

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: December 20, 2017

Final Decision Date Deadline: December 20, 2017

**STATEMENT OF THE ISSUE:** At their meeting on November 15, 2017, the Rent Board considered adoption of Regulation 17-08, but expressed concerns about (1) the definition of “a reasonable period of time” for a Tenant to cure a breach of the lease or abate a nuisance; (2) whether the proposed regulation gave too much discretion to a Landlord concerning termination of tenancy for “criminal activity” and (3) if the Regulation adequately protected victims of certain crimes. In response to these concerns, staff members have prepared a revised regulation for the Board’s consideration.

## INDICATE APPROPRIATE BODY

- |   |   |  |  |   |
|---|---|--|--|---|
| <input type="checkbox"/> City Council               | <input type="checkbox"/> Redevelopment Agency                             | <input type="checkbox"/> Housing Authority     | <input type="checkbox"/> Surplus Property Authority          | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> |   |

## ITEM

- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- Public Hearing                       Regulation                       Other:
- Contract/Agreement                       Rent Board As Whole
- Grant Application/Acceptance                       Claims Filed Against City of Richmond
- Resolution                       Video/PowerPoint Presentation (contact KCRT @ 620.6759)

**RECOMMENDED ACTION:** ADOPT Regulation 17-08, regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance – Rent Program (Michael Roush 621-1202).

AGENDA ITEM NO:

**H-1.**

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# AGENDA REPORT

**DATE:** December 20, 2017

**TO:** Chair Gray and Members of the Rent Board

**FROM:** Michael Roush, Legal Counsel

**SUBJECT:** REGULATION REGARDING WRITTEN WARNING NOTICES REGARDING TERMINATION OF TENANCY FOR BREACH OF LEASE OR NUISANCE

## STATEMENT OF THE ISSUE:

At their meeting on November 15, 2017, the Rent Board considered adoption of Regulation 17-08, but expressed concerns about (1) the definition of "a reasonable period of time" for a Tenant to cure a breach of the lease or abate a nuisance; (2) whether the proposed regulation gave too much discretion to a Landlord concerning termination of tenancy for "criminal activity" and (3) if the Regulation adequately protected victims of certain crimes. In response to these concerns, staff members have prepared a revised regulation for the Board's consideration.

## RECOMMENDED ACTION:

ADOPT Regulation 17-08, regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance (Michael Roush 621-1202).

## FISCAL IMPACT:

There is no fiscal impact to the Rent Program by adopting this Regulation. The staff time to administer this part of the Ordinance is already part of the Board's adopted budget.

## DISCUSSION:

The Board previously considered Regulation 17-08 at its October 18, 2017, and November 15, 2017, meetings. The Board indicated at its November meeting that staff had addressed most of the concerns expressed at the October meeting, but important questions remained. Each of these questions is listed below, with a response from staff.

1. What constitutes a "reasonable time period" to cure a breach of the lease or abate a nuisance?

One concern raised by the Board was the amount of time given to a Tenant to cure a breach of a lease or abate a nuisance before a Landlord could serve a notice to terminate a tenancy in light of the requirement of the Fair Rent Ordinance that the landlord must serve the written notice to cease "within a reasonable time period" prior to serving a notice to terminate the tenancy. Staff recommended that "a reasonable time period" mean not less than three business

days. Some Boardmembers expressed the view that three business days was not long enough. For the following reasons, staff continues to recommend that no less than three business days is a “reasonable time period” for a Tenant, typically, to cure the breach or abate the nuisance.

First, the written notice itself must include sufficient details of the alleged breach or nuisance such that a reasonable person understands what must be done in order to cure the breach or abate the nuisance. In addition, the written notice is to include any information necessary for the Tenant to determine the date, time place, witnesses present and other circumstances concerning the reason for the notice.

Second, the Regulation provides if the breach or nuisance is one that it is not reasonable to cure the breach or abate the nuisance within three business days, then the Tenant must have taken steps to cure the breach or abate the nuisance within the three business days and thereafter diligently pursue the cure/abatement. While it is true that the initial decision whether (a) the breach or nuisance is one that can be cured/abated within three business days, (b) the Tenant has taken steps within the three business days to cure/abate and/or (c) the Tenant is diligently pursuing the cure/abatement rests initially with the Landlord, ultimately, those issues would be decided by the trial court should the Landlord pursue an unlawful detainer. Presumably a landlord would undertake the time and expense of an eviction on these grounds only if the issues allowing an eviction weighed heavily in the Landlord’s favor. Thus, it is not likely that Landlords will act rashly where in fact a reasonable person would recognize that more than three business days are required to cure a breach or abate a particular nuisance.

Third, even after serving the written notice to cease as required by the Fair Rent Ordinance, state law requires an additional three day notice to cure or quit before the landlord may initiate legal action to terminate the tenancy before filing an unlawful detainer action. For example, see Code of Civil Procedure, section 1161.3 [A tenant is guilty of unlawful detainer who continues in possession after a failure to perform a condition of a lease following three days’ notice requiring the performance of such condition.] Accordingly, by State law, a Tenant will have additional time in which to cure a breach or abate a nuisance before the Landlord may pursue the matter in court.

