

Berkeley Eviction Notices Report

An Analysis of Rent Stabilization Board Filings

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Introduction

In June 1980, Berkeley residents passed the City’s comprehensive rent stabilization law known as the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. Chapter 13.76). The Ordinance regulates rents in Berkeley, as well as outlines eleven reasons in which a tenant may be evicted from a rental unit. The Rent Stabilization Board and staff provide information and counseling to landlords and tenants, calculate and certify individual rent ceilings, conduct administrative hearings and issue decisions on landlord and tenant rent adjustment petitions, collect registration fees, and maintain a database of registered rental units. They are typically referred to as the “Rent Board.”

The Berkeley Rental Housing Coalition was established in 2015 and is the policy and legal arm of the long-standing Berkeley Property Owners Association. The BRHC is a member-based organization for Berkeley’s rental housing providers and provides a voice through political and legal actions on behalf of owners. The BRHC stays abreast of rental housing policy issues and where needed, provides insight into these issues from a rental housing provider perspective.

Background

The Berkeley Rent Stabilization Ordinance has required that rental housing providers submit copies of eviction notices to the Rent Board. While not all rental housing properties in Berkeley are required to follow the rent control portion of the ordinance, many units are required to abide by the Just Cause for Eviction protections. In cases where a tenant is covered by Just Cause for Eviction protections, the owner must provide one of eleven reasons for eviction in the notice of termination or notice to quit¹, and must submit a copy of the notice to the Rent Board. Although the Rent Board does not regularly report or publicize notices of termination or notices to quit, the data is public data and can be obtained by anyone who asks through a Public Records Request.

Berkeley Municipal Code Chapter 13.76.100.D states, “The landlord shall file with the board a copy of any notice of termination, notice to quit, or summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.” In November 2016, Measure AA changed the ordinance to require that both notice of termination or notice to quit *and* summons and complaint must be filed with the Rent Board.

A lawful (or “just cause”) eviction is a multi-step process and must start with what is typically known as a “3-day notice.” Three-day notices provide for the landlord to name the reason for possible eviction, and gives the tenant three days in which to correct the violation. The most common notice in this form is a “3-day Notice to Pay or Quit” (aka “3-day Notice to Quit or Correct.”) These notices are issued when a tenant has not paid the rent by the day

“Landlords use illegal evictions to rid themselves of low-rent tenants.”

FALSE: *Less than 2% of all notices filed resulted in a turnover of tenancy in units with rents less than \$1,000 per month.*

¹ The Rent Board does not make a distinction between a notice to quit or a notice of termination.

dictated in the lease agreement. Other notices to “quit or correct” can include material breaches of the lease. In a notice to pay or quit, if a tenant pays the rent in full before the three days are up, they are considered to have corrected and cannot be evicted from the unit. There is no method in which the owner can rescind or strike the notice on file at the Rent Board if the tenant has corrected the violation, and so these notices remain on file for the unit.

Scope of Work

The Berkeley Rent Stabilization Board, staff, elected officials, Housing Advisory Commissioners and other tenant representatives regularly claim an increase in illegal evictions with no evidence to support their claims. Elected officials attest to “a growing displacement crisis caused by the rapidly increasing cost of housing in Berkeley”² and that “the unprecedented rental housing crisis has resulted in increased displacement and eviction of low-income residents in Berkeley.”³

Rent Board staff claims to have “seen a marked increase in the rate of pretextual evictions and constructive evictions...”⁴ and reason that the Costa-Hawkins Rental Housing Act of 1995 gave Berkeley landlords the “incentive to pursue pretextual evictions of tenants with below market rents.”⁵

Rent Board Commissioners make public comment about an increase in evictions. Rent Board Chairman John Selawsky says, “There’s been an uptick in evictions, and certainly the hot housing market is a factor.”⁶ At times they are forced to admit the situation may be otherwise, as did Commissioner Leah Simon-Weisberg when she stated that she “doesn’t believe such fraudulent owner move-in evictions are a pervasive problem in Berkeley. Most owners of single-family homes typically do occupy properties after they have evicted tenants, and buyers of duplexes are likely to want to live in one of those units.”⁷

None of these statements or memos have been presented with, or backed up by data that shows the claimed increase. The city’s two local publications (*Berkeleyside* and *The Daily Californian*) regularly fail to report on data to support the claims made.

In reality, the only evictions that the Rent Board regularly tracks and are required to report on are Owner Move In evictions, also known as “no fault” evictions. In November 2000, Berkeley voters adopted Measure Y which placed restrictions and conditions on owner and/or owner relative occupancy evictions. Measure Y requires that “at least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units’ possession of which has been recovered pursuant to this subsection within the prior 36 months.”⁸ The Staff typically does not provide formal analysis of this data although they have a process in which they follow up on Owner Move In eviction notices and units to determine whether an owner or owner relative has moved in.

