CALIFORNIA APARTMENT ASSOCIATION v. COUNTY OF LOS ANGELES
Case Number: 23STCP01114
Hearing Date: December 6, 2023

ORDER GRANTING PETITION FOR WRIT OF MANDATE

On January 24, 2023, Respondent, the County of Los Angeles, adopted a COVID-19 tenant protections resolution (the Resolution).[1] One provision in the Resolution—section VI.A.1.c—requires a landlord to serve certain residential tenants with a 30-day notice to cure or quit prior to initiating an unlawful detainer action. Petitioner, California Apartment Association, seeks an order from this court enjoining Respondent from "implementation and enforcement" of the notice provision. (Pet., Prayer ¶ 1; Pet. ¶ 1.) Petitioner contends the 30-day notice requirement is preempted by state law—Code of Civil Procedure section 1161(2) (Section 1161(2).) To be clear, Petitioner's attack here is solely on the 30-day notice provision in the Resolution—nothing more.

Petitioner's unopposed Request for Judicial Notice (RJN) of the Resolution is granted.

Respondent's unopposed RJN of Exhibits A and B is granted.

Petitioner's Reply RJN of Senate Judiciary Committee, Analysis of Assembly Bill 2179, March 27, 2022 (2021-2022 Regular Session) is granted.

The petition is granted.

BACKGROUND AND PROCEDURAL HISTORY

The County Passes Emergency Tenant Protections in Response to the Covid-19 Pandemic

Beginning in March 2020, in response to the COVID-19 pandemic, the County adopted a series of emergency orders and protections to prevent the spread of the virus. As relevant here, on March 19, 2020, the Chair of the County Board of Supervisors (Board) issued an Executive Order "that imposed a temporary moratorium on evictions for non-payment of rent by residential or commercial tenants impacted by COVID-19, and other tenant protections . . . commencing March 4, 2020, through May 31, 2020." (Rec. 63.)[2]

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[1] The Resolution is formally entitled "Resolution of the Board of Supervisors of the County of Los Angeles Further Amending and Restating the County of Los Angeles COVID-19 Tenant Protections Resolution."

[2] The court cites to Petitioner's record, Respondent's supplemental record, and Petitioner's reply record as "Rec."

Thereafter, the Board replaced the eviction moratorium with a Tenant Protections Resolution that granted qualifying tenants an affirmative defense to an unlawful detainer action and other protections from harassment and intimidation. (Rec. 58-68.) After multiple periodic reviews, the County repeatedly extended and modified the Tenant Protections Resolution in response to the evolving nature of the pandemic. (Rec. 58-68.)

On January 24, 2023, the Board adopted the Resolution. (Rec. 58.) Among other things, the Resolution extended prior tenant protections through March 31, 2023 for those tenants "whose household income is at 80 percent Area Median Income or below and who cannot afford to pay rent due to financial impacts related to COVID-19." (Rec. 58.) It also dictated that after March 31, 2023 landlords would be required to "provide tenants with a 30-day notice to 'cure or quit' prior to filing an eviction based on back rental payments accrued prior to March 31, 2023." (Rec. 58.)

Pertinent Provisions of the Resolution

The Resolution specified COVID-19 residential tenant protections would extend through March 31, 2023. (Rec. 68.) The "Eviction Protections" in section VI of the Resolution, relevant to Petitioner's preemption challenge, provide:

> **VI. Eviction Protections.** Temporary protections of Tenants impacted by the COVID-19 crisis are imposed as follows:
>
> A. Evictions.
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> 1. Nonpayment of Rent. During the time periods set forth below, a Tenant may assert **an affirmative defense** to an unlawful detainer action for nonpayment of rent, late charges, interest, or any other fees accrued **if** the Tenant demonstrates an inability to pay rent and/or such related charges due to Financial Impacts Related to COVID-19[3] and the Tenant has provided notice to the Landlord within seven (7) days after the date that rent and/or such related charges were due, unless extenuating circumstances exist . . . . The affirmative defense provided under this Paragraph is described in Section C of Paragraph XI, below.[4]
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> . . . .
>
> a. Protected Time Period. A Tenant who is unable to pay rent incurred during the Protected Time Period may assert an affirmative defense to an unlawful detainer