Fourth, although the unlawful detainer process is intended to be and, at times, can be an expedited process, a savvy Tenant or a Tenant with experienced legal counsel can draw out the process for weeks, if not months. For example, once an unlawful detainer complaint is filed in Superior Court, it must be served on the Tenant, usually by personal service, although “substituted service” may suffice if efforts at personal service are not successful. Therefore, a Tenant could be served the same day as the complaint is filed or service might not have happen for days or weeks. Once a Tenant is served, the Tenant has five days to file “responsive pleadings”. Responsive pleadings, however, could contend if the complaint fails to state a cause of action (called a “demurrer”) on grounds, for example, that the Landlord has failed to follow precisely the noticing requirements under State law, the Fair Rent Ordinance or Rent Board Regulations. Demurrers are heard by noticed motions and typically are set at least 30 days out. Once a Tenant files an “answer” to the complaint, the Landlord may set the matter for trial and unlawful detainer matters are to be given a preference on the court’s calendar. There are also ways to delay this process; for example, by the use of discovery, such as serving written interrogatories, or taking the deposition of a landlord or property manager, any one of which procedures would delay the court hearing on the merits of the complaint. Of course, a Tenant whose primary language is not English or who does not have legal representation could be at a decided disadvantage. Staff notes, however, that the Rent Board has allocated

\$150,000 in this year's budget for the express purpose of providing legal assistance to community members with rent-related issues.

The unlawful detainer and eviction process due to a breach of lease or creating nuisance is summarized is outlined in Attachment 1.

2. What information must a landlord know before initiating an eviction based on criminal activity and would such eviction apply to all tenants in the unit who had not engaged in such activity?

A second concern raised by Boardmembers at the November 15, 2017, meeting concerned the provisions surrounding the termination of a tenancy for engaging in criminal activity. Specifically, Boardmembers took issue with the fact the Regulation would not require a landlord to provide a written warning to cease before initiating eviction proceedings in such a case. The proposed regulation, as written, seemed to suggest that a Landlord did not need to comply with State law procedures before initiating a termination of tenancy. Second, the language was not sufficiently specific as to what the landlord must know before proceeding without the written warning notice. Third, the Board was concerned that if there were more than one Tenant in the rental unit and not all Tenants had engaged in criminal activity, the Landlord could seek eviction of all Tenants. Finally, along those same lines, the Board had concerns that if a person in a household, such as a minor, engaged in criminal activity, this would potentially be grounds to evict all members of the household.

To address these concerns, staff has revised the language of Section 3 (a) so that in order to avoid the written notice to cease based on criminal activity, (1) the Landlord must still comply with State law procedures before initiating a termination of tenancy, (2) the Landlord has reported the activity to law enforcement, (3) law enforcement has investigated the activity, and (4) law enforcement has advised the Landlord there is probable cause that the Tenant has engaged in the criminal activity. Probable cause is the standard law enforcement must have in order to make an arrest for criminal activity. It is more than a hunch or a belief, but less than beyond a reasonable doubt, the standard needed to convict a person of a crime. Section 3 (a) has also been revised to make it clear it is only the Tenant that has engaged in the criminal activity to which the subsection applies, and not to a Tenant who has not engaged in criminal activity.

Staff has also revised subsection (b) of Section 3 to address criminal activity not by a Tenant but by a member of a Tenant's household or a guest or invitee of the Tenant. In that case, as when the Tenant has engaged in criminal activity, the Landlord must report the activity to law enforcement, who must investigate and determine there is probable cause that the person in question engaged in criminal activity. Before requirement to provide a written warning notice to the Tenant may be waived, the Landlord must find the Tenant failed to remove the person from the Tenant's household or that the person was removed but the Tenant has permitted such person to return to the household. And, as above, if there is more than one Tenant in the household, subsection (b) applies only to the Tenant whose household member, guest or invitee has engaged in the criminal activity and yet remains in the household; it does not apply to other Tenants.

3. When may tenants who are victims of certain crimes nevertheless be evicted?

A third concern was the potential eviction of victims of certain criminal activity, i.e., domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult. Section 7 of the Regulation has been revised in several respects, consistent with State law (Code of Civil Procedure, section 1161.3) to make it clear that a Landlord may not evict a victim of those enumerated crimes except under very narrow circumstances. Where there has been a protective order issued, or where a person has been named in a police report as committing one (or more) of the enumerated crimes, and either (a) the Tenant allows such person to visit the rental unit or (b) the Landlord reasonably believes the presence of such person on the property poses a physical threat to other Tenants and the Landlord has given a three days' notice to the Tenant that the person in question may not be on the premises, the Landlord may terminate the tenancy of the Tenant or a member of the Tenant's household (if applicable), notwithstanding the Tenant or member of the household was a victim of the enumerated crimes.

4. The role of "reasonableness" in the Regulation

Inherent in this Regulation is one of reasonableness. For example, a Tenant must be given a "reasonable time period" to cure a breach or abate a nuisance. If it is not "reasonable" to cure the breach or abate the nuisance within three business days, the Tenant must have taken steps to cure the breach within that time frame. A Landlord may waive the requirement for the written warning notice only if there are facts that "reasonably" demonstrate a Tenant has engaged in criminal activity by having law enforcement investigate and advise there is probable cause that a Tenant engaged in that activity. A Landlord may nevertheless evict a victim of certain crimes where the Landlord "reasonably" believes the presence of a person who has committed the crime on the property poses a physical threat to other Tenants (and, in this last example, the landlord has given the tenant/victim three days' notice to cure the violation).

Reasonableness is somewhat subjective and it is not realistic or possible to define the term with specificity in the Regulation; however, a landlord who decides to terminate a tenancy based on that standard will need to prove reasonableness to the trial court. Presumably, most Landlords will not act capriciously and will seek legal counsel as to whether they are acting reasonably before undertaking the time and expense to file an unlawful detainer action in reliance thereon.

