

**CITY OF BERKELEY
Rent Stabilization Program
2125 Milvia Street
Berkeley, California 94704
(510) 644-6128**

NOTICE OF DECISION OF HEARING EXAMINER

PETITION NO. IRD-3

PETITIONER: Jeff Johnston

RESPONDENTS: Natalie Dinar, et al.

PROPERTY ADDRESS: 3151 Eton Avenue, #4, Berkeley, California

DATE OF HEARING: December 1, 2006

DATE OF DECISION: December 5, 2006

HEARING EXAMINER: Debra Hutton

A hearing was held on the above-enumerated petition and the following decision is rendered:

The Petition is Approved as Submitted.

You are hereby advised that you have the right to appeal this decision to the Rent Stabilization Board. Such appeal must be filed, on a form provided by the Board, within 35 days of the date the decision is mailed. An appeal to the Board is necessary before any further review in the courts. If no appeal is filed, the decision shall become the final non-reviewable decision of the Board. If an appeal is filed, the decision is stayed pending the Board's decision on appeal.

If an appeal is filed and you disagree with the Board's decision on appeal, you may seek judicial review of the decision. (Reference: Berkeley Rent Stabilization Ordinance, Section 18 and California Civil Procedure Code Section 1094.6 for judicial review time limitations.)

Enclosure: Decision

**CITY OF BERKELEY
RENT STABILIZATION PROGRAM
2125 Milvia Street
Berkeley, CA 94704
(510) 644-6128**

Jeff Johnston,

PETITIONER,

vs.

Natalie Dinar, et al.,

RESPONDENTS.

PETITION NO. IRD-3

DECISION

RE: 3151 Eton Avenue #4, Berkeley, California.

SUMMARY OF PROCEEDINGS

On October 26, 2006, the landlord filed a Petition for Determination of Eligibility To Set Initial Rent. On December 1, 2006, the Rent Stabilization Board (Board) held a hearing on the matter. Landlord, Jeff Johnston; landlord representative, Michael St. John; tenant, Jonathan Dinar; and tenant witness, Yael Atar, appeared for the hearing.

ISSUE

Is the landlord eligible to establish an initial under the Costa-Hawkins Rental Housing Act and Board Regulation 1013?

SUMMARY OF EVIDENCE AND DISCUSSION

Summary of Facts

Natalie Dinar entered the subject unit under a one-year lease that began on February 1, 2004. The rent was set at \$800, and the lease permitted two occupants. Ms. Dinar had one roommate, her brother, Jonathan Dinar, who joined her in July or August 2005. When he moved in, Ms. Dinar notified the former landlord, Estelle Johnston, and asked that Jonathan Dinar's name be placed on the lease. Ms. Johnston had no objection to Mr. Dinar's occupancy, but was unwilling to place his name on the lease.¹

¹ Mr. Dinar testified that Ms. Dinar repeatedly requested that her brother's name be added to the lease, but it was not.

On November 18, 2005, Ms. Johnston passed away. Upon her death, the property passed to her son and daughter. Since her son lives nearby, primary responsibility for managing the property fell to him. In December 2005, Ms. Dinar vacated the unit and established a primary residence in Virginia. Ms. Dinar did not give written notice that she was vacating to either Ms. Johnston or her son. Nevertheless, it is very likely that Ms. Johnston knew of Ms. Dinar's plans since Ms. Johnston hosted an engagement party for her.

Although Ms. Dinar has vacated, she continues to pay the rent and Mr. Dinar continues to reside in the unit. Since Ms. Dinar uses a portion of the unit for her jewelry business, she pays half of the rent from her personal account and half from the business account. Ms. Dinar has continued to pay \$800 a month since the inception of her tenancy in February 2004, and now the landlord would like to raise the rent to market.

Establishing an Initial Rent

Beginning January 1, 1999, under the Costa-Hawkins Rental Housing Act (Civ. Code § 1954.50, *et seq.*) and Board Regulation 1013, landlords may set an initial "market" rent for a new tenancy where the previous tenancy terminated voluntarily or following an eviction for cause. Once established, the new rent must be registered, and is subject to the Board's regulation. In this case, Board records show that the former tenant voluntarily vacated in January 2004. Thus, in February 2004, at the inception of Ms. Dinar's tenancy, Ms. Johnston was permitted to set the initial rent. The new rent became the rent ceiling and was subject to rent control.

