

A Primer on San Francisco Tenant Lawsuits

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Overview

While California law now imposes state-wide pro-tenant legislation including eviction controls, the county of San Francisco practices some of the most, if not the most, strict pro-tenant regulation of them all.

In addition to the California Civil Code, [Chapter 37](#) of the San Francisco administrative code describes the only permissible reactions to tenant concerns and complaints. This means that any slight deviation from [Chapter 37](#) prescribed conduct creates a theory of liability - and Plaintiffs' attorneys are not short on theories...



Problems to Solve : A Tenant Moves Out Because of You

1 The all too common scenario:

Whether you have asked the tenant to leave, served a notice to terminate tenancy, or a tenant simply moved out while there is a documented record of tenant complaints, expect that a tenant will claim they were unlawfully forced to vacate.

2 Who is liable?

If you own, lease, sublease, or are entitled to receive rent, are the agent, representative or successor of any of the foregoing - you are a Landlord liable under the rent ordinance. Note that liability in wrongful eviction claims is not limited to owners or even landlords. Anyone who assists in endeavoring to recover property may be on the hook as well.

3

What tenants know:

Today's tenants are sophisticated and are very aware of the pro-tenant legislation. They know their protections are comprehensive and that lawsuits in response to landlord - tenant disputes can prove very lucrative.

4

What to do:

You must assume that a tenant will consult a lawyer in order to protect their tenancy or leverage as much money as they can for the inconvenience of moving out. You must arm yourself with the best, most comprehensive legal coverage.

What to Expect: The Most Common Causes of Action in Tenant Lawsuits

- 1 Violation of San Francisco Rent Ordinance 37.9
- 2 Violation of Tenant Protection Act of 2019
- 3 Violation of San Francisco Rent Ordinance 37.10b
- 4 Constructive Eviction
- 5 Violation of Civil Code 1942.4
- 6 Breach of Implied Warranty of Habitability
- 7 Breach of Covenant of Quiet Enjoyment
- 8 Negligence
- 9 Fraud
- 10 Violation of Civil Code 1950.5
- 11 Unfair Business Practices
- 12 Discrimination Under The Fair Employment and Housing Act
- 13 Intentional Infliction of Emotional Distress

Understanding the Various Causes of Action In Tenant Lawsuits



Violation of San Francisco Rent Ordinance 37.9

01

To establish a claim that a plaintiff was evicted in violation of Section 37.9(f) of the San Francisco Rent Ordinance, a plaintiff must prove that:

- 1) plaintiff was a tenant in the subject property;
- 2) the defendant endeavored to recover possession of the subject property;
- 3) a. the defendant did not have 1 of the only 16 enumerated just causes for recovering possession; OR
b. the defendant did not properly notify the plaintiff in writing of the termination; OR
c. the defendant's dominant motive was not to recover possession of the subject property for the enumerated just cause in the notice.

QUICK TIP

Under Section 37.9(f), money damages of not less than three times actual damages (including damages for mental or emotional distress) may be recovered. The jury is never told there award will be trebled.

In Addition, the prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. It's BIG money for plaintiffs attorneys

Violation of California Tenant Protection Act of 2019 under civil code 1946.2

02

To establish a claim that a plaintiff was evicted in violation of civil code 1946.2, a plaintiff must prove that:

- 1) plaintiff was a tenant in the subject property for at least 12 continuous months;
- 2) the defendant endeavored to recover possession of the subject property;
- 3) a. the defendant did not have 1 of the only 15 enumerated just causes for recovering possession; OR
b. the defendant did not properly notify the plaintiff in writing of the termination of tenancy.

QUICK TIP

Instead of the San Francisco Rent Ordinance 37.9 (discussed 1 page prior), many tenants will use the new Tenant Protection Act to sue. This is because the local rent ordinance mainly applies to units in buildings first certified for occupancy before June 1979. However, civil code 1946.2 catches most other residential properties. The good news is, there is no treble damages provision under the new act.

Violation of San Francisco Rent Ordinance 37.10b

03

In order to prove a claim for Tenant Harassment in violation of 37.10b, a plaintiff must prove that the defendant did any of the following in bad faith:

1) interrupt, terminate or fail to provide required housing services; OR

2) fail to perform repairs/maintenance required; OR

3) fail to exercise due diligence in completing repairs and maintenance once undertaken; OR

4) abuse the landlord's right of access into a rental housing unit as that right is provided by law; OR

5) influence or attempt to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion; OR ...

QUICK TIP

A tenant does not have to vacate in order to make a successful claim under 37.10b. Some attorney will even argue that a tenant need not vacate in order to make a successful claim for wrongful eviction under 37.9.

[The list goes on giving a plaintiff many theories on which to base a claim of harassment]

Constructive Eviction

04

A defendant constructively evicted a plaintiff if:

A defendant's acts or omissions, or any disturbance or interference with a plaintiff's possession renders the premises, or a substantial portion thereof:

1) unfit for the purposes for which they were leased, OR

2) has the effect of depriving a Plaintiff for a substantial period of time of the beneficial enjoyment or use of the premises, AND

3) the Plaintiff vacates within a reasonable time after the wrongful act of the landlord.

QUICK TIP

In the case of a constructive eviction, a tenant asserts that the premises has reached a point where it is no longer habitable. This can be because of the conditions of the leased space, or in some case, the condition of the landlord-tenant relationship. If your tenant is living in fear of you and vacates as a result, they can successfully make a claim for constructive eviction.

This legal theory in itself however, does not provide for treble damages or attorneys fees.

