



Detroit Landlords and Enforcement of the City's Inspection Ordinance

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In May 2017, the City of Detroit announced its intention to implement a city-wide effort to enforce tougher rental ordinance rules on landlords, including demanding that rental properties be registered and brought into compliance with relevant housing regulations.

Recent media reports suggest that the city's crackdown efforts have had little impact on landlord compliance. According to the *Detroit News*, only 11 percent of registered rental properties in the first zip code targeted for enforcement had city clearance to operate.

The city's enforcement efforts are being phased in across five different zones and the review process is expected to be completed over the next 18 months. Landlords who own rental property in Detroit, many of whom have apparently ignored the ordinance rules to date, should take action immediately, because failure to comply can bring a multitude of consequences.

For example, landlords who fail to bring their building up to code and have it inspected by the end of their zone's six-month compliance period are not able to legally collect rent, may be fined, and may not evict any tenant of a non-compliant building solely for withholding rent. Indeed, the ordinance allows renters in non-compliant dwellings to place rental payments into escrow. According to news reports, landlords within the city's 48215 zip code who haven't complied began receiving \$750 tickets in early August.

Compliance under the ordinance involves both registration and inspection. Registration is relatively simple; it requires landlords, regardless of whether a non-primary residence is occupied or unoccupied by a tenant, to complete and submit a registration form for each property they own. Certificates of compliance and of rental registration must be posted on the premises.

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Inspections are required annually on rental properties (again, occupied or unoccupied) for the purpose of verifying compliance with the City of Detroit Property Maintenance Code, the Zoning Ordinance, and other ordinances that pertain to the maintenance of structures and environmental concerns. Owners must also annually obtain a lead risk assessment and submit a lead clearance certificate before they will be issued a certificate of compliance by the city.

Compliance, however, is not the only course of action that landlords can pursue. At least two federal lawsuits have been filed by landlords challenging the city's inspection ordinance. The plaintiffs are alleging violations of due process, violations of the U.S. Constitution's Fourth Amendment (prohibiting warrantless searches), assumpsit (a cause of action against a municipality when restitution is being sought for an illegal or inappropriate assessment that is authorized to become a lien on the property), municipal liability, and other causes of action.

Another alternative is that a landlord can simply sell their property; however, depending on the enforcement action taken to date, landlords may have to pay off fines and liens.

In addition to the direct costs and potential fines imposed by the ordinance, landlords have expressed fears that some unscrupulous tenants may intentionally damage properties to prevent them from passing inspection, which would allow tenants to escrow rental payments until a certificate of compliance is obtained. Under the ordinance, escrowed payments are to be returned to the tenant if a certificate is not obtained within 90 days. To combat against this risk, landlords should thoroughly document the status of the property and, if permissible, take action to establish the condition on an ongoing basis.

The city's enforcement of its inspection ordinance is just beginning. Six zip codes are now being affected, and the city intends to complete its review across all zip codes within the next 18 months. If you own rental property in Detroit, and you are not already in compliance, now is the time to act.

If you need help understanding or complying with the ordinance, have been assessed a fine, or have questions about challenging the ordinance, please contact Rob Hamor at 248.785.4737 or at rhamor@fosterswift.com. Robert Hamor provides value-added legal representation to his clients in the areas of commercial real estate, for-profit and non-profit corporate transactions and governance, and related litigation matters.