



L.A. Rent Control Guest House Rentals Face Dilemma

by James S. Cooper, Esq.

There has been a long tradition of renting out guest houses in the City of Los Angeles probably for as long as any living person can remember. Numerous houses throughout the San Fernando Valley and greater Los Angeles contain guest units, some of which were built 30 to 60 years ago. Others have garages that have been plumbed and converted to "granny flats." Over two decades ago, however, the Los Angeles Rent Stabilization Ordinance was amended to increase the scope of rent control from its original coverage of any property which has three or more units on a lot, to only two. While this subtle change

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Put simply, any single family residence which also con-

tains a guest house or a granny flat is subject to the ordinance's provisions. The problem is that because these units typically, in most cases, lack a certificate of occupancy, they are not recognized under the Rent Stabilization Ordinance as valid rental units and cannot be registered with the Rent Stabilization Board. This potentially prevents a landlord from collection of any rent.

Pursuant to Municipal Code § 151.02, the Rent Stabilization Ordinance applies to any property containing two or more units. Therefore, anyone renting out a guest house or granny flat is required to "register"

(continued on page 54)

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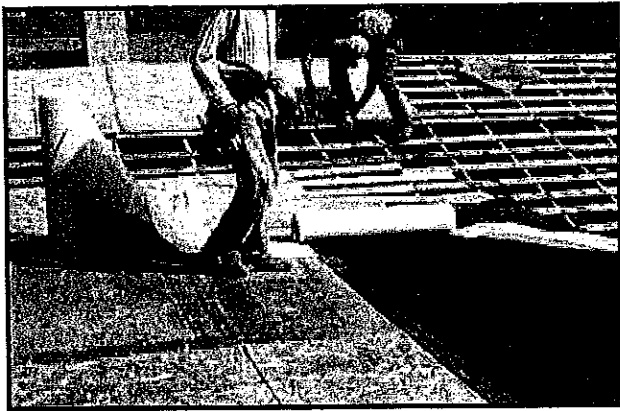
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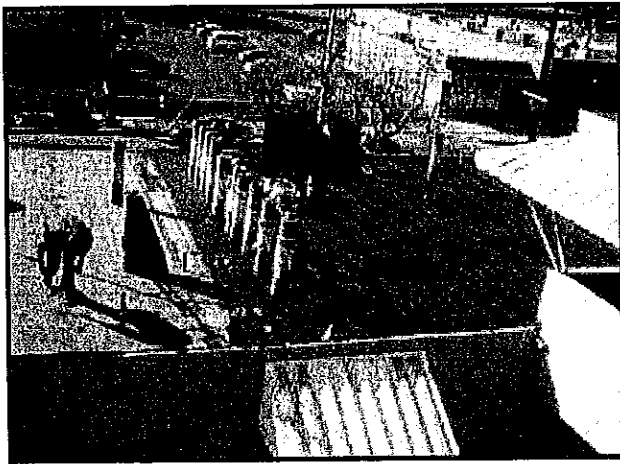
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with the Rent Stabilization Board. Under Municipal Code § 151.05, if the unit that is subject to the ordinance is not registered with the Board, the landlord cannot raise rent and, in fact, cannot collect, demand, or accept any rent at all.

While registration is generally a simple matter for ordinary apartment owners, it is generally impossible for owners of guest houses. Guest houses are not recognized as legal units in most circumstances by the Rent Stabilization Board. Typically, guest houses are illegal; that is, they are usually part of single family residences which are zoned for one unit only under standard R-1 zoning. The Rent Stabilization Board does not even recognize their existence because often they do not have separate addresses. Moreover, the Rent Stabilization Board has taken the position that it will refuse to register such units because they are not legal and do not contain a certificate of occupancy, nor do they comply with zoning laws. What this means is that while landlords who rent out guest units are technically subject to the restrictions of rent control, they may not participate in the rent control program in order to protect themselves by registration.

This was the finding in the recent case of *Carter v. Cohen* (2010) 188 Cal.App.4th 1038, recently decided by the California Court of Appeal. Justice Nora Manella writing for the majority reasoned that all residential structures which are comprised of two or more on a parcel used by tenants constitute "rental units" under the definitions set forth in the Rent Stabilization Ordinance, even if the Rent Stabilization Board does not recognize them as legal units and, therefore, refuses to allow landlords to register these units.

In the *Carter* case, the tenant, Carter, entered into a lease agreement with the previous owner and landlord of a guest unit which was part of a single family residence for \$890.00 per month. Like so many others, the guest house was built without building permits, albeit it is far from clear whether they were originally required as

this unit was built before later-enacted code requirements may have been grandfathered in. Nevertheless, as a result, the unit was not and could not be registered under the Rent Stabilization Board.

In 2004, the landlord, Cohen, purchased the property and increased Ms. Carter's rent to the market rate of \$1,475.00 as a condition of letting the tenant remain. The tenant readily agreed to this sum as she was likely aware that the increase was still well below market for like units. In 2005, Cohen further raised the rent to \$1,585.00 and again raised the rent in 2006 to \$1,685.00 – both times to reflect market

rates. In response to the final rent increase, the tenant gave a 30-day notice of her intent to move from the guest house, and the parties became involved in a dispute whether her security deposit could be applied to her last month's rent.


