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PERSPECTIVE

Seattle Housing: A Case Study in Crisis Creation

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Kelly Lyles is a member of a dying breed: the mom-and-pop Seattle landlord. Her kind has become the target of an increasingly radical city council that has slammed the rental housing industry with a barrage of new-fangled policies over the last five years that protect tenants at all costs, including the cost of landlord property rights. The result is a deepening housing crisis, increased gentrification, and an end to landlords like Kelly.

Kelly lives in West Seattle, not far from a single-family home that she rents out. In every way, Kelly is the consummate Seattleite—an artist with a giant painted pig in her front yard who can often be seen wearing and driving her art, like Leopard Bernstein, a leopard-print Subaru covered in exotic cats.

Like so many artists, Kelly's artwork, while award-winning and prolific, doesn't pay the bills. She relies mostly on her rental as her primary source of income. Kelly is hardly unique. A 2018 survey of 4000 Seattle landlords showed that most own or manage a small number of units, and more than half of them rely on rental property as a way to supplement their primary income or support their retirement. Fifty-eight percent of Seattle landlords make less than $75,000 a year, with about 30 percent earning $50,000 or less.

These smaller landlords provide an important niche in the rental housing market. Most privately-owned affordable rentals across the country are mom-and-pop establishments with five or fewer units.

But Kelly's city council has made her life as a landlord, and the lives of thousands of others like her, increasingly unsustainable. In recent years, the city has passed laws removing landlord discretion over tenant selection, banning criminal background checks, allowing tenants to invite others to live on the premises against the landlords' will, and banning evictions during the winter (December through March of every year).

Seattle's dive toward radical and ill-conceived rental housing regulations does no favors to either landlords or tenants: The sum consequence will be far fewer affordable rentals in the city. Below, I examine each of these laws in greater detail as they might apply to landlords like Kelly, to tenants who struggle to find housing in a heated housing market, and to housing

ABOUT THE AUTHOR

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in general. We can hope that cities take Seattle as a warning, not an example.

THE FIRST-IN-TIME RULE

While Seattle had already been an aggressive regulator of rental housing, it took a significant turn against landlords in 2016, with the nation's first "first-in-time" rule. The rule essentially removes landlord discretion from the tenant selection process. It requires landlords to set minimum criteria for applicants and then offer the unit to the first person who meets the pre-established criteria. The landlord has no option to consider the best candidates among a pool of applicants or provide a unit for a less-qualified tenant who needs a break. If the first in line doesn't accept the unit, then the landlord must offer the unit to the next in line, and so on. The idea is to remove implicit bias from the tenant selection process. The real-world result, however, is another matter.

Perhaps the most obvious effect of the law is to place all the power in the applicants who apply fastest. It, therefore, favors native English speakers with cars, flexible work hours, and internet access. In other words, it worsens the lot of those renters already hard-pressed to compete for decent housing.

But the rule also encourages landlords to set stricter rental criteria. When landlords had some discretion to choose among a pool of qualified applicants, landlords could afford—and benefit from—using flexible and lenient rental standards. Landlords could also deviate from their rental criteria in special cases where they might want to rent to someone with, for instance, a low income but a solid credit score. No longer. Landlords must now impose heightened criteria to maintain some degree of control over tenant selection, and the law forbids them from deviating from those criteria. The result isn't hard to predict—lower-income renters have been pushed out of the city.

This isn't guesswork. A city-commissioned study found that 63.45 percent of 4000 surveyed landlords said they already had raised rental criteria in response to the first-in-time rule or intended to do so.[1] When asked whether the rule "reduced your ability to rent to those with fewer resources," 65 percent of landlords said yes. A staggering forty percent of landlords, according to the survey, had already sold their rentals or intended to do so in response to city regulations, primarily the first-in-time rule.

The law does no favors to already struggling renters, but what about the law's impact on landlords themselves? Take Kelly Lyles, for instance. She can no longer control who's in charge of her key source of income. But there's also a more personal side to Kelly's story. Kelly is a single woman and a sexual assault survivor. Unable to afford a property management company, Kelly must interact with her tenants personally, visiting and entering the unit alone when problems arise. Safety is of paramount concern to her, a circumstance she can do little about when she has no control over whom she rents to. As the law's written, Kelly would be required to rent to her former abuser if he met her rental criteria.

Other examples abound. What if an applicant who checks out on paper shows up with a swastika tattooed on his shoulder? What if the applicant is belligerent on the phone? What if a social media search reveals that an applicant with a satisfactory application is an unapologetic bigot? Maybe landlords would still be comfortable with renting to these individuals, and maybe they wouldn't. As a basic tenet of a free society, however, it seems that decision should be up to them, not bureaucrats with no skin in the game.

And what if a landlord wanted to help out someone who applied second or third, or didn't meet the landlords' written rental criteria? What if a recent college graduate has no rental history, as required by the criteria, but the landlord is impressed by the applicant's courtesy and willingness to work hard? What if a tenant can't afford the rent as posted in the advertisement but offers to do yardwork for a discount? The landlord has no discretion in any of these settings. To crush implicit bias, the city has also squashed conscious goodwill.