² [Resolution to Request Funding of Legal Service Providers by City Council](#) memo, Rent Stabilization Board meeting of June 20, 2016; authors Rent Stabilization Board Budget/Personnel Committee

³ [Authorizing Transfer of Funds to Rent Board for Eviction Defense Contracts](#) memo; City of Berkeley, City Council Meeting of July 25, 2017; authors: Mayor Arreguin, Councilmembers Hahn, Davila and Harrison

⁴ [Resolution to Request Funding of Legal Service Providers by City Council](#) memo, Rent Stabilization Board meeting of June 20, 2016; authors Rent Stabilization Board Budget/Personnel Committee

⁵ [Authorizing Transfer of Funds to Rent Board for Eviction Defense Contracts](#) memo; City of Berkeley, City Council Meeting of July 25, 2017; authors: Mayor Arreguin, Councilmembers Hahn, Davila and Harrison

⁶ Emerson, Jim. “[Berkeley Sees an Increase in Owner Move in Evictions by Landlords.](#)” *Berkeleyside.com*, May 25, 2017.

⁷ Emerson, Jim. “[Berkeley Sees an Increase in Owner Move in Evictions by Landlords.](#)” *Berkeleyside.com*, May 25, 2017.

⁸ Rent Stabilization and Eviction for Good Cause Ordinance, B.M.C. Chapter 13.76.130.9(r)

While other neighboring jurisdictions seek and put forth efforts to follow up on the outcome of notices to correct or quit, the Berkeley Rent Board does not. Although they do not actively apply theory or speculation on data collected, their non-participation in providing expert opinion points toward a passive “acceptance” of claims that illegal evictions are on the rise.

Objectives

The Berkeley Rental Housing Coalition sought to determine whether data collected and provided by the Berkeley Rent Stabilization Board staff showed an increase in unlawful or “no cause” evictions.

Collection & Analysis Methodology

Data Collected

Any notice filed with the report from the period of August 1, 2014 through June 13, 2017 was collected through a Public Records Request. All notices dated January 1, 2016 through June 13, 2017 were isolated and examined. Duplicate records were removed.

Data Labels

“Duplicates”: Where street number, street name, unit number and date of notice filed were replicas.

“Exempt”: Units that are exempt from the rent ceiling portion of the Rent Stabilization and Just Cause for Eviction Ordinance. They include non-profit housing, homeless facilities, co-ops, University-owned housing, Owner Occupied units, new construction (units built after February 1, 1995) and Single-Family Residences. When a unit is exempt from rent control, the owner is not required to register with the Rent Board and the Rent Board does not have the ability to monitor the property’s rent levels. However, the unit is still subject to the Just Cause for Eviction part of the ordinance and must adhere to the rules for submitting copies of eviction notices.

Methodology

All records were matched against the Rent Board’s “My Rent Ceiling” database⁹ to determine unit status, tenancy start date and rent ceiling at the time of the search.¹⁰ Once unit status was determined, all duplicate and exempt records were removed from the data set. Remaining data was examined for assessment of outcome of the notice received by the tenant.

Where a tenancy date had started *after* the last notice of termination or notice to quit was filed, it was assumed that the tenant likely vacated the unit¹¹. Vacated units can be the result of a variety of actions on the part of the rental housing provider and/or tenant, and can include agreement between tenant and property owner for owner’s possession of unit (many times done in court and known as a “settlement agreement”), judgement by a court of law in which the tenant must vacate the unit (typically known as a “lawful eviction” or “eviction with cause”) or buyout of a

⁹ The “My Rent Ceiling” database is a public records database maintained and published by the Rent Board at www.cityofberkeley.info/rent. It contains unit address, unit status, tenancy start date, rent ceiling, housing services and occupancy level.

¹⁰ The database was searched during the timeframe of July 1-July 31, 2017 and is considered “real time” data, direct from the Rent Board’s database.

¹¹ Example: 123 Main Street, Unit A, last notice filed August 15, 2016. Tenancy start date of October 17, 2016. Rent Ceilings in this category are often whole numbers such as \$1,795, a reflection of a more recent tenancy.

