

Presents:

New Hayward RRSO: Tenant Rights and Responsibilities

January 15, 2020

Who are we?

Project Sentinel, Inc. is a non-profit housing services agency serving many communities in Northern California. Neutral Landlord /Tenant Counseling and Dispute Resolution is one our core services. This includes supporting some Cities with the administration of their rent stabilization hearing and petition processes.

Michael Dittmer, Rent Stabilization Programs Analyst

Emily Hislop, Rent Stabilization Programs Manager

PLEASE NOTE: We are not able to offer legal advice or legal representation, but we can offer tips, best practices, and an overview of local and State laws. For legal services, please contact an attorney or a lawyer referral service.

Project Sentinel | 1490 El Camino Real | Santa Clara, CA 95050 | www.housing.org

Tenant Rights and Responsibilities



AGENDA

- 1. RRSO Overview
- 2. Eviction Protections
- 3. Rent Stabilization
- 4. Noticing Requirements
- **5. Rent Review Petition Process**
- 6. Other Protections
- 7. Tips and Challenges
- 8. Resources

What is the RSSO?



The City of Hayward encourages investment in local residential rental housing by allowing landlords to make a fair return on their real estate investments while also protecting the welfare of its citizens who are its tenants. The goals of the RSSO are to:

- 1. Stabilize rising rents
- 2. Provide eviction protections to tenants
- 3. Ensure a fair rate of return to landlords
- 4. Provide protection from harassment and retaliation
- 5. Stop bias about sources of income (including Section 8 vouchers)

How long has the RRSO been law?



Hayward City Council approved the Residential Rent Stabilization Ordinance (RRSO) summer of 2019 which completely replaced the old rent review ordinance. The RRSO has been in effect since:

July 25, 2019



Eviction Protections

Why do eviction protections matter?



Eviction protections provide **tenants in good standing** with **housing stability** by limiting the reasons a landlord can evict a tenant.



Who has just cause eviction protection?



RRSO Just Cause protections apply to <u>all</u> rental units EXCEPT:

- medical care facilities
- motels, hotels, inns, tourist houses
- boarding houses were tenants stay less than 30 days
- non-profit cooperatives
- non-profit transitional housing
- where owner shares residence including common areas
- certain subsidized affordable housing units
- mobile homes

Just Causes under the RRSO



What are allowable reasons/causes for termination?

- 10 reasons where tenant "at-fault", some of which require opportunity to cure prior to termination
- 5 reasons where termination is landlord initiated "no fault"

Tenant "At-Fault" Causes under the RRSO



- 1. Failure to pay rent
- 2. Breach of material term*
- Refusal to pay for substantial damage beyond "wear and tear"*
- 4. Refusal to renew same lease terms
- Disorderly disruption of peace and quiet of other tenants/occupants*
- 6. Failure to grant landlord access*

- 7. T convicted of using unit for illegal purpose
- T used or allowed use of unit or any area controlled by LL for manufacture, sale, distribution or use of controlled substance (under State law)*
- Violated rules applicable to all units, which T agreed to previously in writing.*
- T has threatened bodily harm/death to another person on the premises, for which a police report has been filed

*Requires written notice to cease be served (or payment demand for 3.) providing tenant an opportunity to "cure" the fault. Only if not cured, can a termination notice be served.

"No-Fault" Causes under the RRSO



Landlord initiated

- 1. Necessary and substantial repairs requiring tenant to vacate (after obtaining permits)
- 2. Demolition of unit (after obtaining permits)
- 3. Owner or owner's family move-in
- 4. Owner seeks to recover possession of unit for their principal residence
- 5. Lawful termination of an employee where employment was condition/consideration for the tenancy

Above is in addition to reasons for termination under State law – e.g. withdrawal of the unit from the rental market ("Ellis Act")

1

What is NOT a "Just Cause"?



