



# HANDLING HABITABILITY PROBLEMS IN RICHMOND

CITY OF RICHMOND RENT PROGRAM

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# Agenda

Overview of Rent Control in Richmond

Properties Covered Under Rent Control and Exempt Properties

State Law Governing Habitability: “The Implied Warranty of Habitability”

Housing Inspections

Tenant and Landlord Responsibilities

Petitioning The Rent Board

Temporary and Permanent Relocation Payment Assistance

Termination of Tenancy

Documentation and Providing Written Notice

# OVERVIEW OF THE RICHMOND RENT ORDINANCE

**November 8, 2016: Rent Ordinance/Measure L passed by voters of Richmond**

**December 30, 2016: Rent Ordinance goes into effect**

**January 3, 2017: Rent Program Office opens**

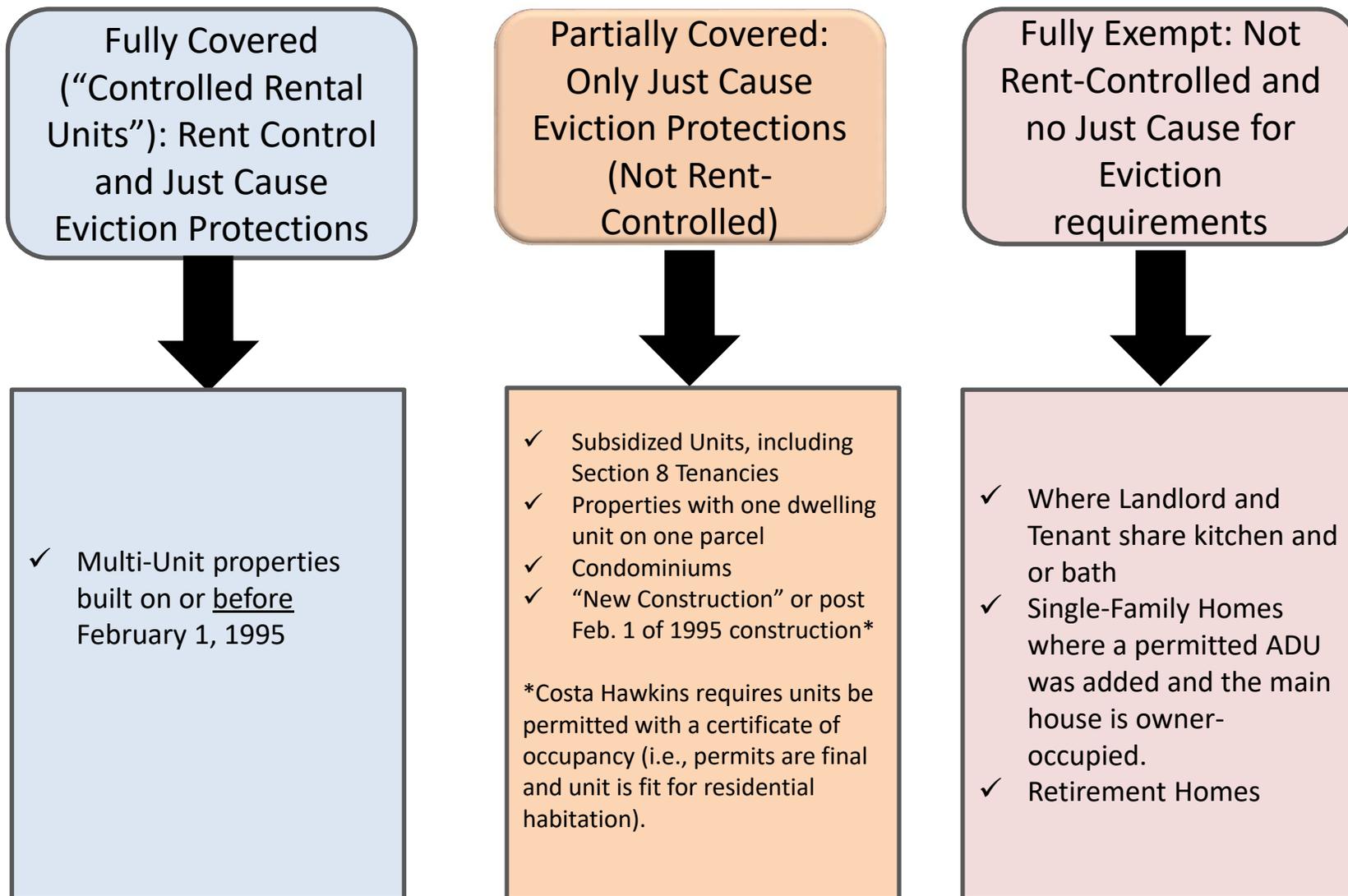
Rent increases are limited to the Annual General Adjustment (100% of the CPI)

