



Housing Update No. 93 October 2017

Litigation and Local Advocacy

Landlord Tenant

Vague and ambiguous citations to lease covenants in termination notice are insufficient to raise criminal activity as grounds for eviction

The CBM Group, Inc. v. Llamas, 12 Cal. App. 5th Supp. 34 (2017)

The Appellate Division of the Fresno County Superior Court held that the trial judge improperly allowed a landlord to present evidence of criminal activity as an alternative ground for eviction. The trial court had concluded that the allegations were within the scope of a 60-day notice regarding failure to recertify because the notice mentioned lease covenants related to criminal activity. The Appellate Division roundly rejected this approach, explaining that “it would not be fair to require a tenant to guess as to the underlying reasons for the termination of the lease, especially where the notice refers to only one specific ground for termination and mentions others only by a vague and ambiguous citation to the lease.” The Appellate Division also held that the evidence could not support the trial court’s finding that the tenant failed to complete recertification. Congratulations to Marcos Segura at Central California Legal Services on an excellent result!

Section 8 landlord’s extra charges for laundry machines violate HAP contract

United States ex rel. Terry v. Wasatch Advantage Group, LLC, No. 2:15-CV-00799 KJM DB, 2017 WL 3116940 (E.D. Cal. Jul. 21, 2017)

In a putative class action lawsuit alleging improper charges by a large Section 8 landlord, a federal district court determined that the landlord’s monthly charges for washer and dryer machines constituted illegal rent. The Section 8 HAP contract requires owners to pay for appliances provided unless otherwise specified, and laundry machines were not listed as a tenant responsibility in the HAP. Advocates defending Section 8 non-payment evictions should check for similar, potentially illegal charges.

Appellate Division holds that tenants have statutory right to jury trial on habitability defense

Guttman v. Chiazor, No. BV 031226-01, 2017 WL 4404553 (Cal. App. Dep’t Super. Ct. Sep. 9, 2017)

The Appellate Division of the Los Angeles Superior Court held that defendants in unlawful detainer cases have a right to a jury trial on the issue of breach of the warranty of habitability. Citing clear legislative history, the court rejected the landlord’s argument that references to determinations by “the court” in Civil Code § 1174.2 were intended to carve out an exception to the right to jury trial under Civil Code § 1171 and Code of Civil Procedure § 592. The court further held that denial of a jury trial is reversible error per se.

Appellate Division holding that landlord bears risk of loss of rent in the mail

stands after Court of Appeal remand

Sleep EZ v. Mateo, 13 Cal. App. 5th Supp. 1 (2017)

In Housing Update No. 92, we reported that the Court of Appeal had taken up an unlawful detainer case in which the tenants' money order was lost in the mail. On July 12, 2017, the Court of Appeal remanded the case to the Appellate Division of the Los Angeles Superior Court without directions. The Court of Appeal's action means that the Appellate Division's decision in favor of the tenants stands. The Appellate Division held that "when a tenant mails rent at a landlord's direction and, through no fault of the tenant, the landlord does not receive it, the tenant is not in default in the payment of rent in an unlawful detainer action."

Supreme Court to review Court of Appeal decision barring tenant's malicious prosecution action based on denial of motion for directed verdict

Hart v. Darwish, 12 Cal. App. 5th 218 (2017), review granted Sep. 13, 2017

In Housing Update No. 92, we reported a Court of Appeals decision holding that the denial of a defendant's motion for directed verdict in an unlawful detainer bars a subsequent action for malicious prosecution. The Supreme Court has granted review in the case.

Subsidized Housing

Tenant who continued living in project-based Section 8 unit after her removal from the household composition is entitled to due process protections

Greene v. Carson, No. 14CIV3676ATGWG, 2017 WL 2592427 (S.D.N.Y. Jun. 14, 2017)

A longtime resident of a project-based Section 8 apartment sought to take over the lease after her mother, the head of household, moved out, only to find that she had previously been removed from the household composition without her knowledge. The federal district court held that the landlord twice failed to afford the resident notice and an opportunity to be heard: before it removed her from the household composition, and when it denied her request to take over the lease. Although the resident had no property interest in the unit at the latter point, the court held that she had due process rights as an applicant. HUD has appealed the decision.

In unpublished decision, Eleventh Circuit reasons that an accommodation is unreasonable if it requires deviation from Section 8 regulations

Binns v. City of Marietta Georgia, No. 16-14924, 2017 WL 3309760 (11th Cir. Aug. 3, 2017)

Advocates working on reasonable accommodations in the Section 8 program should be aware of a potentially harmful (but fortunately, unpublished) decision from the Eleventh Circuit. A tenant with a housing authority-approved live-in aid due to her disability requested that her one-bedroom voucher be changed to a two-bedroom voucher as a reasonable accommodation. Without addressing the tenant's claimed need for an additional bedroom, the Court of Appeals held that the accommodation was not reasonable because Section 8 regulations only require one bedroom for a two-person household. By treating the regulations as decisive, the Court ignored the central point that reasonable accommodations can require changes in rules and policies.

Fair Housing

Eighth Circuit rejects landlords’ disparate impact FHA claim based on alleged improper enforcement of housing standards

Ellis v. City of Minneapolis, 860 F.3d 1106 (8th Cir. 2017)

Two Minneapolis landlords sued, claiming that the defendant City violated the FHA by improperly applying heightened housing standards and issuing invalid citations at their rental properties in low-income minority neighborhoods. The Eighth Circuit held that the claim was properly dismissed because the landlords’ allegations did not establish a citywide policy, only a series of one-time decisions and disagreements about the scope of code violations. The court also rejected the landlords’ argument that the city should apply the purportedly-lower standards that it applied to public housing to private rentals, as “an FHA disparate-impact claim may not be used to lower housing standards for everyone merely because housing standards are inconsistently applied.”

