Filed 4/10/02; pub. & mod. order 5/9/02 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

JONATHAN COBB, **Petitioner,** **v.** **CITY AND COUNTY OF SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD,** **Respondent;** **RICHARD PASSALACQUA,** **Real Party in Interest.**	**A095196** **(San Francisco County Super. Ct. No. 314966)**

Jonathan Cobb appeals a judgment denying his petition for writ of administrative mandate (Code Civ. Proc.,[1] § 1094.5) reviewing a rent control decision of the San Francisco Residential Rent Stabilization and Arbitration Board (Rent Board). Cobb sought to set aside the Rent Board's decision establishing the base rental of his tenant, Richard Passalacqua, as $600. He contends he is entitled to a base rental of $1,500 under the Costa-Hawkins Rental Housing Act (Civ. Code, § 1954.50 et seq.; Costa-Hawkins Act).

FACTUAL BACKGROUND[2]

Since 1984, Cobb has owned and resided in one unit of a four-unit apartment building. Sometime in 1984, he rented another unit to Frances Restoni for $440 per month. Cobb acknowledged that he lost the Restoni rental agreement, but, according to

[1] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

Cobb, it was a standard form rental agreement, which provided that a "Tenant shall not assign this agreement or sublet any portion of the premises without prior written consent of the Owner."

Cobb never increased Restoni's rent. In March 1996, Restoni's son, Richard Passalacqua, moved into her apartment without obtaining Cobb's permission. According to Passalacqua, his son, Joseph, then 15 years old, also began living half-time in the apartment. According to Cobb, whenever he asked about Passalacqua's plans, Restoni and Passalacqua both replied that Passalacqua was staying only temporarily.

In May 1998, Restoni vacated her apartment due to ill health. Thereafter, Cobb accepted rent from Passalacqua, who had not paid him rent as long as Restoni was living in the apartment. Effective November 1, 1998, the rent was raised to $600 per month, pursuant to an oral agreement between Cobb and Passalacqua. Passalacqua thought the increase was "fair."

In late spring 1999 Joseph, then 18 years old, began living full time in the apartment. In June 1999 Cobb served Joseph with a "6.14 Notice." The notice informed Joseph that "(1) [w]hen the last tenant vacates the premises, a new tenancy is created for purposes of determining the rent under the [San Francisco Residential Rent Stabilization and Arbitration Ordinance (Rent Ordinance)]; and (2) [a]ll new co-tenants or occupants are not considered tenants under subsection (a) of Section 6.14 of the [Rent Board's] Rules and Regulations." The notice included a copy of Rule 6.14, as amended March 24, 1998.[3] Under the Rent Ordinance, a new tenancy permits a landlord to increase the rent without the Rent Ordinance limitations on rental increases to an in-place tenant. (S.F. Admin. Code, § 37.3(d)(1)(a).)

It is undisputed that Cobb never served Passalacqua with a "6.14 Notice."

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[2] Our factual summary is drawn from evidence presented before the Rent Board's administrative law judge.

[3] See footnote 6, *post*.

By letter dated June 16, 1999, Cobb's attorney admonished Passalacqua of his obligation to pay his rent in a timely fashion, and failing to do so, "your landlord may lawfully terminate your rental agreement on the ground that you have habitually paid the rent late."

In mid-September 1999, Cobb notified Passalacqua that, effective November 1, 1999, the rent would increase to $1,500 per month, in accordance with the Costa-Hawkins Act. Passalacqua then petitioned the Rent Board for arbitration on the grounds that the rent increase to $1,500 was beyond the limits permitted under the Rent Ordinance. Cobb responded that the rent increase was not governed by the Rent Ordinance but by the Costa-Hawkins Act because Passalacqua moved into the apartment after January 1996 and Restoni, its original occupant, had since vacated it.

The section of the Costa-Hawkins Act on which Cobb relied states: "Where the original occupant . . . who took possession of the . . . unit pursuant to the rental agreement with the owner no longer permanently reside[s] there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the . . . unit prior to January 1, 1996." (Civ. Code, § 1954.53, subd. (d)(2).)

