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“The Los Angeles City Council enacted the Rent Stabilization Ordinance in an effort to regulate rent increases due to a housing shortage.”

A Cautionary Tale for Landlords: Don't do Dumb Things

THIS ISSUE

As one residential landlord recently discovered, it can be very costly to violate rent control ordinances, especially when there are unhappy tenants.¹

SUMMARY

Lawyer Jerry Cohen bought a home in North Hollywood, with a nice guest house in the back. There was a renter paying \$850 a month. He raises the rent to \$1475. Ouch. Then later raises it again. And again. Tenant has had enough and says she's going to leave, but wants to apply her security deposit to the last month's rent. He says no, and when she doesn't pay the rent files an action for unlawful detainer. She moves, he dismisses. But she's ticked off. And what follows is a terrific cautionary tale for all residential landlords.

BACKGROUND

In 2002, Lauren Carter entered into a residential lease for an in-law guesthouse in North Hollywood. The guesthouse contained two rooms with a kitchen area, and was detached from a house on the same property. The guesthouse had been constructed without building permits, and was not registered under the local Rent Stabilization Ordinance (“RSO”). From 2002 to 2004, Carter paid \$890 per month in rent.

In 2004, Cohen bought the house and its guesthouse, and increased Carter's monthly rent to \$1,475. A year later, he raised the monthly rent to \$1,585. When Cohen later increased the monthly rent to \$1,685 Carter gave 30-days' notice of her intent to move out of the guesthouse, and they

¹ *Carter v. Cohen* (2010)

fell into a dispute regarding whether Carter's security deposit should be applied against her final rent payment. Cohen began proceedings to evict Carter, but voluntarily dismissed them after Carter vacated the premises. On November 8, 2006, the Los Angeles Department of Building Services declared the guesthouse "substandard," finding "unapproved occupancy" in a structure "constructed without the required permits" and "not designed or intended to be used for such occupancies."

Then the real bitterness began. Carter sued Cohen alleging that he had increased her rent in violation of the RSO. She asked for disgorgement of the entire rent she had paid to Cohen, or alternatively, the rent she had paid in excess of the limits set by the RSO, together with penalties provided under the RSO.² In addition, she asserted two claims under state rental statutes and a claim for unfair business practices.

Cohen took an unusual approach to defending against Carter's claims, contending that Carter's claim for excess rent payments under the RSO failed as a matter of law because Carter's rental agreement was unlawful and the guesthouse fell outside the RSO. He maintained that Carter was entitled to recover her rental payments only to the extent they exceeded the reasonable rental value of the guesthouse. But after trial, a jury found in favor of Carter, awarding her excess rent payments of \$11,590. Carter subsequently sought her attorney fees and the trebling of the jury's award pursuant to the penalty provisions of the RSO. The trial court awarded Carter \$25,575 in attorney fees, but declined to treble the jury's award; in addition, the trial court awarded \$5,427.01 in other costs.

Cohen contended on appeal that the trial court erred in permitting Carter to recover her excess rent payments, as this had the effect of enforcing an unlawful rental agreement. He argued that the rental agreement was unenforceable because the guesthouse had been built without permits, lacked a certificate of occupancy, and was unregistered under the RSO. The court of appeals disagreed.

APPELLATE COURT ANALYSIS

The Court began by examining the RSO and other pertinent provisions of the Los Angeles Municipal Code. The Los Angeles City Council enacted the RSO in an effort to regulate rent increases due to a housing shortage, finding: "There is a shortage of decent, safe and sanitary housing in the City of Los Angeles resulting in a critically low vacancy factor. Therefore, it is necessary and reasonable to regulate rents so as to safeguard tenants from excessive rent increases, while at the same time providing landlords with just and reasonable returns from their rental units."

The RSO further obligates landlords to register rental units, and provides that no landlord shall demand or accept rent for a rental unit without first serving a copy of a valid registration or annual registration renewal statement on the tenant of that rental unit. And it prohibits the use of any structure or building in the absence of "all permits and licenses required by all laws and ordinances."

The court of appeal found that enforcing the RSO in this circumstance, and enforcing what Cohen called an illegal contract was appropriate under the circumstances. There is nothing terribly new in the decision, though it reinforces the concept that a landlord cannot avoid the rent control laws.

² For those interested, the ordinance at issue is L.A. Mun. Code, ch. XV., art. I., § 151.10(A) and the state law is Cal. Civil Code, §§ 1941.1, subd. (d), 1950.5, subd. (l)

WHY IS THIS IMPORTANT?

There is nothing particularly unique about this holding. If it were not for the interesting fact pattern, the case would have been largely ignored. But it is an interesting cautionary tale about what can happen when a landlord violates local rent control ordinances, and even more so what can happen when a landlord enforces unreasonable positions against tenants. Would this case have ever been published if Cohen had merely been reasonable in the rent increases he sought? Would the tenant have notified the Building Department about the failure to get permits or a certificate of occupancy for the guesthouse if Cohen had taken the time to develop a relationship with his tenant? We won't know for sure. But what we can be sure of is that neither the tenant nor landlord can be called a "winner" here.

Here, Carter requested a total of \$43,025 in fees. The trial court awarded Carter only \$25,575, plus her court costs. The court of appeal expressly awarded her additional attorney fees and costs incurred on appeal. In the end, Cohen's approach cost him at least \$36,000, plus his own attorney fees through trial and on appeal, as well as the loss of ability to rent his guesthouse without paying fines and obtaining permits and approvals after the fact. The real message for landlords?: Don't do dumb things.

NEXT ISSUE

Review of a new case discussing title company negligence in preparation of a preliminary report of title.

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