



STAFF REPORT

Meeting Date: February 21, 2012
To: Honorable Mayor & City Council
From: George Chavez, Assistant Director of Community Development
Subject: 420 S. Doheny Drive – “Landlord Use” eviction
Attachments: Letter from Attorney Mark Egerman

INTRODUCTION

At the February 7th City Council Meeting, Mark Egerman appeared before the City Council during Public Comment along with his clients, Parker and Jean West, who are being threatened with eviction from his unit in the subject property.

DISCUSSION

Mr. Egerman is seeking a change to the current Rent Control laws to offer greater protections for tenants and introduce a hearing process for “Landlord Use” evictions. He presented the City Council with draft language and requested the City delay its decision pertaining to unit “Comparability” until the item could be formally heard. The City Council directed staff to delay the comparability decision and bring the item forward at its February 21 meeting for consideration of the requested changes.

Since the meeting of February 7th, both parties have been in contact with the City. At this time, the parties have indicated a willingness to work out their differences through voluntary mediation. Furthermore, the parties have requested that the City refrain from taking any action until the mediation process concludes.

RECOMMENDATION

Staff recommends allowing time for the voluntary mediation process to take place. Once this process concludes, staff will bring forward an item specific to “Landlord Use” evictions.

A. Kelton for George Chavez
George Chavez, Assistant Director of
Community Development

Approved By

Attachment 1

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February 7, 2012

Mayor Barry Brucker
Vice Mayor Willie Brien
Hon. John Mirisch
Hon. Lili Bosse
Hon. Julian Gold

*Re: Parker and Jean West
420 S. Doheny Drive, Unit 3, Beverly Hills, California*

Dear Mayor Brucker, Vice Mayor Brien, Councilman Mirisch, Councilwoman Bosse, and Councilman Gold:

I am writing you in reference to my clients Parker and Jean West, senior citizens over the age of 70 years, who live in the rent controlled apartment at 420 S. Beverly Drive, Unit 3, Beverly Hills, California 90211. Parker West is fighting stage 4 colon cancer. He has undergone surgery, three regimens of chemotherapy, and is currently undergoing radiation therapy. Because of Mr. West's guarded physical condition and the Wests' very limited financial resources, I am bringing this matter to your attention with the hope that you can remediate the problem.

The property is a four unit building. Unit 3 is an upstairs one bedroom unit, which was identical to the one bedroom unit below them. The Wests took possession of their unit pursuant to an oral rental agreement entered into between the Wests and Frieda Fritz, the former owner of the building. The Wests have lived in the unit for over 23 years. The building was sold to Aaron Biston on December 4, 2006. Biston's business plan was to evict all tenants, upgrade the building, and re-lease the units at market rates. In order to facilitate his business plan, Biston evicted or otherwise caused the other tenants to vacate their units. Biston gave the Wests multiple notices to move, all of which violated the provisions of the Beverly Hills Rent Stabilization Ordinance. When the Wests refused to leave, Biston attempted to force them to leave by creating an intolerable living situation at the property. On several occasions, Biston demanded inspections by the Beverly Hills Fire Department asking the Fire Department to cite the Wests for use of their garage for personal storage. The Fire Department refused to cite the Wests finding no violations.

Biston, thereafter, on March 10, 2010, filed an unlawful detainer action against the Wests. After seven months of intensive litigation and a five day jury trial, judgment was entered in favor of the Wests on October 18, 2010. Thereafter, Biston filed a second action and obtained, without prior notice to Parker West, temporary restraining orders

against Parker West restricting his activities at the property. The Court after a trial on the merits vacated the restraining orders, ruled in favor of Parker West, and dismissed Biston's second lawsuit.

Biston, thereafter, sold the property to Dr. and Mrs. Chapman and their daughter Mrs. Amy Feldman late last year. The Chapmans and Mrs. Feldman knew that the property was subject to the Beverly Hills Rent Stabilization Ordinance, knew of the prior litigation between the Wests and Biston, and negotiated with Biston to modify plans he had submitted to the City to demolish a back stairwell and add space to the kitchens of the Wests' unit and the unit below the Wests. To circumvent the Beverly Hills Rent Stabilization Ordinance, the Chapmans, Mrs. Feldman and Biston agreed that Biston prior to the close of escrow would close the back stairwell and use part of the space to build a small $\frac{3}{4}$ bath adjacent to the Wests' living room and enlarge the kitchen area of the one bedroom unit directly below the Wests' unit. Biston, pursuant to his agreement with the Chapmans and Mrs. Feldman, then filed new plans with the City in an attempt to make the Wests' apartment not "comparable" to the downstairs one bedroom unit. This was done to circumvent the requirements of BHMC § 4-5-509 A 4, which allows a landlord to recover the possession of an apartment unit if the landlord seeks in good faith to recover the unit for the landlord's own use. The landlord's right to recover a unit is limited as to senior citizens, however, by subsection 4 which provides:

