

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: November 15, 2017

Final Decision Date Deadline: November 15, 2017

**STATEMENT OF THE ISSUE:** At its meeting on October 18, 2017, the Rent Board considered Regulation 17-08, regarding written warning notices to cease before terminating a tenancy due to a breach of lease or creating a nuisance. Following discussion, the Board directed staff to return with a revised regulation at the November Rent Board meeting.

## 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

- |   |  |                                 |
|---|--|---------------------------------|
| <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 – Rent Program (Michael Roush 621-1202).

AGENDA ITEM NO:

**G-2.**

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# AGENDA REPORT

**DATE:** November 15, 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 its meeting on October 18, 2017, the Rent Board considered Regulation 17-08, regarding written warning notices to cease before terminating a tenancy due to a breach of lease or creating a nuisance. Following discussion, the Board directed staff to return with a revised regulation at the November Rent Board meeting.

## **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).

## **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:**

### Purpose

Sections 11.100.050(a)(2-4) and (d) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") establishes requirements for Landlords to provide Tenants an opportunity to cure problems before the Landlord can act to terminate a tenancy due to certain "just cause" reasons for eviction. Specifically, the Rent Ordinance requires that a Landlord must serve a written warning notice to

## ITEM G-2

cease prior to seeking to terminate tenancy due to the tenant's breach of lease, nuisance, or failure to give access. The written warning notice must:

- a) Be served by the Landlord within a reasonable period prior to serving a notice to terminate tenancy;
- b) Shall inform the Tenant that a failure to cure may result in the initiation of eviction proceedings;
- c) Shall inform of the Tenant of the right to request a reasonable accommodation and the contact information for the Rent Board;
- d) Shall include sufficient details allowing a reasonable person to comply;
- e) Shall include any information necessary to determine the date, time, place, witnesses present and other circumstances.

A "written warning notice to cease" as referenced in the Rent Ordinance, and as interpreted by Rent Program staff members, is in addition to, and distinct from, notices established by State law, such as 3-day Notices to Perform Covenant or Quit (see, e.g., Civil Code, section 1161(3). See Attachment 2

Regulation 17-08 seeks to preserve the intent of such provisions while clarifying that Landlords maintain the ability to proceed with termination of tenancy when the actions of a Tenant pose an immediate threat to health and safety. For example, if a Tenant commits a criminal act, such as assault, the Landlord would not be required to provide the Tenant with a written warning notice and reasonable amount of time for the Tenant to cure the violation, and could instead proceed with a three-day notice (Code of Civil Procedure Section 1161(4) (See Attachment 2).

### Background

At its meeting on October 18, 2017, the Rent Board considered Regulation 17-08, regarding written warning notices to cease before terminating a tenancy due to a breach of lease or creating a nuisance. The Board raised several concerns, primarily about Section 3 of the Regulation, which would allow a landlord to initiate terminating a tenancy without providing a written warning to cease for a tenant, a member of the tenant's household or a person under the control of the tenant who engages in criminal activity, including drug related criminal activity.

Boardmembers and members of the public expressed concern that the Ordinance, as drafted, vested too much discretion in the Landlord and could be used by a Landlord as a ruse to evict a Tenant or punish a Tenant for behavior over which the Tenant had no control. The Board also expressed concern about allowing a landlord to initiate eviction proceedings without providing an additional written warning notice to cease if a Tenant breached the lease twice within a 24-month period but the breaches concerned different terms of a lease, or the tenant created a nuisance twice in a 24-month period but the nuisances were different. In addition, the Board was concerned that the Regulation did not provide adequate guidance as to how long a Tenant would have to cure the breach or the nuisance following the serving of the written notice to cease before the landlord

could serve a written notice to terminate. Finally, although the Regulation is consistent with State law, and provides that a person who is a victim of domestic violence cannot be terminated, except under limited circumstances such as the victim allowing the person who engaged in the violence to visit the property, the State statute protects a larger group of criminal activity victims and the Board felt those categories ought to be expressly identified as well. See Code of Civil Procedure, section 1161.3, subdivision (b).

