



Legal Update

Senate Bill 567 to add “Actual Damages” for Wrongful Eviction of a Tenant: How Much Can the Landlord Be Liable For?

The Tenant Protection Act (or TPA) is a statewide California rent control and just cause eviction law. When first enacted, it did not specify damages for wrongful eviction. Senate Bill 567 seeks to change that. Not only will it tighten up the rules on owner move and substantial rehabilitation evictions, but once the Governor signs it, which is highly likely, a tenant who has been wrongfully evicted in material violation of the TPA will be entitled to claim actual damages, attorney fees and costs (at the judge’s discretion), and a tripling of the actual damage if the owner acted willfully in addition to punitive damages.

Calculating actual damages is surprisingly complicated.

It may seem simple to calculate actual damages in this context, but a recent case reveals that it is anything but. The case of *DeLisi v Lam*, (2019) 39 Cal.App.5th 663, which involved the San Francisco rent control ordinance, is illustrative of how open ended the calculation can be.

In the *DeLisi* case, the owner had just purchased a four-plex in San Francisco, and then proceeded to terminate tenants under the owner move-in rules. However, the jury was skeptical and determined that the owner’s stated motives were bogus. So, the trial proceeded to the calculation of damages.

Two expert witnesses present two competing views.

Each side in the case had their own expert testify as to the correct calculation of actual damages -- which were mutually exclusive theories. So, the landlord asked the judge to rule on which measure of damages it would allow the jury to hear. But the judge simply said no. It was for the jury, not the judge to decide between the competing expert witnesses' views as to the appropriate measure of damages.

Expert for the tenant uses the difference between rent-controlled rent and market rent

First, according to the expert for the tenant, actual damages are the difference between the rent-controlled rent previously being paid by the tenant and the market rate rent of the unit, multiplied by the tenant's intended length of occupancy. The tenant testified that she intended to stay five to ten years. Under the San Francisco ordinance, a triple damage penalty is automatically applied. Taking into account the present value of a ten-year tenancy, the expert arrived at a figure of \$287,180. That figure multiplied by three would allow for total damages of approximately \$860,000.

Expert for the landlord uses out-of-pocket costs

The expert for the landlord took a different view. In his view, the value of the rent-controlled tenancy was not an asset the tenant could monetize. Instead, damages would be the amount the tenant was out-of-pocket beyond what she would have been if she had stayed in the rent-controlled apartment. This included moving expenses, the difference between her monthly rent at the rent-controlled property and her monthly rent at her new apartment (about \$500 dollars), and any differences in expenses for items such as commuting to work. All in all, "actual damages" would be \$23,139 for a five-year period and \$48,183 for a 10-year period. Multiplied by three, these dollar figures are still considerable, but a far cry from the amount arrived at by the tenant's expert.

And the verdict is...?

The jury returned a verdict for \$120,000, \$110,000 of which was "economic damage" and \$10,000 was for past mental damages. After multiplying this amount by three, the total award to the tenant was \$360,000. Which theory of "actual damages" did the jury base their decision on? No one knows. The jury did not explain the method of calculation behind its award, although it seems to have split the difference between the two expert views making it all the more difficult to decipher the result.

Damages for wrongful termination are difficult to assess.

Speculating about the price tag on ultimate legal liability for wrongful termination is just that – speculation. For a property subject to rent control, no attorney will be able to give a clear picture of exactly how much that liability is. Based on the DeLisi case, that liability can vary wildly. Mind you, the problem will be compounded by the fact that under SB 567, a triple damage award may be imposed if the wrongful termination is "willful."

Attorney Fees under SB 567?

Attorney fees are an additional unknown. In many legal cases the attorney fees are staggering, often in excess of the actual damages awarded. Under SB 567 attorney fees may be awarded to the tenant at the discretion of the judge. This is another wild card thrown into the mix, just in case you thought you knew the upper limit of a landlord's liability for wrongful termination.