[3] Financial Impacts and Related to COVID-19 are defined in the Resolution and set forth *infra*.
[4] Section C of Paragraph XI of the Resolution states: ". . . . The Tenant shall have the burden to prove the basis of their affirmative defense, including the merit of any self-certification of a Financial Impact Related to COVID-19 made pursuant to this Resolution. Said affirmative defense[] shall survive the termination or expiration of these Protections." (Rec. 30.)

action throughout the repayment period set forth in Section C of this Paragraph VI,[5] so long as the reason for nonpayment was Financial Impacts Related to COVID-19, and the Tenant has provided notice to the Landlord to this effect and certified their financial hardship within the timeframe specified in this Paragraph VI.

b. Extension Protections Period. Effective July 1, 2022, through March 31, 2023, a Residential Tenant whose household income is at 80 percent Area Median Income or below and who is unable to pay rent incurred from July 1, 2022, through March 31, 2023, may assert **an affirmative defense** to an unlawful detainer action, **so long as** the reason for nonpayment was Financial Impacts Related to COVID-19, and the Residential Tenant has provided notice to the Landlord to this effect and self-certified their income level and financial hardship within the timeframe specified in this Paragraph VI.

c. 30-Day Notice to Cure or Quit. Following expiration of the Resolution, **if a Landlord seeks to evict a Residential Tenant** described in subsection VI.A.1.b., above, for rent incurred from July 1, 2022, through March 31, 2023, **the Landlord must first serve on the Residential Tenant a 30-day notice to cure or quit prior to initiating the unlawful detainer action**. This protection shall not be construed as superseding or nullifying, in whole or in part, the Residential Tenant's twelve (12) month repayment period, described in section VI.C.1., below, nor the Residential Tenant's affirmative defense to an unlawful detainer action for such nonpayment of rent, described in section VI.C.4, below. This protection shall survive the expiration of the Resolution.

. . . .

C. Repayment of Rent. Unpaid rent incurred during the Protections Period shall be repaid pursuant to the following:

. . . .

4. Failure to Pay Back Rent Not Ground for Eviction. Effective July 1, 2022, a Residential Tenant may assert an affirmative defense to an unlawful detainer action brought on the ground of inability to pay back unpaid rent from July 1, 2022, through March 31, 2023, under the terms of a payment plan, or at the end of the repayment period. Any term in a payment plan that allows eviction due to the Tenant's failure to comply with the terms of the payment plan is void as contrary to public policy. The Protections set forth in this subsection shall be an affirmative defense for a Tenant in any unlawful detainer action filed by a Landlord. (Rec. 21-27 [emphasis added].)

[5] Section VI.C.1. sets forth a repayment schedule for unpaid rent for residential tenants. (Rec. 26.)

STANDARD OF REVIEW

Petitioner seeks relief from the court pursuant to Code of Civil Procedure section 1085.

Ordinary mandate under Code of Civil Procedure section 1085 is generally used to review an agency's ministerial acts, quasi-legislative acts and quasi-judicial decisions which do not meet the requirements for review under Code of Civil Procedure section 1094.5. (*Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 848; *Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1264-1265.)

Under Code of Civil Procedure section 1085, a writ:

> may be issued by any court to any . . . board . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, ... (Code Civ. Proc., § 1085, subd. (a).)

"To obtain a writ of mandate under Code of Civil Procedure section 1085, the petitioner has the burden of proving a clear, present, and usually ministerial duty on the part of the respondent, and a clear, present, and beneficial right in the petitioner for the performance of that duty." (*Marquez v. State Dept. of Health Care Services* (2015) 240 Cal.App.4th 87, 103.)

