

SANTA MONICA RENT CONTROL BOARD

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www.smgov.net/rentcontrol

HOW TO PREPARE FOR A RENT CONTROL HEARING

THE TEN MOST FREQUENTLY ASKED QUESTIONS

Introduction

This information brochure is designed to help you prepare for a hearing before the Rent Control Board. Answers are provided to the ten most frequently asked general questions about hearings and the hearing procedure. This material should be read in conjunction with the brochure containing the specific information on the type of petition that you file. Instructions for filing each type of petition are available at the Administration Office.

Question #1: What is a petition and why file?

The Santa Monica Rent Control Law allows tenants and landlords to file petitions to resolve disputes or adjust rent levels. The filing of a petition usually results in the matter being scheduled for a hearing. There are several types of petitions heard by the Rent Control Board. They include:

Decrease petitions - filed by a tenant to encourage the landlord to make necessary repairs or restore services/amenities. The decrease petition is occasionally filed by a landlord who wishes to remove a service in exchange for a decrease in rent or by the Administrator for common area problems;

Increase petitions - filed by a landlord who seeks to increase the rent levels at a property. Increase petitions are generally filed for all units on a property at the same time and are often based on unusually high expenses, including capital improvement expenses;

Base Rent/Base Amenities petitions - filed by a landlord or a tenant to establish the base rent and/or the base amenities for a unit. The base rent date is April 10, 1978, or the first date the unit was rented after that date for units rented prior to January 1, 1999. For units rented on or after January 1, 1999, the base rent date is the date the unit was rented by the current tenant. The rent level and amenities are established as of the base rent date.

Complaints for excess rent/non-registration - filed by the tenant who believes he or she is being or has been charged rent in excess of the legal maximum rent. A complaint may also be filed by a tenant if the owner has failed to register the property in accordance with the Regulations.

Tenant not in occupancy- filed by the landlord to establish the tenant is not occupying a unit as his or her primary residence. If a unit is not the tenant's primary residence, the landlord is entitled to a one-time increase in the unit's maximum allowable rent up to market rate.

Question #2: How do I file a petition?

The hearing process begins with the filling out and filing of a petition. All petitions are filed at the Rent Control office in City Hall. Petition forms and the regulations which apply to the petition process are available there. Each type of petition includes instructions on how to complete the forms. Follow the instructions carefully. If the petition is not complete or is incorrectly filled out, it cannot be accepted for filing.

Question #3: What happens after I file the petition?

After the petition is filed in the City Hall Office, it is sent to the Hearings Department where it is thoroughly reviewed. If no changes are required, a hearing is scheduled. In the case of a decrease or excess rent petition, the parties will be notified of the opportunity to participate in a mediation of the issues. If the case does not reach a complete settlement of the issues, a hearing will be held. A Notice of Hearing is sent to the parties at least ten days prior to the hearing. The notice contains the date, time and place of the hearing, as well as other important information. Please pay careful attention to the notice.

Hearings are held by the Hearings Department and are scheduled during regular working hours.

In some cases, you may be contacted by the Hearings Department prior to the hearing. You may be contacted by the person reviewing your petition if any changes or clarifications to your petition are needed. If you file a decrease petition, an investigator will, in most cases, contact the tenant to inspect the unit. This is also true when a petition has been filed stating a tenant does not occupy the unit as his or her primary residence.

Question #4: What will happen at the hearing?

A Rent Control hearing is not as formal as a hearing or trial in court. The hearing is held before a hearing officer at the Hearings Department and may be attended by any interested party.

The hearing officer will begin the hearing by explaining how the hearing will proceed. Both petitioner (the person who filed the petition) and

respondent (the tenant or landlord who disagrees with what is stated in the petition) will have an opportunity to present their cases to the hearing officer. The evidence presented by the parties will form the basis of the hearing officer's decision.

Attendance

It is essential that the parties attend the hearing. If the petitioner does not appear, the case is normally dismissed. If the respondent does not appear, he or she will miss the opportunity to present his or her case.

Witnesses Must Attend the Hearing

It is vital that any witness with firsthand knowledge regarding your case attend the hearing and testify. If you believe there is a vital witness who will be unwilling to attend the hearing, the subpoena process is available to compel attendance.