“Base rents” rolled back to the rent paid by Tenant on July 21, 2015, or the first rent paid by tenant for tenancy commencing after July 21, 2015.

Landlords must have “ Just Cause” to terminate tenancy or evict

Ordinance provides a Rent Adjustment/ Fair Return Petition Process

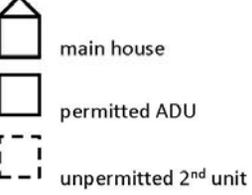
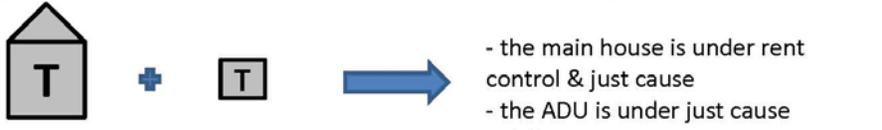
# Which properties are covered by the Richmond Rent Ordinance?



# ACCESSORY DWELLING UNITS (ADUS)

## Accessory Dwelling Units (ADUs) and the Rent Ordinance



<p>If the main house is the owner's primary residence and the 2<sup>nd</sup> unit is a permitted ADU, then...</p> 	<p><b>Key</b>  O = owner-occupied (<i>primary residence</i>)  T = tenant-occupied</p>  <p><i>Note: all units are exempt from rent control if built after 1995</i></p> <p><b>For more information on ADU requirements, contact the Planning Division at (510) 620-6706</b></p> <p><b>For more information on Rent Control and Just Cause, contact the Rent Program at (510) 234-RENT (7368)</b></p> <p><b>References</b>  1. RMC 11.100.040 (2)  2. RMC 11.100.030 (d)(5)</p>
<p>If the main house is the owner's primary residence and the 2<sup>nd</sup> unit is not permitted, then...</p> 	
<p>If both units are tenant-occupied and the 2<sup>nd</sup> unit is a permitted ADU, then...</p> 	
<p>If both units are tenant-occupied and the 2<sup>nd</sup> unit is not permitted, then...</p> 	
<p>If the main house is tenant-occupied and the 2<sup>nd</sup> unit is owner-occupied, then...</p> 	

# The Maximum Allowable Rent (MAR) is....

The maximum rent that can be charged for a **Controlled Rental Unit**

Can be adjusted downwards if there is a decrease in habitability or a reduction in space or services.

Equals the **Base Rent + Annual General Adjustments (AGA)** + Individual Rent Adjustments (approved through the petition process)

The Base Rent includes the initial rent paid by the Tenant plus any services that are included in the initial rent (water, garbage, appliances provided, etc.)

# State Law Governing Habitability

State law requires that a Landlord provide rental units that meet certain standards for habitability. This law is also known as the Implied Warranty of Habitability  
(Civil Code 1941.1, Health and Safety Code 17920.3).

Local Housing Code (Richmond Municipal Code) mirrors State habitability standards but provides clarity and detail about those habitability standards (e.g. minimum temperature required to provide “hot water”).