Traditional mandate under Code of Civil Procedure section 1085 is the appropriate vehicle to challenge the constitutionality or validity of statutes or other official acts. (See *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fn. 2 [noting mandate is appropriate remedy for compelling public official to act in accordance with law and challenging constitutionality or validity of statute].)

"The constitutionality of a statute is a question of law . . . ." (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 642.) However, "[i]t is well established . . . . that as a general rule statutes are presumed to be constitutional." (*Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151, 192.) "When the Legislature has enacted a statute with constitutional constraints in mind there is a strong presumption in favor of the Legislature's interpretation of a provision of the Constitution." (*Ibid.* [*Cleaned up.*])

" '[A]ll presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.' [Citations.] If the validity of the measure is 'fairly debatable,' it must be sustained. [Citations.]" (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814-815; *Hellinger v. Farmers Group, Inc.* (2001) 91 Cal.App.4th 1049, 1061-1062.)

"The issue of preemption of a municipal ordinance by state law presents a question of law, subject to de novo review." (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles*

(2006) 136 Cal.App.4th 119, 129. See *Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, 1224.)

ANALYSIS

Petitioner's challenge here is based solely on state law preemption.

Rules of Preemption

"Under article XI, section 7 of the California Constitution, a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. . . . Local legislation is 'duplicative' of general law when it is coextensive therewith . . . Similarly, local legislation is 'contradictory' to general law when it is inimical thereto." (*San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785, 792-793 [*cleaned up*].)

"The first step in a preemption analysis is to determine whether the local regulation explicitly conflicts with any provision of state law. [¶] If the local legislation does not expressly contradict or duplicate state law, its validity must be evaluated under implied preemption principles. In determining whether the Legislature has preempted by implication to the exclusion of local regulation we must look to the whole purpose and scope of the legislative scheme. There are three tests [for implied preemption]: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality." (*Johnson v. City and County of San Francisco* (2006) 137 Cal.App.4th 7, 13-14 [*cleaned up*].)

"The question whether an actual conflict exists between state law and [local] law presents a matter of statutory construction." (*City of El Centro v. Lanier* (2016) 245 Cal.App.4th 1494, 1505.) "To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.)

Courts "have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.' " (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) " '[A]bsent a clear indication of preemptive intent from the Legislature,' we presume that local regulation 'in an area over which [the local government] traditionally has exercised control' is not preempted by state law. [Citation.] 'The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption.' " (*Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 752 [*Rental Housing*].)

Section 1161(2)

Petitioner contends the 30-day notice requirement in the Resolution (section VI.A.1.c.) is preempted by Section 1161(2)'s provision requiring a landlord to provide only a three-day notice. Section 1161(2) is within the unlawful detainer law. (Code Civ. Proc., § 1161 *et seq.*)

Section 1161(2) provides in pertinent part:

> A tenant of real property, . . . is guilty of unlawful detainer:
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> 2. When the tenant continues in possession, . . . without the permission of the landlord, . . . after default in the payment of rent, pursuant to the lease or agreement under which the property is held, **and three days' notice** . . . in writing, requiring its payment, stating the amount that is due . . . shall have been served upon the tenant and if there is a subtenant in actual occupation of the premises, also upon the subtenant.
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> The notice may be served at any time within one year after the rent becomes due. (Emphasis added.)

Section 1161(2) has remained unchanged since 1905. (See *Levitz Furniture Co. v. Wingtip Comm., Inc.* (2001) 86 Cal.App.4th 1035, 1037, n. 3.) The Court of Appeal has explained:

> The purpose of the notice required by section 1161, subdivision 2, is to give the tenant the opportunity to pay the rent due and retain possession by avoiding forfeiture. . . . This entire statutory procedure is intended to provide an expeditious and adequate remedy for obtaining possession of premises wrongfully withheld by tenants. (*Valov v. Tank* (1985) 168 Cal.App.3d 867, 874.)