PROCEEDINGS BEFORE THE RENT BOARD

The Rent Board hearing officer concluded that the Costa-Hawkins Act was inapplicable because Passalacqua was not a sublessee or assignee of Restoni. Instead, he became Cobb's tenant when Cobb began accepting rent from him in May 1998. The hearing officer also observed that "there is not compelling evidence" the original lease contained a prohibition against subleases or assignments without the landlord's prior written permission. But even if it did, the hearing officer concluded that Cobb waived any prohibition in the original rental agreement by his conduct. The landlord accepted rent, including a rent increase, from Passalacqua; he sent him notices of habitually late rent payments; and, despite knowing Passalacqua was living in the apartment as early as 1996, failed to take any action to confirm that Passalacqua's residency was temporary.

The hearing officer granted Passalacqua's petition and ordered that his current base rent remain $600, with an anniversary date of "November." The order does not give

a year for the anniversary date, but it is presumably November 1998, when Passalacqua's rent was increased to $600.

Cobb appealed the hearing officer's decision to the Rent Board, which accepted the appeal and remanded it for a hearing on the issues of waiver and estoppel. Specifically, the hearing officer was to determine: (1) Did Cobb's acceptance of rent from Passalacqua after Restoni moved out constitute a waiver of the Costa-Hawkins Act, insofar as Cobb did not receive written notice of Passalacqua's occupancy of the apartment and thereafter accepted rent? (2) Was Passalacqua estopped from asserting that Cobb waived his statutory right to a market rate increase because he attempted to deceive Cobb into accepting rent by claiming that he was residing in the apartment only temporarily?

The hearing officer granted Passalacqua's petition on remand after concluding Cobb failed to establish waiver or estoppel. When Cobb's appeal to the Rent Board was denied, he filed the instant petition for administrative mandate.

This appeal follows the denial of Cobb's petition by the trial court.

DISCUSSION

Cobb contends the Rent Board's decision[4] was an abuse of discretion because it was not supported by the evidence and was contrary to the provisions of the Costa-Hawkins Act.

I. *Standard of Review*

In determining whether to grant a writ pursuant to section 1094.5, the trial court inquires whether there was a prejudicial abuse of discretion in the administrative agency's decision. (§ 1094.5, subd. (b).) An abuse of discretion is established if the agency has not proceeded in the manner required by law, its decision is not supported by the findings, or the findings are not supported by the evidence. (§ 1094.5, subd. (b).) Where there is a claim that the findings are not supported by the evidence and, in matters

[4] We recognize that the decision and findings therein were actually made by a hearing officer, although the Rent Board ultimately voted to deny the landlord's appeal. For convenience we refer to the hearing officer's decision and findings as that of the Rent Board.

like this where the court does not exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record. (§ 1094.5, subd. (c); *Getz v. City of West Hollywood* (1991) 233 Cal.App.3d 625, 627.)

The appellate court reviews the agency's decision under the same substantial evidence standard used by the trial court.

II. *Timeliness of Petition*

A threshold issue is whether Cobb's section 1094.5 petition was timely. The Rent Board contends it is time-barred because he failed to file it within statutory limits.

A person seeking judicial review of an agency decision must file his petition no later than 90 days following the date on which the decision becomes final. (§ 1094.6, subd. (b).) When, as here, the agency's regulations provide for a written decision, that decision is final on the date it is mailed by first-class mail to the party seeking the writ. (§ 1094.6, subd. (b).) The Rent Board mailed its final decision on June 9, 2000. Ninety days thereafter was September 7, 2000. Cobb filed his petition on September 8, 2000.

However, if the petitioner files a request for the administrative record within 10 days after the decision becomes final, the time for filing a section 1094.5 petition "shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed" to the petitioner or his attorney of record. (§ 1094.6, subd. (d).) The record contains a letter and a facsimile (fax) cover sheet therefor from Cobb's attorney to the Rent Board's custodian of records. The faxed letter states, in pertinent part: "I wrote to you on June 9 to request a cost estimate for preparation of the administrative record for this matter. Since my client's time to file a writ is passing, I now request that you prepare the administrative record." The faxed letter and cover sheet are both dated *July* 11, 2000, more than 10 days after the Rent Board mailed its final decision. However, the Rent Board's received stamp on the faxed letter is *June* 11, 2000.

The administrative record appears to have been sent to Cobb on or about October 6, 2000.

