

Local Eviction Controls and Enhanced Voucher Statute Protect Voucher Holders

A federal district court has granted a permanent injunction that allows twenty-two assisted tenants to remain in Los Angeles' Morton Gardens apartments and orders the owners to comply with the city's eviction protection ordinance. In *Barrientos v. 1801-1825 Morton, LLC*, the court held that sixteen enhanced-voucher holders had a right to remain in their assisted units when the owners sought to evict them in order to raise rents.¹ The court also held that Department of Housing and Urban Development (HUD) regulations permitting owners to evict voucher tenants based on business or economic reasons did not preempt the eviction protections of the Los Angeles Rent Stabilization Ordinance (LARSO).²

Background

Morton Gardens is a sixty-six-unit apartment complex that was developed in 1971 as low-income rental housing.³ The complex was funded by a federal mortgage-secured loan under Section 236 of the National Housing Act.⁴ The complex was subject to a use agreement requiring the units to be rented to low-income households and limiting the amount of rent that could be charged.⁵

In 1998, Morton Gardens' prior owner prepaid the Section 236 loan, extinguishing the use agreement.⁶ When private owners leave HUD's multifamily housing programs by prepaying their subsidized loans, many tenants are eligible to receive enhanced vouchers, pursuant to annual appropriations acts passed during the late 1990s and permanent legislation passed in 1999.⁷ As a result, enhanced vouchers were issued to the tenants who lived at Morton Gardens at the time of prepayment.⁸ Enhanced vouchers are largely equivalent to tenant-based Housing Choice Vouchers (HCV), except that the payment standards for these vouchers can be higher to cover the new higher market rent.⁹ Further, enhanced-voucher tenants have a federal statutory right to remain in their homes.¹⁰

Subsequently, other tenants with regular HCVs also moved into the property.

All of the tenants' apartments were subject to LARSO.¹¹ The federal regulations governing housing choice vouchers permit evictions based on "[a] business or economic reason for termination of the tenancy (such as...desire to lease the unit at a higher rental)."¹² In contrast, LARSO lists as a permissible ground for eviction certain business or economic reasons but not an owner's desire to raise the rent. As a result, when a tenant's unit is covered by LARSO's eviction protections, but that tenant also receives housing choice voucher assistance, a question arises as to whether the owner can evict the tenant for the purpose of raising the rent, or for other business or economic reasons unrecognized by local law.

On June 30, 2006, Defendant 1801-1825 Morton LLC served on each voucher tenant a "Ninety Day Notice to Terminate Tenancy."¹³ The notice stated that Morton LLC was terminating the rental agreement "for a business or economic reason, including but not limited to, the desire to opt-out of the Tenant Based Section 8 Program and/or the desire to lease the unit at a higher rental rate."¹⁴

On October 9, 2006, all twenty-two voucher tenants filed a complaint in federal court alleging that Morton LLC had violated the enhanced voucher statute and LARSO. The parties stipulated that no unlawful detainer actions would be filed against the tenants for the pendency of the litigation and agreed on a set of stipulated facts.¹⁵

On May 7, 2007, the tenants filed a motion for summary judgment advancing two arguments. First, the sixteen enhanced voucher tenants argued that the enhanced-voucher provisions of Section 8 afforded them a right to remain, even if Morton LLC had complied with the Section 8 regulation authorizing evictions for certain grounds.¹⁶ Second, the tenants argued that the LARSO grounds for eviction limited Morton LLC's ability to evict both the sixteen tenants with enhanced vouchers and the six tenants with housing choice vouchers.¹⁷

Residents' Enhanced Voucher Protections

The court first examined whether the enhanced-voucher tenants had a right to remain in their homes despite what it characterized as the owner's desire to terminate their rental agreements in order to charge higher rents.¹⁸ Pursuant to 42 U.S.C. § 1437f(o), during the lease term, an owner participating in the housing choice voucher program "shall not terminate the tenancy except

¹*Barrientos v. 1801-1825 Morton, LLC*, No. 06-6437, slip op. (C.D. Cal. Sept. 10, 2007) (hereafter, "Sept. 10 slip op.").

²Los Angeles Municipal Code § 151.01 *et seq.*

³Sept. 10 slip op. at 3.

⁴12 U.S.C. § 1715z-1.

⁵Sept. 10 slip op. at 3.

⁶*Id.*

⁷Pub. L. No. 106-74, § 538, 113 Stat. 1047, 1122 (1999) (establishing Section 8(t) of the United States Housing Act and codified at 42 U.S.C. § 1437f(t)).

⁸Sept 10 slip op. at 3.

⁹*See generally* NHLP, HUD HOUSING PROGRAMS: TENANTS' RIGHTS § 15.4.2.4 (3d ed. 2004).

¹⁰*See* 42 U.S.C.A. § 1437f(t)(1)(B) (West 2003).

¹¹Sept 10 slip op. at 3.

¹²24 C.F.R. § 982.310(d)(iv) (2007).

¹³Sept 10 slip op. at 5.