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Legal Framework for Claim of Preemption and Section 1161(2)

The California Supreme Court has refined the preemption analysis in the context of local laws and the state's unlawful detainer statutes. The relevant framework for determining whether the 30-day notice provision in the Resolution is preempted by the state's unlawful detainer statutes is set forth in *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129 [*Birkenfeld*].

In *Birkenfeld*, the plaintiff argued a local law limiting the grounds for eviction of tenants in rent-controlled apartments was preempted by the state's unlawful detainer statutes. The Supreme Court rejected the argument reasoning:

> The purpose of the unlawful detainer statutes is procedural. The statutes implement the landlord's property rights by permitting him to recover possession once the consensual basis for the tenant's occupancy is at an end. In contrast the charter amendment's elimination of particular grounds for eviction is a limitation upon the landlord's property rights under the police power, giving rise to a substantive ground of defense in unlawful detainer proceedings. The mere fact that a city's exercise of the police power creates such a defense does not bring it into conflict with the state's statutory scheme. Thus, a landlord's violations of a city's housing code may be the basis for the defense of breach of warranty of habitability in a summary proceeding instituted by the landlord to recover possession for nonpayment of rent. [Citations.] Similarly, the statutory remedies for recovery of possession and of unpaid rent (see Code Civ. Proc., §§ 1159-1179a; Civ. Code, § 1951 et seq.) do not preclude a defense based on municipal rent control legislation enacted pursuant to the police power imposing rent ceilings and limiting the grounds for eviction for the purpose of enforcing those rent ceilings. (*Id.* at 149.)

"In contrast, another provision of the local law challenged in *Birkenfeld* required landlords to obtain a certificate of eviction from the rent control board before commencing unlawful detainer proceedings. (*Birkenfeld, supra,* 17 Cal.3d at p. 150, [].) To obtain such a certificate, the landlord bore the burden of proving the existence of permissible grounds for eviction, proper notice to the tenant, and that there were 'no outstanding Code violations on the premises' other than those 'substantially caused by the present tenants.' (*Ibid.*) Moreover, the board was required to notify the tenant of the landlord's certificate application, the tenant was entitled to a hearing, and both parties were entitled to judicial review of the board's decision to grant or deny the certificate. (*Ibid.*) The Supreme Court concluded, '[u]nlike the limitations . . . upon the grounds for eviction, which can affect summary repossession proceedings only by making substantive defenses available to the tenant, the requirement of a certificate of eviction raises procedural barriers between the landlord and the judicial proceeding.' (*Id.* at p. 151, [].) 'The summary repossession procedure [citation] is intended to be a relatively simple and speedy remedy that obviates any need for self-help by landlords. [Citations.] To require landlords to fulfill the elaborate prerequisites for the issuance of a certificate of eviction by the rent control board before they commence the statutory proceeding would nullify the intended summary

nature of the remedy.' " (*San Francisco Apartment Assn. v. City and County of San Francisco* (2018) 20 Cal.App.5th 510, 515-516 [*SFAA*].)

Thus, under *Birkenfeld*, "municipalities may by ordinance limit the substantive grounds for eviction by specifying that a landlord may gain possession of a rental unit only on certain limited grounds. [Citations.] But they may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes . . . ." (*Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 754 [*Rental Housing*].)

As this dispute demonstrates, there is generally no bright line between substantive and procedural rules in the context of the state's unlawful detainer statutes. (See *San Francisco Apartment Assn. v. City and County of San Francisco* (2018) 20 Cal.App.5th 510, 516 [*SFAA*]. ["As this case illustrates, the distinction between procedure and substantive law can be shadowy and difficult to draw in practice."])

Does The 30-Day Notice Requirement Regulate a Substantive Limitation on Eviction?

