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# Liability of Successor Landlord for Rent Overcharges: Baychester Shopping Ctr., Inc. v San Francisco Residential Rent Stabilization & Arbitration Bd. (2008)

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**Liability of Successor Landlord for Rent Overcharges**  
**Baychester Shopping Ctr., Inc. v San Francisco Residential Rent**  
**Stabilization & Arbitration Bd. (2008)**  
**165 CA4th 1000, 81 CR3d 341**

**Successor landlord is liable for prior owner's rent overcharges under San Francisco Residential Rent Stabilization and Arbitration Ordinance.**

In 1991, Larry Fingerhut began renting an apartment for \$950 per month from Svend Hansen in a building subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Rent Ordinance), San Francisco Admin C ch 37. Between 1994 and 2001, Fingerhut managed the apartment building in exchange for free rent or for a rent credit. In November 2001, Hansen raised the rent to \$2000, but Fingerhut did not start paying that amount until January 2002. Hansen raised the rent annually, to a high of \$2044.76 in August 2005. Beginning in September 2005, Fingerhut unilaterally paid only \$1244.76 per month. In October 2005, Fingerhut filed a tenant petition with the Board, claiming that his rent had been raised unlawfully. In December 2005, Hansen sold the building to Baychester, which returned Fingerhut's \$1244.76 check for January 2006. Fingerhut amended his petition to name Baychester as the new owner of the building. Following a hearing, the administrative law judge granted the petition and found Baychester liable for \$41,414.10 in rent overcharges from October 1, 2002, through December 31, 2005. Baychester unsuccessfully appealed to the Board and then petitioned for a writ of administrative mandamus. The trial court found that the Board did not act in excess of its jurisdiction or abuse its discretion. Moreover, the trial court ruled that CC §1466 did not apply because the Board was enforcing the Rent Ordinance, not a breach of covenant. The court of appeal affirmed.

Baychester contended that under CC §1466, it was not liable for a breach of covenant before it became the owner of the property, that the Rent Ordinance violated due process by holding a successor owner liable for the conduct of the prior owner, and that the Board was bound by res judicata based on a 1997 case concerning the one-year limit on landlord liability for decreased services. The Rent Ordinance sets permissible rent increases and imposes its provisions on successor landlords. San Francisco Admin C §37.8(e)(7). Under the plain language of the Rent Ordinance, Baychester was liable and the amount of overcharges was not disputed. The court of appeal ruled that Baychester waived the due process argument by not raising it below. In any event, there was no due process violation. The Rent Ordinance is reasonably related to a proper legislative goal and provides a fair and practical procedure for resolving disputed rent increases without litigation. There is no due process violation in burdening a successor landlord to exercise due diligence in its purchases. Finally, a 1997 case finding that the Board abused its discretion for holding a successor liable for more than one year's rent reductions for decreased services under San Francisco Admin C §§37.2(h) and 10.10(c) was not res judicata because it concerned a different issue.

**THE EDITOR'S TAKE:** Whether your reaction to this decision is shock or exultation, the important fact to remember is that it could happen to your client, *i.e.*, your client could discover that she has to refund rents to the tenants because of overcharges by the former owner, even though your client had never collected them. While this result may depend somewhat on the particular wording of the San Francisco ordinance, it is likely that other rent control measures are similarly worded, or shortly will be. Thus, a whole new set of steps must be taken, or at least recommended, by counsel for a purchaser of residential property in a rent-controlled jurisdiction.

This is strict successor liability, much like the responsibility to clean up toxic pollution. The landlord will owe whether or not she was at fault. What can she do about it, now that this risk is known?

The opinion states that it is a question of the successor landlord exercising due diligence "to determine if tenants' rents have been charged in accordance with the rent ordinance." If that was not true previously, it is certainly true now. The published facts in this case indicate that this particular purchaser could have found out in time because the tenant's petition to the rent board had been filed

two months before the close of escrow. However, that will not always be the case because, under the San Francisco ordinance, the only consequence to the tenant of filing late is a three-year time limit on how much can be refunded. Thus, a new owner may not find out until several years after her purchase that her predecessor was charging too much.

Very likely, a landlord who has to pay her tenants for prior overcharges like this can recover from her vendor. That is probably an easy case when, as here, the vendor knew of the tenant's claims, but such indemnification is probably also proper when neither party knew that tenants might later make a claim. Nevertheless, an agreement to that effect would certainly be appropriate, and probably now should be part of any offer to purchase residential property.

More importantly, estoppel letters should be sent in all cases and nonresponses or vague responses should definitely be followed up. This will probably become standard operating practice for brokers whose clients are purchasing tenanted buildings.—*Roger Bernhardt*