The Receiver Strikes Back: Navigating Coordinated Tenant Rent–Strikes Through a Receivership

By Richard Ormond and Michael Muse-Fisher*

The following scenario is becoming more common. Upon being appointed over a multifamily apartment complex, the receiver discovers that some or all of the tenants are involved in a coordinated rent strike. Routinely after questioning the tenants, the receiver discovers that they have but one demand – payment of relocation fees; often for a sum in excess of $15,000-$20,000 per tenant. The tenants predicate this demand on the fact that the building is rundown and in need of serious repairs (which is often true). The tenants start throwing around legalese, stating that "there are serious health and safety concerns" and that "the landlord has breached the implied warranty of habitability;" a sure sign that the tenants have "lawyered-up."

Further inquiry may reveal that the tenant rent strike began months before the receiver's appointment, and was, in fact, likely one of the causes for the receiver's appointment in the first place. Like any good receiver would do, the receiver requests permission to inspect each unit that is subject to the rent strike to determine what repairs are needed to address the habitability concerns, and to avoid the exorbitant relocation demands of the tenants.[1] This is when things get interesting…

Rather than give access to the receiver as they are required to do by law, the tenants flatly refuse entry to the receiver. The tenants assert that their attorney has instructed them not to let the receiver into the units for inspection. These "tenant" lawyers are now, admittedly, searching court dockets and identifying distressed real property assets, many times with foreign-born tenants, to complicate and interfere with the appointed receiver. These lawyers wave around the Los Angeles Municipal Code as a sword, when such codes were intended to protect and shield tenants.

The receiver calls the tenants' attorney, and sure enough, the attorney reiterates the same untenable position of the tenants and further states that, "if the receiver enters any unit without the tenant's permission, I will have you arrested." While such a threat is just that – a threat – it causes the receiver legitimate concerns. As the party in legal custody *(custodia legis)* of the Property, the receiver is required to make any needed repairs, but because of the situation, is prevented from doing so by the threat of being arrested, or more likely a lawsuit by the tenants.

So what is the receiver to do?

There are a few options for the receiver –

In a standard rents and profits receivership, the receiver is given express authority under the Form Orders to undertake unlawful detainer ("UD") proceedings against any tenant who does not pay rent or who does not allow the receiver access to do necessary repairs. However, the authors recommend that, if the receiver chooses to institute UD proceedings, he or she does so with instruction and support from legal counsel well-versed in UD issues. This is because there are considerable pitfalls in UD proceedings of which these "tenant" attorneys will undoubtedly take advantage.

Falling prey to these pitfalls can be extremely costly to the receivership. Moreover, an unlawful detainer is not always the best approach for a receiver in these circumstances because this is exactly the route the "tenant" attorneys want the receiver to take. Rest assured that the "tenant" attorneys will take all steps to delay the proceedings and to ratchet up costs to force the receiver to settle on terms that may not be in the best interest of the receivership Estate.

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The alternative is for the receiver to seek instruction directly from the receivership court. As officers of the court and backed by the court's equitable powers, a receiver can often seek extraordinary relief in these extreme circumstances.

As recognized in *Clark Law Of Receiver, 3d. Ed.* § 625.1(b) "strangers [which would include tenants] who interfere with receivership property within the court's territorial jurisdiction may be made to desist and give up possession and control to the receiver by proper proceedings against them by making the strangers parties to the receivership proceeding or parties to a separate proceeding." Going further, "[b]y the appointment of a receiver, the court by its officer, the receiver, acquires possession and control of the property. No one, whoever he may be, even the sheriff, can interfere with it without the sanction of the court." *Id.* at § 633.

Because the property is in the charge of the court, the concerns of the drafters of the Los Angeles Municipal Code's eviction procedures are not present, and therefore the receiver and the receivership court should have considerable discretion and latitude to remediate these improper rent strikes. Indeed, there is statutory authority and case law that permits a receiver to be appointed to take possession from a tenant prior to the conclusion of a UD proceeding. *See e.g., Cal. Code Civ. P.*, §564(b)(6); *Telegraph Avenue Corp. v. Raentsch*, 205 Cal. 93, 100 (1928). Any concerns about prohibiting a landlord's "self-help" (the reason for which the UD laws were created) are ameliorated when the property is in the legal custody of the court.

To this end, courts have ruled in favor of the receiver regarding these exact issues, issuing orders which include, *inter alia*, the following:

- "This court finds that a refusal by a tenant to admit the receiver to do the repairs and improvements contemplated herein… and as set forth and required by this order is a breach of the tenant's leasehold obligations which is not 'curable' and which gives rise to an immediate right of eviction in the receiver as a matter of law through unlawful detainer procedure."
- "A failure to comply with this order or to in any way obstruct or attempt to obstruct the receiver in his carrying out of the specifics of this order and/or the clear intent and purpose of this order as well as his general duties to repair and maintain, etc. to see the repairs called for [herein] and/or other needed repairs done may possibly be found to be a contempt of court and punishable as such. Contempt if found to apply is punishable by fines and at times even incarceration."
- "The receiver may seek the assistance of the local police if there is any attempt by a tenant or others to physically interfere with entry and/or any other performance under this order." [2]

The authors recommend that when a receiver faces such a rent strike or other coordinated effort by the tenants that is deleterious to the receivership estate, it is best to engage competent counsel, well-versed in these issues and the municipal code and also to advise the Court immediately and seek appropriate instructions.

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[1] Indeed, if $15,000-$20,000/tenant was put back into the property for repairs, rather than for relocation costs, the property would be in pristine condition and all parties, including the tenants, would benefit.

[2] These bullet points are directly from court orders issued by Department 12 of the Los Angeles Superior Court.

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