### Discussion of Revisions to Proposed Regulation 17-08

To address the issues described above, the proposed Regulation 17-08 has been revised in several respects, as outlined below:

#### ***Revision #1: Distinguishing between a Tenant and guests under the Tenant's control***

First, the Regulation will distinguish between a Tenant and members of the Tenant's household or a guest/invitee of the Tenant. As to the Tenant him/herself, a Landlord may initiate an action to terminate a tenancy immediately, i.e., without serving a written warning to cease, only if the Tenant has engaged in criminal activity that threatens another's health, safety or right to peaceful enjoyment, has engaged in or threatened violent or abusive behavior to other members of the Tenant's household or other Tenants, and the criminal activity or violent or abusive behavior has been reported to law enforcement. See subsection (a) of Section 3 of Regulation 17-08.

Abusive or violent behavior includes verbal as well as physical abuse or violence, including the use of racial epithets or other language that is customarily used to intimidate. Threatening refers to oral or written threats or physical gestures that communicate to a reasonable person an intent to abuse or intent to commit violence. See subsections (e) and (f) of Section 3 of Regulation 17-08.

As to a member of the Tenant's household or a guest or invitee of the Tenant, a Landlord may initiate an action to terminate a tenancy immediately only (1) when the person engages in the activity or behavior described above, e.g., criminal activity that threatens another's health, safety or right to peaceful enjoyment, (2) the criminal activity or the violent or abusive behavior has been reported to law enforcement, and (3) the Tenant fails to provide proof to the landlord within 24 hours from the time of the report to law enforcement that the person has been removed from the household or, following the person's removal from the household, the Tenant has allowed the person to return to the household. See subsection (b) of Section 3 of Regulation 17-08

The Board, however, should be aware that Tenants in federally subsidized rental units may be subject to more stringent standards. In a 2002 United States Supreme Court case, *Department of HUD v. Rucker*, the Supreme Court upheld provisions of leases following federal regulations that implement federal law, that permit tenancies to be terminated without a warning notice to cease, if a Tenant, a member of the Tenant's household, a guest of a Tenant or a person under the control of the Tenant engages in

criminal activity. See Attachment 3. In addition, Tenants who have leases with a “Crime Free Lease Addendum” may also have agreed that their tenancies may be terminated without a written warning to cease based on certain criminal activity. See Attachment 4.

### ***Revision #2: Omission of “two-strikes within a 24-month period” provisions***

Second, the “two strikes within a 24-month period and you are out” provisions concerning breaches of the lease or creating a nuisance have been deleted. If a Tenant breaches different terms of a lease, or creates different nuisances, the Landlord will be required to provide separate written warning notices to cease for each breach or nuisance. It is only if the same legally valid, material breach, or if the same nuisance, is repeated within a one-year period, may a landlord immediately take steps to initiate an eviction proceeding. See subsection (a) or Section 2, and deleted subsection (c) of Section 4 of Regulation 17-08.

### ***Revision #3: Quantification of a “reasonable period”***

Third, the Regulation has been revised to provide that a landlord must serve the written notice to cease a “reasonable time period” prior to serving a 3-day notice to terminate tenancy, and that a “reasonable time period” means either not less than three business days or, if it is not reasonable that the time period to cure the breach or abate the nuisance can be accomplished within three business days, then the tenant must start to cure the breach or abate the nuisance within three business days and thereafter diligently pursue the cure or abatement. In addition, the specific language of Section 11.100.050 (a) RMC has been spelled out in the Regulation, e.g., the notice must say the failure to cure may result in the landlord’s initiating an eviction proceeding, rather than simply referencing the Municipal Code section. See subsection (a) of Section 2 and subsection (b) of Section 4 of Regulation 17-08.

### ***Revision #4: Expansion of protections for victims of sexual assault, stalking, human trafficking, or abuse of an elder or dependent***

Fourth, in addition to prohibiting a landlord from evicting a tenant who is a victim of an act of domestic violence, except in very limited circumstances, the Regulation provides similar protection to victims of sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult. See Section 7 of Regulation 17-08. These provisions also track a federal statute, the Violence Against Women Reauthorization Act of 2013.

