



Quality Housing • Ethics • Professionalism



August 14, 2023

Via E-Mail Only

Councilmember Katie Valenzuela
Chair, Law and Legislation Committee
City of Sacramento
915 I Street
Sacramento, CA 95814

RE: 8-15-2023 Agenda Item #5: Tenant Anti-Harassment Ordinance (TAHO)

Dear Chair Valenzuela & Members of the Law & Legislation Committee:

The California Apartment Association (CAA) is the largest statewide rental housing trade association in the country, representing over 50,000 rental housing providers offering over 1-million rental homes statewide. And, in Sacramento our members provide homes to more than 25,000 local residents.

CAA has significant concerns with the lack of information shared with the committee in the staff report for Agenda Item #5: “Councilmember Proposal Request for Committee Consideration - Tenant Anti-Harassment Ordinance (TAHO).”

Education is at the heart of our mission at CAA. Our association helps housing providers manage their properties legally and ethically, maintaining compliance with all local, state, and federal laws. In addition to a helpline to help members understand the various laws that impact them, CAA offers a robust series of classes, articles, informational guides, and forms for rental housing providers to offer quality homes to the state’s renters.

Reports to this committee on this issue allege tenants are experiencing harassment including *“intimidation and coercion, abusing their right to access rental units, removal of their possessions without authority, threats of violence, refusal to acknowledge receipt of rent payment, interference with their right to quiet use, interruption or termination of utility service, and refusals to do repairs, among others.”* However, it is important to note that all these items are already prohibited by state law.

The August 15, 2023 staff report fails to discuss the many robust protections that already exist under state law to protect renters from harassment and ensure safe, quality housing. While the staff report acknowledges that certain laws that do exist, the staff report is far from the comprehensive overview the committee requested at the April 4, 2023 meeting. Specifically, the staff report only cites two state laws – Civil Code sections 789.3 and 1940.2 – as providing harassment protection to tenants. While those two laws certainly provide important tenant protections, there are many more state laws that the staff report omitted. For example, it did not include any explanation or reference to the covenant of quiet enjoyment or warranty of habitability which are implied in all residential tenancies and together protect the tenant’s right to safe and exclusive possession of their unit. The staff report also made no mention of the habitability standards codified in state law or that tenants are protected from eviction and other retaliatory actions by their landlord for making a complaint regarding a habitability issue or exercising other legally protected rights. Additionally, the staff report omitted explanation of Civil Code section 1954 which is the

state law which both limits a landlord's right to enter a rental unit and requires that tenants be given advanced, written notice prior to entry. Similarly, the staff report was silent as to the robust tenant discrimination protections available under the federal Fair Housing Act and the California Fair Employment and Housing Act.

In fact, there are existing laws that address each of the alleged forms of harassment which are listed as the supporting reasons for the proposed ordinance:

"Intimidation and coercion"

Civ. Code section 1940.2. makes it illegal for a landlord to induce a tenant to leave a unit by: the use or threat of use of "force, willful threats, or menacing conduct;" threatening to disclose the citizenship or immigration status of the tenant or the tenant's guests; entering the tenant's unit in substantial violation of the law; extorting the tenant, and removing the tenant's property from the units without consent.

Civ. Code section 1940.35 prohibits a landlord from disclosing information about the immigration or citizenship status of the tenant or the tenant's guess for the purpose of harassing, intimidating, or retaliating against a tenant.

The state's anti-retaliation statute, Civ. Code section 1942.5, prevents a landlord from increasing rent, decreasing housing services, causing a tenant to move out involuntarily, or seeking to evict a tenant because the tenant has asserted any right under law, including complaining about habitability concerns or participating in a tenants' rights organization.

The Fair Employment and Housing Act prohibits harassing a tenant because of their race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information.

Code of Civil Procedure section 527.6 allows any person – including tenants – to obtain a civil harassment restraining order if they are subjected to a knowing and willful course of conduct directed that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.

"Abusing their right to access rental units"

An landlord's right to enter a rental unit is limited by Civil Code section 1954 to the following circumstances: making or supplying necessary or agreed repairs or services; exhibiting the dwelling unit to prospective purchasers, mortgagees, tenants, workers, or contractors; conducting a walk-through inspection pursuant to the security deposit law; when the tenant has abandoned or surrendered the premises; pursuant to court order or in case of an emergency; when there is a specific statutory authorization (e.g., to test smoke detector or read a water meter).

Civ. Code section 1954 also provides that 24 hours' prior written notice is generally required specifying the date, approximate time, and purpose of the entry. It further states that the landlord may not abuse the right of access or use it to harass the tenant.

Committing a significant and intentional violation of Civ. Code section 1954 is considered a form of harassment under Civ. Code 1940.2 for which a tenant can seek civil penalties of up to \$2,000 per violation.