Petitioner contends the 30-day notice requirement contradicts Section 1161(2)'s three-day notice provision because the 30-day notice "requires a landlord to provide a thirty (30) day notice to pay rent or quit prior to commencing an unlawful detainer action." (Opening Brief 11:17-19.) Petitioner asserts the 30-day notice requirement enters into a field fully occupied by state law. (Opening Brief 12:10.) In a footnote, Petitioner also acknowledges the applicable procedural-substantive preemption framework set forth in *Birkenfeld* and argues:

> The amount of notice required to evict for nonpayment of rent falls squarely within the realm of a procedural requirement rather than a substantive one. Section VI(A)(1)(c) has no substantive function; its sole effect is simply to extend the notice to cure period for nonpayment of rent as specifically prescribed by state law. (Opening Brief 13-14, fn. 2.)

The court agrees.

The 30-day notice provision has nothing to do with the substantive grounds for eviction; it is purely procedural and merely delays the landlord's ability to initiate the summary nature of the remedy.[6] The Resolution provides certain tenants—those who failed to pay rent at any time from July 1, 2022 through March 31, 2023 and also meet certain household income requirements—with an affirmative defense to eviction. (Rec. 21 [section VI.A.1.c.].) That is, pursuant to its police powers, Respondent has eliminated a particular ground for eviction; certain tenants may defend against an eviction and prove they did not pay rent because of

[6] Near the end of argument, as the court understood it, Respondent implicitly acknowledged it intended the 30-day notice requirement to provide qualifying tenants with additional time to defend against an unlawful detainer.

"Financial Impacts[7] Related to COVID-19,"[8] they provided proper and timely notice to their landlord of the financial impacts, and their self-certification of the financial impacts was accurate. (Rec. 21, 30 [section VI.A.1.c. and VI.C.].)

The 30-day notice provision does not regulate the substantive trigger for an eviction. The provision does not provide the substance of the tenant's affirmative defense. The elements of the affirmative defense are separate and distinct from the 30-day notice requirement in the Resolution.

The Resolution creates a procedural barrier to satisfy—a 30-day notice—before the landlord can bring the summary unlawful detainer action. Providing a 30-day notice is a procedural requirement. (See *SFAA, supra,* 20 Cal.App.5th at 518. ["Unlike that ordinance, the Ordinance does not impose any procedural requirements: it does not require landlords to provide written notice or to do any other affirmative act."]) A local law "may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes." (*Rental Housing, supra,* 171 Cal.App.4th at 754.)

Respondent analogizes the 30-day notice requirements to the ordinances upheld in *SFAA, supra,* 20 Cal.App.5th at 510 and *Rental Housing, supra,* 171 Cal.App.4th at 751 as substantive limitations on eviction. Respondent argues "[t]he 30-Day Notice Requirement is not preempted by Section 1161(2) because it only limits the substantive bases for eviction." (Opposition 13:13-14.) The court finds Respondent's position unpersuasive, and the cases relied upon distinguishable.

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[7] "Financial Impacts" is defined by the Resolution to mean either: "1. Substantial loss of household income caused by the COVID-19 pandemic. 'Substantial loss' as used in this paragraph is defined as a loss of at least 10% of a Tenant's average monthly household income for the 12-month period immediately preceding March 1, 2020, as may be established by pay stubs, payment receipts, letters from employers, or other evidence; or 2. Increased or extraordinary costs in food, fuel, child care, and/or unreimbursed medical expenses in an amount greater than 7.5% of a Tenant's average monthly household income for the 12-month period immediately preceding March 1, 2020." (Rec. 18.)

[8] "Related to COVID-19" is defined by the Resolution as any of the following: (1) "A suspected or confirmed case of COVID-19, or caring for a household or family member who has a suspected or confirmed case of COVID-19;" (2) "Lay-off, loss of compensable work hours, or other reduction or loss of income or revenue resulting from a business closure or other economic or employer impacts related to COVID-19;" (3) "Compliance with an order or recommendation of the County's Health Officer to stay at home, self-quarantine, or avoid congregating with others during the state of emergency;" (4) "Extraordinary, unreimbursed medical expenses related to the diagnosis of, testing for, and/or treatment of COVID-19;" or (5) "Childcare needs arising from school closures in response to COVID- 19." (Rec. 19.)

