

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: September 20, 2017

Final Decision Date Deadline: September 20, 2017

STATEMENT OF THE ISSUE: Section 11.100.050 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance establishes just cause for eviction requirements in the City of Richmond. Regulations are necessary to clarify when Written Warning Notices to Cease are to be provided prior to a landlord's taking action to terminate a tenancy due to the tenant's breach of the lease or creating a nuisance.

INDICATE APPROPRIATE BODY

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|---|---|--|--|---|
| <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> | |

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|---|--|---------------------------------|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) | | |
| <input type="checkbox"/> Public Hearing | <input checked="" type="checkbox"/> Regulation | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement | <input type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> 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 (Michael Roush 621-1202).

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AGENDA REPORT

DATE: September 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:

Section 11.100.050 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance establishes just cause for eviction requirements in the City of Richmond. Regulations are necessary to clarify when Written Warning Notices to Cease are to be provided prior to a landlord's taking action to terminate a tenancy due to the tenant's breach of the lease or creating a nuisance.

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:

Background

Section 11.100.050(d) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Ordinance") requires that a Written Warning Notice to Cease be served on the tenant prior to initiating a termination of tenancy if the cause for termination is a breach of lease, creating a nuisance, or failure to give access. The written warning notice must inform the tenant that a failure to cure may result in eviction

proceedings. In addition, the notice must include sufficient information allowing a reasonable person to comply with the request to cease.

If termination of tenancy follows the service of a written warning notice, Section 11.100.050(f) requires that any Written Warning Notice served prior to termination of tenancy is attached to the termination notice for which it corresponds. The Ordinance, however, does not specify how many times a Written Warning Notice to Cease must be served, and opportunity to cure the violation be provided, before the landlord may proceed to initiate the termination of tenancy. Moreover, the Ordinance is silent as to whether such written warning notice must always be served if a tenant, members of the tenant's household, a tenant's guest or other person under the control of the tenant engages in certain conduct or activity that involves serious criminal behavior or involves the imminent or actual threat to a landlord or other tenants. Such provisions need to be incorporated into the Regulation concerning the Written Warning Notice to Cease.

Discussion

Section 2 (a) of Regulation 17-08 provides generally that if a tenant violates a material term of a rental agreement, the landlord must provide the tenant with a written warning notice to cease the violation. If, however, following the tenant's receipt of the notice to cease, the tenant violates the same or substantially the same provision of the rental agreement within a 12-month period, the landlord may proceed directly to terminate a tenancy without providing an additional written notice to cease. In addition, if following the tenant's receipt of written notices to cease violations of substantially different terms of the rental agreement, and if the tenant violates the same, the substantially same or a substantially different material term of the agreement within a 24-month period, the landlord may proceed immediately to terminate the tenancy without providing a further written notice to cease. The exception to Section 2(a) is set forth in Section 3 of the Regulation discussed below.

The Ordinance sets out in some detail the rights of a tenant to sublease the rental unit without being in breach of the rental agreement. See Section 11.100.050 (a)(2) (i), RMC. One subparagraph provides that if the landlord fails to respond to a tenant's request to sublease within 14 days of the landlord's receipt of such request, the request is deemed approved. Section 2 (b) of the Regulation clarifies that the 14 "days" are calendar, not business, days.

Section 3 of the Regulation will permit a landlord to initiate eviction proceedings immediately, i.e., without having to provide a written warning notice to cease, if the tenant, a member of the tenant's household or a guest or other person under the control of the tenant engages in certain criminal activity, including drug-related criminal activity. Section 3 (b) of the Regulation sets forth the types of serious criminal activity that will allow a landlord to take immediate action. Such activity includes assault and battery, the unlawful use and discharge of firearms, burglary, certain sexual offenses and criminal street gang activity, as those terms are defined in the State Penal Code. Section 3 (c) of the Regulation also provides that a landlord may take immediate action

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for the illegal manufacture, sale, distribution or use of a “controlled substance”, as those terms are defined under federal and state law, except as may be permitted under State and local law, e.g., the personal use of non-medical marijuana if smoking is permitted in the rental unit.

Section 4 of the Regulation defines nuisance by referencing section 1161 (4) of the California Code of Civil Procedure, copy attached, and includes conduct that substantially interferes with the use and enjoyment of property by neighboring tenants. The requirement to provide to a tenant a written warning notice to cease for creating a nuisance largely tracks the provisions discussed above for breaches of a lease. For example, if a tenant has been provided a written notice to cease creating a nuisance and then engages in the same or similar conduct in a 12-month period, the landlord may take action to terminate the tenancy without provided a further notice to cease.