# Nuisance

Landlords may proceed with an eviction process if a tenant's behavior creates a "nuisance." Nuisance may lead to habitability problems. Nuisance may include, but is not limited to:

- Behavior that results in substantial danger to the health and safety of tenants and neighbors
- Behavior that prevents other tenants or neighbors from quiet enjoyment of living in their property such as:
  - continuous loud music/noise
  - Repeated or continuous fighting, yelling, barking dogs
  - foul odors from the garbage receptacle area
- Engaging in illegal activities (ex., drug dealing).
- Abandoned vehicles, equipment, appliances, unsafe fences, structures, or foliage
- Overcrowding a room with occupants
- Smoking
- Damaging property

**Tenants are required to comply with the provisions set forth in Civil Code Section 1941.2 (To be discussed in Slide 10).**

# Written Warning Notice Requirements

## RMC 11.100.050(d)

**Must be served PRIOR to a notice of termination of tenancy if the Just Cause for Eviction is:**

- **Breach of Lease**
  - **Nuisance**
  - **Failure to Give Access**
- 
- Must provide a “reasonable period” of no less than five (5) days to cure or correct the violation prior to serving a notice of termination of tenancy
  - Must state that failure to cure may result in eviction
  - Must inform Tenant of their right to request a reasonable accommodation (For example, a Tenant may require additional time to cure if disabled)
  - Shall include the contact number of the Rent Program
  - Shall include instructions for compliance
  - Shall include information necessary to determine the date, time, place, witnesses present and other circumstances.

# Implied Warranty of Habitability

## Civil Code Section 1941.1

Landlords must provide rental units that are in "habitable" condition and fit to live in. In order for the property to be habitable, it must have all of the following:

- ✓ Effective waterproofing/weather protection of roof and exterior walls, including unbroken windows and doors.
- ✓ Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- ✓ Gas facilities in good working order.
- ✓ Heating facilities in good working order.
- ✓ An electrical system, including lighting, wiring and equipment, in good working order.
- ✓ Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) which are free from debris, filth, rubbish, garbage, rodents and vermin.
- ✓ Adequate trash receptacles in good repair.
- ✓ Floors, stairways and railings in good repair.
- ✓ A working toilet, wash basin, and bathtub or shower. The toilet and bathtub/shower must be in a room that is ventilated, and that allows for privacy.
- ✓ A kitchen with a sink, which cannot be made of an absorbent material (for example, wood).
- ✓ Natural lighting in every room through windows or skylights. Unless there is a ventilation fan, the windows must be able to open at least halfway.
- ✓ Safe fire or emergency exits leading to a street or hallway. Stairs, hallways and exits must be kept litter free. Storage areas, garages, and basements must be kept free of combustible materials.
- ✓ Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.
- ✓ Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.

# Tenant's Responsibilities

## Civil Code Section 1941.2

A tenant must take reasonable care of the rented property and common areas, such as hallways. This means that the tenant must keep those areas in good condition. A tenant must also repair all damage that he or she causes, or that is caused by the tenants' guests, children or pets. California Civil Code section 1941.2 requires the tenant to do all of the following:

- ✓ Keep the premises "as clean and sanitary as the condition of the premises permits."
- ✓ Use and operate gas, electrical and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets, flushing large foreign objects down the toilet, and allowing any gas, electrical, or plumbing fixture to become filthy.)
- ✓ Dispose of trash and garbage in a clean and sanitary manner.
- ✓ Not destroy, damage, or deface the premises, or allow anyone else to do so.
- ✓ Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenances, or allow anyone else to do so.
- ✓ Use the premises as a place to live, and use the rooms for their proper purposes. For example, the bedroom must be used as a bedroom and not as a kitchen.
- ✓ Notify the landlord when deadbolt locks and window locks or security devices do not operate properly.

# Steps for Addressing Habitability Problems



Contact the Rent Program to become informed about your rights under the Richmond Fair Rent, Just Cause For Eviction, Home Owner Protection Ordinance and applicable state law.



Document the problem and Inform the Landlord.

