



Presents:

Just Cause and Understanding the Termination Process in Hayward

December 12, 2019

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.

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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.

Just Cause / Terminations Workshop



AGENDA

1. Hayward RRSO Overview
2. Eviction Protections
3. Noticing Requirements
4. Termination and Eviction Process
5. Tenant Defenses
6. Tips and Challenges
7. Resources

What is the RRSO?



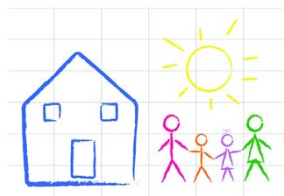
The City of Hayward encourages investment in local residential rental housing by allowing landlords to make a fair return on their real estate investments while also protecting the welfare of its citizens who are its tenants. The goals of the RRSO are to:

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)

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.



5

Who has just cause eviction protection?



RRSO Just Cause protections apply to all rental units EXCEPT:

- medical care facilities
- motels, hotels, inns, tourist houses
- boarding houses where 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

6

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”

7

Tenant “At-Fault” Causes under the RRSO



1. Failure to pay rent
2. Breach of material term*
3. Refusal to pay for substantial damage beyond “wear and tear”*
4. Refusal to renew same lease terms
5. 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
8. 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)*
9. Violated rules applicable to all units, which T agreed to previously in writing.*
10. 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.*

8

“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”)

9



Tenant “At-Fault” Causes

10

Failure to Pay Rent



- Tenant has failed, after 3-days' written notice, to pay lawful rent.

NOTE: As of September 1, 2019, Saturdays and Sundays and other judicial holidays are excluded in from this calculation.

11

Breach of Lease



- The Tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement

AND

- Such terms must be reasonable and legal, and have been accepted in writing by the Tenant

12

Damage to Property



- The Tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear; and
- Tenant has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises; and
- Such terms must be reasonable and legal, and have been accepted in writing by the Tenant.

13

Refusal of New Lease with Same Terms



- The Tenant has refused to agree to a new Rental Agreement upon expiration of a prior Rental Agreement, but only where the new Rental Agreement contains provisions that are substantially identical to the prior Rental Agreement, and is not inconsistent with local, state, and federal laws.

14

Nuisance to Others



- The Tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other Tenants or occupants of the premises.

15

Failure to Give LL Access



- The Tenant has, after written notice to cease, refused the Landlord access to the unit as required by state or local law.
- Entry by Landlord or on behalf of Landlord under CC Sec. 1954 requires:
 1. Lawful Purpose – only for necessary or agreed repairs/services or allowed inspections
 2. Proper Notice – Tenant given at least 24 hours' notice stating time and purpose. Entry during normal business hours. Exceptions in cases of emergency (fire, flooding).
 3. Tenant has right to be present by cannot deny lawful entry.

16

Conviction Relating to Use of Unit



- The Tenant is convicted of using the Rental Unit for any illegal purpose.

Merely arrested on suspicion of such a crime is not sufficient.

17

Use of Controlled Substances



- Tenant has used or allowed the use of the Rental Unit, or any other area owned or controlled by the Landlord, for the manufacture, sale, distribution, possession, or use of a controlled substance (under State law).

18

Violation of Written Rules



- The Tenant has continued, after written notice to cease, to violate legal and **reasonable** written rules and regulations:
 1. that are applicable to all tenants and occupants at the property
 - AND
 2. that such terms have been accepted in writing by the Tenant.

19

Threats of Bodily Harm or Death



- Tenant has threatened, either verbally or in writing, to commit a crime which would result in death or great bodily harm to a Tenant, guest, manager, owner, or other person on the premises, for which a **report has been filed** with the Hayward Police Department.

20



No Fault Causes

21

Necessary and Substantial Repairs



- Landlord seeks in good faith to undertake **substantial** repairs which are necessary
 1. to bring the Property into compliance with codes/laws affecting health and safety or where necessary to address outstanding code violations; and
 2. such repairs cannot be completed while the Tenant resides in the unit.
- **ONLY** after all necessary permits have been obtained.
- When work completed, Tenant **must be given the right of first refusal** to re-occupy the unit.

22

Demolition



- Landlord seeks in good faith to recover possession of the Rental Unit(s), in order to remove the such units from the market by **demolition**.
- **ONLY** after all necessary permits have been obtained.