Staff is concerned that if there are too many obstacles to prevent a Landlord from taking steps promptly to evict a Tenant who has engaged in criminal activity or abusive or violent behavior, other Tenants could be at risk. Staff believes the Regulation, as drafted, presents a fair balance between (1) the rights of Tenants to be given an opportunity to cure a breach before being evicted and (2) the rights of Landlords to evict Tenants with alacrity when circumstances so warrant. Accordingly, staff recommends Regulation 17-08 be adopted as revised.

**DOCUMENTS ATTACHED:**

Attachment 1 – Summary of Unlawful Detainer and Eviction Process

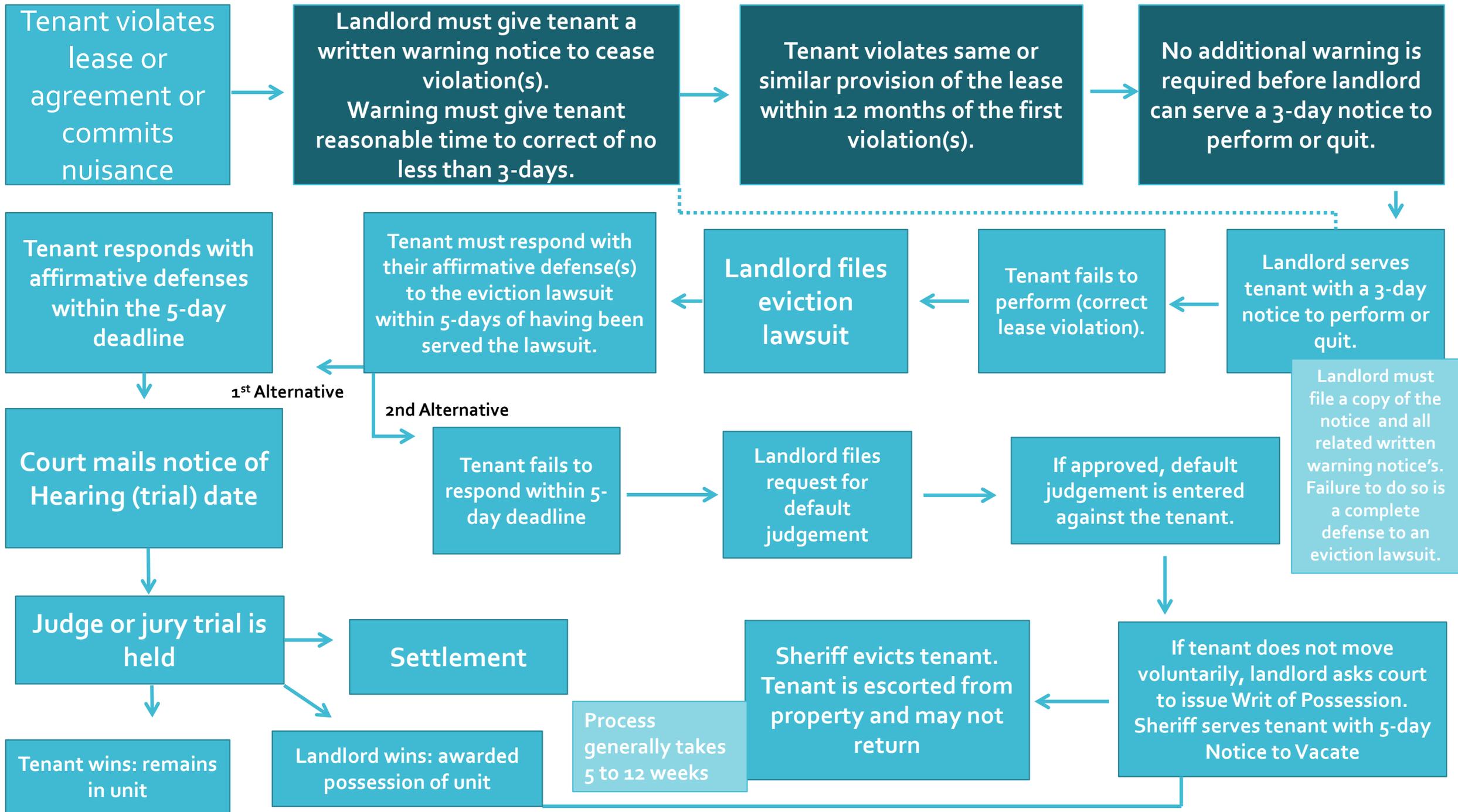
Attachment 2 – Proposed Regulation 17-08, with revisions from October 20, 2017 draft  
(Redlined)

Attachment 3 – Proposed Regulation 17-08, with revisions from October 20, 2017, draft  
(Clean)

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# General Eviction Timeline where Tenant Breaches the Lease or Creates a Nuisance

*(See next slide)*



Tenant violates lease or agreement or commits nuisance

Landlord must give tenant a written warning notice to cease violation(s).  
Warning must give tenant reasonable time to correct of no less than 3-days.

Tenant violates same or similar provision of the lease within 12 months of the first violation(s).

No additional warning is required before landlord can serve a 3-day notice to perform or quit.

Tenant responds with affirmative defenses within the 5-day deadline

Tenant must respond with their affirmative defense(s) to the eviction lawsuit within 5-days of having been served the lawsuit.

Landlord files eviction lawsuit

Tenant fails to perform (correct lease violation).

Landlord serves tenant with a 3-day notice to perform or quit.

Court mails notice of Hearing (trial) date

Tenant fails to respond within 5-day deadline

Landlord files request for default judgement

If approved, default judgement is entered against the tenant.

