

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: September 19, 2018

Final Decision Date Deadline: September 19, 2018

**STATEMENT OF THE ISSUE:** The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Rent Ordinance) prohibits Landlords from charging Tenants more than the Maximum Allowable Rent. If a Tenant is charged in excess of the Maximum Allowable Rent, they may file a petition on the grounds of excess rent payment. The proposed regulation would prohibit Master Tenants in rent-controlled units from demanding more Rent from subtenants than that which is lawfully paid to the Landlord, and extend to subtenants the right to file a petition for a downward rent adjustment on the grounds of excess rent payment to the Master Tenant.

## 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 911.5 (Determining the Lawful Rent in Master Tenant – Subtenant Occupancies), prohibiting Master Tenants from charging subtenants more Rent than that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit, and permit subtenants to petition the Rent Board for an adjustment in Rent and/or exercise rights and obligations pursuant to Regulation 911 (Overcharges and Other Violations) – Rent Program (Nicolas Traylor 620-6564).

AGENDA ITEM NO:  
**H-2.**



# AGENDA REPORT

**DATE:** September 19, 2018  
**TO:** Chair Gray and Members of the Rent Board  
**FROM:** Nicolas Traylor, Executive Director  
**SUBJECT:** MASTER TENANT/SUBTENANT RENT OVERCHARGE REGULATION

## **STATEMENT OF THE ISSUE:**

The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Rent Ordinance) prohibits Landlords from charging Tenants more than the Maximum Allowable Rent. If a Tenant is charged in excess of the Maximum Allowable Rent, they may file a petition on the grounds of excess rent payment. The proposed regulation would prohibit Master Tenants in rent-controlled units from demanding more Rent from subtenants than that which is lawfully paid to the Landlord, and extend to subtenants the right to file a petition for a downward rent adjustment on the grounds of excess rent payment to the Master Tenant.

## **RECOMMENDED ACTION:**

ADOPT Regulation 911.5 (Determining the Lawful Rent in Master Tenant – Subtenant Occupancies), prohibiting Master Tenants from charging subtenants more Rent than that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit, and permit subtenants to petition the Rent Board for an adjustment in Rent and/or exercise rights and obligations pursuant to Regulation 911 (Overcharges and Other Violations) – Rent Program (Nicolas Traylor 620-6564).

## **FISCAL IMPACT:**

There is no fiscal impact related to this item.

## **DISCUSSION:**

### Background

The Rent Ordinance defines “Landlord” as “an owner, lessor, sublessor or any other person entitled to receive rent for the use and occupancy of any Rental Unit, or an agent, representative or successor of any of the foregoing” (RMC 11.100.030 (f)). Under

this definition, Master-Tenants are considered “Landlords” and are therefore subject to the same requirement to maintain rent levels that do not exceed the Maximum Allowable Rent in a Controlled Rental Unit.

There are two circumstances in which subtenants can be charged excessive Rent by the Master Tenant: (1) where the Master Tenant subleases an entire Controlled Rental Unit, and charges a subtenant(s) more Rent than the Master Tenant actually and lawfully pays the Landlord, and (2) where a Master Tenant subleases a portion of a Controlled Rental Unit and charges a subtenant(s) more Rent than is appropriate based on a proportional share of occupied space, square footage, or other methods used in proportioning the Rents.

To address such situations that are not contemplated by the Ordinance but present circumstances which are contrary to its purpose, and to provide subtenants with a mechanism for petitioning the Rent Board to reduce the rent and refund any overcharges, staff members have prepared Regulation 911.5, which would prohibit Master-Tenants from charging a subtenant more Rent than the Landlord is lawfully and actually paid.

### Regulation 911.5 Maintains the Intent of the Rent Ordinance in Master-Tenant/Subtenant Relationships

Currently, the Rent Board has not adopted regulations that specifically address Master-Tenant and subtenant rent overcharge situations. Regulation 911.5 specifically addresses the two situations where subtenants are overcharged in Rent by Master-Tenants. Regulation 911.5 is necessary to effectuate the Rent Ordinance for several reasons. The Rent Ordinance was put in place by the voters of Richmond to mitigate an ongoing housing crisis, where an inflated rental housing market was destabilizing the community. An unstable rental housing market creates financial instability for Tenants. The Rent Ordinance, by stabilizing rents, alleviates some of the financial instability for renters that emerged due to the inflated rental housing market. As the rental housing market continues to heat up, it is important to establish regulations to prevent circumvention of the Rent Ordinance through Rent overcharge practices.