- Write letter(s) of complaint (keep signed copies) and consider proof of mailing
- Take photos or videos of the problem and attach them to the letter(s) of complaint

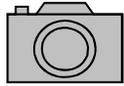
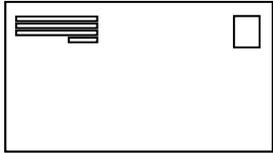


If landlord is nonresponsive to your complaints, consider scheduling a Housing Inspection with the Richmond Rental Inspection Program. Tenants who reside in subsidized housing, such as Section 8, must contact the Housing Authority to schedule an inspection.



If the property is fully covered under rent control, a tenant has the option to file a petition for rent reduction. If the property is fully or partially covered, the tenant has the option to request mediation services. Filing of petition for rent reduction and mediation services are available through the Rent Program.

# Tips for Documenting Habitability Problems



Writing letters or emails of complaint(s) to the Landlord and or property manager. Attaching photos or videos to the letter or email is an effective way to hold a Landlord accountable.



If you are engaged in verbal communication with the Landlord, it is recommended that you summarize the conversation in writing to avoid unnecessary disputes or misunderstandings.



If the Landlord is not being responsive, consider documenting the habitability problem through an inspection by the City so that the City can compel Landlord to fix the problem(s).



Using a chronological approach to memorializing the problems is important in framing the narrative, if the case were to go to a Rent Board hearing or court.



Be mindful that anything you write may become part of a court action wherein you would be required to appear before a judge to explain your complaint. In other words, you may hurt your credibility if your letter or email makes you seem unreasonable or abusive in tone.

# Requesting a Housing Inspection



To request a housing inspection, contact the City of Richmond Residential Rental Inspection Program at 510-690-8260 or [richmondrrip@ci.richmond.ca.us](mailto:richmondrrip@ci.richmond.ca.us). **Note: The Landlord's contact information must be provided at the time the request is made.**

**Section 8 Tenants:** If you believe your landlord is violating the terms of the Housing Assistance Payment Contract or your lease, please contact the Contra Costa County Housing Authority at 925-957-7023.



Upon determination that an inspection is needed, generally, it may take up to 10 days after making request for the inspection to take place.



The inspector will notify the Landlord if code violations are found and the Landlord may face fees or fines for failure to correct the violations.

# Criteria for Filing a Petition To Reduce Rent Due to Habitability Problems

Filing a petition requesting a rent reduction may compel a Landlord to fix habitability problems. A Tenant can petition to reduce their rent if the following criteria is met:

- The Landlord has been informed about the problems
- There is a decrease habitability or a reduction of space or services
- Tenant resides in a multi-unit property built on or before 1995, which is defined as a fully covered or controlled rental unit under the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance

Tenants who live in partially covered/controlled or fully-exempt properties cannot file petitions to reduce the rent because these properties are not regulated or controlled by the Rent Board. The partially covered and fully exempt properties include the following:

- Subsidized Units, including Section 8 Tenancies
- Properties with one dwelling unit on one parcel (i.e., single-family homes without any other structure on the property, townhome)
- Condominium “New Construction” or post Feb. 1 of 1995 construction\*
- Landlord resides in the property as his/her primary resident and shares kitchen and or bath with the Tenant
- Single-Family Homes where a permitted ADU was added and the main house is owner-occupied
- Retirement Homes

\*Costa Hawkins requires units be permitted with a certificate of occupancy (i.e., permits are final and unit is fit for residential habitation).

# Filing a Petition May Lead to a Hearing



After filing a petition for habitability problems, the Landlord and Tenant, or their representatives, are required to attend a hearing, where both parties can present their evidence. Alternatively, the Hearing Examiner may also opt to issue an Administrative Decision if there are no objections by the opposing party.



The Rent Program Hearing Examiner examines evidence submitted in the petition and the opposing party's objections and hears testimony from both sides. A decision to award a rent refund and an order to reduce the rent generally occurs several weeks after the hearing is held. Both parties may appeal the Hearing Examiner's decision within 35 days of the date of the decision.