The Rent Board raised the timeliness issue in its objection to Cobb's petition. It supported its argument that the petition was untimely with a declaration from Delene Wolf, the Rent Board's deputy director in charge of its daily operations. She declared: (1) the Rent Board uses a mechanical time-stamp to record the date and time of received faxes, and (2) the clock on this time-stamp was mistakenly reset so that documents received on or about July 11, 2000, were stamped as received on June 11, 2000.

Wolf supported her declaration that the clock was mistakenly set with two faxed letters unrelated to Cobb's case. One letter was sent on July 10, 2000, 12:08 p.m.; the Rent Board's stamp shows it received on June 10, 2000, 12:31 p.m. The second letter was sent July 9, 2000, 22:58 p.m.; the Rent Board's stamp shows it received on June 10, 2000, 10:20 a.m.[5]

Cobb did not present any written rebuttal evidence, and the timeliness issue was not argued during the hearing on his petition. At the conclusion of the hearing, after the court had announced the denial of his petition on other grounds, his attorney noted for the record that he "initiated the request" for the administrative record on June 9, 2000. The court, without specifying its reasons, replied, "Your writ is timely . . . Absolutely. I find it timely." The Rent Board did not challenge the finding at the time.

When a trial court is required to resolve evidentiary conflicts, the appellate court does not overturn its factual findings unless the evidence is insufficient as a matter of law to sustain the finding. (*Lake v. Reed* (1997) 16 Cal.4th 448, 457.) The trial court could reasonably infer that Cobb's request for a cost estimate for preparing an administrative record was effectively a request for the record itself. Because Cobb, via his attorney, made this request the same day the Rent Board mailed its final decision, and thus within the requisite 10 days for making such a request (§ 1094.6, subd. (d)), there is sufficient

[5] At oral argument, counsel for the Rent Board asked us to take judicial notice of the fact that June 10, 2000, fell on a Sunday. Counsel offered this evidence as further proof that Cobb's attorney's letter could not have been received on June 10 because the Rent Board would have been closed that day. We deny the Board's oral motion. (Cal. Rules of Court, rule 41.5.) Additionally, because this evidence was not before the trial court, it was unable to inquire whether or not the Rent Board's fax machine was normally turned on during the relevant time to receive documents on Sundays.

evidence to support the trial court's finding that his petition was timely. The request extended the time for filing the petition until 30 days after the record was mailed on October 6, 2000, and the petition was filed well before that time expired. (§ 1094.6, subd. (d).)

III. *Costa-Hawkins Act*

Prior to enactment of the Costa-Hawkins Act, local rent control ordinances were generally categorized as "strict" or "moderate." "Strict" or "vacancy control" ordinances continued control of the rent on a unit when it became vacant, prohibiting an increase when a new tenant occupied the unit. "Moderate" or "vacancy decontrol" ordinances, such as the San Francisco Rent Ordinance, permitted a landlord to raise the rent on a unit to market rate when it became vacant and a new tenant moved in; once this new rent was determined the rent was again controlled during this tenant's occupancy. (Legis. Analyst, analysis of Assem. Bill No. 1164 (1995-1996 Reg. Sess.) p. 2.)

A central purpose of the Costa-Hawkins Act is to establish a comprehensive statewide scheme to regulate local residential rent control. It establishes vacancy decontrol for residential dwelling units where the former tenant has voluntarily vacated, abandoned or been legally evicted. (Legis. Analyst, analysis of Assem. Bill No. 1164 (1995-1996 Reg. Sess.) p. 2.) Thus, "[n]otwithstanding any other provision of law, an owner of residential real property may establish the initial rental rate for a dwelling or unit," except in specified situations. (Civ. Code, § 1954.53, subd. (a).) Although the Costa-Hawkins Act does not define "initial rental rate," the parties do not dispute that Civil Code section 1954.53, subdivision (a) permits landlords to impose whatever rent they choose at the commencement of a tenancy.