23

Owner/Owner's Family Move-In



- Landlord seeks in **good faith** to recover possession
 1. for Landlord's own use as his/her **principal residence**; OR
 2. for the use as **principal residence** by the Landlord's spouse or domestic partner or by the Landlord's or the Landlord's spouse's child, parents, brother, sister, grandparents, or grandchildren.
- Landlord **must** hold as an owner of record at least a 51% interest in the Property.
- Landlord **may not** recover possession if a comparable unit is vacant and available at the Property.

24

Owner/Lessor Principal Residence



- A Landlord or lessor seeks in **good faith** to recover possession of the Rental Unit for his/her occupancy as a **principal residence**
- Landlord/Lessor **must have the right** to recover possession of the unit for his/her occupancy as a principal residence under an **existing Rental Agreement** with the current Tenants.

Distinction from prior slide: If there is such a provision in the lease, Landlord is not required to have 51% ownership interest, and cause is permissible regardless of whether another unit in building is vacant.

25

Termination of Tenant's Employment



- Lawful termination of Tenant's employment by the Landlord
 1. where such employment was an express condition of, or consideration for, the tenancy under a written Rental Agreement,
 2. the notice of termination is given as provided in Cal. Civ. Code Sec. 1946

Example: Tenant employed as on-site manager and pays discounted (or no) rent as consideration for their employment

26

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 month-to-month automatically

Sale or Transfer of Rental Property

- Noticing of new ownership information to tenant required

27



Noticing

28

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.

29

Notice to Cease



- Required as written warning for grounds of:
 1. Breach of Lease
 2. Damage
 3. Disruption of peace/quiet enjoyment
 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.

30

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)*

31

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

32

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.

There are 3 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 AND must then mail a second copy to the Tenant at the property.
- **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.

33

Service of Notices



Proper

- ✓ Give notice to the Tenant in person
- ✓ Post notice on door AND mail
- ✓ Give notice to occupant over 18 AND mail

NOT Proper

- X By email
- X By text
- X Orally
- X By giving the notice to an occupant who is a minor

34

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 3-day 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).

35

What to do if you receive a Notice?



- If it is a Notice to Cease, do you understand what you need to do to fix the problem?
- If a Notice to Cease, address the problem and contact your landlord.
- Contact legal resources. Do not wait to get help.
- Consider utilizing mediation services to resolve possible misunderstandings and avoid future ones.

Echo Housing | echofairhousing.org | 510-581-9380

36



Eviction Process

37

Constructive Eviction or Retaliation



Is not allowed!

Change
Locks

Cut off
utilities

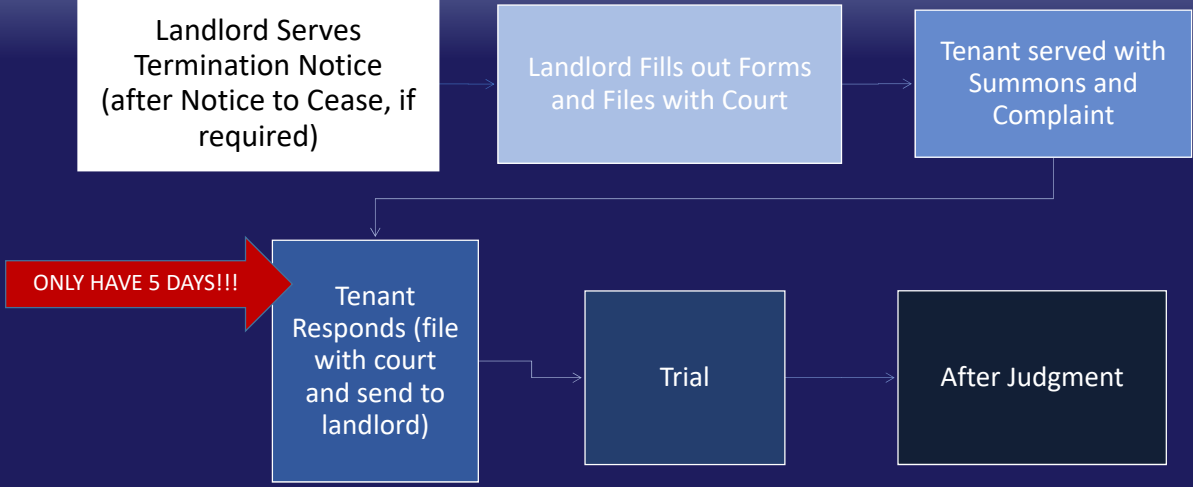
Harass
occupants

Prevent
occupants
from entering

Not address
habitability
issues

38

Steps in the Eviction Process



Forms –Summons and Complaint



If you receive documents that look like these – Seek legal help! Action is needed!