# Habitability Problems and Evictions

# Just Cause for Eviction

RMC 11.100.050

**Residential tenants can only be evicted for one of the following “Just Causes”(notice must state the reason):**

- Failure to Pay Rent
- Breach of Lease
- Nuisance
- Failure to Give Access
- Temporarily Vacate in Order to Undertake Substantial Repairs\*
- Owner Move-In\*
- Withdrawal from Rental Market\*
- Temporary Tenancy

\*Relocation Payment required – See Relocation Ordinance established by the City Council (RMC 11.102)

# Habitability Problems and Evictions

Habitability problems can be used as a defense to an eviction lawsuit. Retaliatory evictions are illegal.

If a Rent Controlled Unit is deteriorating and the owner is attempting to terminate the tenancy, a Tenant may use the habitability problem(s) as a defense to an eviction lawsuit. An Attempt to evict a Tenant on the basis of Tenant submitting a request for a housing inspection is generally considered retaliatory and, therefore, unlawful.

Chronological documentation is key to protecting Tenancy

It is important to chronologically document habitability problems as it may show a pattern or effort on the part of the Landlord to illegally force a Tenant to move out or “**constructively evict**” the tenant.

Landlord must be in compliance with Rent Ordinance to evict

If a Hearing Examiner issues a decision to refund or reduce the rent until a habitability problem is fixed, and the Landlord fails to issue the refund, reduce the rent and fix the problem, a Tenant may use the Landlord’s non-compliance as a defense to an eviction lawsuit.

# Habitability Problems and Temporary Relocation Payments

## Temporary Relocation Assistance

Under the Relocation Ordinance, if habitability problems are such that repairs and abatement require the Tenant to temporarily relocate, the Landlord must pay temporary relocation.

## Permanent Relocation Assistance

A Landlord and Tenant may agree to a permanent relocation payment if, after the temporarily relocation period is over and the Tenant does not want to move back in to the unit.

# Temporary Relocation Payment

RMC 11.100.050

RMC 11.102.030

- Must be provided to Tenants when they must temporarily vacate in order for the Landlord to undertake substantial repairs
- Notice of Entitlement to Relocation Payment must be provided with the notice of termination of tenancy
- Amount of relocation payment is determined by a resolution of the City Council

## 2019 Temporary Relocation Payment Amounts

Per Diem Description	Amount	Term (a)
Hotel or Motel	\$156	Per day per household
Meal Expenses	\$31	Per day per person
Laundry	\$1	Per day per household
Pet Accommodations	Cat - \$30 Dog - \$54	Per day per animal

Applicable amounts shall be paid on a weekly basis, calculated on a daily basis, at a minimum. Alternatively, the Landlord may provide comparable housing located in Richmond. In such case, the Landlord shall provide per diem payments until the Tenant and their possessions have been moved into the comparable Rental Unit. (RMC Section 11.102.030(g))

The Landlord shall immediately make Temporary Relocation Payments to the Tenant . (Relocation Ordinance, Section 11.102.030(a)(1))

## 2019 Permanent Relocation Payment Amounts

Owner Move-In (R.M.C. 11.100.050(a)(6))		
Maximum Cap per Unit Type (a) (b)	Base Amount	Qualified Tenant Household Amount
Studio	\$3,646	\$4,236
1 Bedroom	\$5,629	\$6,486
2+ Bedroom	\$7,666	\$8,792

- (a) If a Rental Unit is occupied by one Tenant then the entire per unit Relocation Payment shall be paid to the Tenant. If more than one Tenant occupies the Rental Unit, the total amount of the Relocation Payments shall be paid on a pro-rata share to each Eligible Tenant.
- (b) The Relocation Payments will be calculated on a per Rental Unit basis, distributed on a per Tenant basis, and includes a maximum cap per Rental Unit.
- (c) A "Qualified Tenant Household" is any household that includes at least one Tenant that is a Senior Citizen, Disabled, or has at least one minor dependent child as defined in R.M.C 11.102.020(a) and (I).