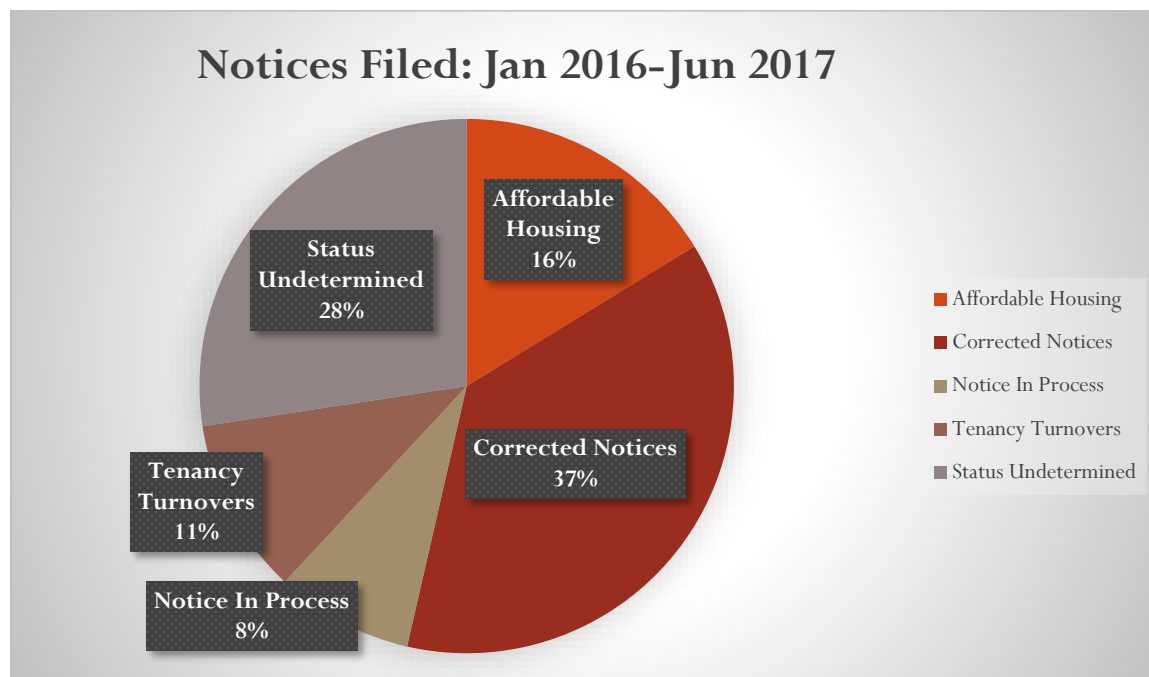
tenancy by the owner (typically known as a “tenant buyout” or “cash for keys”). The Rent Board does not research or follow through on notices to determine outcome.

Where the last notice filed was dated March 1, 2017 or later, it was deemed to potentially be an “in process” notice, one in which final determination of outcome could not be made.¹²

Any record in which the last notice received was a date *prior to* the tenancy start date, it was assumed that the tenant likely corrected the notice.¹³ Corrections usually are a result of the tenant paying their rent upon receipt of notice, therefore “correcting” the notice. Once corrected, the notice is null and void and the tenancy continues.

Each notice filed was examined, and information gathered from the “My Rent Ceiling” database to make determination as to potential outcome of the notice.

Results



Highlights of Results

⇒ Eviction notices filed for January through May 2017 are down 46% since 2015. During that time, 155¹⁴ notices were filed with the Rent Board, in comparison to 287 notices for the same timeframe in 2015, and 263 notices in 2016.

⇒ For all notices filed from January 2016 to June 2017, 16% were attributed to affordable housing units.

¹² Notices can result in the filing of an unlawful detainer and subsequently a court process. Unlawful detainers and court judgements can take many months to come to conclusion.

¹³ Example: 123 Main Street, Unit A, last notice filed August 15, 2016. Tenancy start date of June 27, 2007. Rent Ceilings in this category are often odd numbers such as \$820.02, a reflection of the annual allowable rent increase under rent control.

¹⁴ Indicates a particular street address and unit number. Does not account for multiple notices served on the same unit.

⇒ **Less than a quarter of all notices** filed with the Rent Board **were for units with rents less than \$1,000 per month.**

⇒ Just **11% of notices filed** from January 2016 to June 2017 **indicated a potential tenancy turnover.**

All Results Examined: January 1, 2016 through June 13, 2017

- 1,151 total notices were filed, where street number, street name, unit number (where applicable) and date of notice filed was provided.
- 50% of the units listed had more than one notice filed during the time examined. Where multiple notices were given to any one unit, it indicated a likely pattern in behavior of nonpayment of rent. Rental housing providers will issue 3-day notices to pay or quit to preserve their right to pursue an unlawful detainer if the notice is not corrected.
- 37% of notices filed were likely corrected by the tenant and the tenancy continued.
- 28% lacked proper information provided by the Rent Board (e.g. not found in “My Rent Ceiling” database, did not indicate unit number where unit was clearly part of a multi-unit building, or did not record a tenancy start date).
- 16% of the all the notices filed were filed for affordable housing units such as co-ops, non-profits and homeless housing.
- 11% indicated a potential tenancy turnover where a new tenancy began.
- 8% of notices were filed as of March 1, 2017 or later, indicating outcome is likely still in process.
- Fewer than 0.05% of total units tracked by the Rent Board had notices filed during the period examined.

