

Setting the Table For Rent-Controlled Evictions

by James S. Cooper, Esq

Evicting a tenant for non-payment of rent is not nearly as simple as it once was. This is because of the fact that although the unlawful detainer statutes were originally designed for relatively simple and expeditious recovery of rental units, that body of law has now been modified beyond recognition, creating numerous traps for landlords and allowing for a variety of defenses by tenants to forestall relinquishment of rental units even when these tenants fail to pay their rent.

Originally, the unlawful detainer statutes were specifically geared to prevent delay when a tenant was in default of their

lease. The law provides that a landlord may simply serve a tenant with a Three-Day No-

The rent control statutes have expanded into a complex and labyrinthine statutory scheme now developed by major cities, such as Los Angeles, which are much more difficult to comply with and create multiple traps for landlords who simply seek recovery of their units...

tice to Pay Rent or Quit. After the expiration of the Three-Day

Notice, the landlord generally could refuse to accept rent and then proceed to file a lawsuit for eviction. Code Civ. Proc., § 1161. The unlawful detainer lawsuit is also governed by specialized statutes with shorter periods of time required to obtain relief. For example, tenants have only five days, as opposed to the standard 30 days, to answer an unlawful detainer complaint; landlords are given priority for trial setting, allowing trials to be set within as little as 45 days from the date of filing, as opposed to a year in normal civil actions. Discovery and specialized motions, such as motions for summary judgment, all may proceed on

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five days' notice, as opposed to 75 days in the case of a motion for summary judgment, for example, in normal civil actions. Similarly, the tenant's ability to challenge an unlawful detainer complaint was highly circumscribed originally meant to prevent tenants from asserting frivolous attacks and creating legal roadblocks in order to delay forfeiture.

Beginning primarily in the 1970s, the unlawful detainer process came under attack beginning with liberal court decisions which began to view the providing of rental units as a consumer product and with the passage of rent control laws by legislators who successfully,

with the blessing of the U.S. Supreme Court, were able to erode landlord rights and impose a number of limitations on the principles of freedom of contract previously enjoyed under the law. The first major blow to speedy recovery of rental units was arguably the advent of the common law habitability defense articulated in the seminal case of *Green v. Superior Court* (1974) 10 Cal.3d 616 in California. Under *Green*, the California Supreme Court expressed for the first time a new defense for defaulting tenants who could now claim that the rental units they resided in were "uninhabitable" if they could show that certain

items, such as plumbing, electrical, fenestration, were lacking or had fallen into a state of disrepair. Not surprisingly, the habitability defense created by case law has been greatly expanded in many cities in California and elsewhere and also has been adopted by statute (Civ. Code, § 1942.3), allowing tenants who may have not paid rent for months to successfully delay and even defeat unlawful detainer actions based upon issues as simple as peeling paint and missing screens.

Concurrent with the establishment and expansion of the habitability defense is the advent of rent control. Civ.

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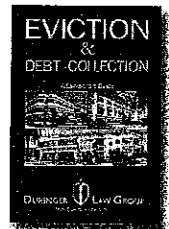
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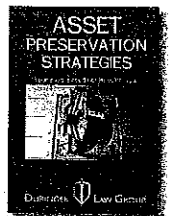
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Code., § 1947.8. While the concept of rent control is simple, e.g. placing a limitation on the amount of rent a landlord can seek, in practice the rent control statutes have expanded into a complex and labyrinthine statutory scheme now developed by major cities, such as Los Angeles, which are much more difficult to comply with and create multiple traps for landlords who simply seek recovery of their units, usually for nonpayment of rent. Accordingly, when seeking to evict a tenant for nonpayment of rent in the City of Los Angeles, it is imperative that landlords first make sure they have satisfied a number of prerequisites in order to set the table for a successful eviction. Because most standard leases contain attorneys' fees provisions, losing an unlawful detainer case means more than simply having to re-file a second time. It could mean thousands of dollars in attorneys' fees which a landlord will owe to a tenant, despite the fact that the tenant is in arrears in rent. It is for this

reason that evictions must be carefully planned and thought out, especially in rent controlled jurisdictions such as Los Angeles city and even when a tenant is clearly in default.

Registration and Posting in Los Angeles

Before even considering posting a Three-Day Notice to Pay Rent or Quit, a landlord in the City of Los Angeles first needs to make sure that he or she is in full compliance with the rent control laws. This starts with the requirement that the landlord's unit has been registered with the Rent Stabilization Board. Pursuant to Los Angeles County Municipal Code § 151.05, no landlord may either demand or collect rent unless the unit is registered with the Rent Stabilization Board. In addition to the registration requirement, the landlord must also ensure that he has also sent a copy of the registration to the tenant or posted a copy of the current registration from the Rent Stabilization Board in a prominent place, such as the apartment lobby.