Terminations without any of the 15 Just Causes

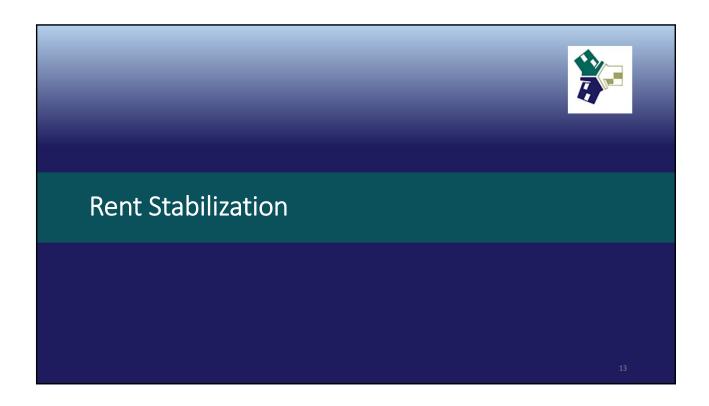
 Termination notices MUST include reason, including when grounds for eviction are under State or Federal law

End of Lease

- Tenant not required to sign a new lease unless substantially identical to prior
- Otherwise goes monthto-month automatically

Sale or Transfer of Rental Property

 Noticing of new ownership information to tenant required



What is Rent Stabilization under the RRSO?



Basic Rule for Rent Increases:

- Only 1 increase allowed per 12-month period
- 5% Rent Increase Threshold (some exceptions may apply)
- Rent Review Process available to challenge certain increases in rent or decreases in housing services

Who is covered by Rent Stabilization?



- Most Residential Units built on or before July 1, 1979 are Covered
- Key Exceptions:
 - Care facilities
 - motels, hotels, inns, tourist houses
 - boarding houses were tenants stay less than 30 days
 - non-profit cooperatives, non-profit transitional housing
 - where owner shares residence including common areas
 - housing with other government rent restrictions
 - mobile homes (covered by separate ordinance)
- 'De-controlled' status under the previous ordinance no longer applies

15

Who is covered by Rent Stabilization?



What if the building my unit is in was built <u>after</u> July 1, 1979?

You may be covered under a new State law (AB 1482), however, the rent cap is higher (currently 9%) than the RRSO rent increase threshold.

Exceptions to the Rent Increase Threshold of 5%



- Banking
- Vacancy Decontrol
- Utility Increases (with limitations)
- Capital Improvement Pass-through*
- Fair Return increase*

17

What is Banking?



Banking is when a Landlord does not use some or all of the 5% threshold in a prior year. The unused part is "banked" and can be used in a future year, subject to some limitations:

- ➤ The total increase, including the "banked" amount, cannot exceed 10%
- ➤ If the property changes ownership, the new owner cannot use any portion of a Rent Increase Threshold the prior owner "banked" (did not use)

^{*}Landlord must file a petition and be granted permission for these types of increases BEFORE increasing the tenant's rent. This is a process which tenants may <u>and are encouraged to</u> participate in.

Banking Example



- Tenant received an increase of 3% beginning February 1, 2019
- This means the Landlord "banked" 2% [5% 3% = 2%]
- Landlord could increase Tenant's rent on or after February 1, 2020 by 7%

5% (Rent Increase Threshold) + 2% (Banked amount) = 7%

19

What is Vacancy Decontrol?



- ➤ When a tenant moves out of their unit *voluntarily*, the landlord may set the rent for the new tenant(s) without restriction.
- ➤ If a tenant is evicted for cause (after an eviction lawsuit), this is considered a voluntary vacancy.
- Once a new tenancy has begun, subsequent increases are subject to RRSO.