In *SFAA, supra,* 20 Cal.App.5th at 510, the Court of Appeal upheld a San Francisco law that prohibits no-fault evictions of tenant households with a child or an "educator" during the school year against a preemption challenge. The ordinance creates an affirmative defense to eviction based on a tenant's status as a student or educator—that is the city eliminated a particular ground for eviction. As relevant here, the Court reasoned:

> The purpose of the Ordinance is to protect children from the disruptive impact of moving during the school year or losing a relationship with a school employee who moves during the school year. When tenants belong to this protected group (or have a custodial or familial relationship with a resident protected group member), they have a substantive defense to eviction; when they no longer belong to the group—because the regular school year has ended or will have ended by the effective date of the notice of termination—they no longer have a substantive defense. At this time, landlords may avail themselves of the unlawful detainer procedures, which are not altered by the Ordinance. (*Id.* at 518.)

In *SFAA,* through its police powers, the city limited the substantive grounds for a no-fault eviction for students and educators. Respondent characterizes the ordinance in *SFAA* as "extending the 3-day notice to quit period for as long as 9 months, ..." (Opposition 11:12-13.) While the ordinance may have that impact because the affirmative defense applies when school is in session, the ordinance in *SFAA* limits the substantive grounds for eviction—as a matter of substantive law, a landlord cannot evict a student or educator during the school year.[9] Once the school year has ended, the ordinance permits a no-fault eviction to proceed. Thus, *SFAA* addressed whether a landlord had legal grounds to evict a tenant during the school year.

The court also disagrees *SFAA* stands for the proposition "[a] local government's rule that extends the length of the notice-to-quit period is substantive if it applies only to a defined and uniquely vulnerable class." (Opposition 10:25-26.) That the city found students and educators are a uniquely vulnerable class merely explained the city's rationale for a substantive limitation on the grounds for a no-fault eviction for the group. The substantive/procedural preemption analysis does not turn on the nature of the individuals benefitted by the local law. (See, e.g., *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 705-707 [substantive measure allowing rent to be withheld when landlords violate local rent ceilings or fail to register rental units with the local rent board].)

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[9] *SFAA* acknowledged the substantive grounds of the ordinance created a procedural impact because it limited the landlord's ability to bring an unlawful detainer to other than the school year. (*SFAA, supra,* 20 Cal.App.5th at 518.) For preemption analysis, however, the ordinance was substantive as it limited a landlord's property right under the city's police powers. Unlike in *SFAA,* the 30-day notice requirement here is not necessary to " 'regulate the substantive grounds' of the defense . . . ." (*Ibid.*) The affirmative defense created by the Resolution exists separate and apart from the 30-day notice requirement.

The Resolution's 30-day notice requirement is distinct from the types of procedural impacts recognized in *SFAA*. *SFAA* expressly noted "written notice" or some other "affirmative act" by the landlord are examples of procedural requirements. (*SFAA, supra,* 20 Cal.App.5th at 518.)

In *Rental Housing, supra,* 171 Cal.App.4th at 751, the Court of Appeal held the unlawful detainer statute does not preempt an ordinance requiring landlords to provide "notice and an opportunity to cure any offending conduct" before resorting to an unlawful detainer action where the basis for the eviction is other than non-payment of rent.[10] (*Id.* at 762.) The Court reasoned:

> The warning notice requirements in Measure EE limit a landlord's right to initiate an eviction due to certain tenant conduct by requiring that the specified conduct continue after the landlord provides the tenant written notice to cease. These notice requirements thus regulate the substantive grounds for eviction, rather than the procedural remedy available to the landlord once grounds for eviction have been established. If the tenant ceases the offending conduct once notified by the landlord, there is no good cause to evict. (*Id.* at 762-763.)

The court acknowledges *Rental Housing* is more helpful to Petitioner than *SFAA. Rental Housing*, however, did not address a tenant's failure to pay rent and the three-day notice provisions of Section 1161(2). That circumstance makes the case distinguishable.