As previously noted, the Costa-Hawkins Act also provides that the landlord may increase the rent by any amount to the lawful sublessee or assignee of the original occupant when the original occupant no longer resides in the unit permanently and the sublessee or assignee did not reside in the unit prior to January 1, 1996. (Civ. Code, § 1954.53, subd. (d); Legis. Analyst, analysis of Assem. Bill No. 1164 (1995-1996 Reg. Sess.) p. 3.) Passalacqua did not reside in the apartment until March 1996. Therefore,

the Costa-Harris Act entitled Cobb to impose a rental rate in an amount of his choosing, as he sought to do with his notice of rent increase effective November 1, 1999, if either of two circumstances were present: Passalacqua's initial occupancy as a new tenant commenced on that date (Civ. Code, § 1954.53, subd. (a)), or Passalacqua was Restoni's sublessee or assignee as of that date (Civ. Code, §1954.53, subd. (d)). Substantial evidence supports the Rent Board's findings that Passalacqua was not a sublessee or assignee on November 1, 1999, but rather that he became a tenant in his own right in June 1998 or at least no later than October 1998.

Under the Costa-Hawkins Act, "tenancy" includes the lawful occupation of property, as well as a lease or sublease. (Civ. Code, § 1954.51, subd. (f).) The Rent Ordinance defines "tenant" as a "person entitled by written or oral agreement . . . or by sufferance, to occupy a residential dwelling unit to the exclusion of others." (S.F. Admin. Code, § 37.2(t).) A tenancy may be created by consent and acceptance of rent, despite the absence of a lease. (*Getz v. City of West Hollywood, supra,* 233 Cal.App.3d at p. 629.)

Cobb knew as of mid-May 1998 that Restoni no longer lived in the unit. He acknowledged that he began accepting rent in the full amount directly from Passalacqua alone as of June 1998. He negotiated a rent increase with Passalacqua in October 1998, to take effect November 1, 1998; Restoni was not involved in the negotiation. He complained to Passalacqua in June 1999 that the rent was habitually delinquent and requested delinquent rent payments from him, without reference to any obligation on Restoni's part for the rent. He sought a rent increase directly from Passalacuqua in September 1999. This evidence reasonably demonstrates that Cole deemed Passalacqua, not Restoni, his sole tenant as of June 1998.

Furthermore, there was no evidence to support a finding that Passalacqua was Restoni's subtenant or assignee after her departure. A subtenant has only a portion of an interest in a lease; the original lessee retains a right of reentry at some time during the unexpired term of the lease. (*Kendall v. Ernest Pestana, Inc.* (1985) 40 Cal.3d 488, 492, fn. 2.) For an assignment to be effective, it is essential that the owner of the right to be transferred manifest an intention to transfer the right, and the burden of proving an

assignment lies with the party asserting the rights thereunder. (*Cockerell v. Title Ins. & Trust Co*. (1954) 42 Cal.2d 284, 291-292; *Sunburst Bank v. Executive Life Ins. Co*. (1994) 24 Cal.App.4th 1156, 1164.)

Restoni performed no obligations under the lease after she moved out of the apartment. Nothing in her conduct or Passalaccqua's subsequent conduct implied that she retained any interest in the apartment. Likewise, there was an absence of evidence from which to find that Restoni manifested an intent to transfer her right to occupy the apartment to Passalacqua. The Rent Board could reasonably infer that she moved out because her health demanded it, and she did so without regard to whether Passalacqua or anyone else remained in the apartment.

On this evidence the Rent Board could find that Passalacqua was an existing tenant when Cobb notified him in September 1999 that his rent would be increased effective November 1, 1999. Therefore, the Costa-Hawkins Act did not provide authority for the amount of the increase Cobb sought.

IV. *Waiver*

Cobb contends the trial court erred in deciding he waived his right to a rent increase under the Costa-Hawkins Act by accepting the "banked" rent increase in October 1998.[6] The "banking" provision of the Rent Ordinance permits a landlord who has not imposed the permissible annual rent increase to accumulate that increase and impose it on or after a tenant's subsequent rent increase anniversary date. (S.F. Admin. Code, § 37.3(a)(2).)

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6 We construe Cobb's contention to be that there is an absence of evidence to support the Rent Board's finding of waiver. As previously discussed, the appellate court does not review the substantive "findings" in a trial court's decision on a petition for writ of administrative mandate, which, as here, does not involve the trial court's exercise of its independent judgment on the evidence. Rather, the appellate court has the same role as the trial court: reviewing the agency's findings to determine if they are supported by the evidence. (§ 1094.5, subd. (c); *Getz v. City of West Hollywood, supra,* 233 Cal.App.3d at p. 627.)