## 2019 Permanent Relocation Payment Amounts

**Withdrawal from Rental Market or Substantial Repairs (R.M.C. 11.100.050(a)(7)) OR Due to a Governmental Agency Order for the Tenant to Vacate the Rental Unit, or Other Condition Described in Richmond Municipal Code Section 11.102.030(c)**

Maximum Cap per Unit Type (a) (b)	Base Amount	Qualified Tenant Household Amount (c)
Studio	\$7,345	\$8,417
1 Bedroom	\$11,259	\$12,974
2+ Bedroom	\$15,279	\$17,584

- (a) If a Rental Unit is occupied by one Tenant then the entire per unit Relocation Payment shall be paid to the Tenant. If more than one Tenant occupies the Rental Unit, the total amount of the Relocation Payments shall be paid on a pro-rata share to each Eligible Tenant.
- (b) The Relocation Payments will be calculated on a per Rental Unit basis, distributed on a per Tenant basis, and includes a maximum cap per Rental Unit.
- (c) A "Qualified Tenant Household" is any household that includes at least one Tenant that is a Senior Citizen, Disabled, or has at least one minor dependent child as defined in R.M.C 11.102.020(a) and (I).

**Habitability Problems  
and  
Lawful Landlord Entry to  
Make Repairs**

# Habitability Problems and Lawful Landlord Entry to Make Repairs

## 24 HOUR NOTICE TO ENTER REQUIRED

If a Tenant informs the Landlord about a habitability problem, the Landlord has an obligation to make the necessary repairs. The Landlord has a right to enter the rental unit to make repairs after giving the Tenant at least 24-hrs written notice.

## Abuse of the Right to Enter Can Lead to the Rent Being Frozen

A Landlord may not abuse the right to enter and must follow the specific rules laid out in Civil Code 1954. Abuse of the right to enter can lead to the Landlord being unable to reset the rent to market when the Tenant leaves. The next slide highlights the Landlord's and Tenant's responsibilities under Civil Code 1954.

## Tenant does not need to be present for Landlord to lawfully enter

A Tenant has a right to be present during the inspection, but Civil Code 1954 does not give a Tenant the right to deny entry because the Tenant is unable to be present at the time of the entry. Denying the Landlord lawful entry because the Tenant can't be there at the time of the entry may give the Landlord the right to evict the Tenant under the Just Cause provisions of the Rent Ordinance.

# **Lawful Landlord Entry**

## **Civil Code Section 1954**

- Landlord may only enter for necessary or agreed upon repairs, cleaning to bring the unit back to the same level of cleanliness that existed when the tenant moved in, or to replace any landlord property (stove, refrigerator, etc.)
- Landlord must give the tenant written notice to enter, at least 24 hours prior to entry
- Landlord does not need to provide written or verbal notice to enter in cases of emergency (such as fire, flooding, etc.)
- The tenant cannot demand that they be there when the landlord enters
- Entry must be during “normal business hours”
- Landlord must state the time and date, as well as the purpose of the entry in the written notice
- In Richmond, it is “Just Cause” to evict a tenant who denies a landlord lawful entry, after the tenant has been warned to cease denying lawful access and continues to do so.

# **Habitability Problems and a Landlord's Ability to Raise or Collect Rent**

# California Law and a Tenant's Right to Withhold Rent Due to Habitability Problems

California Civil Code Section 1942.4 prevents a landlord from demanding rent, collecting rent, issuing a notice of a rent increase, or issuing a 3 day notice to pay rent or quit where all of these four factors exist:

- The Rental unit lacks any habitable characteristic as listed in Civil Code 1941.1, or violates health and safety code 17920.10 (which deals mainly with lead) or is deemed and declared substandard as explained in Health and Safety Code Section 17920.3, because the conditions listed in that section exist to the extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants.
- A Public Officer or employee who is responsible for the enforcement of any housing law (this could include RHA employees who do HQS inspections), after inspecting the Rental Unit, notifies the Landlord or his/her agent in writing to abate the nuisance or repair the substandard condition.
- The condition continues to exist without abatement for 35 days beyond the date of written notice provided by the public officer or employee responsible for enforcing housing laws.
- The complained of condition was not caused by the Tenant.