Prior Rent Increases

It is also important that prior to serving a Three-Day Notice to Pay Rent or Quit, a landlord reviews any rent increases that have been imposed upon the tenant to ensure that they were properly noticed and within the "maximum allowable rate" allowed for the year in question. This means that any rent increases during the course of the tenancy must have been made with the required notice of 60 days and must be within the allowable percentage for the year in question. Thus, if the landlord previously raised the rent 4% when the maximum allowable rate for the year in question was only 3%, it is likely that the entire rent raise amount is illegal and must be returned to the tenant. The landlord could also be subject to treble damages. Civ. Code, § 1947.11; Los Angeles County Municipal Court § 151.10A. Moreover, although there is a four-

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year statute of limitations for lease-related collection of rents (and a one-year statute for unlawful detainer purposes), a tenant's right to claim an offset for overpayment of rent is considered "equitable" and has no statute of limitations. See *Minelian v. Manzella* (1989) 215 Cal.App.3d 457. This means that if a landlord improperly raised the rent seven, eight or nine years prior to the eviction, the landlord could owe thousands of dollars back to the tenant as an offset to any rent arrearages presently sought in an unlawful detainer action. For purposes of a Three-Day Notice, this means that if a landlord who previ-

ously improperly raised a tenant's rent sets forth the claimed amount owed in unpaid rent in a Three-Day Notice to Quit, said amount could in fact be incorrect because it fails to take into account the illegal rent increase and the amount refundable to the tenant. On this basis alone, the Three-Day Notice to Pay Rent will be considered improper because it does not state the correct amount of rent due. If the tenant then challenges the unlawful detainer action, the tenant may be likely to prevail and could be eligible for attorneys' fees, not to mention other amounts, including treble or three times multiplier of damages.

Interest on Deposits

Another potential trap for Los Angeles city landlords is interest due and owing on the tenant's deposits. Although the amount of interest currently payable on tenant deposits is extremely low based upon the current inflation index, failure to pay such interest creates another potential trap for landlords. If a landlord has failed to pay interest on a tenant's deposit in previous years, no matter how small the amount owed, the tenant could potentially assert a defense that the amount of rent demanded in the Three-Day Notice is inaccurate because it fails to take into ac-

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count a credit owed to the tenant for such interest. *This technicality is a "gotcha" provision hidden by the Legislature which could potentially result in the loss of an unlawful detainer case despite the fact that the amount owed in interest is dwarfed by the amount of unpaid rent.* This is because the Three-Day Notice to Pay Rent or Quit must precisely state the amount owed to the landlord at the time the Three-Day Notice is posted.

Addressing All Habitability Claims Ahead Of Time

Because a claim for breach of habitability is so easy to

make by any tenant and has become almost automatic, a landlord should expect such a claim in any challenged rent-control lawsuit. What this means for the eviction process is just as a landlord must ensure he or she has fully complied with all the Rent Stabilization Ordinance provisions prior to serving a Three-Day Notice, a landlord must also preemptively prepare for any claimed habitability defense by the tenant. This means that prior to serving any Three-Day Notice it would be wise for a landlord to make inquiries to the tenant as to any repairs the tenant believes are necessary and then promptly have said repairs made. Pref-

erably, the tenant should be asked to provide a list of any proposed repairs. The landlord should consider making all the repairs, no matter how small or trivial. In this way a landlord can head-off a habitability defense and will have *written* evidence of the tenant's own acknowledgment of the claims ahead of time. The same is true for pest control issues. If the landlord does not have a regular pest control service, make sure there are no such claims by the tenant of cockroaches or other such infestations. Despite the fact that many tenants simply create, exaggerate and complain about these issues in an unlawful detainer proceed-

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ing in an untruthful way, it is important for the landlord to preemptively create a barrier to such claims by having a unit treated, if appropriate, upon tenant complaints before serving upon the tenant the Three-Day Notice to Pay Rent or Quit.

While the above-referenced precautions may seem elaborate, time-consuming, expensive and even unfair, they are nevertheless critical in the City of Los Angeles and elsewhere, especially in rent-controlled jurisdictions, to ensure success in an unlawful detainer action. Poverty law firms which defend tenants in such actions have become

savvy in attorney-fee collection and are quite aggressive seeking attorneys' fees awarded by the courts for successful defenses by these law groups based upon some of the technicalities outlined above. In fact, the checklist outlined above is the very same checklist these groups are typically expert in assessing when defending such cases. It is for this reason that it is critical to prepare before serving a Three-Day Notice and commencing an unlawful detainer action. Although in California attorneys' fees provisions in leases are required to be mutual such that whichever party prevails is entitled to such fees, in most cases the

tenant will never pay such fees even if an award against them is made by a court. Conversely, a landlord is typically more solvent and collectible so that a mutual attorneys' fees provision in reality tends to be a one-sided practice. It is for these reasons that landlords must be adequately prepared before evicting tenants for nonpayment of rent. **ADA**

James S. Cooper is a business and real estate attorney who primarily represents landlords in unlawful detainer disputes. He is a partner with the law firm of Levinson, Arshon-sky & Kurtz, LLP. He can be reached at (818) 382-3434.

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