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Tenants Protected from Owner Move-in Evictions¹

By Steven C. Williams

In general, an owner may recover possession of a rent controlled rental unit for use as his or her principal residence for at least 36 continuous months (“owner move-in eviction”). However, when an owner attempts to do an owner move-in eviction, it is not uncommon for the tenant to assert that he or she is a *protected tenant* because of a disability. When this assertion is made, the owner must determine whether or not to proceed with the eviction.

Under the San Francisco Rent Ordinance, the following tenants are protected from owner move-in evictions in multi-unit buildings:

- (1) A tenant who is 60 years of age or older and has been residing in the unit for 10 years or more;
- (2) A tenant who is *disabled* and has been residing in the unit for 10 years or more; and
- (3) A tenant who is *catastrophically ill* and has been residing in the unit for 5 years or more.

See San Francisco Administrative Code §§ 37.9(i)(1)(A) and (B).

Generally, a tenant’s age or how long a tenant has lived in a unit is readily ascertainable information. But what may not be easily determined is whether a tenant is *catastrophically ill* or *disabled*. This article will define those terms so that owners know what they are up against when deciding whether to proceed with an owner move-in eviction.

The Rent Ordinance defines a tenant who is *catastrophically ill* as one who is *disabled* and who is suffering from a life threatening illness as certified by his or her primary physician. Thus, the million dollar question becomes, who is a *disabled* tenant?

A disabled tenant is a person who is disabled or blind within the meaning of the federal

¹This article focuses on “protected tenant” status for purposes of owner move-in evictions in San Francisco only. Issues relating to Oakland’s Just Cause Ordinance or Ellis Act evictions are not dealt with in this article.

Supplemental Security Income/California State Supplemental Program (SSI/SSP), **and** who is determined by SSI/SSP to qualify for that program or who satisfies such requirements through any other method of determination as approved by the Rent Board. The Rent Board's method of determination is to leave it in the hands of a fact finder, generally a judge or jury, to decide whether a tenant is disabled within the meaning of SSI/SSP and qualifies for that program. *See* Rent Board Rules and Regulations §12.14(d). Thus, a tenant can only be disabled if it is determined that the tenant (1) is disabled or blind within the meaning of SSI/SSP **and** (2) qualifies for SSI/SSP.

Disabled Within the Meaning of SSI/SSP

Though the Rent Ordinance provides certain guidelines to assist the fact finder in determining whether the tenant is disabled within the meaning of SSI/SSP, it expressly requires that the tenant must actually be disabled within the meaning of SSI/SSP to qualify as a protected tenant. According to the Federal Codes and the California Welfare and Institutions Code, a person is disabled within the meaning of SSI/SSP only if that person has a physical or mental impairment that causes marked and severe functional limitations, and that can be expected to cause death or last for at least 12 consecutive months. Moreover, that person must be unable to work, not even on a part time basis.

As you can see, a tenant must be severely impaired to be disabled within the meaning of SSI/SSP. Tenants with minor impairments or who are working are probably not disabled within the meaning of SSI/SSP. And, even tenants who are not working and receiving State Disability Insurance (SDI) are probably not disabled within the meaning of SSI/SSP because the disability qualification standards are much lower for SDI.

Qualification for SSI/SSP

Not only must the tenant be disabled within the meaning of SSI/SSP, but the tenant must also qualify for SSI/SSP in order to be a protected tenant under the Rent Ordinance. A person cannot qualify for SSI/SSP unless that person is aged 65 or older, blind or disabled and:

- (1) does not have more income than is permitted;
- (2) does not have more resources than are permitted; and
- (3) files an application to receive such benefits.

Currently, a person's income cannot exceed \$1,752.00 per calendar year to qualify for SSI/SSP. This is a *major factor* in deciding whether a person qualifies. 20 C.F.R. §416.1100. Nor can a person's resources, which include countable real or personal property (including cash), exceed \$2,000.00. Thus, if a tenant makes more than \$1,752.00 or has more than \$2,000.00 in cash or property, then that tenant cannot qualify for SSI/SSP, and according to the express language of the Rent Ordinance, cannot be a protected tenant.

Challenging the Tenant's Claim of Protected Status

Within 30 days of service of an owner move-in eviction notice, the tenant must submit a

statement, with supporting evidence, to the owner if the tenant claims to be protected. Failure to submit such a statement is deemed an admission that the tenant is not protected.

The owner may challenge the tenant's claim by requesting a hearing at the Rent Board or proceeding with the eviction. The tenant has the burden of proving that he or she is protected.

Though an owner has a right to challenge a tenant's claim in an eviction action, it can often be very expensive and time consuming. If an owner does so, then it is advisable to thoroughly utilize the discovery process to ascertain as much information relating to the tenant's disability as possible. This may reveal that the tenant is in fact protected, thereby causing the owner to dismiss the action before further costs are incurred.

Moreover, the owner might find the courts reluctant to dispossess a disabled tenant, even if the tenant does not strictly qualify for SSI/SSP. For example, an owner recently challenged a tenant's claim of protected status in an owner move-in eviction action. Though the tenant was probably disabled within the meaning of SSI/SSP, she admittedly did not qualify for SSI/SSP because her income and resources exceeded the amounts necessary to qualify. However, the court determined that the tenant was protected from owner move-in eviction because she was disabled within the meaning of SSI/SSP.

In its decision, the court focused on the tenant's disability and was not concerned that the tenant admittedly did not, and could not, qualify for SSI/SSP. This determination appears to be contrary to the express language of the Rent Ordinance and was likely made because of the court's sympathy for the otherwise disabled tenant. Though this decision was not appealed, it would likely have been overturned if it had been.

When an owner decides whether to proceed with an owner move-in eviction in San Francisco, it is important to consult with an attorney to determine the likelihood of success of such an eviction, particularly where the tenant may be disabled.

Steven C. Williams is an associate at Wiegel & Fried, LLP. The information contained in this article is not intended to be exhaustive - instead it is provided to inform the real estate community of some important features of California law. The information in this article is general in nature; consult with an attorney for legal advice on any particular matter. © Copyright 2004, Wiegel & Fried, LLP.