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Rare rulings on state rent control law

By Edward A. Klein

More than a dozen California cities — including Berkeley, Beverly Hills, Los Angeles, San Francisco, San Jose and Santa Monica — have some form of rent control ordinance that limits the rent that a landlord may charge a residential tenant. According to the U.S. Supreme Court, rent control is intended "to accommodate the conflicting interest of protecting tenants from burdensome rent increases while at the same time ensuring that landlords are guaranteed a fair return on their investment." *Pennell v. San Jose*, 485 U.S. 1, 13 (1988). Proponents of such regulations argue that they are necessary to ensure an adequate supply of affordable housing. Opponents say price controls exacerbate scarcity by discouraging investment and adversely that the quality of available housing units.

In 1995, California adopted the Costa-Hawkins Rental Housing Act, which largely preempts local rent control ordinances. Cities and counties retain the ability to adopt and implement local rent control laws, but they must do so in accordance with the parameters established by Costa-Hawkins.

Costa-Hawkins affected local rent control ordinances in two significant respects. First, it exempted from such ordinances several categories of housing, including new construction, previously exempt property, and single-family homes. Second, and most significant, the law cleared the way for landlords to increase rental rates when there was a change in occupancy, a policy known as "vacancy decontrol." The law's supporters argued this policy was necessary to moderate "extreme" rent control ordinances in cities such as Berkeley and Santa Monica, which prohibited landlords from raising rents even the rental unit was vacated.

Although Costa-Hawkins has been on the backs for 20 years, there have only been a handful of published decisions addressing the law and numerous issues remain unresolved, one of which was addressed in two recent decisions from California's 1st District Court of Appeal in San Francisco. Costa-Hawkins' vacancy decontrol authorized landlords to increase the rental rate once "the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there." Civil Code Section 1954.53(d)(2). In *Mosser Companies v. S.F. Rent Board*, 233 Cal. App. 4th 505 (Jan. 21, 2015), and *T & A Drolapas & Sons LP v. S.F. Rent Board*, 2015 DJDAR 7984 (July 9, 2015), the court construed this language in the context of an intergenerational transfer of the tenancy. In both cases, the current tenant was a minor — one was six and the other 13 — when he and his parents leased and moved into an apartment subject to San Francisco's Residential Rent Stabilization and Arbitration Ordinance. Years later, the parents moved out of the apartment, but the child, now an adult, remained. The landlord then served the tenant with notice of a substantial rent increase. In each case, the tenant filed a petition with the San Francisco Rent Board, alleging that he was an "original occupant" of the unit and that the rent increase was therefore illegal under Costa-Hawkins. In both cases, Rent Board found in favor of the tenant. In both cases, the San Francisco County Superior Court agreed that the minor was an "original occupant" under the law.

The Court of Appeal in *Mosser* looked to the dictionary for the plain meaning of "occupant." The court said any "individual who has resided in the dwelling from the start of the tenancy with the landlord's permission" qualified as an "original occupant … who took possession of the dwelling unit pursuant to the rental agreement." It rejected the landlord's contention that "taking possession" requires the legal right to possession — a right acquired only by a party to the lease — because such an interpretation was at odds with the Legislature's use of the word "occupant" rather than the distinct terms "tenant," "lessee" or "party," which it used elsewhere in the statute. Although the *Mosser* court could not locate any clear legislative intent, it identified snippets of the legislative history which, together with the "narrow and well-defined purpose" of the law, supported the its conclusion.

Associated Press
An apartment building in San Francisco.

The *Mosser* court dismissed the landlord's concern that its holding would permit a minor to inherit his parent's tenancy with no corresponding obligations. As for the landlord's argument that it was "unwise" to apply the rent control provisions to individuals who begin their residency as minors, the court advised the landlord to pursue that argument with the appropriate legislative body.

Less than six months after *Mosser,* another division of the 1st District decided *T & A Drolapas & Sons*, a virtually identical case. In fact, the *T & A* court noted that it had the benefit of the *Mosser* opinion, which involved the "identical issue" of whether Civil Code Section 1954.53(d)(2) permitted the landlord to increase the rent when an occupant, who moved into the apartment as a minor child, remained there after his parents vacated it. That panel found no reason to disagree with the *Mosser* court and upheld the Rent Board's ruling that the rent increase was illegal.

Like its sister panel, the *T & A* court rejected the landlord's contention that an "original occupant" must be a tenant who is a party to the rental agreement and held that a 6-year-old was such an occupant and that he "took possession the dwelling unit pursuant to the rental agreement" when he moved in with this parents in 1995. In this regard, *T & A* added no analysis to *Mosser*. However, the *T & A* court did uphold the lower court's affirmation of the Rent Board's ruling that, in addition to being an "original occupant," the child tenant was also a "subtenant" under the law, and this provided an alternative basis for declaring the rent increase illegal. Finally, the *T & A* court echoed the *Mosser*'s directive that the landlord's "policy" arguments were no matters for the judicial branch.

These decisions are among just a handful of cases over the last 20 years that address Costa-Hawkins. Although they recognize that the law was intended to benefit landlords by outlawing vacancy control provisions, both cases interpreted the law liberally in the tenant's favor. It remains to be seen whether this portends future decisions under Costa-Hawkins.

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