The Los Angeles Department of Building and Safety subsequently declared the guest house substandard because it constituted an "unapproved occupancy" because it lacked permits. The tenant then filed a lawsuit against Cohen, stating that the guest house was subject to the Los Angeles Rent Stabilization Ordinance and plaintiff was therefore seeking recovery of all the rent she had

paid to the landlord or, alternatively, the rent she had paid in excess of the limits set by rent control. At trial, a jury determined that the landlord had charged her excess rent payments of \$11,590.00. In addition, Ms. Carter was awarded \$25,575.00 in attorneys' fees and \$5,427.01 in costs. Thus, the total amount awarded was \$42,592.11. The judge, however, prevented the jury from considering an additional award of treble or three times the damages as a penalty, as allowed for under the ordinance, since the judge determined that the violation by the landlord was not willful in light of the fact

(continued on page 57)

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that Cohen had not realized the unit was even governed by rent control when he raised the rent.

The landlord appealed, claiming that the tenant was not entitled to damages since the unit was without permits, rendering the rental agreement unlawful. For this same reason Cohen argued that the guest house fell outside the control of the Rent Stabilization Board because the Board did not recognize the unit as being under its jurisdiction due to the lack of permits, nor was it willing to allow the unit to be registered. A witness from the Board had testified to that effect at trial. The Court of Appeal disagreed with the landlord and affirmed

that the Rent Stabilization Ordinance authorized the tenant's recovery of excess rent payments despite the fact that it was impossible for the landlord to comply with the registration requirements.¹

Sadly, the Court was not moved by the legal dilemma such a ruling will place upon the thousands of landlords who provide a vital service to the City in providing rental units, especially in these trying times when many have difficulty paying their own mortgages. This ruling could have a chilling effect on a longstanding tradition in the City which provides a vital service. The implications of the ruling will arguably hinder

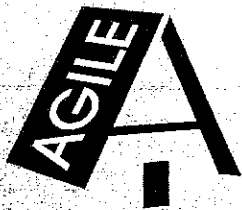
the ability of owners to rent out their residential guest units on R-1 zoned properties within the City limits for fear that a savvy tenant could later claim that he or she doesn't have to pay rent because the unit is not and cannot be registered. Such tenants could potentially collect a large relocation fee as many tenants are now doing. To be clear, there is not, as of yet, an appellate decision that has ever decided a case by a tenant claiming he or she is not required to pay any rent because of non-registration where such registration had been rendered impossible by illegality. Thus, it is still uncertain what remedy

(continued on page 58)

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the law may ultimately fashion. Here, only the amount of overpayment was at issue.

Under common law, and in the absence of rent control, a tenant residing in an illegal unit would still be required to pay the reasonable rental value of the premises, even though the Court would not allow the landlord or the tenant to enforce the actual lease. Moreover, traditionally, if the tenant was fully aware of the illegality of the lease, the courts have the power for purposes of equity to deny the tenant's ability to reject a lease due to illegality out of basic fairness. No such power presumably exists with respect to the violation of rent

control since it is a "public policy" and the tenant's awareness of the violation will not prevent the tenant from taking advantage of her understanding of the illegal nature of the lease.

Thus, under the Los Angeles Rent Stabilization Ordinance, as interpreted both by the Rent Stabilization Board and the Court of Appeal, landlords for these residential guest houses now face a paradox: On the one hand they are prevented from ever registering their units, which is required by law for both legal and illegal duplexes within the City of Los Angeles. On the other hand, they are subject to the penalties under the Rent Stabilization Or-

dinance for failing to register. This means that landlords are now subject to substantial risks in renting out their unregistered units. Although no published decision to date has ruled that a landlord must return all rent paid, the implication by Justice Manella in the Cohen case is menacingly clear.

Of course, this dilemma could be greatly ameliorated if only the Los Angeles Rent Stabilization Board would recognize the importance of these guest house units and allow their owners to register them with the Board. While this would subject such owners to the strictures of rent control, something that probably many



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owners do not even realize applies, it would at least also provide a modicum of protection for those who wish to comply with the law, provide a vital source of highly desirable housing, and contribute to the overall economy, including helping people maintain the abilities to pay their mortgages.

Presently, however, tenants have clear advantage if any dispute arises with their landlord in connection with their unregistered units. In my representation of landlords for many years, I cannot think of a single case that wasn't initially caused by such a dispute in which the tenant later, upon discovering the application of the Rent Sta-

bilization Ordinance, was able to turn the tables on the landlord. See *Swartz v. Gombiner* (2008) 167 Cal.App.4th 1365.

In truth, landlords who rent out guest units are typically not professionals and are shocked and dismayed over the plethora of complex and punitive statutory law which essentially treats them in the same contemptuous manner that rent control unfairly stereotypes landlords generally in the City of Los Angeles.

Ultimately, the solution to this problem is to come up with some type of reasonable compromise on this issue. Otherwise, there will be continued unfairness and even due process

violations to landlords, who on the one hand are prevented from registering their units but, on the other, are subject to the Rent Stabilization Ordinance's penalties for failure to do so. Such is the unfortunate lesson in *Carter v. Cohen*. **AUA**

It is important to note that had the unit been allowed to be registered, the landlord would have still been in violation of RSO since the rent increases for the dwelling unit exceeded that allowed for under the ordinance.

James S. Cooper is an attorney with Levinson, Arshon-sky & Kurtz LLP and may be reached at (818) 382-3434.

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