“Removal of their possessions without authority”

Civil Code section 789.3 prohibits a landlord from removing the tenant’s personal property or the furnishings from the premises. Civil Code section 1940.2 also prohibits a landlord from removing a tenant’s personal belongings from the unit for the purpose of influencing a tenant to vacate. Moreover, removing tenant’s possessions without authority may also run afoul of generally applicable criminal laws that prohibit theft and civil claims for conversion and trespass to chattels (see Cal. Pen. Code Sec. 484, et seq.; Judicial Council of California Civil Jury Instructions Nos. 2100 and 2101).

“Threats of violence”

Threatening physical harm to tenants, specifically, is illegal via Civil Code section 1940.2. In addition, Code of Civil Procedure Sec. 527.6 allows any person – including tenants – to obtain a civil harassment restraining order if they are subjected to unlawful violence or credible threats of violence. Making threats of violence is also a crime under Penal Code section 422 and may also give rise to a civil claim for the intentional tort of assault (see Judicial Council of California Civil Jury Instruction No. 1301, defining assault as including a threat of physical violence).

“Refusal to acknowledge receipt of rent payment”

Civil Code section 1499 provides that a landlord must provide a rent receipt upon request. In addition, Civil Code section 1947.3 requires the landlord to allow a tenant to pay rent by at least one form of payment that is neither cash nor electronic funds transfer. Caselaw also provides eviction defense protections for a landlord’s unreasonable refusal to accept rent (e.g., *Boyd v. Carter* (2014) 227 Cal.App.4th Supp. 1, as modified (July 2, 2014); *Bawa v. Terhune* (2019) 33 Cal.App.5th Supp. 1).

“Interference with their right to quiet use”

Civil Code section 1927 provides that every residential lease in California has implied in it a covenant of quiet enjoyment – this provides that a tenant must be free from substantial interference with their use of the property. Additionally, an owner’s right to enter a rental unit is limited by Civil Code section 1954 as discussed above.

Civil Code section 789.3 prohibits a landlord from interfering with tenant’s right to safe and exclusive possession of their unit in a number of ways including: preventing a tenant from gaining reasonable access to the property, such as by changing the locks; removing outside doors and windows; interrupting utility services; and/or removing a tenant’s personal belongings or furnishings from the property.

“Interruption or termination of utility service”

As mentioned above, Civil Code section 789.3 prohibits a landlord from interrupting utility services with the intent to terminate a tenancy. It is important to note that utilities occasionally need to be temporarily turned off for legitimate reasons, such as to make necessary repairs or safely perform maintenance work.

“Refusals to do repairs”

Every residential lease in California has an implied warranty of habitability, which has been found in case

law and codified in statutes including Civil Code sections 1941, 1941.1, and 1941.3. Specific habitability standards have also been codified in Health and Safety Code sections 17920.3 and 17920.10. Remedies and penalties for violation of habitability standards are codified in Civil Code section 1942, 1942.3, and 1942.4.

As previously mentioned, Civil Code section 1942.5 makes it illegal for a landlord to retaliate against a tenant in response to a tenant exercising any of their rights under the law, including making a complaint about a habitability issue at the property.

“Among others”

While it’s impossible to respond to a non-specific allegation of “other” forms of harassment, it is worth noting that discrimination in housing – including creating a “hostile environment” – is prohibited by state law (see 2 CCR Sec. 12120). The federal Fair Housing Act, California Fair Employment and Housing Act (FEHA), and Unruh Civil Rights Act prohibit discrimination based on a person’s membership in a protected class. There are many protected classes under the law including race, color, citizenship, immigration status, religion, age, gender, sexual orientation, source of income, familial status, and whether the person has a disability. Under these laws, landlords are prohibited from discriminating, harassing, indicating any preference or limitation or making unavailable or denying a rental unit to a tenant based on their membership in a protected class.

These provisions by no means constitute an exclusive list of every law that may protect tenants from harassment, but they showcase the breadth of protections that are already in place and should be considered before enacting new protections. Under these laws there are ample remedies for tenants who encounter harassment including criminal prosecutions, restraining orders, actual damages, emotional distress damages, punitive damages, civil penalties and attorneys’ fees.

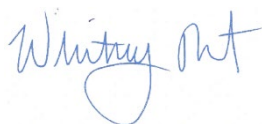
CAA strongly believes that the City should seek to educate the renters in Sacramento of their rights under state law. CAA stands ready and willing to partner with the City on these education efforts.

CAA reiterates its commitment to partnering with the City to increase education surrounding the existing state anti-harassment laws and tenant protections in place in an attempt to address instances of tenant harassment in the City.

CAA looks forward to partnering with you on this important issue.

Sincerely,

California Apartment Association



By
Whitney Prout, Policy and Compliance Counsel