

## Individual Rent Adjustment (IRA)

As of January 1, 1999 Berkeley rent law provides for only three methods for a landlord to obtain a rent increase:

- 1) when the unit becomes vacant ("qualifying" vacancy only),
- 2) with the Annual General Adjustment (AGA), (usually 1%) or,
- 3) with an Individual Rent Adjustment (IRA).

The following are the requirements a landlord must meet to qualify for an Individual Rent Adjustment.

### **REASONS FOR AN INDIVIDUAL RENT ADJUSTMENT**

The following reasons provide justification for a rent increase:

- (1) Maintenance of Net Operating Income (reg. 1262-64)
- (2) Financing Capital Improvements (reg. 1267)
- (3) Increase in the Number of Tenants (reg. 1270)
- (4) Low Rent Increase Between 1976-79 (reg. 1268)
- (5) Debt Service on Mortgages (reg. 1276)
- (6) Other (reg. 1275)

### **MAINTENANCE OF NET OPERATING INCOME**

Net operating income is defined as gross income minus operating expenses. Under regulation 1264, landlords are entitled to maintain the level of net operating income that was produced during the base year (1979). If a landlord's net operating income has fallen below the base level of 1979, the landlord may be entitled to an increase.

### **FINANCING CAPITAL IMPROVEMENTS**

Capital improvements are defined in regulation 1267 as any improvement to a unit or building which has a useful life of greater than one year, and a cost of \$200 or more per unit affected. For a landlord to be eligible for an adjustment to offset capital improvements, the improvements must either be approved in writing by a majority of the tenants, or must be necessary to bring the property into compliance with housing codes. Also, to receive an adjustment, the landlord must prove that rent increases above the level of the base year of 1979 will not cover the cost of the improvement. Amounts awarded to cover the cost of capital improvements must be amortized over the life of the objects constituting the improvement.

### **INCREASE IN THE NUMBER OF TENANTS**

If the number of tenants increases above the base occupancy level, the landlord may be eligible for an IRA. The base level is defined as the highest number of tenants occupying the unit with

the landlord's knowledge between June 1, 1979 and May 31, 1980. Landlords are limited to a 10% increase per added tenant.

### **LOW RENT INCREASES FROM 1976-79**

If the landlord has been in compliance with Measure D since its enactment (May 31, 1980) and the rent level on Dec. 31, 1979 was not more than 10% greater than that of Jan. 1, 1976, the landlord may be eligible for an increase. The increase can be calculated by subtracting the difference between the Jan. 1, 1976 and Dec. 31, 1979 rent levels from 10% of the Jan. 1, 1976 rent level.

### **DEBT SERVICE ON MORTGAGES**

Landlords can be granted rent increases to cover increased debt service costs for one of the two reasons:

1. To cover increased debt service costs for properties purchased or refinanced between June 3, 1980 to the extent that: (a) the landlord can prove that rents were not increased prior to Measure D to cover the greater cost, and (b) the increase granted is the difference between the current financing arrangements and the previous financing arrangements.
2. To cover increased debt service costs for refinancing done after June 3, 1980, only if the refinancing was required by a financing agreement signed before June 3, 1980.

### **OTHER**

This category includes any reason deemed relevant by the Rent Board. Many landlords petition for a "fair return on investment" adjustment under this category. The rent Board presently defines fair return as maintaining the net operating income level.

### **LIMITATIONS ON INDIVIDUAL RENT INCREASES**

Tenants should be aware that regardless of the reason for the adjustment, the yearly increase is limited to 15% of the maximum rent that can be charged, or \$50 per month, whichever is less. For instance, a landlord may be granted a 40% increase, but it would take 3 years for the full 40% to be realized.

### **NOTIFICATION OF A LANDLORD IRA**

If a landlord files petition for an IRA, tenants occupying all units involved in the IRA will receive copies of the petition from the Rent Board. Tenants should carefully review each section of the petition to ensure that it is properly completed. Consult RLA staff for assistance. The burden of proof rests on the landlord, and if the petition is improperly completed, the landlord's IRA may be disallowed.

### **THE HEARING PROCESS**

The hearing process consists of two meetings between the tenant and landlord. The first meeting is the pre-hearing. The purpose of the pre-hearing is (1) to try to reach an informal settlement; and (2) to discover what points are important or controversial in the petition. If no settlement is reached during the pre-hearing, then the case goes on to the second meeting - the actual hearing. During the hearing, both parties are allowed to testify and cross-examine. All hearings and pre-

hearings are open to the public. In addition, tenants are allowed to receive help from one of the various tenant assistance groups or a lawyer before and during the hearing and pre-hearing.

Both meetings are conducted by a Hearing Examiner. In addition to making a decision on the petition, the Hearing Examiner may:

- (1) grant requests for subpoenas and order the gathering of evidence
- (2) rule upon requests for continuances to postpone the hearing to a later date
- (3) call, examine, and cross-examine witnesses

If the Hearing Examiner has a financial interest in the case, or a personal bias against one of the involved parties, the offended party may file a written request for disqualification to the Senior Hearing Examiner. This request must be filed at least 72 hours before the hearing.

A few items may be helpful at the hearing. Tenants should bring copies of rent checks, letters between the landlord and the tenant, copies of the lease, witnesses, or anything else that may help the tenant prove his case.

### **APPEALS**

The decision of the Hearing Examiner may be appealed by either party within 30 days of the day the decision is received. The fee for appeal is \$60, some or all of which is refundable if the appeal is successful. A written request for reconsideration of the appeal decision by the full Rent Board can be filed within seven days of the day the appeal decision is received. The appeal should state reasons why the original decision was incorrect, and provide support for these reasons.

### **FAST TRACK REVIEW**

The landlord can expedite the IRA process by using a fast track review. In this process, both the landlord and the tenant agree in writing to the increase. Tenants should be aware that this process requires that they waive their right to appeal the decision. Do not sign anything unless you are sure of the consequences.