

HARASSMENT

A presentation on the laws concerning harassment in the City of West Hollywood. Prepared as part of the Building Blocks Series.

Important Note:

This presentation explains some of the basic provisions of the City of West Hollywood Rent Stabilization Ordinance Harassment law.

It is not intended to act as a substitute for legal advice or for reading the law itself.

Harassment Presentation

- Introduction
- Ordinance Sections
- Who should file a complaint
- Once the tenant files the complaint – what happens?
- Summary

17.52.090 Prohibition of Tenant Harassment.

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Notwithstanding any other provision of this code, no landlord, or landlord's agent, property manager or representative shall, with respect to property used as a rental unit under any rental agreement or other tenancy or estate at will, however created, willfully engage in harassment of any tenant of a rental housing unit in a manner that is likely to create a hostile living environment or cause a reasonable tenant similarly situated to vacate the rental housing unit.

Harassment Elements

As used herein, harassment includes but is not limited to the following conduct:

1. A reduction of housing services as the term “housing service” is defined in this title.
2. A reduction of maintenance or failure to perform and timely complete necessary repairs or maintenance as determined by the Rent Stabilization Department or the Commission.

Harassment Elements continued:

3. Abusing the right of access into a rental housing unit as established and limited by California Civil Code Section 1954.

California Civil Code §1954

- **Reasons for entry:**
 - ✓ 1) emergency;
 - ✓ 2) to make necessary or agreed upon repairs;
 - ✓ 3) to show the unit to prospective tenants or buyers;
 - ✓ 4) to conduct inspection before tenant moves out
 - ✓ 5) when tenant has moved or abandoned unit

- **Landlord must give “reasonable” written notice before entry. Typically 24 hours is considered reasonable.**

- **Landlord does not need tenant’s permission to enter. Landlord is informing tenant of the planned entry. Entry must take place during “normal business hours” which can include weekends if the lease says so.**

Harassment Elements continued

4. Engaging in abusive conduct toward a tenant through the use of words which are offensive and inherently likely to provoke an immediate violent reaction.
5. Enticing a tenant to vacate a rental housing unit through an intentional misrepresentation(s) or the concealment of a material fact.
6. Threatening a tenant, by word or gesture, with physical harm.
7. Misrepresenting to a tenant that the tenant is required to vacate a rental housing unit.

Harassment Elements continued...

8. Failing to exercise due diligence in performing and completing repairs to a rental housing unit after obtaining possession of the unit for the purpose of performing the repairs.

9. Engaging in an activity prohibited by federal, state or local law which prohibits housing discrimination on any basis including but not limited to sexual orientation, race, color, sex, ancestry, ethnic origin, national origin, religion, age, marital status, familial status, parenthood, pregnancy, disability, medical condition including, but not limited to, AIDS or AIDS-related conditions, gender identity, occupancy by a minor child, citizenship, or status as a student.

Harassment Elements continued

10. Threatening to terminate a tenancy, recover possession of a rental unit, or evict a tenant from a rental unit without a proper factual and legal basis. This subsection shall not apply to a threat that is made in connection with litigation that is actually pending or in good faith contemplated when the threat is made. In the case of a threat, or a series of threats, made in the form of a three-day, thirty-day, or other formal tenancy-termination notice, there is a rebuttable presumption that the threat is not made in good-faith contemplation of litigation if the landlord does not actually initiate litigation based on the notice within thirty days of the tenancy termination specified in the notice.

11. Engaging in any act or omission which interferes with the tenant's right to use and enjoy the rental unit.

Harassment Elements continued....

12. Refusing to acknowledge or accept receipt of lawful rent payments as set forth in the lease agreement or as established by the usual practice of the parties.

13. Engaging in any act or omission constituting a disturbance of a tenant's possession of rental premises, whereby the premises are rendered unfit for occupancy, or the tenant is deprived of the beneficial enjoyment of the premises.

14. Engaging in any conduct intended primarily to vex, annoy, injure, or intimidate a tenant. The conduct described in this subsection includes any behavior explainable only or primarily by the intent and purpose to vex, annoy, injure, or intimidate a tenant. The conduct described in this subsection shall not include conduct intended to communicate ideas or beliefs to the public at large which has only an incidental effect upon a person or persons.

Harassment

17.52.120 Removal of Parking Prohibited.

- (a) If a landlord provides an on-site, off-street parking-space housing service to a tenant on or after January 1, 2004, that parking space becomes an inseparable part of the rented premises, and the landlord may not remove it during the tenancy unless the tenant consents to the removal in writing.

- (b) If a landlord removes an on-site, off-street parking space housing service from a tenancy in violation of this section:
 - (1) The tenant may apply for a rent decrease by an amount commensurate with the value of the removed parking space under Section 17.44.040 for the temporary period of time during which the space is removed;
 - (2) The landlord shall be subject to criminal prosecution; and
 - (3) The city may bring a civil action for injunctive relief.