## **DOCUMENTS ATTACHED:**

- Attachment 1 – Revised Proposed Regulation 17-08
- Attachment 2 – Civil Code of Procedures Section 1161
- Attachment 3 – U.S. Supreme Court case, *Dept. of HUD v. Rucker et al*
- Attachment 4 – Crime Free Lease Addendum

# ITEM G-2 ATTACHMENT 1

## 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 Section 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 (3) business days or, if it is not reasonable that the time period to cure the violation can be accomplished within three (3) business days, that 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 twelve (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 take action to terminate the tenancy as provided by State law. As to Tenants who violate Section 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 as provided by State law.

(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

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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 (e.g. service of a 3-day notice) immediately 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 and (2) the criminal activity or the violent or abusive behavior has been reported to law enforcement and there is an official report, such as a police report, to document the criminal activity or the violent or abusive behavior.

(b) A landlord may initiate an action to terminate a tenancy (e.g. service of a 3- day notice) immediately without providing a written warning notice to cease if (1) a member of the 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, and (2) the activity or behavior has been reported to law enforcement and there is an official report, such as a police report, to document the criminal activity or the violent or abusive behavior, and (3) the tenant fails to provide proof to the landlord within 24 hours from the time of the report to law enforcement that the person engaged in the activity or behavior has been removed from the tenant's household, or the tenant has provided proof that the person engaged in the activity or behavior has been removed from the tenant's household, but the individual has returned to the tenant's household.

(c) For purposes of this Regulation, "criminal activity" shall include 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.

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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.

(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 (including other Rental Units on the property) 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 warning 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 warning 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 warning 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 take action to terminate the tenancy as provided by State law.

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 forty-five (45) days after service of the written warning 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

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**ATTACHMENT 1**

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.** 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 victim of domestic violence as defined in Section 6211 of the California Family Code, or against a victim of sexual assault, stalking, human trafficking or abuse or an elder or dependent adult unless (a) the victim has otherwise engaged in conduct constituting criminal activity, drug-related criminal activity, abusive or violent behavior (actual or threatened) or a nuisance, or (b) the provisions of subdivision (b) of section 1161.3 of the California Code of Civil Procedure apply.

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

If a Landlord seeks to terminate a tenancy on the 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 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 November \_\_\_\_ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

\_\_\_\_\_  
Rent Board Clerk

\_\_\_\_\_  
David Gray, Chair



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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

Cite as: 535 U. S. \_\_\_\_ (2002)

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## Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

Nos. 00–1770 and 00–1781

DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT, PETITIONER

00–1770

*v.*

PEARLIE RUCKER ET AL.

OAKLAND HOUSING AUTHORITY, ET AL.,  
PETITIONERS

00–1781

*v.*

PEARLIE RUCKER ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[March 26, 2002]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

With drug dealers “increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants,” Congress passed the Anti-Drug Abuse Act of 1988. §5122, 102 Stat. 4301, 42 U. S. C. §11901(3) (1994 ed.). The Act, as later amended, provides that each “public housing agency shall utilize leases which . . . provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for

termination of tenancy.” 42 U. S. C. §1437d(l)(6) (1994 ed., Supp. V). Petitioners say that this statute requires lease terms that allow a local public housing authority to evict a tenant when a member of the tenant’s household or a guest engages in drug-related criminal activity, regardless of whether the tenant knew, or had reason to know, of that activity. Respondents say it does not. We agree with petitioners.

Respondents are four public housing tenants of the Oakland Housing Authority (OHA). Paragraph 9(m) of respondents’ leases, tracking the language of §1437d(l)(6), obligates the tenants to “assure that the tenant, any member of the household, a guest, or another person under the tenant’s control, shall not engage in . . . [a]ny drug-related criminal activity on or near the premise[s].” App. 59. Respondents also signed an agreement stating that the tenant “understand[s] that if I or any member of my household or guests should violate this lease provision, my tenancy may be terminated and I may be evicted.” *Id.*, at 69.