You may submit letters or declarations, but it is possible they will not be considered without the person who wrote the document appearing and testifying at the hearing.

What if I can't attend?

Continuances

If you find that it is impossible for you to attend the scheduled hearing, you may ask for a continuance in writing from the Hearings Department.

Your written request for continuance must be received no less than 72 hours prior to the hearing. The request should contain a statement of your good cause for continuance, a statement that you contacted the opposing party and alternate dates for hearing.

If you believe you have good cause to request a continuance but are unable to meet the requirements set forth above, you or a representative may request a continuance at the scheduled hearing. In that case, the hearing officer will determine whether or not to continue the hearing.

What if the issue is resolved before the hearing?

Withdrawing a Petition

In some cases, all of the issues that led to the petition are resolved before the hearing. If the petitioner is satisfied with the resolution of the matters, he or she may withdraw the petition in writing. Withdrawals must be received by the Hearings Department prior to the scheduled hearing. Withdrawal forms are available at the Rent Control office, or the petitioner may inform the Hearings Department by letter that he or she wishes to withdraw. A

Notice of Withdrawal is then sent to the parties. If you later change your mind, you may re-file your petition.

Question #5: What kind of evidence do I need?

The petition determines the issues you may address at the hearing, either as petitioner or respondent. Issues not mentioned in the petition cannot be discussed at the hearing. Organize your evidence according to each item to be shown on the petition. Also try to organize the evidence in terms of the dates of events or documents.

Your own testimony is important evidence. Organize the presentation of your testimony prior to the hearing. You may use notes during the hearing to aid in your presentation.

You should be prepared to tell the hearing officer, in your own words, what happened or what you want to prove. For example, if you are asking for a rent decrease, be prepared to prove what service has been lost or what repairs need to be made.

Be ready to tell what happened, in the order in which it happened: First this, then this, then that.

It is also important to provide evidence in addition to your own testimony of what you seek to prove, if possible. If there are important witnesses with knowledge about your case, they should appear at the hearing to testify. **Remember, a letter, report or written declaration is not sufficient proof for the hearing officer to use when making a decision without the testimony of a person with firsthand knowledge** (e.g., someone who knows something because they were there when it happened).

Documents are also important. Bring them to the hearing. Organize the evidence materials according to the points they prove. Examples of documents that could be important include rental agreements, changes of terms of tenancy, notices, rent receipts, ledgers, bills, checks, statements of work done, any citations from the Health Department or Building and Safety. Please provide three copies of any document you wish to submit at the hearing. One copy will go into the file, one to the opposing party and one is for your file. Be prepared at the hearing to show the original document, if available, if it is requested by the hearing officer.

Interpreter: The Rent Control Board will provide an interpreter if necessary for you or your witnesses. There is no charge. In order to get this service, you must request an interpreter from the Hearings Department (458-8751) immediately after you receive notice of the hearing.

Question #6: How do I get the evidence I need?

A detailed instruction sheet on how to subpoena witnesses and documents, as well as the necessary forms, is available at the Rent Control office.

When you have completed the forms as provided in the instruction sheet, you must have the subpoena signed by the supervisor of the Hearings Department. Allow one day for the review and signing of the form by the supervisor.

To subpoena a witness, the signed subpoena must be served at least five days prior to the date of the hearing. The person serving the subpoena must personally hand a copy of the subpoena to the person to be served. It is important to retain the original subpoena. The person serving the subpoena must be at least 18 years of age and not a party to the case. The proof of service must then be completed by the person serving. Both the proof of service and the original subpoena should be presented to the hearing officer at the hearing.

Please note that subpoenaed witnesses are entitled to a witness fee of \$35 and 20¢ per mile. It is your responsibility to pay those fees. If the subpoenaed witness demands the fees from the person serving the subpoena, the fees must be paid on the spot. Otherwise the service will not be considered effective and the witness will not be compelled to appear at the hearing.