- (c) Nothing in this section is intended to limit a tenant's right to a rent decrease for the loss of a parking housing service, even if the tenant consents in writing to the loss.

- (d) Nothing in this section is intended to penalize a temporary removal of a parking space reasonably necessitated by required repair or maintenance.

- (e) Nothing in this section is intended to prohibit a landlord and tenant from voluntarily agreeing to the substitution of one parking space for another at the same property. (Ord. 04-681 § 2, 2004)

Harassment

- Before filing, you should understand that you are asking the City to investigate the landlord for criminal activity.
- If the City were to file a criminal complaint it would be heard in a court room where a judge is hearing trials for other serious crimes.
- Rudeness, lack of consideration, or mistakes are not adequate grounds for filing a criminal complaint.
- If a case goes to trial, the complaining tenant must testify, but the landlord (or other charged person) does not have to.

Harassment - Who should file a complaint?

Who should file a complaint?

- Tenants who feel that their landlord or a representative of their landlord is engaging in substantial conduct intended to motivate the tenant to vacate the unit.

Harassment Complaint Filed – What Happens Next?

- Once the tenant files the complaint – what happens next?
- When a tenant files a harassment complaint it is routed to the Legal Services Division – currently, a staff attorney reviews the complaint.
- The harassment complaint is reviewed to determine if there is enough information to warrant further investigation. The tenant will be contacted if more information is required.
- If the investigation reveals a basis for criminal prosecution, the case is forwarded to the City Prosecutor's office. If the City Prosecutor determines that prosecution is appropriate, a criminal complaint is filed.

WHMC 17.68.010 – Remedies - Civil Action

Harassment 17.68.010 Remedies – Violations.

- c. Any person or entity who willfully demands, accepts or retains any payment in violation of the provisions of this title or in violation of the prior moratorium ordinance regulating rents adopted November 29, 1984 shall be liable in a **civil** action to the person from whom such payment is demanded, accepted or retained for damages in the sum of three times the amount by which the payment or payments demanded, accepted, or retained exceed the maximum amounts which could be lawfully demanded, accepted, or retained together with reasonable attorneys' fees and costs as determined by the court. The retention of amounts received in violation of this title shall be deemed a continuing violation until such amounts are refunded to the affected persons.
- d. Any person, including the City, may enforce the provisions of this title by means of a civil action. Any person or entity violating any of the provisions of this title is liable for each and every such offense for actual damages suffered by the aggrieved party, or for statutory damages in the sum of one thousand dollars (\$1000.00), whichever is greater, and for punitive damages. The prevailing party may also recover such attorneys' fees and costs as may be determined by the court.

WHMC 17.68.010 -

- e. Any person or entity violating any of the provisions of this title or the prior moratorium ordinance regulating rents adopted on November 29, 1984 shall be guilty of a misdemeanor. Any person or entity convicted of a misdemeanor under the provisions of this title shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period of time not exceeding six months, or by both. Each violation of any provision of this title, and each day during which any such violation is committed or continued shall constitute a separate offense.

- f. The City Attorney or any other person authorized by the City Council may bring an action on behalf of the city and/or on behalf of tenants seeking injunctive relief to compel compliance with or prohibit violations of this title. Such relief may include an order requiring that all amounts accepted or retained in violation of this title be refunded to the affected persons.

- g. The amount of any fee and penalty imposed by any of the provisions of this title shall be deemed a debt owing to the city and may be collected by any means provided by law.

Harassment - Summary

- The RSO prohibits tenant harassment and the Legal Services Division investigates harassment complaints filed by tenants for possible criminal prosecution of the landlord.
- Harassment is defined as willful behavior with the intention of creating a hostile living environment or causing a reasonable tenant similarly situated to vacate the rental housing unit.
- A few examples of conduct that may constitute harassment:
 - Threatening a tenant, by word or gesture, with physical harm
 - Engaging in any act or omission which interferes with the tenant's right to use and enjoy the rental unit
 - Misrepresenting to a tenant that the tenant is required to vacate the unit
 - Engaging in abusive conduct through the use of words which are offensive and inherently likely to provoke an immediate violent reaction.
- A tenant harassment complaint is filed as a precursor to possible criminal prosecution. A charged person is entitled to a jury trial and a unanimous verdict based on evidence proving the charge beyond a reasonable doubt. Civil remedies are also available to a tenant, but the City cannot assist on that.

Contact Us:

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Hours:

Monday thru Thursday	8 am until 5 pm
Friday	8 am until 4:30 pm

Rent Information Coordinators are available on the phone and at City Hall every Friday, including modified Fridays.

City's Web Site: www.weho.org