the regulation in accomplishing that purpose. The proposed language recognizes that the Board is obligated to provide a final decision on excess rent complaints within 120 days of filing, and allows extensions only for good cause or as otherwise agreed by the parties.

The Court did not order that the Board strike or modify other regulations which Mr. Jacobson characterizes as giving the Board's staff "unfettered discretion to 'deem' the complaints filed and take an unlimited amount of time to take 'final action' in excess rent cases." The Judgment states, "The Court finds that for purposes of determining the 120-day period, the 'date of filing' of an excess rent complaint shall be the initial date that complainant submits to Respondent a complaint for excess rent." To comply with the court order a complaint will be considered filed when it is submitted and the procedures for determining whether a prima facie showing have been satisfied will take place after the complaint is filed. The court did not order that the Board make changes to regulations other than that which is presented in the form of proposed regulation 8066.

RECOMMENDATION

Staff continues to recommend that the Board adopt the proposed regulation after the public hearing.

Regulation 8066 Time of Decision

Pursuant to section 1809(b)(1), the Board will take final action on any complaint for excess rent within one-hundred and twenty (120) days following the date of filing of the complaint unless good cause is shown or the parties otherwise agree. This regulation is declarative of existing law and practice and does not impose any new requirements or rights, or limit any existing requirements or rights under the Rent Control Law.