¹⁴*Id.*

¹⁵*Id.* at 5-6.

¹⁶*Id.* at 9.

¹⁷*Id.* at 20.

¹⁸*Id.* at 9.

for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause.”¹⁹ HUD has defined “other good cause” as including “[a] business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).”²⁰

A separate provision, 42 U.S.C. § 1437f(t), governs enhanced vouchers and provides that an “assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project...”²¹ The enhanced-voucher tenants at Morton Gardens argued that this provision gave them a right to remain in their homes for as long as they remained voucher-eligible and lease-compliant.²² Accordingly, the tenants argued that § 1437f(o), which permits eviction for “other good cause,” does not apply to enhanced voucher holders, at least insofar as it would permit evictions based on grounds unrelated to tenant misconduct.²³

In addressing this argument, the court first ruled that enhanced-voucher tenants have a right to remain in occupancy even when an owner exits a HUD-assisted program. Citing a case from another district court, the court noted that “[t]he enhanced voucher program was created to ensure that tenants would not be displaced upon the termination of project-based subsidies,” and that the Housing Act “expressly provides that tenants ‘may remain’ and that they may use enhanced vouchers to do so.”²⁴

The court next ruled that even though the enhanced-voucher tenants had a right to remain, they were not protected from being evicted under the “other good cause” provision of § 1437f(o).²⁵ The court found that the statutory language and legislative history of the enhanced-voucher provision indicated that Congress intended to encourage owner participation in the program, and that barring owners from evicting based on other good cause would undermine this intent.²⁶

The court next ruled that even though the enhanced-voucher tenants could be evicted for other good cause, the desire to lease units at a higher rent cannot constitute other good cause for evicting them.²⁷ The court found that the language and history of § 1437f(t), which require

additional assistance to cover higher rents, “unambiguously provide enhanced-voucher tenants a right to remain in tenancy when the rent is raised.”²⁸ The court reasoned that “[g]iven the clear right to remain established by [§ 1437f(t)], Congress could not have intended that a recognized justification for enhanced vouchers—rent increases—would also constitute ‘other good cause’ to evict those same tenants.”²⁹ The court therefore granted summary judgment, concluding that HUD regulations permitting evictions based on the “desire to lease the unit at a higher rental” cannot be applied to enhanced-voucher tenants.³⁰

Does Federal Law Preempt LARSO?

Six of the Morton Gardens plaintiffs held standard housing choice vouchers, and they, therefore, did not fall within the enhanced voucher statute analyzed by the court.³¹ These tenants argued that regardless of the protections afforded to the enhanced-voucher tenants, all of the Morton Gardens tenants were protected from eviction by LARSO where the asserted grounds were not recognized by the local law. In opposition, Morton LLC argued that HUD’s regulations regarding evictions based on other good cause preempt LARSO. This issue affects thousands of voucher tenants both in Los Angeles and nationwide who are covered by local eviction protections.

The court first found that an actual conflict exists between LARSO and federal law.³² The court found that HUD’s regulations permitting owners to evict based on the desire to raise rents directly conflicted with LARSO, which does not list the owner’s desire to raise rents as a permissible ground for eviction.³³

The court next refused to enforce, as contrary to Congressional intent, HUD’s regulation defining “other good cause” as including the desire to raise rents.³⁴ The court found that the regulation was unreasonable because “[b]y defining ‘other good cause’ to include raising rents, HUD has favored the policy of owner participation to the complete exclusion of protecting tenants from arbitrary evictions.”³⁵ The court also noted that in enacting the housing choice voucher provisions, Congress acknowledged that some assisted units would be subject to local rent control.³⁶ The court found that HUD’s regulation defining “other good cause” as including raising rents would allow owners to circumvent this congressional understanding by permitting owners to evict rent-controlled

¹⁹42 U.S.C.A. § 1437f(o)(7)(C) (West 2003) (emphasis added).

²⁰24 C.F.R. § 982.310(d)(1)(iv) (2007). HUD has limited an owner’s use of “business or economic reasons” to terminations after the initial lease term. § 982.310(d)(2).

²¹42 U.S.C.A. § 1437f(t)(1)(B) (West 2003).

²²Sept 10 slip op. at 9. The court slightly misapprehended the tenants’ claim, which was not that the tenants were immune from eviction for breaches of the lease.

²³*Id.*

²⁴*Id.* at 13 (citing *Estevez v. Cosmopolitan Assocs.*, 2005 WL 3164146, at * 6 (E.D.N.Y. Nov. 28, 2005)).

²⁵*Id.* This reasoning ignores the fact that encouraging owner participation is irrelevant to enhanced vouchers, which converting owners are obligated to accept.

²⁶*Id.* at 15.

²⁷*Id.* at 19.

²⁸*Id.* at 17.

²⁹*Id.* at 19.

³⁰*Id.* (citing 24 C.F.R. § 982.310(d)(iv) (2007)).

³¹*Id.* at 20.

³²*Id.* at 22.

³³*Id.* at 34.

³⁴*Id.* at 37.