In the same way that the Rent Ordinance prohibits Landlords from charging Tenants more than the Maximum Allowable Rent, the proposed regulation clarifies that Master-Tenants (acting as the “Landlord”) cannot “profit” on their Controlled Rental Unit by charging subtenants more than the amount of Rent which is lawfully and actually paid to the Landlord.

### Summary of Regulation

Regulation 911.5 prohibits Master-Tenants, who sublease an entire Controlled Rental Unit, from charging subtenants more Rent than the Master-Tenant actually and lawfully pays the Landlord.

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Additionally, Regulation 911.5 prohibits Master-Tenants, who sublease a portion of the Controlled Rental Unit, from charging subtenants more Rent than is appropriate based on a proportional share of occupied space, square footage, or other methods used in proportioning the Rents.

Finally, Regulation 911.5 permits subtenants to file a petition to adjust the Rent or assert the occurrence of Rent Overcharge(s).

### Conclusion

Staff members recommend the Rent Board adopt Rent Board Regulation 911.5 to prohibit Master Tenants from charging a subtenant more Rent than the Landlord is lawfully and actually paid to the Landlord, and permit subtenants to petition the Rent Board seeking an adjustment of the subtenant's Rent and/or Rent Overcharges.

### **DOCUMENTS ATTACHED:**

Attachment 1 – Rent Board Regulations 911.5

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### **911.5. Determining the Lawful Rent in Master Tenant – Subtenant Occupancies**

- A. For purposes of this Regulation 911.5, Master Tenant shall mean any person, other than the owner of record, who is entitled to receive Rent for the use and occupancy of any portion of a Rental Unit.
- B. Where a Master Tenant subleases a Controlled Rental Unit, the Master Tenant shall not demand, accept, receive, or retain from the subtenant(s) more Rent than that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit. If the Master Tenant receives, accepts or retains Rent in excess of that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit, the Master Tenant shall be responsible to the subtenant(s) for all such Rent Overcharges. If the Master Tenant acts as an agent, employee, or conduit of the Landlord of the Controlled Rental Unit in demanding, accepting, receiving, or retaining Rent in excess of that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit, the Master Tenant and the Landlord of the Controlled Rental Unit shall be jointly and severally responsible for all such Rent Overcharges.
- C. Where a Tenant is designated as a Master Tenant or acts as a Master Tenant, and the Master Tenant is subletting a portion of a Controlled Rental Unit, the subtenant shall not pay more than the proportional share of the total current Rent paid to the Landlord by the Master Tenant for the housing and housing services to which the subtenant is entitled to under the Rental Housing Agreement. A Master Tenant's violation of this section shall not constitute a basis for eviction under Richmond Municipal Code Section 11.100.050, et seq.
- D. An appropriate proportional share of a subtenant's Rent may be calculated based on the square footage shared with and/or exclusively occupied by the subtenant; or the space shared with and/or exclusively occupied by the subtenant (for instance, dividing the total Rent in equivalent proportions amongst all occupants); or any other method of proportioning the Rent such that the subtenant(s) do not pay more Rent than the proportional share of the total Rent which is actually and lawfully due and paid to the Landlord by the Master Tenant.
- E. Where the subtenant(s) and Master Tenant elect to determine their Rent based on either the proportion of the space shared with and/or exclusively occupied by the subtenant(s) and Master Tenant or the proportion of square footage shared with and/or exclusively occupied by the subtenant(s) and Master Tenant, there shall be a rebuttable presumption as to the lawfulness of the subtenant's and Master Tenant's Rent. This presumption may be overcome by evidence of the relative amenities of the rooms, special obligations of the Master Tenant and/or subtenant(s), or any other evidence the Hearing Examiner deems relevant.

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ATTACHMENT 1**

- F. Subtenant(s) may file a petition pursuant to Regulation 805(B)(1) and Regulation 911 for Rent Overcharges, or a petition for an adjustment in Rent, to enforce rights and obligations under this Regulation. In the event the Hearing Examiner determines a Rent Overcharge has occurred, and where the actual rent charged or collected is not the same as the lawful Rent, the Overcharge award(s) must be calculated based on the actual rent charged or collected.