Judge or jury trial is held

Settlement

Tenant wins: remains in unit

Landlord wins: awarded possession of unit

Process generally takes 5 to 12 weeks

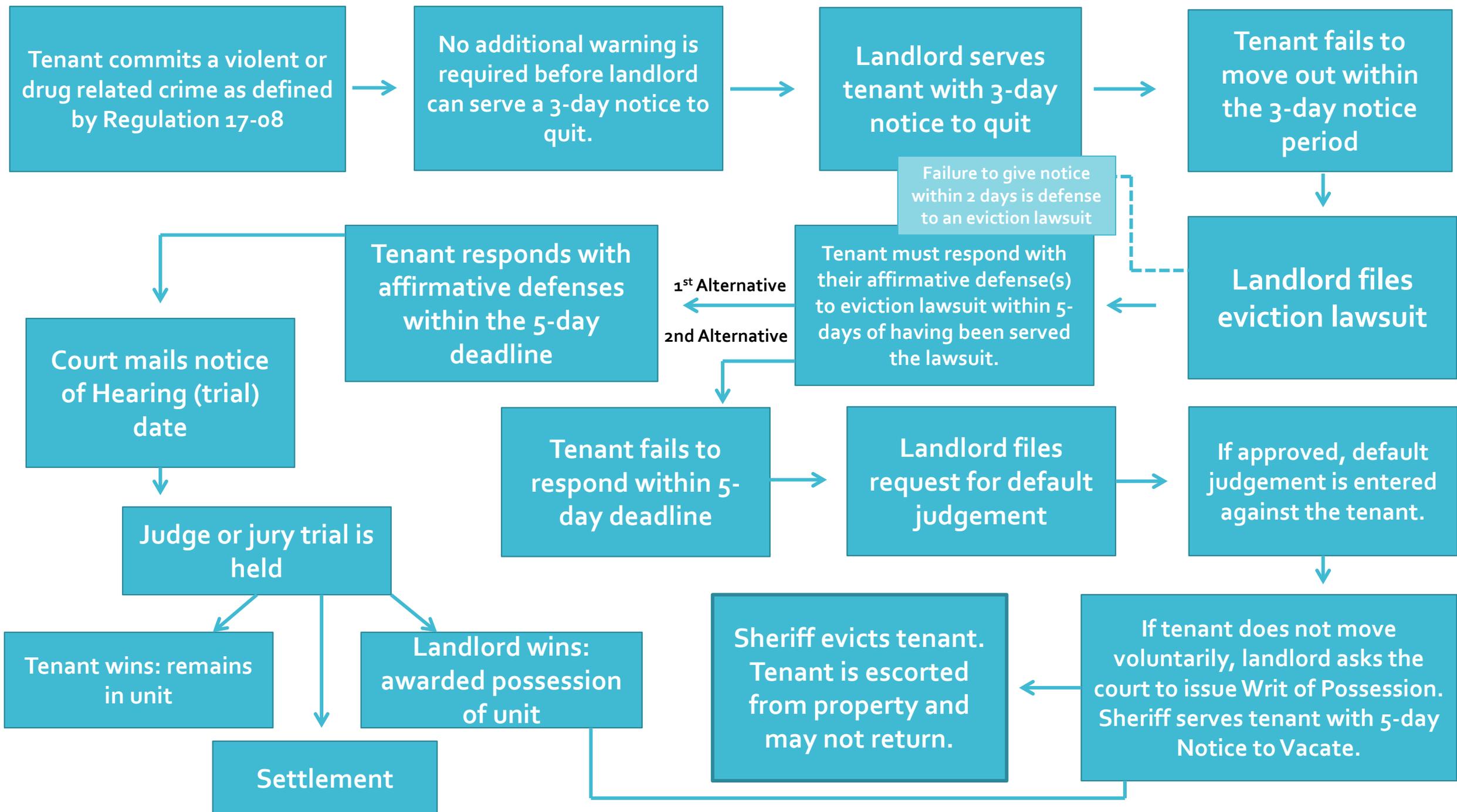
Sheriff evicts tenant. Tenant is escorted from property and may not return

If tenant does not move voluntarily, landlord asks court to issue Writ of Possession. Sheriff serves tenant with 5-day Notice to Vacate

Landlord must file a copy of the notice and all related written warning notice's. Failure to do so is a complete defense to an eviction lawsuit.

# General Eviction Timeline where Tenant Commits a Violent or Drug-Related Crime

*(See next slide)*



# ITEM H-1 ATTACHMENT 2

## RICHMOND RENT BOARD REGULATION 17-08 Regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance

### 1. Purpose

The purpose of this Regulation 17-08 is to clarify provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance concerning termination of a tenancy for a breach of the lease or creating a nuisance, and the necessity of, in most situations, providing a written warning notice to cease.

### 2. Termination of a Tenancy for Breach of Lease

The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that a ~~landlord~~Landlord may terminate a tenancy if a ~~tenant~~Tenant has continued, after written notice to cease, to substantially violate the material terms of a rental agreement, provided such terms are reasonable, legal and have been accepted in writing by the ~~tenant~~Tenant or made part of the rental agreement. Section 11.100.050 (a) (2), RMC. Some behavior, however, may warrant a ~~landlord~~Landlord to initiate the termination of a tenancy immediately without providing a written notice to cease. This Regulation would provide that authority.