**IMPORTANT NOTE: BEFORE A TENANT WITHHOLDS RENT PURSUANT TO CC 1942.5, THEY SHOULD SEEK THE ADVICE OF AN ATTORNEY OR SPEAK WITH A RENT PROGRAM SERVICES ANALYST ABOUT THE POSSIBLE CONSEQUENCES OF WITHHOLDING RENT, NAMELY THE POSSIBILITY THAT THE LANDLORD MAY ATTEMPT TO EVICT FOR NON-PAYMENT OF RENT.**

# Habitability Problems May Lead to the Landlord Being Unable to Raise the Rent

A Hearing Examiner may deny a Landlord from taking a future vacancy rent increase if there is evidence that there was intent by the Landlord to force the Tenant by not fixing things

Non-compliance with a Hearing Examiner's order can result in denial of AGA increases

Under Rent Board regulations, if a Tenant moves out of a Controlled Rental Unit due to unabated habitability problems, the Rent Board may consider this a non-voluntary vacancy. If a Tenant leaves as a result of the unabated habitability problems the rent level of the next Tenant remains at the same level that the Tenant who was forced to vacate was paying.

If the Rent Board Hearing Examiner orders a Landlord to make repairs, reduce the rent or refund rent overcharges and the Landlord fails to comply with the Hearing Examiner's decision, the Hearing Examiner may deny Annual General Adjustment Increases until the Landlord comes into compliance

# **HABITABILITY PROBLEMS AND BREAKING A LEASE**

# Lease Breaking Law

## Civil Code Section 1951.2

If a tenant breaks a lease they are liable for unpaid rent remaining on the lease, but only if:

- The landlord attempts to mitigate unpaid rent damages by making a reasonable effort to re-rent the unit
- In other words, if a tenant breaks a lease, the landlord cannot make the tenant pay for the remaining unpaid rent unless the landlord can show that they made a reasonable effort to re-rent and were still unable to find a replacement/new tenant

# Habitability Problems and Breaking a Lease

Significant habitability problems may allow a Tenant to vacate without proper notice

If a Tenant vacates a rental unit due to habitability problems and in doing so breaks their lease, the law may allow them to end their tenancy without giving 30-days written notice. If a tenant breaks their lease and is sued by the Landlord, ultimately a Tenant's right to vacate without providing proper notice under state law, would be decided in court.

Significant habitability problems may allow a Tenant to break a lease without being liable for unpaid rent remaining on lease

If a Tenant vacates their rental unit due to significant habitability problems, the tenant may be allowed by the Landlord to break the lease without being liable for unpaid rent remaining on the fixed term lease. However, ultimately, whether a Tenant is liable for breaking their lease would be decided in court.

Because each lease breaking situation is different, it is recommended that Tenants are consult with an attorney prior to taking any action to breaking the lease.

**RESOLVING HABITABILITY  
PROBLEMS  
THROUGH MEDIATION**

# Mediation As Option to Resolve Habitability Problems

- Either a Landlord or a Tenant may request mediation through the Rent Program to resolve habitability disputes.
- Mediations (informal or formal) can be scheduled within weeks, whereas the petition process can take months.
- Mediations are generally less adversarial in nature and participants often improve their relationships due to better communication and understanding.

# Additional Recommendations

- Tenants should consider obtaining renters insurance, as it may provide protection against personal property damage caused by habitability problems such as mold, water leaks, vermin, rodents, bedbugs, etc.)
- Doing a walk-through inspection at the beginning and end of a tenancy (taking photos and or videos to document the condition of the unit) provides documentation regarding the condition of the unit in case there is a dispute over deductions made from the security deposit.

**THANK YOU!**

**Rent Program presentations can be found at:**

**[RichmondRent.org/workshops](https://RichmondRent.org/workshops)**

**Please call 510-234-RENT (7368) for questions about the Richmond Rent Ordinance. You can also email the Rent Program:**

**[rent@ci.richmond.ca.us](mailto:rent@ci.richmond.ca.us)**