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Mediating Tenant vs. Landlord Disputes: Finding the Middle Floor

By Andrew Westley
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The landlord was convinced she had done everything a prudent landlord should have done to address the rodent infestation, bringing in a pest remediation company. The tenant, however, moved out of his long-term, rent-controlled apartment after complaining to the landlord for months about rodent droppings in his unit.

Now the tenant seeks compensation, but by hour six of mediation the parties are still far apart and their frustrations are high. The landlord's liability also remains high. How did a simple rodent problem turn into a potential six-figure standoff?

Many cities have stringent rent-control and just-cause eviction protections and the law leaves little margin for error. Over 40 years as a litigator, with 20 as a settlement judge pro tem and now as a private mediator, I learned that effective mediation of tenant-landlord disputes calls for more than knowledge of the statutes and case law; it requires a balanced assessment of the risks that haunt *both* sides of the table.

Courtesy photo

Andrew Westley, with Signature Resolution.

The Legal Landscape

While every case has its own unique story, each plays out against a rigorous statutory backdrop. The law may not pre-determine the outcome, but it will definitely set the boundaries.

In California, every residential lease includes an absolute legal requirement that the landlord maintain the property in a condition fit for human occupation. This is a powerful sword for tenants, opening the door to contract and tort damages that do not evaporate when the lease ends.

Every California residential lease also contains an implied covenant of quiet enjoyment, a contractual duty for landlords to protect their tenants' right to peaceful possession. Landlords often mistakenly believe that quiet enjoyment claims are limited to disturbances they create, not neighbor-versus-neighbor disputes, but the landmark case of *Andrews v. Mobile Aire Estates* (2005) 125 Cal. App. 4th 578 held that a landlord who simply looks the other way when a neighbor creates a disturbance may be liable for breaching the covenant of quiet enjoyment. It is a question of fact that can catch owners off guard.

Rent-Control and Just-Cause Eviction Protection

Many California cities maintain a dual system of rent-control and just-cause protection for rental units. Rent-control limits the "how much" of a rent increase, while just-cause limits the "why" and "how to" of an eviction.

Supplementing the local patchwork is the California Tenant Protection Act of 2019 (AB 1482), which caps annual rent increases at 5% plus the local inflation rate, not to exceed a 10% ceiling. AB 1482 also mandates just-cause for evictions once all tenants have lived in the unit for 12 months, or when at least one tenant has occupied the unit for 24 months.

While expansive, AB 1482 is not absolute. Some properties are exempt, such as certain single-family homes and condominiums, as well as properties constructed within the last 15 years. Notably, AB 1482 does not override local ordinances that offer stronger tenant protections. In cities with more restrictive rent-control or just-cause laws, the local rules take precedence.

In mediation, understanding whether the unit is covered under rent-control and/or just-cause eviction protection is essential when calculating a landlord's potential exposure.

Wrongful Eviction and Constructive Eviction

If a landlord "wrongfully" recovers possession of a unit, the financial fallout he or she faces can be significant. These cases typically center on two distinct theories of liability:

- **Actual eviction (procedural breach):** This is a direct attempt to end a tenancy, ignoring statutory requirements. Whether it's an owner move-in that turns out to be a sham, or a "no-cause" notice served in a "just-cause" city, the landlord's procedural failure can create a cause of action for the displaced tenant.
- **Constructive eviction (substantial interference):** This is a "*de facto*" eviction. No sheriff is called and no notice is taped to the door, but the landlord's failure to act—such as ignoring severe habitability defects or refusing to curb an abusive neighbor—makes continued residency impossible. In these cases, the tenant's departure is treated as a forced removal, often carrying the same heavy penalties as a direct eviction.

A landlord who wrongfully recovers possession of a unit or who violates the rent cap limitations of AB 1482 faces significant legal exposure under the statute and most local ordinances. Even the mere *attempt* to unlawfully

recover a unit can trigger liability. A bungled actual eviction or a forced constructive eviction will generally be recognized as a "wrongful recovery," exposing the landlord to significant statutory damages, whether the tenant was removed by a notice or by unlivable conditions.

