



FILED
ALAMEDA COUNTY

MAR 26 2010

CLERK OF THE SUPERIOR COURT

By Vicki Daybell *JD*

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

Respondent.

Case No. HG09433908

ORDER RE: PETITIONER'S
OBJECTIONS TO RETURN OF WRIT

The Petitioner raises five objections to Respondent City of Hayward's Return of Writ.

The first objection (that requiring "Owner, Managers and Tenants" to "allow for the inspection of units" violates the Court's Order Granting the Writ) is without merit and is overruled. It is not offensive to either statute or Constitution to provide for consent of both

the landlord/property fee owner and the tenant/owner of the right to possession prior to an inspection by the City of Hayward.

The second objection (that requiring owners or their representatives to be present at the time of the inspection violates Civil Code §1954 and the Constitution of the United States) is overruled. Once the consent of the tenant is given to the City Inspector, Civil Code Section 1954 does not proscribe the landlord's presence at the inspection. Further, requiring the landlord's presence is neither arbitrary nor unreasonable as the landlord frequently bears the burden of making repairs of habitability defects discovered by the inspectors.

The third and fourth objections relate to the portion of the City's amendment to the ordinance stating "It shall be the responsibility of the Owner or the Owner's designated representative to make a good faith effort to obtain the consent of the tenants to inspect the subject rental housing units or otherwise obtain legal access to the units." The objections are 1) that "good faith effort" is so vague and without definition as to be a violation of due process, and 2) that the ordinance requires the Owner to become an agent of the state seeking a governmental intrusion with the added coercive impact that arises from the owner being the tenant's landlord.

The first objection is overruled. The concept of "good faith" is not, on its face, a violation of the Constitutional requirement of due process.

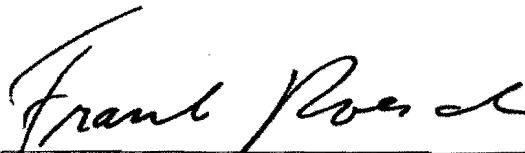
The second objection is sustained. The City's ordinance modification requiring an Owner of a rental unit "to obtain the consent of the tenant" is not cured by the slight modification that an Owner must only make a "good faith effort" to do so. The Owner may

lawfully be required to forward a notice of the time and date of an inspection to the tenant, but may not be held responsible to obtain the tenant's consent to permit the governmental entry for inspection.

The fifth objection is that the modifications to the ordinance approved by the City of Hayward do not revise section 9-5.401, providing for fees or penalties to be paid by the owner for the failure (or refusal) of a tenant to submit to the City's inspection demand. While the landlord/owner may be required to notify the tenant of a scheduled inspection and may be required to attend the inspection, the City may not impose a fee or a sanction if an inspection or re-inspection cannot proceed unless it is an act of the landlord/owner which frustrates the inspector's ability to inspect. And while it is a policy choice by the City if it chooses to not sanction a tenant for their refusal to consent to the City's inspection, it is not within the City's discretion to sanction the landlord/owner for the tenant's act.

The fourth and fifth objections are sustained and the City is directed to cure these defects forthwith and make further return on the Writ showing full compliance with the Court's writ within 90 days.

Date: March 26, 2010



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 ORDER RE: PETITIONER OBJECTIONS TO RETURN OF WRIT to be mailed first class, postage pre paid, in a sealed envelope to the persons hereto, addressed as follows:

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I declare under penalty of perjury that the same is true and correct.
Executed on March 29, 2010

By: *Vicki Daybell*
Vicki Daybell, Deputy Clerk
Department 31