Disparate impact FHA claim based on refusal to insure Section 8 properties survives motion to dismiss, satisfies “robust causality requirement”

Nat’l Fair Hous. Alliance v. Travelers Indem. Co., No. CV 16-928 (JDB), 2017 WL 3608232 (D.D.C. Aug. 21, 2017)

A fair housing agency brought an FHA challenge to an insurer’s refusal to provide insurance policies to landlords that rent to Section 8 tenants. A federal district court denied the insurance company’s motion to dismiss, holding that the plaintiff’s allegations were sufficient to satisfy *Inclusive Communities*’ “robust causality requirement” for disparate impact claims. The court emphasized that the plaintiff had pled “facts that show that voucher recipients are significantly more likely to be members of a protected class than is true for the D.C. population as a whole.”

Legislative Update



Western Center on Law & Poverty and California Rural Legal Assistance Foundation sponsored eight bills to improve housing outcomes for our low-income clients, analyzed over 150 housing-related bills, and commented on dozens of proposals in the areas of land use, affordable housing finance, mobilehomes, climate change, landlord-tenant, fair housing, code enforcement, and other areas. Western Center and CRLAF were recognized for their efforts in a ceremony held on September 29, 2017 to mark Governor Brown’s signing of a package of 15 bills meant to address the state’s ongoing housing affordability crisis. The following are some of the highlights of this year’s successful legislative session.

Sponsored Bills Signed Into Law

AB 72 (Santiago and Chiu) improves enforcement of Housing Element Law by allowing the state Department of Housing and Community Development (HCD) to revoke housing element compliance based on a local action or a failure to act that is inconsistent with the adopted element, and provides a framework for HCD to refer violations of Housing Element Law, the Housing Accountability Act, Density Bonus Law, and other critical housing laws to the state Attorney General for possible enforcement action.

AB 291 (Chiu) enacts significant protections for immigrant tenants, including codifying an affirmative defense to evictions based on immigration status, prohibiting landlords from threatening to report tenants to immigration authorities, and creating a new private right of action against landlords who make such a report for purposes of retaliation, intimidation, or forcing an eviction.

AB 1397 (Low) ensures that local governments cannot skirt their obligation to have sufficient sites available to meet their share of the regional housing need by limiting their ability to rely on sites that are too small or too large to have a realistic capacity for multifamily housing development, sites that have been recycled across multiple Housing Elements without developing, and sites that cannot feasibly be served by utilities. Also requires rezoned sites to be developable by right only for projects in which at least 20% of units will be affordable to low-income households.

AB 1505 (Bloom, Chiu, and Gloria) overturns the decision in *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* and restores the ability of local governments to impose inclusionary requirements on rental housing.

AB 1521 (Bloom and Chiu) strengthens the state's Preservation Notice Law by requiring that rental housing with expiring affordability restrictions be offered for sale first to an entity that would preserve the units as affordable, requiring the state to monitor compliance with the law's provisions, providing additional notice to tenants and local governments in advance of expiration, and providing affected tenants and local governments with the right to enforce the entirety of the law.

SB 166 (Skinner) amends the existing No Net Loss Zoning Law to require that when sites identified for affordable housing in a jurisdiction's housing element develop at a higher income level, the jurisdiction continues to maintain an ongoing supply of sites available to meet its unmet need for affordable housing.

Ongoing Advocacy

AB 686 (Santiago) would establish an obligation for California state, regional, and local governments to affirmatively further fair housing in their decisions related to housing and community development. The obligation would be modeled on, and enhance, the obligation found in the Fair Housing Act of 1968, which is under attack at the federal level. Co-sponsored by Western Center, the National Housing Law Project, and Public Advocates, this bill is currently in the Senate Transportation & Housing Committee, where it will be considered in 2018.

Research and Resources

HUD released a new report, [**Rental Housing Discrimination on the Basis of Mental Disabilities: Results of Pilot Testing**](#), finding continued and significant housing discrimination against persons with mental disabilities and frequent denials of reasonable accommodation requests.

The National Low Income Housing Coalition published its annual report on housing costs, [**Out of Reach 2017: The High Cost of Housing**](#).

NLIHC also submitted [**recommendations to Congress, HUD, and FEMA**](#) regarding disaster relief and publishes regular updates on hurricane housing relief.

Harvard University's Joint Center for Housing Studies published its annual study of the national housing market, [**The State of the Nation's Housing 2017**](#).

The Center on Budget and Policy Priorities released [**new facts sheets on federal housing assistance programs**](#) for all 50 states and the nation as a whole. The study data is also available for download.

PolicyLink published [**fact sheets for 37 cities**](#), including 8 in California, detailing the importance of renters to city economies and documenting the housing affordability crisis. The cities covered are Alameda, Los Angeles, Long Beach, Oakland, San Diego, Santa Ana, Santa Barbara, and Santa Rosa.

Trainings and Events

[**LAAC Traveling Training 2017**](#), November 6, 2017, Piccadilly Inn Shaw, 2305 W. Shaw Ave, Fresno, CA; Cost TBD. More info from LAAC [here](#).

Want to brag about a case or share a loss? Announce an upcoming training? Please contact Alex at aprieto@wclp.org with updates or other items for inclusion in our Housing Update.



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