In fact, the trial court's judgment does not even refer to "banking." It simply states that Cobb's petition is denied on the grounds that his "acceptance of increased rent

We do not consider this contention because, as discussed in Part III, *ante*, the Costa-Hawkins Act is inapplicable to Passalacqua's tenancy. This conclusion obviates consideration of his claim that he did not waive, i.e., did not knowingly relinquish, his rights thereunder.

V. *Preemption of Rent Board Rule 6.14*

Cobb asserts that the Rent Board's decision denying the rent increase was "expressly" based on his failure to give Passalacqua notice under Rent Board Rule 6.14. He contends that Rule 6.14 conflicts with the Costa-Hawkins Act "to the extent it limits rent increases" permitted under the Act. Therefore, he argues, Rule 6.14 is preempted and void, and "the Rent Board acted contrary to the Act in deciding that Cobb had waived his rights by failing to serve any notice under Rule 6.14."

We need not reach the issue of whether the Costa-Hawkins Act preempts Rule 6.14. Preemption of a local regulation by a state law raises constitutional questions. (See *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) Appellate courts, as a matter of policy, do not decide constitutional questions unless absolutely necessary. (*Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65.) Because we have concluded that substantial evidence supports the Rent Board's decision that the Costa-Hawkins Act did not authorize the rent increase Cobb sought, resolution of the preemption question is unnecessary to our decision. (See also *Borba Farms, Inc. v. Acheson* (1988) 197 Cal.App.3d 597, 603; *Coalition for L.A. County Planning etc. Interest v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 246: appellate courts do not consider issues unnecessary to decision.)

In any case, Cobb's contention, which appears to assert that the Rent Board "expressly" decided he was not entitled to a rent increase pursuant to the Costa-Hawkins Act because he failed to serve Passalacqua with a Rule 6.14 notice, is seemingly based on

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in October 1998 constitutes waiver of landlord's right to increase rent under the Costa-Hawkins Act."

a version of Rule 6.14 not yet in existence during his proceedings. It also misconstrues the Rent Board's decision.

When Cobb argues before this court that Rule 6.14 "is" preempted by the Costa-Hawkins Act, he quotes in his opening brief the rule as amended on April 25, 2000, and refers to this rule in the present tense. However, the decision of the Rent Board on remand is dated April 18, 2000, and refers to Rule 6.14 as amended July 2, 1996. Thus, the amended Rule 6.14 quoted by Cobb in his opening brief is inapplicable to this appeal.[7]

Furthermore, the language and organization of the Rent Board's decision demonstrate that the Rent Board's examination of Rule 6.14 was unrelated to its conclusions concerning the effect of the Costa-Hawkins Act on Cobb's entitlement to a rent increase and auxiliary thereto. The Rent Board first found that the Costa-Hawkins Act was inapplicable to Cobb's justification for the November 1999 rent increase because Passalacqua was not a sublessee or assignee. Instead, it found that he had been Cobb's tenant since Cobb began accepting rent from him in May 1998.

Having reached this conclusion, the Rent Board then stated: "Rent Board Rules and Regulations Section 6.14 as amended July 2, 1996 is therefore applicable." After quoting portions of Rule 6.14, the Rent Board found that Cobb never served Passalacqua with "a 6.14 notice," nor otherwise informed him that his rent could be increased once the original tenant vacated the premises.[8]

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[7] Parenthetically, Rule 6.14, as amended April 25, 2000, substantially rewrote the rule and now concludes that it "is intended to comply with" the Costa-Hawkins Act "and shall not be construed to enlarge or diminish rights thereunder."

[8] A copy of a version of Rule 6.14 as it existed prior to the April 25, 2000 amendment is attached to the "6.14 Notice" Cobb sent Passalacqua's son Joseph, (see fn. 2, *ante*.) and is set forth below. The portions of the rule quoted in the Rent Board's decision are underlined.

"a. A tenant is any person residing at the premises at any times [sic.] since the Rent Ordinance was adopted on June 12, 1979, who has satisfied any one of the following criteria:

1. Has a written or oral tenancy with the landlord; or

2. Has the landlord's permission; or

Given the bases of the parties' arguments during the proceedings before the Rent Board, it is unclear why the decision refers at all to Rule 6.14. Passalacqua did not rely on it to support his position that Cobb was not entitled to increase the rent to $1,500. There was no discussion of Rule 6.14 at the administrative hearing other than the hearing officer's quick ascertainment that only Joseph, not Passalacqua, received a "6.14 Notice" from Cobb. The decision specifically and accurately notes that Cobb based his justification for the rent increase to $1,500 solely on the Costa-Hawkins Act. Consequently, the Rent Board's relatively brief discussion of Rule 6.14 in its decision is surplusage to its essential conclusion that, contrary to Cobb's assertion, the Costa-Hawkins Act does not justify the rent increase he sought.