Summons - Unlawful Detainer-Eviction (Form SUM-130)

Complaint - Unlawful Detainer (Form UD-100)*

Being Served a Summons & Complaint



Summons & Complaint can only be served by (<https://www.courts.ca.gov/28660.htm>):

Personal Service

- The server (not the landlord!) gives you the papers in person. If you won't take the papers, the server can tell you that you are being served and leave them as close to you as possible.

Substituted Service

- You aren't at home or work when the server comes, the server can give the papers to a member of the household where you live or to someone in charge where you work. A copy of the *Summons & Complaint* must also be mailed to the address where the papers were left.
- Server must try at least 2 or 3 times, on different days and different times of the day, before using this method of service

Posting and Mailing

- RARE - landlord can only use this type of service if the court gives them permission

41

Tenant Responds to the Complaint



How long does a Tenant have to file an Answer? (<https://www.courts.ca.gov/27757.htm>)

- If Tenant *personally* served, they **have 5 days**, excluding Saturdays, Sundays and court holidays
- If Tenant served by "substituted service" (papers served on person at the unit over 18 years old and copies mailed), the tenant has 15 days after the date the server mailed the court papers. For the first 5 of the 15 days, do not count Saturdays, Sundays, or court holidays. The following 10 days counted may be regular calendar days
- If more than one Tenant named, ALL need to file an Answer! One Answer can be submitted by multiple tenants.

42

Seek Assistance with Your Response



- After being served with the Summons and Complaint, you **must file a response** with the court if you want to defend yourself in the case.
- The response has to be in the proper legal form. It is not enough to call or write a letter to the landlord. It is also not enough to write a letter to the court.
- You **MUST** file your response within the deadline.
- Talk to a lawyer or find a legal aid office to help you make sure you file whatever response is best in your situation. You can also hire your own lawyer to review your papers or to get legal advice with just the parts of it that you may need more help with. *See "Resources" slide at the end.*

43

Guide and Forms – www.courts.ca.gov



<https://www.courts.ca.gov/27812.htm>

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Self-Help > Eviction & Notices > Eviction > Eviction: Tenants > Tenants: Landlord Gives You Written Notice (Step 1 of 6)

Tenants: Landlord Gives You Written Notice (Step 1 of 6)

1 Eviction Notice | 2 Served with Complaint | 3 Decide to Respond | 4 File Response | 5 Trial | 6 After Judgment

For Tenants: The Eviction Process

- Eviction Overview
- Step 1
- Step 2
- Step 3
- Step 4
- Step 5
- Step 6

Types of Notices

- How the Landlord Gives You Notice
- When Notice is Not Required
- Decide How to Respond to the Eviction Notice

Go to the Next Step

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44

Ways to Respond to the Complaint



- **Answer** - Tenant may file a response using Answer – Unlawful Detainer (Form UD-105). The Answer may allege *defenses* to the eviction. (see next slides). The Answer must be filed with the Court, with a copy sent to the Landlord.
- **Motion to Quash Service** - Tenant can file this if they believe the Summons and Complaint were not served properly.
- **Demurrer** – A filing that asserts that the Complaint does not state enough facts or elements that the law requires to justify an eviction.

<https://www.courts.ca.gov/27822.htm>

If you do nothing...



Process moves quickly!! Important to seek help and at least get Answer filed!!



Tenant Defenses in Unlawful Detainer



- Certain actions or omissions by an owner or actions by tenant may be used by tenant in defense of an unlawful detainer (eviction or UD) lawsuit.

Examples: Tenant not first served a notice to cease prior to termination based on breach or other causes that require opportunity to cure

- An *affirmative defense* is an assertion by a defendant that raises new facts and arguments that defeat the plaintiff's claim even if all of the allegations in the complaint are true.

Example: Eviction based on failure to pay and Tenant argues Landlord has failed to address habitability issues in rental unit

47

Tenant Defenses in Unlawful Detainer



Constructive Eviction?

- Actions demonstrated to illegally force out tenant, such as change of locks, cut off utilities, harassment, unaddressed habitability issues

Non Compliance with RRSO?