Violation of Civil Code 1942.4

05

To prove a violation of Civil Code 1942.4, plaintiff must show:

- 1) a defendant collected rent; AND
- 2) a public officer or employee who is responsible for the enforcement of any housing law has notified the landlord in writing of his or her obligations to abate the nuisance or repair the conditions; AND
- 3) the conditions have existed and have not been abated 35 days beyond the date of service without good cause; AND
- 4) the conditions were not caused by an act or omission of the tenant or lessee; AND
- 5) the dwelling substantially lacks affirmative standard characteristics habitability.

QUICK TIP

This section is noteworthy because any record of habitability complaints bolster a tenant's argument that he or she was wrongfully evicted - either constructively or in retaliation of the tenant asserting their rights

Breach of Implied Warranty of Habitability

06

A dwelling is deemed uninhabitable if it substantially lacks any of the following:

- 1) Effective waterproofing and weather protection of roof and exterior walls, including windows/ doors.
- 2) Plumbing/gas facilities in working order.
- 3) A water supply capable of producing hot and cold running water and connected to a sewage disposal system approved under applicable law.
- 4) Heating facilities in good working order.
- 5) Electrical lighting, with wiring and electrical equipment, maintained in good working order.
- 6) An adequate number of appropriate receptacles for garbage.
- 7) Floors, stairways, and railings in good repair.

Breach of Covenant of Quiet Enjoyment

07

In order for a plaintiff to prevail on a claim for breach of the implied covenant of quiet enjoyment arising from their contract, they must show all of the following:

- 1) a defendant knew or should have known that conditions were existing at the premises that unreasonably interfered with the tenants' quiet enjoyment. Examples of such conditions would be: Defects and habitability violations; Causing/permitting nuisance; Allowing/encouraging persons to harass and disturb the tenant; etc.
- 2) Defendant had the power and reasonable opportunity to correct and/or prohibit any such violations or conditions;
- 3) Defendant unreasonably failed to correct and/or prohibit any such violations or conditions;

Negligence

08

Negligence is the failure to use reasonable care to prevent harm to oneself or to others.

A person can be negligent by acting or by failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation.

To establish this claim, a plaintiff must prove all of the following:

- 1) a defendant was negligent;
- 2) the plaintiff was harmed; AND
- 3) the defendants' negligence was a substantial factor in causing a plaintiff's harm.

Fraud

09

Fraud means an intentional misrepresentation, deceit, or concealment of a material fact with the intention of depriving someone of a legal right or to otherwise cause injury.

To establish this claim, a plaintiff must prove all of the following:

- 1) a defendant made a representation to a plaintiff;
- 2) the representation was false;
- 3) the defendant knew that the representation was false when they made it or made the representation recklessly and without regard for its truth;
- 4) the defendant intended that the representation be relied on; AND
- 5) the plaintiff reasonably relied on the representation.

Violation of Civil Code 1950.5

10

A defendant violates Civil Code 1950.5 if a plaintiff proves:

1) the plaintiff paid a security deposit to rent a residential property; AND

2) No later than 21 calendar days after a tenant's vacancy, but no earlier than the time the landlord or tenant provides a notice to terminate, the defendant, in bad faith, failed to:

a. return the security deposit; OR

b. provide an itemized statement indicating the basis for the disposition of the security deposit.

QUICK TIP

Violation of this code section could result in damages up to double the security deposit.

Unfair Business Practices Under B & P Code §§ 17200-17208

11

A defendant violates Cal. Bus. & Prof. Code § 17200 if a plaintiff proves:

1) a. the defendant broke a law; OR

b. the defendant caused substantial consumer injury to a plaintiff which the plaintiff could not have avoided; OR

c. the defendant deceived the plaintiff;

2) the defendant's conduct was in commerce or affected commerce;

3) the above Defendant conduct caused the plaintiff injury;

QUICK TIP

Virtually any law—federal, state or local—can serve as a predicate for a B & P 17200 claim, effectively giving Plaintiffs two bites of the same apple. However, the only remedies available under this cause of action are injunctive relief or restitution of overpayments

Discrimination Under The Fair Employment And Housing Act

12

A defendant discriminates in violation of the Fair Employment And Housing Act if:

- 1) a defendant is responsible for providing services in connection with residential real estate related transactions;
- 2) a plaintiff was entitled to Defendants services in connection with residential real estate related transactions;
- 3) the plaintiff is a member of a protected class;
- 4) the defendant made statements, acted or failed to act in such a way that limited, withheld, or terminated the residential real estate services which Plaintiff was entitled to;
- 5) that the protected status of Plaintiff was a substantial motivating reason for the decision to limit, withhold, or terminate services.

Intentional Infliction of Emotional Distress

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To establish this claim, a plaintiff must prove the following:

- 1) a defendant's conduct was outrageous;
- 2) a. the defendant intended to cause emotional distress; OR

b. the defendant acted with reckless disregard of the probability that the plaintiff would suffer emotional distress;

- 3) the plaintiff suffered severe emotional distress as a result of the defendant's conduct.

QUICK TIP

Even without alleging this cause of action, Plaintiffs will try to recover emotional distress damages under any law that allows it. The ability to recover emotional distress damages under the San Francisco Rent Ordinance is far easier for a plaintiff than it would be under this claim.

Conclusion

Whether a tenant has vacated the leased premises or not, they are entitled to many forms of redress for perceived interruptions in the enjoyment of their tenancy.

If you are involved in the ownership or management of property in San Francisco, it is imperative to know what your legal obstacles are. We wish you a successful outcome.



Thank you.

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