

## Revisions to the 2021 SFAA Rental Tenancy Agreement

### **New Clause: #7 Rent Board Fees**

RENT BOARD FEES: Chapter 37A of the San Francisco Administrative Code allows the City to collect a per-unit fee for each residential dwelling unit that is subject to the Rent Ordinance. This fee funds the cost of operating the Rent Board. The owner is entitled to recovery of a portion of the fee from the tenant(s) of each residential unit on November 1st of each year, up to a maximum of 50% of the annual fee for the unit. Tenant will promptly pay Owner for Tenant's share of the Rent Board fees and authorized charges when billed by Owner.

Where the interest on the tenant's security deposit has been paid annually, the owner may bill the tenant directly. Where the interest on the tenant's security deposit is not paid annually, an owner seeking recovery of the fee shall deduct it from the next interest payment owed.

Owners may "bank" the Rent Board fee and collect it in a later year. This means that owners do not have to collect the fee in the year that it was due, but are entitled to collect the Rent Board fee in later years if they so desire. The billing statement for the fee must specifically state the fee amount owed by the tenant for each year and the amount, if any, of security deposit interest due the tenant for each year owing. The bill should also state that the purpose of the fee is to fund the Rent Board, and that the fee is due and payable within thirty (30) days of the date of the bill.

To the extent that SFAC Chapter 37A is amended or pass-through of additional fees is authorized under the Administrative Code, this provision will be deemed amended to conform to law and to confirm the obligation of Tenant to pay those additional pass-throughs and interpreted in a manner which complies with law.

### **Edit: #12 Occupancy**

**The following language was removed from the Occupancy clause, because it was unenforceable:**

Tenant may not have overnight guests on the Premises for more than fifteen (15) consecutive days or thirty (30) days in a calendar year, and no more than two (2) guests per bedroom at any one time. Persons staying overnight more than fifteen (15) consecutive days or more than thirty (30) days in any calendar year shall not be considered original occupants of the Premises. Tenant must obtain the prior written approval of Owner if an invitee or guest of Tenant will be present at the Premises for more than fifteen (15) consecutive days or thirty (30) days in a calendar year. Violation of the provisions of this Paragraph shall be deemed a substantial and material breach of this Agreement and is agreed to be a just cause for eviction. A person is not a guest when they provide any consideration to Tenant for the privilege of occupying the Premises or any portion thereof.

### **Edit: #35. Maintenance and Repairs**

This clause was thoroughly updated to meet current standards and to further clarify resident's responsibility to maintain the apartment and for expenses for repairs for damage tenants may cause.

New language clarifies who is allowed to do work, and clarifies the landlords' rights relating to liens or other fines and penalties that may be assessed as a result of improvement work.

**Edit: #39 Satellite Dishes**

The “Satellite Dish” section has been updated with new language relating to allowable placement, liability, and owner protections.

**Edit: #53.1 Noise and Behavior**

The “Noise and Behavior” section has been updated with new language and more appropriately establishes the expectation that tenants resolve disputes amongst themselves and use neighborhood dispute services before filing any complaints against owners.

**Edit #53.2 Parking**

Parking requirements have been updated to include more restrictions related to storage, use and blockage of doors, sidewalks, and fire escapes.

**New Clause: #54 Attorneys Fees**

In the past we have been reticent to include any “Attorney Fees” language because these clauses attract tenant attorneys to assist bad tenants with unlawful detainer defenses and/or affirmative cases against owners. However, legal decisions have made it possible to require the limited reimbursement of fees for court actions that are filed by the owner for breach of contract and related causes of action, so a new paragraph, Section 54, has been added.

**Edit: #58 Termination**

The “Termination” paragraph received a rewrite and update that further establishes the right to depend upon termination notices from tenants, the ability to recover costs related to holding over, and further establishes the process and expectations when a tenant terminates their tenancy.

**NEW ADDENDUM: SFAA Rental Unit Registration Addendum**

The 2021 lease includes a new addendum– the new San Francisco Rent Registration Addendum. This form may be supplanted by a mandatory Rent Board form in the coming months, but for now we can begin the process of obtaining required unit registration information that will be required in July of 2022 and annually thereafter. The form tracks the Unit Registration and Licensing Ordinance in terms of what we will have to submit to the Rent Board each year for every rental. The form has also been created as an individual document to be used for existing tenancies before the July 2022 deadline.

## **Welcome to the 2021 SFAA Residential Tenancy Agreement**

by Eric R. Andresen, CPM

One again, Charley Goss, SFAA's Government Affairs Director, and I met with a volunteer panel of attorneys (remotely this year) to update the SFAA Residential Tenancy Agreement (RTA). We do want to take a moment to thank Curtis Dowling, Clifford Fried, Justin Goodman, Ashely Klein, Denise Leadbetter, Andrew Wiegel and Dave Wasserman, for their time and expertise. It was a great group this year, and we managed to accomplish a serious overhaul of the RTA. As of this writing, the 2021 RTA has been sent to the printer and is being prepared for online use and should be available from SFAA, soon.