Increases in Utility Costs



When charges by a public agency/utility have increased and are billed to the Landlord (water, sewer, gas, electric, garbage, etc.):

IF

- 1. the lease provides that Tenant will pay utility costs separate from rent and
- 2. there are no individual meters and a ratio utility billing system (RUBS) is used and
- 3. the new INCREASE is more than 1% of current rent amount <u>or</u> there is a rate increase,

THEN Tenant may

- 1. request supporting documents (must be done within 60 days of the notice) and
- 2. challenge the utility increase if the Landlord does not provide the supporting documentation <u>or</u> the increase is greater than 1% of the tenant's rent (petition for utility cost pass-through review)

21

Landlord Petitions



Landlords may petition to seek approval for pass-through or increase that is excess of the 5% threshold on two grounds:

- 1. Pass-Through of Capital Improvement Costs
- 2. Fair Return Review

Both petitions require documentation and an arbitration hearing. Tenants may and are encouraged to participate. Tenants receive notices during all stages of the process and the landlord cannot increase rents > 5% unless they received a favorable decision from the arbitrator and Tenants have been given notice of that decision.



Noticing Requirements



Copy of RRSO or Summary of RRSO

- Landlord <u>must</u> give a notice to tenant that identifies which parts of the RRSO apply to the unit
- Must be given by August 24, 2019 or before renting a unit

Rent Increase: at Least 30 days' Notice

- For covered units, the notice must explain the rent increase and give the tenant information about rent review
- If not given proper notice, Tenant can challenge an eviction or rent increase

Utility Costs Increase: at Least 30 days' Notice

 If Tenant requests it, landlord must give the tenant information that explains the increase in utility costs

Just Cause Noticing Requirements



Notice to Cease: Before Termination Notice

- To cure alleged violation by tenant Sec. 13(b)(2), (3), (5), (13)
- Written and properly served

Notice of Termination: 3/30/60 days

- Detail specific reason for termination
- Copy of notice must be filed with City of Hayward within 30 days.

Notice of Intent (Ellis Act): 120 days / 1 year

• Withdrawal of units from the rental market (Ellis Act evictions) has strict requirements.

2!

Notice to Cease



- Required as written warning for grounds of:
 - 1. Breach of Lease
- 3. Disruption of peace/quiet enjoyment
- 2. Damage
- 4. Violation of rules/regulations
- Suggested details to include in notice:
 - 1. Any information necessary to determine date, time, place, and other circumstances concerning the reason of the notice
 - 2. Sufficient details on how to cure and reasonable period to do so.

Notice of Termination



Notice to Pay Rent or Quit

- 3 Day* notice if Tenant has failed to pay rent as required
 - *excludes weekends and judicial holidays

Termination Notice

- 30 Day notice if Tenant has rented unit for < 1 Year
- 60 Day notice if Tenant has rented unit for > 1 Year

File Copy with City of Hayward

 Within 30 days of serving Tenant, file a copy of Notice with City's Rent Review Office in person, by mail or electronically RSSO Sec. 16(c)

27

Notice of Termination - Requirements



- 1. Must be written!
- 2. States the reasons for termination including specific facts for Tenant to understand the date, place and problem that is the reason for termination
- 3. Properly served: how the notice is given to you

.

Proper Service of Notices



Notices must be properly "served" on (given to) Tenant(s)! Person who serves the notice must be at least 18 years old.

Ways to legally serve:

- Personal service: Landlord or someone else gives the notice directly to Tenant in person.
- **Substituted service**: If the tenant is not home, Landlord can leave the notice with a member of the household, at least 18 years old, where the tenant lives <u>AND must then mail a second copy to the Tenant at the property</u>.
- Service by mail: Landlord mails the notice to you. Adds 5 days to a 30-day notice period.
- Posting and mailing ("nail and mail") service: If there is no one home to leave the
 papers with, Landlord can tape or nail the notice to the front door or somewhere
 where it can be seen easily AND send a copy by mail to the tenant at the property.

