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COURT DETERMINES THAT RELIEF FOR EXCESS RENT PAYMENTS IN VIOLATION OF LOS ANGELES RENT STABILIZATION ORDINANCE IS VALID FOR UNLAWFUL GUEST UNIT

By: Anthony Marinaccio, Esq.

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Recently, the California Court of Appeal determined that a tenant of an unpermitted and thus unlawful guesthouse is entitled to recover excess rent payments that she made to her landlord that violated the Los Angeles Rent Stabilization Ordinance (“LARSO”).¹ This case has important implications for landlords who rent units that do not have a certificate of occupancy because the LARSO would still apply to these units if a tenant claims he or she was charged rents that exceeded the limits set in the LARSO.

In 2002, Lauren Carter (“Tenant”) entered into a lease agreement with the previous landlord for \$890 per month. The guesthouse was built without building permits and was not registered under the LARSO. In 2004, Jerry Cohen (“Landlord”) purchased the property and increased the Tenant’s rent to \$1,475. In 2005, he raised the rent to \$1,585 and again raised the rent in 2006 to \$1,685. In response to the final rent increase, the Tenant gave a 30-day notice of her intent to move from the guesthouse, and they became involved in a dispute whether her security deposit could be applied to her last month’s rent.

The Landlord began an unlawful detainer action against the Tenant but dismissed it when she voluntarily left. Later, the Los Angeles Department of Building Services declared the guesthouse substandard because it was an unapproved occupancy that lacked permits. Subsequently, the Tenant filed a lawsuit against the Landlord seeking disgorgement of the entire rent she had paid to the Landlord or the rent she had paid in excess of the limits set by the LARSO. At trial, a jury determined that the Landlord had charged her excess rent payments of \$11,590. In addition, the Tenant was awarded \$25,575 in attorney fees and \$5,427.01 in other costs. ***In sum, the Tenant was awarded \$42,592.01 against her Landlord because he charged rents that exceeded those set in the LARSO.***

On appeal, the Landlord claimed that the Tenant was not entitled to damages because the rental agreement was unlawful and the guesthouse fell outside the control of the LARSO. He argued that the rental agreement was unlawful because he wanted the Court to determine a baseline rent using market value and not the figure stated in the original rental agreement. Further, he believed the Court could not use an invalid rental agreement for a dwelling unit that did not have a certificate of occupancy to determine the baseline rent from which rent increases would be determined. The Court first reviewed LARSO § 151.10 which states that any landlord who demands a payment in excess of the maximum rent as set forth in the LARSO is liable for three times the amount of the excess payment along with reasonable attorneys’ fees and costs.

¹ *Carter v. Cohen* 2010 DJDAR 15181 (September 28, 2010) Cal. Ct. of Appeal 2d Dist.



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On appeal, the Court only reviewed whether the Tenant was entitled to recover excess rent payments even though the guesthouse lacked a certificate of occupancy and was not registered under the LARSO. The Court agreed with the Tenant that the LARSO authorized the Tenant's recovery of excess rent payments because the LARSO prohibits a landlord from accepting rent from a dwelling unit that is not registered under the LARSO. Consequently, the Landlord was not entitled to any exception under the LARSO that he could not accept rent payments and for the limited circumstance of determining rent increases, the LARSO would apply.

Rental agreements for dwelling units that lack certificates of occupancy are considered unlawful and void and will not generally be enforced by the courts. However, here, the Court found an exception because the LARSO was meant to safeguard tenants from excessive rent increases and the only reason the Tenant was using the rental agreement was to show a baseline rent from which the Landlord could have used to raise the rent properly under the LARSO. The Court also found that the Tenant could seek protection under the LARSO even when she knew that the unit was unregistered under the LARSO and lacked a certificate of occupancy.

Further, for purposes of a lawsuit seeking disgorgement of excess rent payments, the LARSO applies to dwelling units that lack a certificate of occupancy. Therefore, the Court of Appeals agreed with the Tenant that she could seek protection under the LARSO because she was charged rent that exceeded what was allowed under the LARSO during her time of tenancy.

It is also important to note that the Tenant was entitled to attorneys' fees and costs because the LARSO allows for their recovery for actions against landlords who demand rent in excess of the LARSO limits. Prior to any litigation, both litigants must be fully aware of whether attorneys' fees may be awarded to a party. In addition to being awarded attorneys fees, a landlord who charges rent in excess of the LARSO may also be liable for three times the amount of the excess rent.

Therefore, although it is unlawful to collect rents from a unit that does not have a certificate of occupancy or is not registered under the LARSO, a landlord must still comply with the rent limits and increases imposed by the LARSO. Prior to purchasing a building in Los Angeles, a landlord must be aware of the limits imposed by the LARSO and whether or not these limits apply.

It is also vital to know what annual increases are allowed under the LARSO annually and to only raise the rent lawfully. Currently, the LARSO allows landlords a 3% increase; however, this changes annually every July 1. Violation of the LARSO can be costly and have drastic effects.

Anthony Marinaccio is an Associate at Alvarez-Glasman & Colvin's City of Industry office. His practice focuses on landlord-tenant issues, zoning law, redevelopment law, Fair Housing violations, Housing and Building Code violations, and real estate litigation. He may be reached at (562) 699-5500 or amarinaccio@agclawfirm.com.

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