The High Cost of Non-Compliance

Recoverable damages are cumulative, and they may include any or all of the following:

- Rent abatement or refund if the premises fall below habitability standards
- Out-of-pocket and property loss
- General compensatory damages
- Lost value of the tenancy (rent-differential), often the largest component of a claim because it measures the difference between the tenant's current rent and the fair market value of a comparable unit, projected over the expected duration of the tenancy
- Mandatory treble damages. Many local ordinances mandate that "actual damages" be tripled, and case law is clear that "actual damages" includes rent-differential damages. AB 1482 and some local ordinances require a showing of "bad faith."

Imagine a long-term tenant paying $1,000 for a unit that now rents for $3,000. That $2,000 monthly difference, projected over 20 years and then tripled under local mandatory trebling ordinances, creates a $1.44 million liability.

On top of this, AB 1482, as well as most local ordinances and many standard lease agreements, contain fee-shifting provisions. Whichever side prevails will be on the hook for the other side's attorney's fees and costs.

Mediation Challenges

Insurance: A Common Stumbling Block Insurance is often the wildcard in mediation. Landlords may believe they are fully covered, only to find exclusions for intentional acts or wrongful eviction. This creates a "mediation within a mediation" between the landlord and their carrier, often requiring independent *cumis* counsel.

If the alleged misconduct spanned several years, multiple insurance carriers may be involved. The mediator must manage a complex secondary negotiation to determine how these carriers will apportion their respective contributions to the settlement (i.e., the time on risk conundrum). Without liquid insurance funds to bridge the gap, cases frequently reach a stalemate, pushing parties toward the very trial they sought to avoid.

Asymmetric Risk: Exposure Imbalance The sheer "tilt" of the playing field can be a significant challenge in mediation. With mandatory trebling provisions in many local ordinances, a landlord's financial exposure is often disconnected from the tenant's actual loss. This asymmetric risk can be exacerbated by fee-shifting provisions. Damages might be a few thousand dollars, but fee-shifting provisions create a nightmare for the defense, a "tail wags the dog" scenario where the cost of defense and the threat of plaintiff's fees become the primary drivers of settlement.

The "tilt" may not, however, always be in the tenant's favor. Tenants should understand the

"shadow risks" they face by proceeding to trial. A million-dollar judgment is just a piece of paper if the landlord is judgment proof or files for bankruptcy. A tenant who rejects a 998 offer and fails to do better at trial could be on the hook for the landlord's legal fees—a debt that could lead to financial ruin.

Valuing the "Rent-Controlled Asset" While experts can offer a clinical opinion on a rent-controlled unit's fair market value, the real dispute often centers on the "duration of occupancy." A mediator must bridge the gap between a landlord who assumes the tenant would have moved in two years and a tenant who intended to stay for 20 years or more. Especially in a just-cause jurisdiction where a residential tenancy can be tantamount to a life estate, this valuation highlights the actuarial reality of a "rent-controlled asset."

Emotional Volatility and Harassment Claims Tenant-landlord disputes are rarely just about the lease; they are about "home" and "displacement." When a tenant alleges harassment, mediation can become a forum for years of accumulated frustration regarding safety, dignity, and personal space. A mediator is a pressure valve, balancing the cold legal valuation of the claim with the tenant's emotional need for validation. Ignoring the "human element" in these cases could result in impasse.

Conclusion

These lawsuits aren't just about statutes and treble damages; they are about people's homes and their livelihoods. A successful mediation doesn't just settle a claim; it provides a finality that a courtroom rarely offers, allowing both parties to start moving forward.

Andrew Westley *is a neutral with Signature Resolution who brings 40 years of legal and dispute resolution experience to his work helping parties resolve complex landlord-tenant and business disputes. He is co-author of California Landlord-Tenant Litigation (LexisNexis), a leading practice guide offering practical insight and strategies for navigating landlord-tenant disputes. He is also a contributing author and editor for the Federal Litigation Guide (LexisNexis) and a frequent contributor to San Francisco Apartment Magazine.*

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