29

Service of Notices NOT X By email Proper ✓ Give notice to Proper the Tenant in X By text person **X** Orally ✓ Post notice on X By giving the door AND mail notice to an ✓ Give notice to occupant who occupant over is a minor 18 AND mail

Counting Days after Service



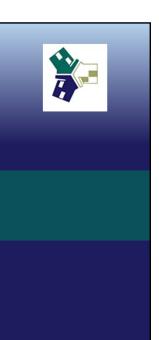
- To count the days in the notice period:
 - 1. The first day is the day *after* the notice is served.
 - 2. Then count every day on the calendar, but, for <u>3-day</u> notices to pay rent or quit and 3-day notices to perform or quit, do not count Saturdays, Sundays, or court holidays.
- If the notice not given to you personally, a copy must be mailed and you start counting the day after the notice is mailed (check postmark).

31

What to do if you receive a Notice?



- ➤ If it is a Rent Increase Notice, is it proper? If not, and you wish to challenge it, a Rent Review Petition must be filed within 30 days!
- ➤ If a Notice to Cease:
 - ✓ Do you understand what you need to do to fix the problem?
 - ✓ Address the problem and contact your landlord
 - ✓ Contact legal resources if necessary. Do not wait to get help.
 - ✓ Consider utilizing mediation services to resolve possible misunderstandings and avoid future ones. (Echo Housing 510-581-9380)
- If a Termination Notice, does it state a "Just Cause"? Contact Rent Review Office for more info or legal resources for assistance.



Rent Review Petitions

Rent Review Petition Process



- ➤ TENANTS IN COVERED UNITS may file a Petition to have their rent reviewed for reasons involving the amount of increase, the notice given, reduction in housing services, or outstanding maintenance / habitability issues
- ➤ LANDLORDS may file one of two types of Petition seeking approval to pass-through certain costs or increase rents to **covered units** beyond the allowed annual threshold (5%)

Tenant Petitions for Rent Review



Grounds for Tenant in a **covered unit** to file a Rent Review Petition:

- Annual rent increase is above 5%
- Tenant received more than one rent increase in a 12-month period
- · Rent increase with a "banked amount" applied
- An increase in utility costs of more than 1% of Tenant's current rent
- Landlord fails to provide supporting documentation for utility increase (after Tenant request)
- To seek help regarding decreases in housing services
- If the property has health, safety or fire code violations, or repairs that the landlord will not fix.
- Tenant failed to receive proper notice regarding a rent increase

35

Proper Notice of Rent Increase



Proper Notice Must Include:

- 1. Amount of increase in both \$\$ and %
- 2. Amount of Banked Increase applied in both \$\$ and %
- 3. Statement that Landlord believes that the rent increases and/or banked increases are in compliance with the ordinance
- 4. Identify the reason for a rent increase above 5% and provide supporting documentation
- 5. Contact information for the tenant to meet & confer with the landlord about a rent increase with best times to call
- 6. Contact information for the Hayward Rent Review Office
- 7. A copy of a Tenant Petition form
- 8. Hayward Rent Review Office will get copies of all increase notices

Proper Notice: Utility Increase or Cap Imp. Pass-through



If the Notice of increase includes an increase in Government Utility Service costs OR a Capital Improvement Pass-Through,

these must be identified as separate from any Rent Increase.

A Notice with a capital improvement pass-through must also include:

- 1. Statement that the LL believes a capital improvement cost passthrough complies with the ordinance
- 2. Approval from the City of Hayward <u>must be attached</u> to notice for Capital Improvement Pass-through (i.e. Arbitrator Decision)

37

Failure to Provide Documentation of Utility Increase



When a Tenant receives notice of a Utility rate increase or cost increase that is >1% of their current rent, Tenant **may request** documentation supporting the increase from the Landlord. At minimum, the Landlord **must provide to the Tenant**:

- 1. The gov't-utility cost for the entire building showing amount paid for each period in the 12 month period prior to the Increase
- 2. The cost by month or billing period apportioned to each unit in the 12 month period prior to the Increase
- 3. Notices from service agency showing increase
- 4. The RUBS calculation used to apportion costs among tenants