While we knew we were going to have to make changes due to COVID-related restrictions, we also needed to begin to prepare for the Unit Registration and Licensing Ordinance that we will have to comply with by the middle of 2022. We also recognize that evictions are becoming more and more restrictive, so the 2021 RTA is updated to reflect a more updated approach to tenancy terminations.

COVID-19 has accelerated what was already happening in SF and in the state: evictions, or, to use the modern term, forced housing displacements, are becoming a thing of the past. Many of us now agree that we need to let go of the fictional notion that a property owner will ever be allowed to forcibly displace residents from their housing over relatively minor things like stating false information on a rental application or not covering 80% of the hardwood flooring.

This COVID nightmare could end tomorrow but we all need to recognize that the courts will likely never again entertain forced housing displacements for anything except severe nuisances, limited nonpayment of rent (after many chances to cure), and very restricted no-fault grounds. This is undoubtedly the new reality, and many of us believe that we need to modernize our attitudes. Terms like "evictions" should no longer be widely used, and we should not attempt to terminate a tenancy unless there is an absolute need to go down that rabbit hole. With that in mind, we have "toned down" the RTA by removing trigger words like eviction, electing instead to use phrases like recovering possession of the unit.

You will also find a new addendum attached to the RTA – the new San Francisco Rent Registration Addendum. This form may be supplanted by a mandatory Rent Board form in the coming months, but for now we can begin the process of obtaining required unit registration information that will be required in July of 2022 and annually thereafter. The form tracks the Unit Registration and Licensing Ordinance in terms of what we will have to submit to the Rent Board each year for every rental. The form has also been created as an individual document to be used for existing tenancies before the July 2022 deadline.

With the additional addendum and several additions to the RTA, we realized that 3 more pages had been added to the lease document. Recognizing that it was already too big, we took a lot of time rearranging and reformatting sections to fit better so many paragraphs are now in different places in the new RTA. The result is that we were able to reduce the RTA's overall length, but please be aware that some sections have moved around.

Going through the RTA from the beginning, the first substantial change is the addition of Paragraph 7 – Rent Board Fees. Recognizing that the Rent Board is likely going to have to substantially increase the annual fees to pay for the staffing that will be required as a result of the Unit Registration and Licensing Ordinance, we added this section to disclose our right to collect a portion of the fee from the tenants.

The next big change is to the “Occupancy” paragraph, now Section 12. Prior RTAs had extensive language relating to guests, the number of guests, and how long they could stay per year. Due to several new rules established by the Board of Supervisors and the Rent Board, such restrictions have become a thing of the past, so we have removed the language entirely. We do still have some legal rights in this regard, but they are no longer what they used to be and the prior language is simply not enforceable.

We have updated language in the “Utilities and House Rules” sections relating to recycling, garbage and boxes. Each year we have made improvements with the recommendations and support of our local scavenger company. We have strengthened the requirements that tenants must adhere to relating to recycling regulations, and have made it even more clear that tenants are responsible for disposing of their own large items such as boxes and other debris. We have also included our right to recover increased costs related to non-compliance with any of these requirements.

The “Maintenance and Repairs” paragraph, now Section 35, was given a complete overhaul. We have been adding to it for years, and it was time to review and update the section to meet current standards and to further clarify resident responsibilities not only for upkeep but for the expenses of repairs tenants may cause. We have also added succinct language about who is allowed to do work, and clarified our rights relating to liens or other fines and penalties that may be assessed as a result of improvement work.

The “Satellite Dish” section has been updated with new language relating to allowable placement, liability, and owner protections. The “Noise and Behavior” section has been updated with new language and more appropriately establishes the expectation that tenants resolve disputes amongst themselves and use neighborhood dispute services before filing any complaints against owners. Parking requirements have been updated to include more restrictions related to storage, use and blockage of doors, sidewalks, and fire escapes. We also worked with the SF Fire Department to enhance existing language relating to fire egress, access for firefighters, and maintenance of smoke and carbon monoxide detectors.

In the past we have been reticent to include any “Attorney Fees” language because these clauses attract tenant attorneys to assist bad tenants with unlawful detainer defenses and/or affirmative cases against owners. However, legal decisions have made it possible to require the limited reimbursement of fees for court actions that are filed by the owner for breach of contract and related causes of action, so a new paragraph, Section 54, has been added.

And finally, the “Termination” paragraph received a rewrite and update that further establishes the right to depend upon termination notices from tenants, the ability to recover costs related to holding over, and further establishes the process and expectations when a tenant terminates their tenancy.

Once again, we are grateful for the attorney panel that provided the time and talent in updating the RTA for 2021. Without a doubt, this has definitely become the most reliable and effective tool for residential rental property owners in San Francisco. As always, however, we do recommend that you continue to review your own legal concerns with qualified local counsel.

*Eric Andresen is a Past President and continuing member of SFAA's Board of Directors. He has been responsible for organizing the annual updates of the RTA for many, many years. Eric owns and operates West Coast Property Management and West Coast Property Maintenance companies.*