(a) Notices to cease concerning violations of the material terms of a rental agreement. Except for those items identified in paragraph 3 of this Regulation, if a ~~tenant~~Tenant violates the material terms of a rental agreement, the ~~landlord~~Landlord must provide the ~~tenant~~Tenant with a Written Warning Notice to Cease. The ~~landlord~~Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (a), a reasonable time period shall mean either not less than three business day or, if is not reasonable that the time period to cure the violation can be accomplished within three business days, the ~~tenant~~Tenant has started to cure the violation within three business days and thereafter diligently pursues the cure of the violation. The written notice shall inform the ~~tenant~~Tenant (i) that the failure to cure the violation may result in the ~~landlord~~Landlord's initiating an eviction proceeding, (ii) of the right to request a reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reason for the notice. See Section 11.100.050 (d), RMC. If the ~~tenant~~Tenant violates the same or substantially the same material terms of the rental agreement within 12 months from the date the ~~tenant~~Tenant- received the initial Written Warning Notice to Cease, the ~~landlord~~Landlord need not serve a further Written Warning Notice to Cease but may then take action to terminate the tenancy. As to ~~tenant~~Tenants who violate paragraph 3 of this Regulation, a ~~landlord~~Landlord need not serve a Written Warning Notice to Cease for a violation of the terms of the lease ~~but may take action immediately to terminate the tenancy.~~

(b) Regarding the ~~tenant~~Tenant's right to sublease. Section 11.100.050(a)(2)(i) RMC provides: If (i) a ~~tenant~~Tenant requests the ~~landlord~~Landlord in writing to sublease the rental unit, (ii) the ~~tenant~~Tenant continues to reside in the rental unit as the ~~tenant~~Tenant's primary residence, (iii) the sublease replaces one or more departed ~~tenant~~Tenants under a rental housing agreement on a one for one basis and (iv) the ~~landlord~~Landlord fails to respond to the ~~tenant~~Tenant in writing within fourteen (14) calendar days of receipt of the ~~tenant~~Tenant's written request, the ~~tenant~~Tenant's request shall be deemed approved by the ~~landlord~~Landlord.

## ITEM H-1 ATTACHMENT 2

(1) A ~~landlord~~Landlord's reasonable refusal of the ~~tenant~~Tenant's written request may be based on, but is not limited to, the ground that the total number of occupants in a rental unit exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922, as described below:

- i. Every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two. Different rules apply in the case of "efficiency units." (See 1997 Uniform Housing Code Section 503(b), Health and Safety Code Section 17958.1.)
- ii. The standard shall be two occupants per bedroom plus one additional occupant.

### 3. Termination of a Tenancy for Engaging in Criminal Activity, including Drug-related Criminal Activity.

- (a) A ~~landlord~~Landlord may initiate an action to terminate a tenancy (as provided under State law) without providing a written warning notice to cease (1) if a ~~tenant~~Tenant (i) has engaged in criminal activity, including drug-related criminal activity, in or near the ~~tenant~~Tenant's rental unit that threatens the health, safety or right to peaceful enjoyment of the property by other members of the ~~tenant~~Tenant's household or by other ~~tenant~~Tenants, (ii) has engaged in or threatened violent or abusive behavior to other members of the ~~tenant~~Tenant's household or to other ~~tenant~~Tenants or (iii) has permitted the rental unit to be used for, or to facilitate criminal activity, including drug related criminal activity, that threatens the health, safety or right to peaceful enjoyment of the property by other members of the ~~tenant~~Tenant's household or by other ~~tenant~~Tenants, (2) the ~~landlord~~Landlord has within a reasonable time reported the criminal activity or the violent or abusive behavior to law enforcement and (3) law enforcement has investigated the criminal activity or violent or abusive behavior and has advised the ~~landlord~~Landlord there is probable cause that the ~~tenant~~Tenant engaged in criminal activity or violent or abusive behavior as reported by the ~~landlord~~Landlord. Notwithstanding the foregoing, if there ~~is~~are more than one ~~tenant~~Tenant in a rental unit, this subsection (a) shall apply only to that ~~tenant~~Tenant or those ~~tenant~~Tenants for which the law enforcement investigation determines there is probable cause that the ~~tenant~~Tenant(s) engaged in criminal activity or violent or abusive behavior.

- (b) A ~~landlord~~Landlord may initiate an action to terminate a ~~tenant~~Tenant's tenancy immediately without providing a written waring notice to cease if (1) a member of ~~tenant~~Tenant's household or a guest or invitee of the ~~tenant~~Tenant engages in the activity or behavior set forth in paragraphs (i), (ii) or (iii) of subsection (a) of this Section 3, (2) the ~~landlord~~Landlord within a reasonable time has reported the activity or behavior to law enforcement, (3) law enforcement has investigated the activity or behavior and has advised the ~~landlord~~Landlord there is probable cause a member of the ~~tenant~~Tenant's household or a guest or invitee of the ~~tenant~~Tenant has engaged in the activity or behavior as reported by the ~~landlord~~Landlord and (4) the ~~tenant~~Tenant fails to demonstrate to the ~~landlord~~Landlord that

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## ITEM H-1 ATTACHMENT 2

the person who engaged in the activity or behavior has been removed from the ~~tenant~~Tenant's household or the ~~tenant~~Tenant demonstrated that the person who engaged in the activity or behavior had been removed from the ~~tenant~~Tenant's household but the ~~tenant~~Tenant has permitted such person to return to the ~~tenant~~Tenant's household. Notwithstanding the foregoing, if there ~~isare~~ more than one ~~tenant~~Tenant in the rental unit, this subsection (b) shall apply only that that ~~tenant~~Tenant or those ~~tenant~~Tenants to which paragraphs (1) and (4) of this subsection (b) applies

(c)

(e) For purposes of this Regulation, criminal activity shall include but not be limited to prostitution as defined in Penal Code, section 647 (b), criminal street gang activity as defined in Penal Code section 186.20 and following, assault and battery, as defined in Penal Code, sections 240 and 242, burglary as defined in Penal Code section 459, the unlawful use and discharge of firearms as prohibited under Penal Code section 245, sexual offenses as defined In Penal Code sections 261 and following and 286 or any other behavior that involves the imminent or actual threat to the health of safety of the ~~landlord~~Landlord or other ~~tenant~~Tenants or actual property damage in excess of \$5,000.