Eviction notices filed January through May of 2017 were down 46% from the same period in 2015.

- Less than a quarter of all notices filed with the Rent Board were for units with rents less than \$1,000 per month (104 notices). Just 8% of those notices resulted in a turnover of tenancy.

It is widely recognized that not all notices of termination and notices to quit are properly filed with the Rent Board.

Although the Rent Stabilization and Just Cause for Eviction

Ordinance requires that owners file notices with the Rent Board, not all owners who deliver notices to tenants will file a copy with the Rent Board. However, many times a position for defense for a tenant (especially when they are represented by one of the eviction defense centers funded by the Rent Board) is a failure of the owner to properly file notice with the Rent Board. Without proper filing of the notice, the eviction notice and unlawful detainer can be deemed invalid and eviction does not transpire. Therefore, it is in the best interest of the rental housing provider to provide a copy of the notice to the Rent Board.

In addition, eviction defense lawyers for tenants will often negotiate with rental housing providers to mask final outcomes in which the tenant is evicted or agrees to vacate the property. This makes it difficult to properly track all eviction notices that turn into unlawful detainers and judgements by the courts.

The Berkeley Rental Housing randomly selected 20 eviction filing notices in 2016 and contacted owners to try to determine the outcome of the notice. In 16 of the cases, the notice was for nonpayment of rent and the tenant eventually corrected or agreed to vacate the unit because they knew they couldn't pay. Two cases were for nonpayment of rent in which the tenant did not correct and tried to remain in the unit, but ultimately the tenant agreed to vacate the property (typically after 30-60 days of free rent from the landlord while the tenant secured a new

place to live.) In one case, the tenant was hoarding and the judge ruled in favor of the tenant remaining in the unit despite the hoarding. In another case, a tenant received a notice for violating terms of the lease by renting a portion of the unit through Airbnb. The tenant initially sought to fight the eviction, but ultimately agreed to vacate the unit after negotiating to receive 30 days' free rent.

Myths & Evidence

Data collected by the Berkeley Rent Stabilization Board for notices of filings does not clearly indicate a significant increase in unlawful or “no fault” evictions. With notices down 46% from 2015, there is no pattern of increase in notices filed that would indicate an eviction and displacement crisis in Berkeley. Notices received in an 18-month period represented less than .05% of total units tracked by the Rent Board.

Myth #1: Evictions are rampant in low rent units. Landlords use unlawful evictions to rid themselves of tenants with low rents so that they may raise the rent to market.

Evidence: Less than a quarter of all notices filed with the Rent Board given were for units with rents less than \$1,000 per month (104 notices). Just 8% of those notices resulted in a turnover of tenancy.

Myth #2: Only big landlords who are trying to make as much money as possible use eviction notices to try to get tenants to evict.

Evidence: 16% of all notices filed with the Rent Board were filed by providers of affordable housing. Three-day notices are a standard tool used by rental housing providers to manage their business and tenancies, as well as to preserve the right to evict if the notice is not corrected.

Myth #3: Most of the notices being served to tenants are an attempt to get the tenant to vacate so that the landlord can raise the rent to market.

Evidence: Data shows that just 11% of notices filed indicated a possible turnover of tenancy where the old tenancy ended and a new tenancy began. But without talking to either owner or tenant about the notice, it is unknown whether the tenancy turnover was due to a “just cause” or “no cause” eviction. “Just Cause” evictions are the landlord’s right to evict should the tenant break the terms of the lease.

Myth #4: Many of the eviction notices require an eviction lawyer’s expertise, and the tenant must take the landlord to court.

Evidence: Most notices in which the tenant does not correct on their own, will wind up in settlement between landlord and tenant. There are multiple times during the process in which both parties are offered the opportunity to settle without going to court (e.g. mediation, settlement conference, etc.)

Conclusion

Responsible housing policy decisions should be made using appropriate data and analysis. Berkeley’s increased reliance on anecdotal information as a compass for policy decisions has led to a “one-size-fits-all” policy approach that inappropriately punishes housing providers that are following the law. Berkeley is well-known for having some of the strictest rent control regulations for rental housing across the U.S. and the ordinance was put into place to “provide tenants with an increased protection against unwarranted evictions.” With no hard evidence found that the majority of eviction notices filed with the rent board are illegal, tenant proponents and elected officials should have faith in the regulations they created to help lessen the likelihood that rental housing providers will unlawfully, or without cause,

evict tenants from their units. Instead, the activists focus should not be on punishing the few bad apples of the basket, but rather on having a wide-spread positive effect that increases the number of units made available for rent.