Review Based on Reduction in Services



Tenant may petition for a reduction in rent based on a decrease in Housing Services:

"Housing Service." A service provided by the Landlord related to the use or occupancy of a Rental Unit, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

39

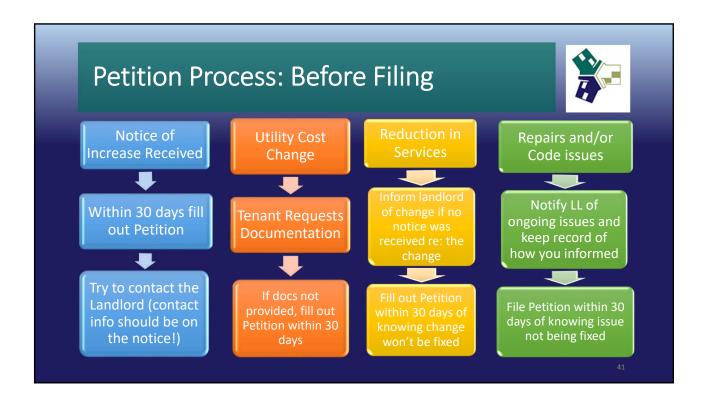
Outstanding Code Violations or Repairs



Tenant may request review of rent when the property has outstanding health, safety, fire, building violations, or repairs that the landlord will not make.

- Outstanding Code violations can be grounds for:
 - 1. Denial of rent increase, OR
 - 2. Reduction of rent.

Landlord can fix the problem(s) prior to arbitration in order to avoid an ongoing rent decrease or a denial of rent increase.