Regulation 17-08 also establishes a requirement that the tenant who has willfully caused substantial damage to the rental unit must have at least 45 calendar days after to repair the damage or pay the landlord for the reasonable cost of repairing such damage, provides that the use of the rental unit for the sale of controlled substances constitutes a nuisance, clarifies that the tenancy of a victim of domestic violence may not be terminated unless the victim has otherwise engaged in activity prohibited under the Regulation and requires landlords to file with the Board notices to terminate tenancies based on breaches of the lease, creating a nuisance or failing to give access, along with a copy of the written notices to cease, if such were required prior to serving the notice to terminate the tenancy.

DOCUMENTS ATTACHED:

Attachment 1 – Regulation 17-08

Attachment 2 – California Civil Code of Procedures Section 1161

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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, for example, 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 as set forth in 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 tenant has received the 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. If within a 24-month period a tenant (i) has violated substantially different material terms of a rental agreement for which the tenant has received a Written Warning Notice to Cease for such violations and (ii) violates the same, the substantially the same, or a different material term of the rental agreement, a 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 but may take action immediately to terminate the tenancy.

(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 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

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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 immediately without providing a written notice to cease if a tenant, a member of the tenant's household or a guest or other person under the tenant's control (i) engages in criminal activity, including drug-related criminal activity, in or near the tenant's rental unit or (ii) permits the rental unit to be used for, or to facilitate criminal activity, including drug related criminal activity, regardless of whether the person engaged in such activity is the tenant.
- (b) 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.
- (c) 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.

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 as set forth in §11.100.050 (d), RMC. If the tenant creates the same or substantially similar nuisance within 12 months after having received the Written Warning Notice to Cease, the landlord need not serve a further Written Warning Notice to Cease, but may give a notice pursuant to Code of Civil Procedure §1161 for the repeated conduct.
- (c) Creating Different Nuisances within a 24 Month Period. If within a 24 month period a tenant (i) has engaged in different conduct, each of which constitutes a nuisance, and for which the landlord has provided the tenant with a Written Warning Notice to Cease, e, and (ii) again

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engages in conduct that constitutes a nuisance, the landlord need not serve a further Written Warning Notice to Cease, but may give a notice pursuant to Code of Civil Procedure §1161 for the conduct constituting a nuisance.

- 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 Domestic Violence.** Notwithstanding sections (b) and (c) of Section 4 of this Regulation, a landlord shall not take any action to terminate a tenancy under Section 11.100.050 (a)(3) RMC against a victim of domestic violence as defined in Section 6211 of the California Family Code unless the victim has otherwise engaged in conduct constituting, criminal activity, drug related criminal activity or a nuisance.
- 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 the notice of termination of tenancy a copy of the Written Warning Notice(s), if applicable, and a copy of the notice of termination of tenancy.

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 September 20, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

Rent Board Secretary


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CODE OF CIVIL PROCEDURE - CCP

PART 3. OF SPECIAL PROCEEDINGS OF A CIVIL NATURE [1063 - 1822.60] (Part 3 enacted 1872.)

TITLE 3. OF SUMMARY PROCEEDINGS [1132 - 1179a] (Title 3 enacted 1872.)

CHAPTER 4. Summary Proceedings for Obtaining Possession of Real Property in Certain Cases [1159 - 1179a] (Chapter 4 enacted 1872.)

1159. Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or,
2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

The "party in possession" means any person who hires real property and includes a boarder or lodger, except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

(Amended by Stats. 1976, Ch. 712.)

1160. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,
2. Who, in the night time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

(Enacted 1872.)

1161. A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him or her; provided the expiration is of a nondefault nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.
2. When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name

and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits or maintains a public nuisance as described in Section 3482.8 of the Civil Code, or who commits an offense described in subdivision (c) of Section 3485 of the Civil Code, or subdivision (c) of Section 3486 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

This section shall become operative on January 1, 2012.

(Amended (as amended by Stats. 2009, Ch. 244, Sec. 5) by Stats. 2011, Ch. 128, Sec. 2. Effective January 1, 2012. Section operative January 1, 2012, by its own provisions.)

1161.1. With respect to application of Section 1161 in cases of possession of commercial real property after default in the payment of rent:

(a) If the amount stated in the notice provided to the tenant pursuant to subdivision (2) of Section 1161 is clearly identified by the notice as an estimate and the amount claimed is not in fact correct, but it is determined upon the trial or other judicial determination that rent was owing, and the amount claimed in the notice was reasonably estimated, the tenant shall be subject to judgment for possession and the actual amount of rent and other sums found to be due. However, if (1) upon receipt of such a notice claiming an amount identified by the notice as an estimate, the tenant tenders to the landlord within the time for payment required by the notice, the amount which