In late 1997 and early 1998, OHA instituted eviction proceedings in state court against respondents, alleging violations of this lease provision. The complaint alleged: (1) that the respective grandsons of respondents William Lee and Barbara Hill, both of whom were listed as residents on the leases, were caught in the apartment complex parking lot smoking marijuana; (2) that the daughter of respondent Pearlle Rucker, who resides with her and is listed on the lease as a resident, was found with cocaine and a crack cocaine pipe three blocks from Rucker’s apartment;<sup>1</sup> and (3) that on three instances within a 2-

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<sup>1</sup>In February 1998, OHA dismissed the unlawful detainer action against Rucker, after her daughter was incarcerated, and thus no longer posed a threat to other tenants.

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month period, respondent Herman Walker’s caregiver and two others were found with cocaine in Walker’s apartment. OHA had issued Walker notices of a lease violation on the first two occasions, before initiating the eviction action after the third violation.

United States Department of Housing and Urban Development (HUD) regulations administering §1437d(l)(6) require lease terms authorizing evictions in these circumstances. The HUD regulations closely track the statutory language,<sup>2</sup> and provide that “[i]n deciding to evict for criminal activity, the [public housing authority] shall have discretion to consider all of the circumstances of the case . . . .” 24 CFR §966.4(l)(5)(i) (2001). The agency made clear that local public housing authorities’ discretion to evict for drug-related activity includes those situations in which “[the] tenant did not know, could not foresee, or could not control behavior by other occupants of the unit.” 56 Fed. Reg. 51560, 51567 (1991).

After OHA initiated the eviction proceedings in state court, respondents commenced actions against HUD, OHA, and OHA’s director in United States District Court. They challenged HUD’s interpretation of the statute under the Administrative Procedure Act, 5 U. S. C. §706(2)(A), arguing that 42 U. S. C. §1437d(l)(6) does not require lease terms authorizing the eviction of so-called “innocent”

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<sup>2</sup>The regulations require public housing authorities (PHAs) to impose a lease obligation on tenants:

“To assure that the tenant, any member of the household, a guest, or another person under the tenant’s control, shall not engage in:

“(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA’s public housing premises by other residents or employees of the PHA, or

“(B) Any drug-related criminal activity on or near such premises.

Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.” 24 CFR §966.4(f)(12)(i) (2001).

tenants, and, in the alternative, that if it does, then the statute is unconstitutional.<sup>3</sup> The District Court issued a preliminary injunction, enjoining OHA from “terminating the leases of tenants pursuant to paragraph 9(m) of the ‘Tenant Lease’ for drug-related criminal activity that does not occur within the tenant’s apartment unit when the tenant did not know of and had no reason to know of, the drug-related criminal activity.” App. to Pet. for Cert. in No. 01–770, pp. 165a–166a.

A panel of the Court of Appeals reversed, holding that §1437d(l)(6) unambiguously permits the eviction of tenants who violate the lease provision, regardless of whether the tenant was personally aware of the drug activity, and that the statute is constitutional. See *Rucker v. Davis*, 203 F. 3d 627 (CA9 2000). An en banc panel of the Court of Appeals reversed and affirmed the District Court’s grant of the preliminary injunction. See *Rucker v. Davis*, 237 F. 3d 1113 (2001). That court held that HUD’s interpretation permitting the eviction of so-called “innocent” tenants “is inconsistent with Congressional intent and must be rejected” under the first step of *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984). 237 F. 3d, at 1119.

We granted certiorari, 533 U. S. 976 (2001), 534 U. S. \_\_\_ (2001), and now reverse, holding that 42 U. S. C. §1437d(l)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity.

That this is so seems evident from the plain language of

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<sup>3</sup>Respondents Rucker and Walker also raised Americans with Disabilities Act claims that are not before this Court. And all of the respondents raised state-law claims against OHA that are not before this Court.

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the statute. It provides that “each public housing authority shall utilize leases which . . . provide that . . . any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.” 42 U. S. C. §1437d(l)(6) (1994 ed., Supp. V). The en banc Court of Appeals thought the statute did not address “the level of personal knowledge or fault that is required for eviction.” 237 F. 3d, at 1120. Yet Congress’ decision not to impose any qualification in the statute, combined with its use of the term “any” to modify “drug-related criminal activity,” precludes any knowledge requirement. See *United States v. Monsanto*, 491 U. S. 600, 609 (1989). As we have explained, “the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *United States v. Gonzales*, 520 U. S. 1, 5 (1997). Thus, any drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about.