You may also want to subpoena documents or records. In that case, you must complete a Subpoena Duces Tecum. Instructions on obtaining a Subpoena Duces Tecum are available at the Rent Control office. The process for serving the subpoena is the same as for service of the personal subpoena, except that if you are serving an entity, such as a utility company, you may serve any representative at any location of that entity. In the case of public utilities and banks, be prepared to wait four to six weeks for documents after the service of the subpoena.

Question #7: How does the hearing work?

The hearing normally proceeds in the following order:

1. Petitioner's Case - presentation of witnesses, documents and other relevant evidence to prove the allegations in the petition;
2. Cross-examination of petitioner;
3. Respondent's Case - presentation of witnesses and evidence to rebut or refute petitioner's evidence;
4. Cross-examination of respondent;
5. Rebuttal by petitioner;
6. Closing arguments.

Both the petitioner and the respondent have the right to representation at the hearing. You may be represented by an attorney, a tenant representative or anyone you choose to help present your case.

It is not necessary to have a lawyer or representative unless you choose to do so.

Both the petitioner and the respondent have the right to present evidence. The evidence may include the testimony of the parties, the testimony of witnesses with first hand knowledge, any relevant documents, photographs, etc. The hearing officer will determine the relevance of any evidence submitted.

Both the petitioner and the respondent have the right to cross-examine the opposing party. Cross-examination means asking direct questions of the opposing party regarding their evidence.

Petitioner may rebut or refute the evidence presented by the respondent (that is, explain why he or she feels it is not correct).

The hearing officer has the responsibility and duty to conduct the hearing in an impartial and fair manner. The goal of the hearing officer is to obtain all of the necessary evidence to make a competent decision.

The hearing officer will explain the procedures at the beginning of the hearing. The hearing officer may assist in getting evidence into the record by asking questions of witnesses.

The entire hearing is recorded on tape. The tape is part of the public record of the case and is the only official record of the proceedings. The tape may be reviewed after the hearing by making an appointment with the Hearings Department. Arrangements may be made through the Rent Control office to obtain copies of tapes.

Testimony

The regulations provide that all testimony at hearings must be given under oath or by affirmation and is subject to penalties for perjury.

Because the proceedings are recorded, it is important not to interrupt the testimony of someone else. It is helpful to keep a pencil and paper handy for making notes about a witness' testimony. This way you will remember any questions you had or points you want to make.

Everyone will have the opportunity to speak. Interruptions only serve to delay the proceedings. An orderly proceeding insures a good record of the case upon which the hearing officer will base the decision.

Question #8: What happens after the hearing?

The hearing officer will not make a decision at the time of the hearing. It takes time to review the facts and make a decision. Within approximately 30 days of the hearing, the hearing officer will issue a written decision based on

the evidence presented. Remember, no evidence presented after the hearing can be considered. The parties (petitioner and respondent) will each receive a copy of the decision. The decision will set forth in detail the hearing officer's reasons for the decision. The decision will also state what, if anything, is required for compliance with the decision.

Question #9: What if I don't agree with the decision?

Any party may appeal the hearing officer decision. The appeal form is included with the decision when it is mailed to the parties. The appeal must be filed within ten days of the date of the decision at the City Hall Office. It is possible that late filings will be accepted if they show good cause for the lateness.

If no appeal is filed, the hearing officer decision becomes the final decision of the Board.

Question #10: How does the Board make its decision if the case is appealed?

After the filing of an appeal, a Staff Report is written by a Rent Control Board attorney making a recommendation to the Board regarding the appeal. The appeal is set for hearing before the Board at one of its regular meetings. Notice of the Board meeting and a copy of the Staff Report are sent to the parties.

The Commissioners receive the appeal, the Staff Report, the hearing officer decision, and other relevant documents prior to the Board meeting.

The Commissioners will vote on the staff recommendation, generally to affirm, modify, reverse or remand the decision of the hearing officer. They may or may not choose to discuss the case further. If you wish to address the Board regarding your case, it is essential you attend the Board meeting at which your case is being reviewed. However, unless one of the Commissioners requests that an appeal be opened for discussion, they will vote on all appeal cases at once, without discussion from the public. Rules on speaking at a Board meeting are available at the meetings.

For further information, call the Rent Control office at (310) 458-8751.