³⁵*Id.* at 36.

³⁶*Id.* at 40.

tenants for the sole purpose of raising rents.³⁷ The court therefore granted summary judgment to the housing choice voucher tenants, finding that HUD had exceeded its authority by defining “other good cause” to include the desire to raise rents.³⁸

California Law Does Not Preempt LARSO

Morton LLC also argued that California Civil Code § 1954.535 preempted LARSO.³⁹ This provision requires that a tenant be given at least ninety days’ notice before an owner terminates or fails to renew a contract with a governmental agency that provides for rent limitations to the tenant.⁴⁰ The provision also mandates that the tenant “shall not be obligated to pay more than the tenant’s portion of the rent, as calculated under the contract or recorded agreement to be terminated, for ninety days following receipt of the notice of termination o[r] nonrenewal of the contract.”⁴¹ Morton LLC contended that this provision regulates the right to terminate Section 8 contracts in California and preempts LARSO. However, the court noted that the section preceding § 1954.535 explicitly preserves local eviction controls, and provides that “[n]othing in this section shall be construed to affect any authority of a public entity that may otherwise exist to regulate or monitor the grounds for eviction.”⁴² Accordingly, the court found that the statutory language and its legislative history indicated that Section 1954.535 was not intended to preempt LARSO eviction controls.⁴³

The Court’s Clarification of Its Opinion

On September 24, 2007, defendant Morton LLC filed a motion for reconsideration.⁴⁴ Morton LLC asserted that the court overlooked its argument that it sought to evict the voucher holders, not just to raise rents, but also to avoid the costs of complying with the Section 8 program.⁴⁵ Morton LLC also argued that pursuant to 24 C.F.R. § 982.310(d)(1)(iv), it was permitted to evict the tenants based on unspecified “business or economic reasons.”⁴⁶

In ruling on the motion to reconsider, the court reaffirmed its prior ruling that to the extent the tenants’ evictions were based on a desire to raise rents, they were invalid.⁴⁷ The court further found that an owner’s desire to avoid the costs of Section 8 program requirements cannot

constitute good cause for eviction.⁴⁸ The court reasoned that good cause “demands more than a bare desire to opt out of the program—whether for excessive costs or some other programmatic reason.”⁴⁹

Most significantly, the court clarified that when owners evict voucher holders based on “business or economic reasons,” they are limited to the grounds for eviction enumerated in LARSO.⁵⁰ The court found that HUD intended for the courts to interpret the term “business or economic reasons” during eviction proceedings,⁵¹ and that Congress intended Section 8 tenancies to mirror the unassisted rental market.⁵² The court reasoned that “[l]imiting evictions to those defined in LARSO places assisted and unassisted tenants on equal footing,” and that “Congress could not have intended for assisted tenants to be less well-off than unassisted tenants in [eviction control] areas such as Los Angeles.”⁵³ Because the cost of program compliance is not a ground for eviction in LARSO, the court found that it was also impermissible to evict the tenants on that basis.⁵⁴

Conclusion

Numerous cases raising the issue adjudicated in *Barrientos* remain pending in California state courts in the Los Angeles area. *Barrientos* provides valuable protections for voucher tenants in Los Angeles who are at risk of being evicted for business or economic reasons that are not enumerated in LARSO. It may also provide valuable guidance to other courts in jurisdictions where voucher tenants are covered by local eviction protection ordinances. On November 13, the owner filed an appeal with the United States Court of Appeals for the Ninth Circuit, so a final disposition of these issues may now take another year or more. ■

³⁷*Id.*

³⁸*Id.* at 41.

³⁹*Id.* at 42.

⁴⁰CAL. CIV. CODE § 1954.535 (West 2007).

⁴¹*Id.* § 1954.535.

⁴²CAL. CIV. CODE § 1954.53(e) (West 2007).

⁴³Sept 10 slip op. at 43.

⁴⁴*Barrientos v. 1801-1825 Morton, LLC*, No. 06-6437, slip op. (C.D. Cal. Oct. 24, 2007) (order granting motion to reconsider and clarifying prior order) (hereafter “Oct. 24 slip op.”).

⁴⁵*Id.* at 2.

⁴⁶*Id.*

⁴⁷*Id.* at 3.

⁴⁸*Id.* at 18.

⁴⁹*Id.*

⁵⁰*Cf. Rosario v. Diagonal Realty, L.L.C.*, 2007 WL 1879349 (N.Y. Jul. 2, 2007) (upholding the application of New York’s City’s rent stabilization laws to Section 8 voucher tenants); see also Jason Lee, *New York’s Highest Court Rules NYC Voucher Owners Must Offer Assisted Renewal Leases*, 37 HOUS. L. BULL. 158, 158 (2007). *Rosario*, however, involved an owner’s refusal to offer a renewal lease as required by local law, not an eviction based on alleged other good cause.

⁵¹Oct. 24 slip op at 3, 13.

⁵²*Id.* at 14.

⁵³*Id.*

⁵⁴*Id.* at 10.