The en banc Court of Appeals also thought it possible that “under the tenant’s control” modifies not just “other person,” but also “member of the tenant’s household” and “guest.” 237 F. 3d, at 1120. The court ultimately adopted this reading, concluding that the statute prohibits eviction where the tenant “for a lack of knowledge or other reason, could not realistically exercise control over the conduct of a household member or guest.” *Id.*, at 1126. But this interpretation runs counter to basic rules of grammar. The disjunctive “or” means that the qualification applies only to “other person.” Indeed, the view that “under the tenant’s control” modifies everything coming before it in the sentence would result in the nonsensical reading that the statute applies to “a public housing tenant . . . under the tenant’s control.” HUD offers a convincing explanation for the grammatical imperative that “under the ten-

ant's control" modifies only "other person": "by 'control,' the statute means control in the sense that the tenant has permitted access to the premises." 66 Fed. Reg. 28781 (2001). Implicit in the terms "household member" or "guest" is that access to the premises has been granted by the tenant. Thus, the plain language of §1437d(l)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenant's knowledge of the drug-related criminal activity.

Comparing §1437d(l)(6) to a related statutory provision reinforces the unambiguous text. The civil forfeiture statute that makes all leasehold interests subject to forfeiture when used to commit drug-related criminal activities expressly exempts tenants who had no knowledge of the activity: "[N]o property shall be forfeited under this paragraph . . . by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner." 21 U. S. C. §881(a)(7) (1994 ed.). Because this forfeiture provision was amended in the same Anti-Drug Abuse Act of 1988 that created 42 U. S. C. §1437d(l)(6), the en banc Court of Appeals thought Congress "meant them to be read consistently" so that the knowledge requirement should be read into the eviction provision. 237 F.3d, at 1121–1122. But the two sections deal with distinctly different matters. The "innocent owner" defense for drug forfeiture cases was already in existence prior to 1988 as part of 21 U. S. C. §881(a)(7). All that Congress did in the 1988 Act was to add leasehold interests to the property interests that might be forfeited under the drug statute. And if such a forfeiture action were to be brought against a leasehold interest, it would be subject to the pre-existing "innocent owner" defense. But 42 U. S. C. §1437(d)(1)(6), with which we deal here, is a quite different measure. It is entirely reasonable to think that the Government, when seeking to transfer private property to itself in a forfeiture proceeding, should be subject to an

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“innocent owner defense,” while it should not be when acting as a landlord in a public housing project. The forfeiture provision shows that Congress knew exactly how to provide an “innocent owner” defense. It did not provide one in §1437d(l)(6).

The en banc Court of Appeals next resorted to legislative history. The Court of Appeals correctly recognized that reference to legislative history is inappropriate when the text of the statute is unambiguous. 237 F. 3d, at 1123. Given that the en banc Court of Appeals’ finding of textual ambiguity is wrong, see *supra*, at 4–6, there is no need to consult legislative history.<sup>4</sup>

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<sup>4</sup> Even if it were appropriate to look at legislative history, it would not help respondents. The en banc Court of Appeals relied on two passages from a 1990 Senate Report on a proposed amendment to the eviction provision. 237 F. 3d, at 1123 (citing S. Rep. No. 101–316 (1990)). But this Report was commenting on language from a Senate version of the 1990 amendment, which was never enacted. The language in the Senate version, which would have imposed a different standard of cause for eviction for drug-related crimes than the unqualified language of §1437d(l)(6), see 136 Cong. Rec. 15991, 16012 (1990) (reproducing S. 566, 101st Cong., 2d Sess., §§521(f) and 714(a) (1990)), was rejected at Conference. See H. R. Conf. Rep. No. 101–943, p. 418 (1990). And, as the dissent from the en banc decision below explained, the passages may plausibly be read as a mere suggestion about how local public housing authorities should exercise the “*wide* discretion to evict tenants connected with drug-related criminal behavior” that the lease provision affords them. 237 F. 3d, at 1134 (Sneed, J., dissenting).