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(d) For purposes of this Regulation, drug related criminal activity includes, but is not limited to, the illegal manufacture, sale, distribution, use or possession with the intention to manufacture, sell, distribute or use a controlled substance as defined in Section 102 of the Controlled Substance Act [ 21 USC 802 } and/or as defined in Health and Safety Code, Section 11350, except as may be permitted under State and local law.

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(e) For purposes of this Regulation, abusive or violent behavior includes verbal as well as physical abuse or violence, including the use of racial epithets or other language, written or oral, that is customarily used to intimidate.

(f) For purposes of this Regulation, threatening refers to oral or written threats or physical gestures that communicate to a reasonable person an intent to abuse to intent to commit violence.

#### 4. Termination of a Tenancy for Creating a Nuisance

(a) Definition. A nuisance, as used in this Regulation, is any conduct that constitutes a nuisance as defined in subsection 4 of Section 1161 of the Civil Code of Procedure or causing substantial damage to the rental unit. Nuisance also includes conduct by the ~~tenant~~Tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance as defined in subsection 4 of Section 1161 of the Code of Civil Procedure.

(b) Violations for Creating a Nuisance within a 12 Month Period. If a ~~tenant~~Tenant engages in conduct that constitutes a nuisance, the ~~landlord~~Landlord must provide the ~~tenant~~Tenant with a Written Warning Notice to Cease. The ~~landlord~~Landlord mut serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (b), a reasonable time period shall mean either not less than three business days or, if it is not reasonable that the time period to abate the nuisance can be accomplished within three business days, the ~~tenant~~Tenant has taken steps to abate the nuisance within three business days and thereafter diligently pursues the abatement of the nuisance. The written notice shall inform the ~~tenant~~Tenant (i) that the failure to abate the nuisance may result in the

## ITEM H-1 ATTACHMENT 2

landlordLandlord's initiating an eviction proceeding, (ii) the right to request reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reasons for the notice. See §11.100.050 (d), RMC. If the tenantTenant creates the same or substantially similar nuisance within 12 months from the date the tenantTenant received the initial Written Warning Notice to Cease, the landlordLandlord need not serve a further Written Warning Notice to Cease, but may then take action to terminate the tenancy.

5. **Substantial Damage to the Rental Unit.** Except as provided in subsection (c) of Section 3 of this Regulation, notice that the tenantTenant has willfully caused substantial damage to the rental unit must give the tenantTenant at least 45 days after service of the notice to repair the damage or pay the landlordLandlord for the reasonable cost of repairing such damage.
6. **Illegal Use of the Rental Unit or the Property on which the Rental Unit is located.** A person who illegally sells a controlled substance in the rental unit or on the property on which the rental property is located, or uses the rental unit or the property on which the rental property is located to further that illegal purpose, is deemed to have committed the illegal act in the rental unit or on the property on which the rental unit is located, in accordance with subsection 4 of Section 1161 of the Civil Code of Procedure.

### 7. Victims of Certain Criminal Activity

(a) Notwithstanding subsection (a) and (b) of Section 3 of this Regulation, a landlordLandlord shall not take any action to terminate a tenancy under Section 11.100.050 (a)(3) RMC against a tenantTenant or a member of a tenantTenant's household who is a victim of domestic violence as defined in Section 6211 of the California Family Code, or against a tenantTenant or a member of a tenantTenant's household who is a victim of sexual assault, stalking, human trafficking or abuse or an elder or dependent adult if (i) the domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult has been documented (A) by a temporary restraining order, emergency protective order or protective order issued within the last 180 days pursuant to law that protects the tenantTenant or member of tenantTenant's household from domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (B) there is a written report, written within the last 180 days, bby a peace officer stating that the tenantTenant or a member of the tenantTenant's household has filed a report alleging that he or she is a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (ii) the person against whom the protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse or an elder or a dependent adult is not a tenantTenant of the same rental unit as the tenantTenant or a member of the tenantTenant's household.

7. (b) Notwithstanding subsection (a) of this Section 7, a landlordLandlord may terminate the tenancy of a tenantTenant or a member of a tenantTenant's household if (i) either (A) the tenantTenant allows the person against whom he protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult to visit the rental property or (B) the landlordLandlord reasonably believes the presence of the person against whom the protective order has been issued or who was named in the police report as having committing an act of domestic violence, sexual assault, stalking, human

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## ITEM H-1 ATTACHMENT 2

trafficking or abuse an elder or a dependent adult poses a physical threat to other ~~tenant~~Tenants, guests, invitees or to a ~~tenant~~Tenant's right to quiet enjoyment and (ii) the ~~landlord~~Landlord previously gave a three days notice to the ~~tenant~~Tenant to correct a violation of paragraph (i) of subsection (b) of this Section 7.

### 8. Requirement to File the Written Warning Notice to Cease with the Rent Board.

If a ~~Landlord~~Landlord seeks to terminate a tenancy on grounds of breach of lease, nuisance or failure to give access (paragraphs (2), (3) and (4) of subsection (a), Section 11.100.050 RMC), the ~~landlord~~Landlord shall file with the Rent Board, within two business days of service on the ~~tenant~~Tenant of such notice of termination of tenancy, a proof of service that such notice of termination of tenancy, along with a copy of the Written Warning Notice(s), if applicable, was served on the ~~tenant~~Tenant..