Rental Housing also found the notice provision concerned the grounds for eviction—a warning to a tenant to cease certain conduct. *SFAA* noted the "procedural requirement [in *Rental Housing*] was imposed in order to 'regulate the substantive grounds' for certain evictions, where tenants continued prohibitive conduct after notification from the landlord, 'rather than the procedural remedy available to the landlord once grounds for eviction have been established.' "[11] (*Ibid.*)

As discussed earlier, the 30-day notice requirement is unrelated to the substantive grounds for eviction in the Resolution. Thus, unlike *Rental Housing,* the provision does not regulate the substantive grounds for eviction.

The Covid-19 Tenant Relief Act Is Not Determinative

The court has considered the parties' contentions related to the Covid-19 Tenant Relief Act (CTRA). The court does not find the argument resolves Petitioner's preemption claim.

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[10] Petitioner cites the codified version of the Oakland ordinance, which shows an additional notice and cure requirement beyond three days of Section 1161(2) is not imposed with respect to nonpayment of rent. (Reply 9-10 fn. 3.)

[11] *SFAA* also noted the ordinance in issue was "not easily defined as substantive or procedural." (*SFAA, supra,* 20 Cal.App.5th at 518.)

Section 1161(2) states "[a]n unlawful detainer action under this paragraph shall be subject to the COVID-19 Tenant Relief Act of 2020 (Chapter 5 (commencing with Section 1179.01)) **if the default in the payment of rent is based upon the COVID-19 rental debt**." (Emphasis added.) As Petitioner points out (see Reply 14:8-11), the CTRA defines "COVID-19 rental debt" as "unpaid rent or any other unpaid financial obligation of a tenant under the tenancy that came due during the covered time period," which is defined as "the time period between March 1, 2020, and September 30, 2021." (Code Civ. Proc., § 1179.02, subds. (a), (c).) The 30-day notice requirement of the Resolution applies only to the nonpayment of rent from July 1, 2022 through March 31, 2023. (Rec. 21.) Thus, Section 1161(2) is not subject to the CTRA for the nonpayment of rent covered by the 30-day notice requirement.

The Legislature's amendment of the CTRA, in Assembly Bill 2179 (AB 2179), does not show an intent to authorize local laws that conflict with Section 1161(2) pursuant to *Birkenfeld*. Rather, the legislative history for AB 2179 cited by Respondent states "[l]ocal jurisdictions are preempted from applying new or additional local additional protections against eviction for nonpayment of rent, if that rent accrued on or before March 31, 2022" but adds "[f]or rent that accrues on or after April 1, 2022, local jurisdictions are free to establish additional protections against eviction." (Rec. 88.) Assuming without deciding this legislative history reflects the intent of the Legislature, it shows intent to return to the status quo as to preemption of local eviction laws that existed before the CTRA was originally enacted in 2020. The status quo before 2020 was the procedural-substantive framework of *Birkenfeld.*

Accordingly, Petitioner's preemption claim must be decided based on the general rules of preemption, as applied to Section 1161(2), the 30-day notice requirement, and the procedural-substantive framework set forth in *Birkenfeld.*

CONCLUSION

Based on the foregoing, the petition for writ of mandate is granted.

The court will issue a writ commanding Respondent against implementing and/or enforcing section VI.A.1.c (the 30-day notice requirement) provision of the Resolution.

Petitioner is entitled to a permanent injunction preventing enforcement of section VI.A.1.c (the 30-day notice requirement) provision of the Resolution.

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Petitioner is not entitled to declaratory relief that is duplicative and derivative of its writ cause of action. (See *Hannon v. Western Title Ins. Co.* (1989) 211 Cal.App.3d 1122, 1128. ["The object of the statute [Code Civ. Proc., § 1060] is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues."])

IT IS SO ORDERED.

January 18, 2024

Hon. Mitchell Beckloff
Judge of the Superior Court