Respondents also cite language from a House Report commenting on the Civil Asset Forfeiture Reform Act of 2000, codified at 18 U. S. C. §983. Brief for Respondents 15–16. For the reasons discussed *supra* at 6–7, legislative history concerning forfeiture provisions is not probative on the interpretation of §1437d(l)(6).

A 1996 amendment to §1437d(l)(6), enacted five years after HUD issued its interpretation of the statute, supports our holding. The 1996 amendment expanded the reach of §1437d(l)(6), changing the language of the lease provision from applying to activity taking place “on or near” the public housing premises, to activity occurring “on or off” the public housing premises. See Housing Opportunity Program Extension Act of

Nor was the en banc Court of Appeals correct in concluding that this plain reading of the statute leads to absurd results.<sup>5</sup> The statute does not *require* the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from “rampant drug-related or violent crime,” 42 U. S. C. §11901(2) (1994 ed. and Supp. V), “the seriousness of the offending action,” 66 Fed. Reg., at 28803, and “the extent to which the leaseholder has . . . taken all reasonable steps to prevent or mitigate the offending action,” *ibid.* It is not “absurd” that a local housing authority may sometimes evict a tenant who had no knowledge of the drug-related activity. Such “no-fault” eviction is a common “incident of tenant responsibility under normal landlord-tenant law and practice.” 56 Fed. Reg., at 51567. Strict liability maximizes deterrence and eases enforcement difficulties. See *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U. S. 1, 14 (1991).

And, of course, there is an obvious reason why Congress would have permitted local public housing authorities to conduct no-fault evictions: Regardless of knowledge, a tenant who “cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents

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1996, §9(a)(2), 110 Stat. 836. But Congress, “presumed to be aware” of HUD’s interpretation rejecting a knowledge requirement, made no other change to the statute. *Lorillard v. Pons*, 434 U. S. 575, 580 (1978).

<sup>5</sup>For the reasons discussed above, no-fault eviction, which is specifically authorized under §1437d(l)(6), does not violate §1437d(l)(2), which prohibits public housing authorities from including “unreasonable terms and conditions [in their leases].” In addition, the general statutory provision in the latter section cannot trump the clear language of the more specific §1437d(l)(6). See *Green v. Bock Laundry Machine Co.*, 490 U. S. 504, 524–526 (1989).

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and the project.” 56 Fed. Reg., at 51567. With drugs leading to “murders, muggings, and other forms of violence against tenants,” and to the “deterioration of the physical environment that requires substantial governmental expenditures,” 42 U. S. C. §11901(4) (1994 ed., Supp. V), it was reasonable for Congress to permit no-fault evictions in order to “provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs,” §11901(1) (1994 ed.).

In another effort to avoid the plain meaning of the statute, the en banc Court of Appeals invoked the canon of constitutional avoidance. But that canon “has no application in the absence of statutory ambiguity.” *United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U. S. 483, 494 (2001). “Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the legislative powers vested in Congress by Art. I, §1, of the Constitution.” *United States v. Albertini*, 472 U. S. 675, 680 (1985). There are, moreover, no “serious constitutional doubts” about Congress’ affording local public housing authorities the discretion to conduct no-fault evictions for drug-related crime. *Reno v. Flores*, 507 U. S. 292, 314, n. 9 (1993) (emphasis deleted).

The en banc Court of Appeals held that HUD’s interpretation “raise[s] serious questions under the Due Process Clause of the Fourteenth Amendment,” because it permits “tenants to be deprived of their property interest without any relationship to individual wrongdoing.” 237 F. 3d, at 1124–1125 (citing *Scales v. United States*, 367 U. S. 203, 224–225 (1961); *Southwestern Telegraph & Telephone Co. v. Danaher*, 238 U. S. 482 (1915)). But both of these cases deal with the acts of government as sovereign. In *Scales*, the United States criminally charged the defendant with knowing membership in an organization that advocated the overthrow of the United States Government. In *Danaher*, an Arkansas statute forbade discrimination

among customers of a telephone company. The situation in the present cases is entirely different. The government is not attempting to criminally punish or civilly regulate respondents as members of the general populace. It is instead acting as a landlord of property that it owns, invoking a clause in a lease to which respondents have agreed and which Congress has expressly required. *Scales* and *Danaher* cast no constitutional doubt on such actions.

