



**FILED**  
ALAMEDA COUNTY

JUL - 1 2009

CLERK OF THE SUPERIOR COURT

By Vicki Daybell *VD*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

RENTAL HOUSING OWNERS  
ASSOCIATION OF SOUTHERN  
ALAMEDA COUNTY, INC.,

Petitioner,

vs.

CITY OF HAYWARD,

Respondents.

Case No. HG09433908

PROPOSED STATEMENT OF  
DECISION ON PETITIONER'S  
WRIT OF MANDATE

The matter of the Petition for Writ of Mandate filed by the Petitioner Rental Housing Owners Association of Southern Alameda County, Inc. ("Petitioner") against Respondent City of Hayward ("Respondent") came on regularly for a hearing on the Petition on June 3, 2009 before Judge Frank Roesch.

Verne A. Perry, Esq. and James McBride, Esq. appeared for Petitioner. Jeffrey A. Cambra, Esq. and Michael S. Lawson, Esq. appeared for Respondent. The matter was argued and taken under submission.

The Court has considered all of the papers filed by the parties in connection with the Petition and the arguments of counsel and, good cause appearing, therefore, HEREBY ISSUES THIS PROPOSED STATEMENT OF DECISION. This proposed statement of decision shall be the statement of decision of the Court unless within the period prescribed in California Rules of Court, Rule 3.1590, either party specifies controverted issues or makes proposals not covered in the proposed statement of decision or filed objections thereto.

Insofar as the "Demurrer" filed by the City of Hayward ("City") may have been an attack on the sufficiency of Petitioner's pleading the Demurrer is overruled.<sup>1</sup>

The Petition for Writ of Mandate is GRANTED; the reasoning follows:

Hayward Municipal Code sections 9-5.101 through 9-5.560 (the "Ordinance") establishes a program for the inspection of rental housing. Petitioners assert that certain provisions of the Ordinance, on their face, violate the Fourth Amendment of the United States Constitution and/or are preempted by the provisions of California Civil Code section 1954.

Specifically, Petitioner argues that:

1) The language of the Ordinance found in Section 9-5.302, "Mandatory Inspection Program", stating that "[o]wners and managers shall allow for the inspection of these units. If an Owner or manager refuses to permit an inspection,

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<sup>1</sup> It appears to the Court, and no party has argued otherwise, that the City has raised all its defenses to the Petition in the pleading denominated "Demurrer" intending this pleading to be the City's opposition to the Petition in addition to raising the same issues as an attack on the sufficiency of the pleading filed by Petitioner.

the Enforcement Official is authorized to procure an inspection warrant” violates the US Constitution and is preempted by California Civil Code section 1954.

2) The language of the Ordinance found at Section 9-5.306, “Entry”, stating that “the Enforcement Official, after having obtained the consent of the Owner or occupant, may enter any rental housing unit . . . to perform any inspection required” and the “Enforcement Official shall not enter any rental housing unit . . . without the consent of the Owner or occupant thereof unless an inspection warrant therefor[e] has been obtained” violates the U.S. Constitution and is preempted by California Civil Code section 1954.

3) The language of the Ordinance found at Section 9-5.401, “Fees/Penalty Charges”, requiring penalty charges under the Ordinance to be paid solely by the owner of the rental housing without regard to whether the penalty was assessed on account of a transgression of the owner or on account of his or her tenant’s transgression violates Petitioner’s state and federal due process rights.

Respondent raises two procedural defenses, statute of limitations and standing, and argues that the plain language of the Ordinance does not compel a landlord to provide access to a tenant’s home in the face of a tenant’s objection to it. Respondent also argues that a landlord has the power to unilaterally, after notice, enter a tenant’s home to provide a “necessary service” such as a governmental inspection under the Ordinance.

Preliminarily, the Petition is not time-barred. Petitioner’s challenge is not to any particular act that occurred over three years ago but, instead, the challenge

is to the eminent and continuing enforcement of Respondent's Ordinance. Further, the Court has determined that Petitioner has standing to bring this action. There is no dispute that Petitioner's membership body is impacted by the Ordinance. *Property Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.*, 132 Cal. App. 4th 666, 672 (2005).

California Civil Code section 1954 is a statutory limitation on a landlord's ability to enter a residential unit whose possession is in the hands of a tenant. Entry is limited, *inter alia*, "to make necessary or agreed repairs . . . [or] . . . supply necessary or agreed services . . . ." The inspection mandated by the Ordinance, however, is not a "necessary service" that would subject a tenant to a non-consensual statutory entry by the landlord. The landlord does not have legal authority to require a tenant to allow him or her access to the rental unit absent a contract giving him or her such power. It follows that Respondent may not by its Ordinance compel the landlord to provide that access.


It then follows that the Ordinance must include a provision that the consent of the tenant who owns the possession of the rental unit must be obtained for any inspection without a warrant of inspection. The consent of the landlord may be required, but the consent of the tenant must be required for the governmental entity to conduct the type of inspection contemplated by the statutory scheme found in the Ordinance. See, e.g., *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528-29, 534 (1967).

Perhaps mindful that a landlord may not allow a governmental entity to inspect his or her tenant's home without the tenant's consent or warrant of inspection, Respondent has suggested, in its argument, that it only requires the landlord's consent alone when a unit is vacant. While this result would be perfectly appropriate, the words of the Ordinance do not make such a distinction. Rather, the Ordinance both mandates and permits an inspection with the consent of either landlord or tenant, and prescribes a monetary sanction against the landlord even in these instances where the landlord may not be an obstruction to an inspection without a warrant.

The Ordinance is facially invalid and Respondent must either cure the constitutional defect that allows a sanction to be imposed on a landlord for failing to provide that which the landlord, by law, may not provide (ie. an inspection of a tenant's home without either the consent of the tenant or a warrant of inspection), or alternatively, the City must revoke its Ordinance.

The Petitioner must prepare a form of proposed judgment and a form of proposed writ of mandate, submit it to adverse counsel and forward it to the Court for the Court's consideration within two weeks of receipt of this proposed statement of decision.

7/1/09  
Date

  
\_\_\_\_\_  
Frank Roesch  
Judge of the Superior Court

## CLERK'S DECLARATION OF MAILING

I certify that I am not a party to this cause and that on the date stated below I caused a true copy of the foregoing PROPOSED STATEMENT OF DECISION ON PETITIONER'S WRIT OF MANDATE to be mailed first class, postage pre paid, in a sealed envelope to the persons hereto, addressed as follows:

James P. McBride, Esq.  
Verne A. Perry, Esq.  
1065 A Street, Suite 224  
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Jeffrey A. Cambra, Esq.  
Michael S. Lawson, Esq.  
777 B Street, 4<sup>th</sup> Floor  
Hayward, CA 94541-5007

Heidi Palutke, Esq.  
980 Ninth Street, Suite 200  
Sacramento, CA 95814

I declare under penalty of perjury that the same is true and correct.  
Executed on July 2, 2009.

By: Vicki Daybell  
Vicki Daybell, Deputy Clerk  
Department 31