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3. If the then applicable lease or other occupancy agreement does not contain a written covenant prohibiting sublease or assignment, then [the] person permanently resides at the premises with the landlord[']s knowledge and consent; or

4. If the then applicable lease or other occupancy agreement contains a written covenant prohibiting sublease or assignment, than as to whom the landlord has waived the enforcement of that covenant. With respect to this subsection, the tenant or other person attempting to assert a waiver, must show through any words or conduct that the landlord knowingly has relinquished his or her right to enforce any such covenant, except that acceptance of rent by the landlord shall not be itself operate as a waiver unless the owner has received written notice from the tenant that is a party to the written covenant and thereafter accepted rent.

b. When one of the tenant[s] as defined above resides in the unit, a new co-tenant or tenant does not create a new tenancy for purposes of the Rent Ordinance or otherwise change the terms and conditions of the tenancy. This subsection, however, shall not prevent the landlord from enforcing any rights he or she might have under a written covenant prohibiting sublease or assignment.

c. A landlord may reach a written agreement or serve written notice upon all of the tenant(s) as defined in subsection (a) above that when the last of the tenant(s) who meet the latter definition vacates the premises, a new tenancy is created for purposes of determining the rent under the Rent Ordinance. A complete copy or reasonable restatement of the Section 6.14 [rule] shall be attached to or incorporated into any written agreement or notice. Both the landlord and tenant(s) have a separate and distinct duty to provide a copy of such written agreement to any new co-tenants. Failure of the landlord to provide a copy of such written agreement or written notice to any new co-tenants of which the landlord has actual knowledge within 60 days of the date the landlord becomes

Preemption of Rent Ordinance

Cobb contends for the first time in his reply brief that the Rent Ordinance, to the extent it has conflicting or contradictory provisions with the Costa-Hawkins Act, is preempted by the latter. Issues raised for the first time in a reply brief are not generally considered on appeal because such consideration would deprive the respondent of an opportunity to counter them. (*American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.) We do not consider the issue because Cobb's failure to raise his claim concerning preemption of the Rent Ordinance precluded the Rent Board from the opportunity to present rebuttal argument thereto.

DISPOSITION

The judgment denying Cobb's petition for writ of administrative mandate is affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Gemello, J.

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aware shall be considered evidence of the landlord's knowledge and consent to such co-tenant or waiver of any covenant against sublease or assignment."

Filed 5/9/02

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

JONATHAN COBB,

Petitioner, **A095196**

v. **(San Francisco County Super.Ct.No. 314966)**

CITY AND COUNTY OF SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD,

Respondent;

RICHARD PASSALACQUA,

Real Party in Interest.

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ORDER MODIFYING OPINION AND CERTIFICATION OF OPINION FOR PUBLICATION

BY THE COURT:

It is ordered that the opinion filed herein on April 10, 2002, be modified as follows:

1. In part III, page 7, second paragraph, delete the first and second sentence beginning "A central purpose . . . or been legally evicted." and replace with the following: "The Costa-Hawkins Act establishes vacancy decontrol for residential dwelling units where the former tenant has voluntarily vacated, abandoned or been legally evicted."

2. On page 12, insert the roman numeral VI immediately before the heading "Preemption of Rent Ordinance."

3. The modification does not effect a change in the judgment.

As modified, the opinion, pursuant to California Rules of Court, rules 976(b) and 976.1, is certified for publication with the exception of parts II, IV, V, and VI of the Discussion.

Dated _____ _____ P.J.

Trial court:	San Francisco Superior Court
Trial judge:	Hon. A. James Robertson, II
Counsel for petitioner:	MICHAEL C. HALL Law Offices of Michael C. Hall
Counsel for respondent:	LOUISE H. RENNE City Attorney RANDY RIDDLE K. SCOTT DICKEY Deputy City Attorneys