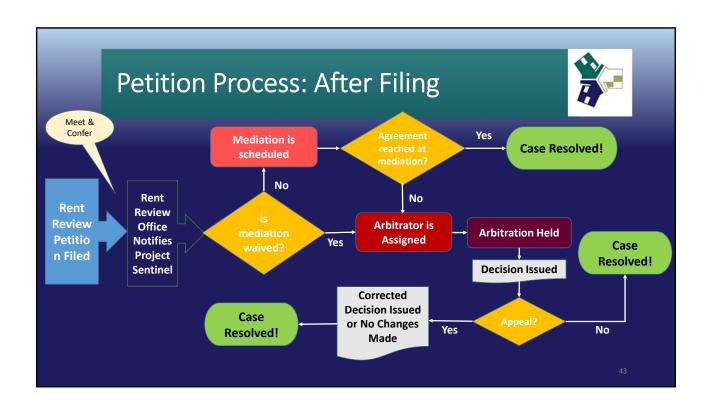


Petition Process Timelines

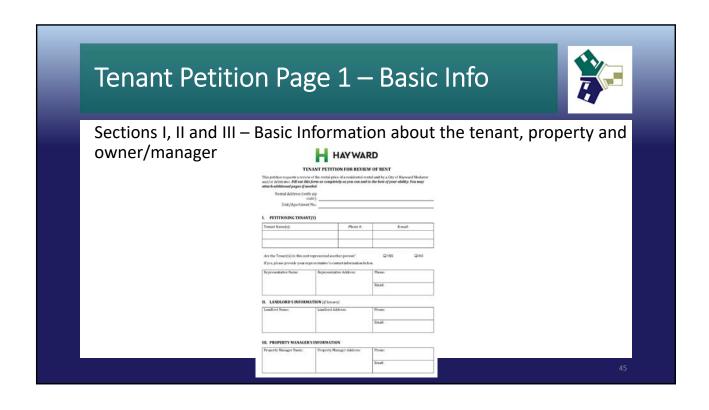


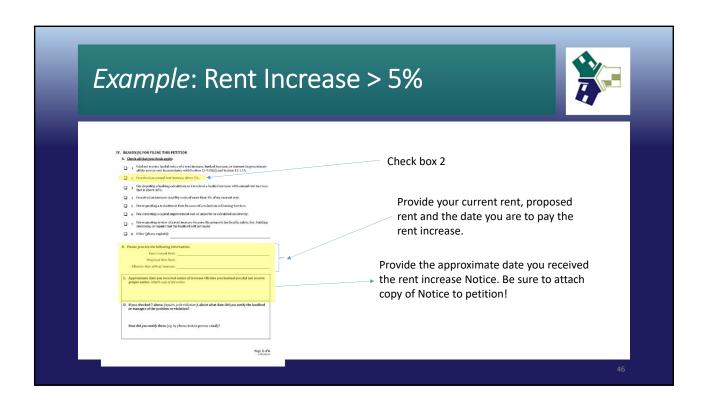
- 1. Tenant files Petition
- 2. City sends landlord notice of receipt, the petition and a blank response form.
- 3. Tenant has 10 days to try to "meet & confer" with Landlord
- 4. If Petition not withdrawn after 10 days, Project Sentinel sends acceptance notice.
- Mediation scheduling; petitions in same complex with similar issues grouped together
- 6. Notice of Mediation sent 14 days before mediation date.

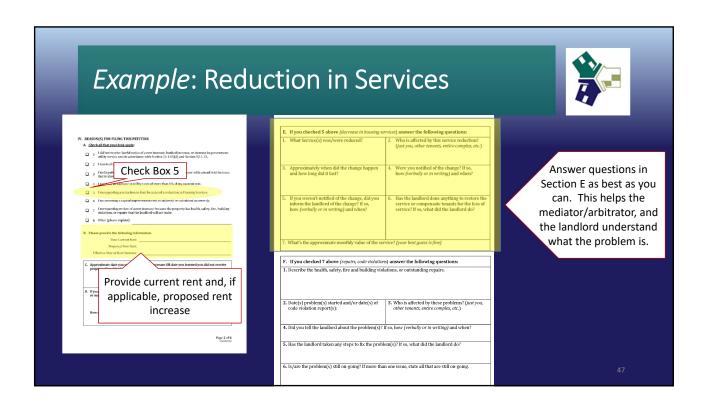
- 7. LL submits written response at least 5 days prior to mediation
- If mediation waived or no agreement at mediation, arbitrator assigned within 21 days.
- 9. Notice of Arbitration send 14 days before Arbitration date
- 10. Parties may submit additional documents or statements at least 7 days before the Arbitration
- 11. Arbitrator has 20 days to issue a Written Decision