"4. The unit to be recovered by the landlord is occupied by the most recent tenant(s) to occupy a unit comparable to the type of unit sought by the landlord or relative described in subsection A of this section. **Notwithstanding the foregoing, no senior citizen or handicapped tenant shall be evicted unless there is no other unit on the parcel of land comparable to the type of unit sought by the landlord or relative. If there are one or more comparable units in such case, the landlord shall recover the comparable unit occupied by the most recent tenant who is not a senior citizen or handicapped person.** For the purposes of this section, 'senior citizen' shall mean a person sixty five (65) years of age or older. Whether a unit is comparable to the type of unit sought by the landlord or relative shall be determined by the city" (emphasis added).

The Chapmans and Mrs. Feldman have asked the City for a determination that since a bathroom was added to the Wests' unit and the kitchen was enlarged in the only other one bedroom unit at the property, that there are no units at the property "comparable" to the Wests' unit. If such a finding is made, the Chapmans and Mrs. Feldman will evict the Wests from their home of 23 years.

My clients, through my office, informed the City that a permit to remove the back stairwell and install a small $\frac{3}{4}$ bath adjacent to the Wests' living room and enlarge the kitchen area of the one bedroom unit directly below the Wests' unit should not be issued because it violated the terms of my clients' rental agreement that access to their unit be available from both a front and rear stairwell. The City issued the permit, however, declining to consider the question of whether the removal of the back stairwell violated the Wests' rental agreement.

The City should not be complicit in the circumvention of its own rent control ordinances by issuing a building permit, which would make a unit "not comparable" under the Rent Stabilization Ordinance, and, thereafter, having a staff person render an opinion that the unit is "not comparable" because of the modification. The Rent Stabilization Ordinance is designed to protect senior citizens on limited income. A landlord should not be allowed to circumvent the purpose of the Ordinance by simply constructing a minor addition to a unit to make the unit slightly different from a prior identical unit. Further, the Ordinance is vague in that it does not set forth any standards on which a determination of "comparability" can be based, does not provide for a hearing at which the tenant can present his or her case, and does not provide for any review process.

I am, therefore, requesting that the City Council clarify Section 4-5-509 A 4 to address the following issues:

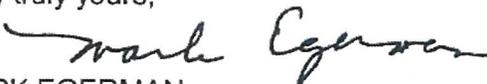
1. The Ordinance should preclude any modification of a unit from being considered in determining "comparability" for a period of five years from the date of the modification to prevent unscrupulous landlords from circumventing the Ordinance through minor modifications to a unit.
2. The Ordinance should provide a clear definition that a unit is deemed "comparable" if it has the same number of bedrooms as another unit and the square footage of the units are within 15% of each other.
3. There should be a hearing procedure so that both the landlord and tenant can present their position to the City.
4. There should be an appeal process in the event that either the landlord or tenant disagrees with the decision of the City.

I have taken the liberty of enclosing a potential draft for consideration. It is submitted as a proposal for further discussion and consideration by the Council.

Please consider amending Section 4-5-509 A 4 to clarify the Ordinance to prevent circumvention of our laws designed to protect our senior citizens. Pending the Council's consideration of this matter, I also request that staff take no action on questions of "comparability" until the Council has reviewed the matter.

Thank you for your attention to this matter.

Very truly yours,


MARK EGERMAN

ME/jl
enclosure

PROPOSED BHMC SECTION 4-5-509 A 4:

4. The unit to be recovered by the landlord is occupied by the most recent tenant(s) to occupy a unit comparable to the type of unit sought by the landlord or relative described in subsection A of this section. Notwithstanding the foregoing, no senior citizen or handicapped tenant shall be evicted unless there is no other unit on the parcel of land comparable to the type of unit sought by the landlord or relative. Any modification made to a unit within five years of the date of determination of comparability shall not be considered in determining whether one or more units are comparable. Further, one or more units containing the same number of bedrooms and square footage within 15% of each other as measured from the largest unit are conclusively presumed to be comparable. If there are one or more comparable units in such case, the landlord shall recover the comparable unit occupied by the most recent tenant who is not a senior citizen or handicapped person. For the purposes of this section, "senior citizen" shall mean a person sixty five (65) years of age or older. Whether a unit is comparable to the type of unit sought by the landlord or relative shall be determined at a hearing at which the landlord or relative and tenant have the right to appear, present evidence, and make arguments. The hearing officer shall be designated by the City Manager. The hearing officer shall render his or her decision in writing within 30 days of the close of the hearing. Notice of the decision shall be mailed to all parties by the City Clerk. Any party to the hearing shall have a right to appeal the decision to the City Council, or a board appointed by the City Council for this purpose consisting of not less than three people, for a hearing de novo by filing a written notice of appeal within 30 days of the date of mailing of the decision by the City Clerk.