I, the undersigned, hereby certify that the foregoing Regulation was duly adopted and passed by the Richmond Rent Board in a regular meeting assembled on December \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

---

Paige Roosa, Rent Board Clerk

---

David Gray, Chair

Approved as to form:

**ITEM H-1  
ATTACHMENT 2**

Michael Roush, Legal Counsel

State of California                    }  
County of Contra Costa            }  
City of Richmond                    }       : ss.

**RICHMOND RENT BOARD REGULATION 17-08  
Regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of  
Lease or Creating Nuisance**

**1. Purpose**

The purpose of this Regulation 17-08 is to clarify provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance concerning termination of a tenancy for a breach of the lease or creating a nuisance, and the necessity of, in most situations, providing a written warning notice to cease.

**2. Termination of a Tenancy for Breach of Lease**

The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that a Landlord may terminate a tenancy if a Tenant has continued, after written notice to cease, to substantially violate the material terms of a rental agreement, provided such terms are reasonable, legal and have been accepted in writing by the Tenant or made part of the rental agreement. Section 11.100.050 (a) (2), RMC. Some behavior, however, may warrant a Landlord to initiate the termination of a tenancy immediately without providing a written notice to cease. This Regulation would provide that authority.

- (a) Notices to cease concerning violations of the material terms of a rental agreement. Except for those items identified in paragraph 3 of this Regulation, if a Tenant violates the material terms of a rental agreement, the Landlord must provide the Tenant with a Written Warning Notice to Cease. The Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (a), a reasonable time period shall mean either not less than three business days or, if it is not reasonable that the time period to cure the violation can be accomplished within three business days, the Tenant has started to cure the violation within three business days and thereafter diligently pursues the cure of the violation. The written notice shall inform the Tenant (i) that the failure to cure the violation may result in the Landlord's initiating an eviction proceeding, (ii) of the right to request a reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reason for the notice. See Section 11.100.050 (d), RMC. If the Tenant violates the same or substantially the same material terms of the rental agreement within 12 months from the date the Tenant received the initial Written Warning Notice to Cease, the Landlord need not serve a further Written Warning Notice to Cease but may then take action to terminate the tenancy. As to Tenants who violate paragraph 3 of this Regulation, a Landlord need not serve a Written Warning Notice to Cease for a violation of the terms of the lease.
- (b) Regarding the Tenant's right to sublease. Section 11.100.050(a)(2)(i) RMC provides: If (i) a Tenant requests the Landlord in writing to sublease the rental unit, (ii) the Tenant continues to reside in the rental unit as the Tenant's primary residence, (iii) the sublease replaces one or more departed Tenants under a rental housing agreement on a one for one basis and (iv) the Landlord fails to respond to the Tenant in writing within fourteen (14) *calendar* days of receipt of the Tenant's written request, the Tenant's request shall be deemed approved by the Landlord.

(1) A Landlord's reasonable refusal of the Tenant's written request may be based on, but is not limited to, the ground that the total number of occupants in a rental unit

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exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922, as described below:

- i. Every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two. Different rules apply in the case of "efficiency units." (See 1997 Uniform Housing Code Section 503(b), Health and Safety Code Section 17958.1.)
- ii. The standard shall be two occupants per bedroom plus one additional occupant.

### **3. Termination of a Tenancy for Engaging in Criminal Activity, including Drug-related Criminal Activity.**

- (a) A Landlord may initiate an action to terminate a tenancy (as provided under State law) without providing a written warning notice to cease (1) if a Tenant (i) has engaged in criminal activity, including drug-related criminal activity, in or near the Tenant's rental unit that threatens the health, safety or right to peaceful enjoyment of the property by other members of the Tenant's household or by other Tenants, (ii) has engaged in or threatened violent or abusive behavior to other members of the Tenant's household or to other Tenants or (iii) has permitted the rental unit to be used for, or to facilitate criminal activity, including drug related criminal activity, that threatens the health, safety or right to peaceful enjoyment of the property by other members of the Tenant's household or by other Tenants, (2) the Landlord has within a reasonable time reported the criminal activity or the violent or abusive behavior to law enforcement and (3) law enforcement has investigated the criminal activity or violent or abusive behavior and has advised the Landlord there is probable cause that the Tenant engaged in criminal activity or violent or abusive behavior as reported by the Landlord. Notwithstanding the foregoing, if there is more than one Tenant in a rental unit, this subsection (a) shall apply only to that Tenant or those Tenants for which the law enforcement investigation determines there is probable cause that the Tenant(s) engaged in criminal activity or violent or abusive behavior.
- (b) A Landlord may initiate an action to terminate a Tenant's tenancy without providing a written warning notice to cease if (1) a member of Tenant's household or a guest or invitee of the Tenant engages in the activity or behavior set forth in paragraphs (i), (ii) or (iii) of subsection (a) of this Section 3, (2) the Landlord within a reasonable time has reported the activity or behavior to law enforcement, (3) law enforcement has investigated the activity or behavior and has advised the Landlord there is probable cause a member of the Tenant's household or a guest or invitee of the Tenant has engaged in the activity or behavior as reported by the Landlord and (4) the Tenant fails to demonstrate to the Landlord that the person who engaged in the activity or behavior has been removed from the Tenant's household or the Tenant demonstrated that the person who engaged in the activity or behavior had been removed from the Tenant's household but the Tenant has permitted such person to return to the Tenant's household. Notwithstanding the foregoing, if there is more than one Tenant in the rental unit, this subsection (b) shall apply only to that Tenant or those Tenants to which paragraphs (1) and (4) of this subsection (b) applies.