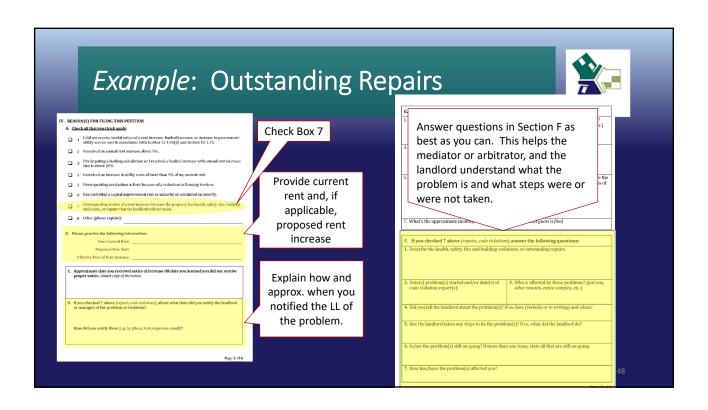


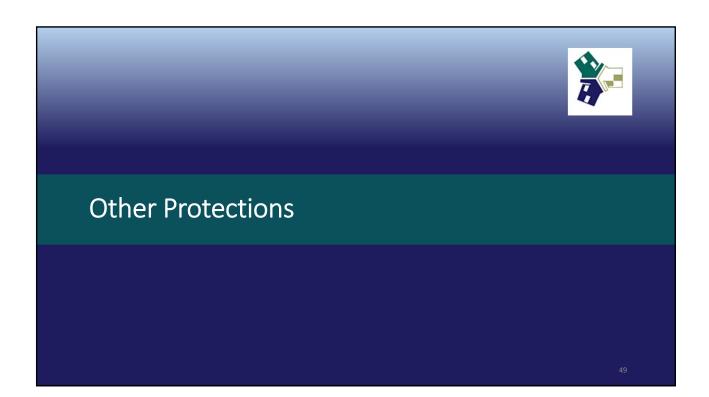












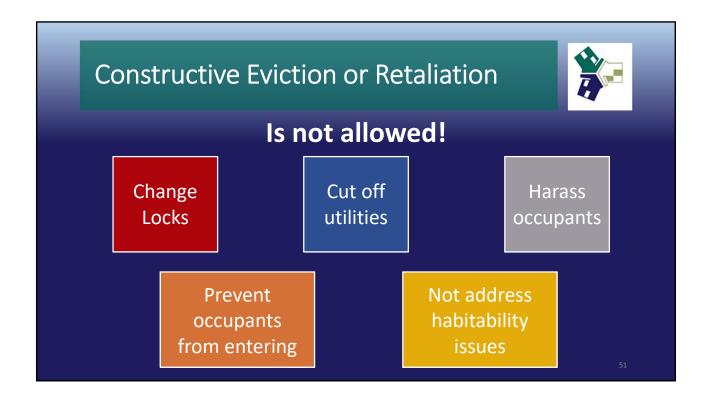
Discrimination Based on Source of Income Prohibited



Landlords **cannot refuse** to rent a unit to a household because of their source of income. Sources of income include rental assistance such as Section 8 vouchers

- ➤ Landlords **must accept** rental applications from tenants using rental assistance
- ➤ Landlords **must include** rental assistance as a source of income when determining whether a tenant can afford the rent
- Landlord **cannot advertise** that they will not accept applications from people who use rental assistance.
- Applies to most units

This type of discrimination is also prohibited under State law as of 1/1/2020



Other Types of Prohibited Actions



- 1. Stop or reduce services to rental units.
- 2. Not completing repairs and maintenance required by contract or law.
- 3. Not completing repairs in a timely and professional manner.
- 4. Abuse right of access to rental unit.
- 5. Use of lies, threats, or violence to make a tenant leave a rental unit, including threats regarding immigration status.
- 6. Not accepting a tenant's rent.

- Interfere with a tenant's right to privacy, including inquiries about immigration status.
- 8. Makes multiple offers (within 6 months) to pay the tenant if they voluntarily move out. (The tenant must tell landlord in writing that they are not interested.)
- 9. Interfere with tenant's right to quiet use and enjoyment of rental.
- 10. Interfere with a tenant's right to request rent review.
- 11. Verbal or physical abuse or intimidation.

New State Laws 1/1/2020



- ➤ Units that were built after July 1, 1979 and before 2015 are likely covered by the new State Rent Cap. The Rent Cap limits rent increases 5% + CPI in a 12 month period. The current CPI for Hayward is 4%, so the current State Rent Cap = **9%**
- Rent increases > 10% now require 90 days' written notice
- Discrimination protections now extend to veterans and military service members.
- > Tenant may house a person at risk of homelessness as a "lodger" (with landlord approval.

53

Tips and Challenges...



Be a Tenant in good standing

- Try to avoid late payments, nuisance, violations of lease
- Promptly notify Landlord of maintenance issues

Take evictions seriously! Deadlines are short and strict!

• If you receive a termination notice or eviction lawsuit contact help immediately.

Constructive Evictions, retaliation, harassment are NOT allowed

• Contact the Rent Review Office to confirm what these protections are and seek legal help.

Very limited "no-fault" causes

 Review any notice carefully and contact the Rent Review Office to confirm just cause requirements and seek legal help