- Failure to comply with Just Cause or noticing requirements may be used as defense
- Includes failure to assert compliance in the UD complaint

Retaliatory Eviction?

- Eviction filed in response to a tenant exercising rights under RRSO or State law
- *Examples: seeking eviction after tenant files a petition, requests repairs, informs City of possible code violations*

Right of Refusal

- Tenant has filed a petition and no final decision or agreement has been reached, and tenant has refused to pay portion of increase above the threshold - where petition filed under *Sec. 7(b)(2) or (3)*- or refused to pay the rent increase - where petition filed under *Section 7(b), (4), (5) or (6)*

48

Filing Your Answer (www.courts.ca.gov/28662.htm)



- After filing out the Answer, make 2 copies.
- Have someone 18 or older (NOT you or another tenant), mail 1 of the copies to the landlord or to the landlord's lawyer (do NOT mail the original).
- Have this person (called the "server") fill out and sign a Proof of Service - Civil (Form POS-040).
- File the original of the Answer and the remaining copy, as well as the completed Proof of Service at the clerk's office in the courthouse.
- You will have to pay a filing fee. *If you cannot afford a filing fee, you can ask for a fee waiver.* If the court approves your fee waiver request, you will not have to pay the fees.
- The clerk will stamp your copy of the Answer and return it to you, and will keep the original for the Court.

49

Trial (www.courts.ca.gov/27840.htm)



- Once you file an answer, the landlord will request a trial date by filing a *Request to Set Case for Trial - Unlawful Detainer* (Form UD – 150)
- On this form, the landlord will state if they request a jury trial or having the case decided by a judge, how long he or she thinks it will last, and what issues need to be decided at trial.
- Tenant may file this form, too, if they wish.
- About a week after the *Request to Set Case for Trial* is filed, the court clerk will mail you and the landlord information with the exact date, time and location of the trial. The trial will usually take place within 20 days.

50

Decision after Trial



- *If Tenant wins:* You have the legal right to stay in the property. In some cases, the judge orders the Landlord to pay your costs, like filing fees and attorney fees. The judge may also decide how much rent you have to pay.
- *If Landlord wins:* Judge will give Landlord a Judgment of Possession. The judge may also order the tenant to pay back rent, damages, and costs, like filing fees and attorney fees (if this is in the rental agreement).
 1. After receiving a *Judgment of Possession*, the Landlord must request the court clerk issue a *Writ of Execution*. The Landlord takes the Writ to the Sheriff. This lets the sheriff remove and lock the tenant out of the property.
 2. Sheriff will serve you a notice to vacate the property. This gives the you 5 days to move. If you do not move out, the sheriff will remove you from the rental unit and lock you out.

51

Stay of Execution



- If you appeal or try to cancel the judge's order, the eviction is NOT stopped. The only way for you to stop or delay the eviction is to ask for a *stay of execution*.
- Even if you do not appeal, you may want more time to move out. If the landlord will not agree to it, you will have to file a Request for a Stay of Eviction ("Stay").
- You must file the Stay as soon as you get a notice from the sheriff giving you 5 days to leave the unit.
- A Stay will delay the eviction. If the judge lets you remain in the rental unit longer, you will have to pay the rent for that period of time.
- You need a good reason to ask for more time! And there are no court forms to ask for a Stay, so talk to a lawyer for help.

52

Tips and Challenges...



Be a Tenant in good standing

- Try to avoid late payments, nuisance, violations of lease

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

53

Resources



City of Hayward – Rent Review Office

- <https://www.hayward-ca.gov/your-government/programs/rent-review-residential-rent-stabilization>
- (510) 583-4454



Eviction Defense Center

- <https://www.evictiondefensecenteroakland.org/>
- (510) 452-4541



Bay Area Legal Aid

- www.baylegal.org
- (510) 663-4744



Centro Legal de la Raza

- <https://www.centrolegal.org/>
- (510) 437-1554



Alameda County Bar Association Lawyer Referral Service

- <https://www.acbanet.org/need-a-lawyer/>
- 510-302-2222, Option 4



Alameda County Superior Court Self-Help

- <http://www.alameda.courts.ca.gov/Pages.aspx/Representing-Yourself>
- <https://www.courts.ca.gov/selfhelp-eviction.htm>

54



Presents:

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