The Court of Appeals sought to bolster its discussion of constitutional doubt by pointing to the fact that respondents have a property interest in their leasehold interest, citing *Greene v. Lindsey*, 456 U. S. 444 (1982). This is undoubtedly true, and *Greene* held that an effort to deprive a tenant of such a right without proper notice violated the Due Process Clause of the Fourteenth Amendment. But, in the present cases, such deprivation will occur in the state court where OHA brought the unlawful detainer action against respondents. There is no indication that notice has not been given by OHA in the past, or that it will not be given in the future. Any individual factual disputes about whether the lease provision was actually violated can, of course, be resolved in these proceedings.<sup>6</sup>

We hold that “Congress has directly spoken to the pre-

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<sup>6</sup>The en banc Court of Appeals cited only the due process constitutional concern. Respondents raise two others: the First Amendment and the Excessive Fines Clause. We agree with Judge O’Scannlain, writing for the panel that reversed the injunction, that the statute does not raise substantial First Amendment or Excessive Fines Clause concerns. *Lyng v. Automobile Workers*, 485 U. S. 360 (1988), forecloses respondents claim that the eviction of unknowing tenants violates the First Amendment guarantee of freedom of association. See *Rucker v. Davis*, 203 F. 3d 627, 647 (2000). And termination of tenancy “is neither a cash nor an in-kind payment imposed by and payable to the government” and therefore is “not subject to analysis as an excessive fine.” *Id.*, at 648.

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cise question at issue.” *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S., at 842. Section 1437d(l)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity.

Accordingly, the judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

*It is so ordered.*

JUSTICE BREYER took no part in the consideration or decision of these cases.

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**ITEM G-2  
ATTACHMENT 4**

**CRIME FREE LEASE ADDENDUM**

In consideration of the execution or renewal of a lease of the dwelling unit identified in the lease, Owner and Resident agree as follows:

1. Resident, any members of the resident's household or a guest or other person under the resident's control agree to live a "Crime Free Lifestyle" and shall not engage in criminal activity, including drug-related criminal activity, on or near the said premises. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. 802]).

2. Resident, any member of the resident's household or a guest or other person under the resident's control shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near the said premises.

3. Resident or members of the household will not permit the dwelling unit to be used for, or to facilitate criminal activity, including drug-related criminal activity, regardless or whether the individual engaging in such activity is a member of the household, or a guest.

4. Resident, any member of the resident's household or a guest, or another person under the resident's control shall not engage in the unlawful manufacturing, selling, using, storing, keeping, or giving of a controlled substance as defined in Health & Safety Code '11350, et seq., at any locations, whether on or near the dwelling unit premises or otherwise.

5. Resident, any member of the resident's household, or a guest or another person under the resident's control shall not engage in any illegal activity, including: prostitution as defined in Penal Code '647(b); criminal street gang activity, as defined in Penal Code '186.20 et seq.; assault and battery, as prohibited in Penal Code '240; burglary, as prohibited in Penal Code '459; the unlawful use and discharge of firearms, as prohibited in Penal Code '245; sexual offenses, as prohibited in Penal Code '269 and 288, or any breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, his agent or other tenant or involving imminent or actual serious property damage.

**6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF TENANCY.** A single violation of any of the provisions of this added addendum shall be deemed a serious violation and a material and irreparable non-compliance. It is understood that a single violation shall be good cause for termination of the lease. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.

7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of the addendum shall govern.

8. This LEASE ADDENDUM is incorporated into the lease executed or renewed this day between Owner and Resident.

\_\_\_\_\_  
Resident Signature Date: \_\_\_\_\_

\_\_\_\_\_  
Resident Signature Date: \_\_\_\_\_

\_\_\_\_\_  
Resident Signature Date: \_\_\_\_\_

\_\_\_\_\_  
Property Manager's Signature Date: \_\_\_\_\_ Property \_\_\_\_\_

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