Landlords may also set an initial rent or re-establish the rent ceiling when all "original occupants" of a unit have voluntarily vacated or been evicted for cause:

An owner may increase the rent by any amount allowed by Civil Code section 1954.50 *et seq.*, and subsection (B) of this Regulation, to a sublessee or assignee where the original occupant or occupants who took possession pursuant to the rental agreement with the owner, no longer permanently reside there. The term "original occupant" as used herein includes any tenant or subtenant who, with the landlord's knowledge, was residing in the unit on or before December 31, 1995 or when the landlord last established an initial rent for the unit. (See Regulation 1013(O)(1).)

Where the landlord initially rents a rental unit to a tenant and authorizes more than one tenant to occupy the unit, but fails to place the name of more than one tenant on the lease, all tenants who occupy the unit within one month, with permission of the landlord, express or implied, shall be considered to be original occupants. (See Regulation 1013(O)(5).)

Natalie Dinar was the only tenant named in the lease-rental agreement, and no one else occupied the unit during the first month of the tenancy. Thus, Ms. Dinar was the only original occupant for the tenancy. When Jonathan Dinar moved into the unit, he became Natalie Dinar's subtenant. His tenancy was lawful² but did not provide Ms. Johnston with an opportunity to set a new rent because Ms. Dinar remained an original tenant-occupant in the unit. However, once Ms. Dinar voluntarily vacated, the landlord could re-establish the rent.

A landlord waives the right to re-establish the rent if the landlord receives written notice that the last original occupant has vacated and thereafter accepts rent (unless the parties agree in writing to postpone the rent increase for up to six months). (See Regulation 1013(O)(3).) Here, Ms. Dinar did not provide written notice that she was vacating to either Mr. Johnston or his mother. In fact, Mr. Johnston testified that he has not received any written communication from her other than the rent checks. Thus, although the landlord did not immediately re-establish the rent for Mr. Dinar, the landlord has not waived his right to do so.

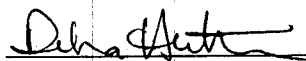
DECISION

The only original occupant of the unit, Natalie Dinar, has voluntarily vacated and no longer maintains a primary residence at the property. Her lawful subtenant, Jonathan Dinar, continues to reside in the unit. There is no evidence that the landlord waived his right to reestablish the rent. Therefore, the landlord is eligible to set an initial rent for the unit.

Pursuant to state law, tenants are entitled to 60 days' advance notice of a rent increase that exceeds ten percent (10%). (See Civ. Code § 827.) In addition, any initial rent established under the Costa-Hawkins Rental Housing Act and Regulation 1013 must be registered with the Board. (See Regulation 1013(K).)

SO ORDERED.

DATE: December 5, 2006



Debra Hutton
Hearing Examiner

² The lease permitted two occupants in the unit.

PROOF OF SERVICE BY MAIL

I am employed at 2125 Milvia Street, Berkeley, Alameda County, California 94704. I am over the age of eighteen years and not a party to this action. I am readily familiar with the Berkeley Rent Stabilization Program's practice for collection and processing of correspondence for mailing with the United States Postal Service and this correspondence will be deposited with the United States Postal Service on the date entered below in the ordinary course of business.

On the date entered below, I served one copy of the attached:

Notice of Decision of Hearing Examiner: Decision

(IRD-3)

following ordinary business practices, by placing for deposit in the United States Postal Service a true copy thereof, enclosed in a sealed envelope, in the City of Berkeley's mail room, 2055 Center Street, Berkeley, California, addressed as follows:

Jeff Johnston
95 Newport Landing Drive
Novato, CA 94949

Michael St. John
St. John & Associates
2115 West Street
Berkeley, CA 94702

Jonathan Dinar
3151 Eton Avenue, #4
Berkeley, CA 94705

Natalie Dinar
1600 S. Eads Street, #120S
Arlington, VA 22202

Alvaro de Legarra
Sr. Field Investigator
RSB

I certify under penalty of perjury, under the laws of the State of California, that the foregoing information is true and correct to the best of my knowledge and belief. Executed at Berkeley, California.

Dated: December 6, 2006