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- (c) For purposes of this Regulation, criminal activity shall include but not be limited to prostitution as defined in Penal Code, section 647 (b), criminal street gang activity as defined in Penal Code section 186.20 and following, assault and battery, as defined in Penal Code, sections 240 and 242, burglary as defined in Penal Code section 459, the unlawful use and discharge of firearms as prohibited under Penal Code section 245, sexual offenses as defined In Penal Code sections 261 and following and 286 or any other behavior that involves the imminent or actual threat to the health of safety of the Landlord or other Tenants or actual property damage in excess of \$5,000.
- (d) For purposes of this Regulation, drug related criminal activity includes, but is not limited to, the illegal manufacture, sale, distribution, use or possession with the intention to manufacture, sell, distribute or use a controlled substance as defined in Section 102 of the Controlled Substance Act [21 USC 802] and/or as defined in Health and Safety Code, Section 11350, except as may be permitted under State and local law.
- (e) For purposes of this Regulation, abusive or violent behavior includes verbal as well as physical abuse or violence, including the use of racial epithets or other language, written or oral, that is customarily used to intimidate.
- (f) For purposes of this Regulation, threatening refers to oral or written threats or physical gestures that communicate to a reasonable person an intent to abuse to intent to commit violence.

#### 4. Termination of a Tenancy for Creating a Nuisance

- (a) Definition. A nuisance, as used in this Regulation, is any conduct that constitutes a nuisance as defined in subsection 4 of Section 1161 of the Civil Code of Procedure or causing substantial damage to the rental unit. Nuisance also includes conduct by the Tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance as defined in subsection 4 of Section 1161 of the Code of Civil Procedure.
- (b) Violations for Creating a Nuisance within a 12 Month Period. If a Tenant engages in conduct that constitutes a nuisance, the Landlord must provide the Tenant with a Written Warning Notice to Cease. The Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (b), a reasonable time period shall mean either not less than three business days or, if it is not reasonable that the time period to abate the nuisance can be accomplished within three business days, the Tenant has taken steps to abate the nuisance within three business days and thereafter diligently pursues the abatement of the nuisance. The written notice shall inform the Tenant (i) that the failure to abate the nuisance may result in the Landlord's initiating an eviction proceeding, (ii) the right to request reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reasons for the notice. See §11.100.050 (d), RMC. If the Tenant creates the same or substantially similar nuisance within 12 months from the date the Tenant received the initial Written Warning Notice to Cease, the Landlord need not serve a further Written Warning Notice to Cease, but may then take action to terminate the tenancy.

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5. **Substantial Damage to the Rental Unit.** Except as provided in subsection (c) of Section 3 of this Regulation, notice that the Tenant has willfully caused substantial damage to the rental unit must give the Tenant at least 45 days after service of the notice to repair the damage or pay the Landlord for the reasonable cost of repairing such damage.
6. **Illegal Use of the Rental Unit or the Property on which the Rental Unit is located.** A person who illegally sells a controlled substance in the rental unit or on the property on which the rental property is located, or uses the rental unit or the property on which the rental property is located to further that illegal purpose, is deemed to have committed the illegal act in the rental unit or on the property on which the rental unit is located, in accordance with subsection 4 of Section 1161 of the Civil Code of Procedure.
7. **Victims of Certain Criminal Activity**
  - (a) Notwithstanding subsection (a) and (b) of Section 3 of this Regulation, a Landlord shall not take any action to terminate a tenancy under Section 11.100.050 (a)(3) RMC against a Tenant or a member of a Tenant's household who is a victim of domestic violence as defined in Section 6211 of the California Family Code, or against a Tenant or a member of a Tenant's household who is a victim of sexual assault, stalking, human trafficking or abuse or an elder or dependent adult if (i) the domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult has been documented (A) by a temporary restraining order, emergency protective order or protective order issued within the last 180 days pursuant to law that protects the Tenant or member of Tenant's household from domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (B) there is a written report, written within the last 180 days, by a peace officer stating that the Tenant or a member of the Tenant's household has filed a report alleging that he or she is a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (ii) the person against whom the protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse or an elder or a dependent adult is not a Tenant of the same rental unit as the Tenant or a member of the Tenant's household.
  - (b) Notwithstanding subsection (a) of this Section 7, a Landlord may terminate the tenancy of a Tenant or a member of a Tenant's household if (i) either (A) the Tenant allows the person against whom he protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult to visit the rental property or (B) the Landlord reasonably believes the presence of the person against whom the protective order has been issued or who was named in the police report as having committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse an elder or a dependent adult poses a physical threat to other Tenants, guests, invitees or to a Tenant's right to quiet enjoyment and (ii) the Landlord previously gave a three days' notice to the Tenant to correct a violation of paragraph (i) of subsection (b) of this Section.
8. **Requirement to File the Written Warning Notice to Cease with the Rent Board.**

If a Landlord seeks to terminate a tenancy on grounds of breach of lease, nuisance or failure to give access (paragraphs (2), (3) and (4) of subsection (a), Section 11.100.050 RMC), the Landlord shall file with the Rent Board, within two business days of service on the Tenant of such notice of termination of tenancy, a proof of service that such notice of termination of

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tenancy, along with a copy of the Written Warning Notice(s), if applicable, was served on the Tenant.

I, the undersigned, hereby certify that the foregoing Regulation was duly adopted and passed by the Richmond Rent Board in a regular meeting assembled on December \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

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Cynthia Shaw, Rent Board Clerk

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David Gray, Chair

Approved as to form:

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Michael Roush, Legal Counsel

State of California }