Unable to get the city council to consider landlord viewpoints, Kelly and several other landlords challenged the legality of the first-in-time rule in 2017 with the help of Pacific Legal Foundation, a nonprofit legal organization.[2] They won at trial, where the judge held that the rule violated takings and due process guarantees

but lost on appeal. Now landlords appear stuck with this tremendously tone-deaf and ill-conceived regulation.

Well over a third of landlords say they had or would leave the rental market because of the first-in-time rule. Remarkably, just over five percent of that group managed more than one rental unit. The first-in-time rule has resulted and will continue to result in a massive depletion of the most affordable housing stock—single-family homes owned and managed by small landlords.

CRIMINAL BACKGROUND CHECK BAN

In August 2017, Seattle passed the most radical regulation of criminal background checks in housing in the country. The so-called "Fair Chance Housing Ordinance" deems it an "unfair practice" for a landlord to ask about a tenant's or applicant's criminal history, or to deny a rental application because of criminal history. There's a narrow exception for sex offenses if the landlord can prove to the city's satisfaction that they have a "legitimate business reason" for denying a sex offender that is "necessary to achieve a substantial, legitimate, nondiscriminatory interest." The city also exempts all "federally assisted housing," which would include all the city's public housing projects plus voucher-subsidized housing.

The rationale for the ban is two-fold. First, the city claims it wants to help the formerly incarcerated reintegrate, and stable housing is an essential factor in preventing recidivism. Second, criminal records tend to have a disproportionate impact on minority groups, so removing them from consideration will promote racial equity. Once again, however, the city remains tone-deaf to the concerns of its landlord constituents or the predictable outcomes of its policies.

There is both a personal injustice and a societal toll that the background check exacts. On the personal front, the ban is an existential threat to landlords like Kelly Lyles, a single woman, sexual assault survivor, and small landlord who relies on her rental income for basic living expenses. The relationship she enters into with a tenant isn't a one-time exchange at a drive-thru window; it's a lengthy and often involved relationship. When she rents her home, she places her primary investment and income source in someone else's hands. No one should be forced to enter into that kind of relationship blind, particularly someone with weighty concerns about personal safety or comfort.

And many landlords live close to their tenants or manage units with roommates. Chong and Marilyn Yim, for instance, two of the plaintiffs joining Kelly in a legal challenge to the ban, own a triplex; they live with their children in one of the units and rent out the other two. They share a yard and other common spaces with their tenants, yet they are unable to refrain from renting to a felon. The Yims' other two units have roommates, and the Yims have long done background checks on possible new roommates to help tenants' vet the people they'll be living with. They can no longer provide this service, and roommates must either share their home with ex-felons or move out.

The city's cavalier response has been that landlords have nothing to worry about—that there's supposedly no link between a "successful" tenancy and a tenant's criminal background. But a quick look at public data says otherwise. About two-thirds of prison releasees re-offend or violate parole within three years of release. Forty-four percent of ex-offenders are rearrested within the first year following release, and a sobering 83 percent of released state prisoners are arrested within nine years of release. This means that a landlord faces a notably stronger likelihood of criminal activity occurring on their premises, and a high probability that a landlord will lose a tenant to incarceration, followed by an expensive unlawful detainer process from which the landlord may recover nothing.

But the landlord, of course, is not the only person affected by this city-mandated blindfold. In multi-family complexes, neighboring tenants may unknowingly share a wall with a violent felon, and neither the landlord nor the surrounding tenants would know or be able to do anything about it if they did know. Landlords typically would have both a legal and a moral obligation to look after the well-being of their current tenants when vetting rental applicants. They can no longer do so.

The ban has already begun to corrupt the quality and

viability of the rental housing stock in Seattle. The Addison, a low-income housing complex in downtown Seattle, is a tragic example. Goodman Real Estate had purchased the Addison in 2012 for $12 million, and it invested another $27 million to convert the property to 254 apartments, a tenth of which are reserved for disabled tenants.

To maintain eligibility for various affordable housing tax credits and exemptions, the Addison rents only to tenants earning up to 60 percent of area median income ($45,600), and adheres to a rent ceiling of about $1200 per month for a one-bedroom unit. From 2013 through mid-2018, the Addison was a model for safe, high-quality, and affordable housing.

About four months after the passage of the Fair Chance Housing Ordinance, however, that began to change. Uncertain whether the Addison would qualify as "federally assisted," its managers decided to cease criminal background checks, a regular business practice up to that point. In the two years since the Addison's living conditions have plummeted.

The change is remarkable. The number of 911 calls has more than doubled. Fights break out in the lobby frequently. Used needles, trash, and feces litter halls and stairways. Fire alarms repeatedly scream throughout the night. Turnover is 400 percent, and evictions have tripled. Management had to evict tenants in 42 units over the last year—16 percent of the total—thirty of which were for behavioral issues, typically criminal: a stabbing, drug dealing, assaults on staff, vandalism, and prostitution.

Beyond the apparent toll this takes on Addison's tenants and management, the economic costs of this deterioration are staggering. Since "Fair Chance" passed, monthly eviction expenses have climbed from $1,442 to $2,983. Monthly security costs have risen from $2,350 to $9,581. Monthly non-recurring capital expenditures have climbed from $4,573 to $15,704. In sum, a successful project has flipped from cash flow positive to cash flow negative in the two years since the Fair Chance Housing Ordinance struck the housing industry. This is not a good outcome for anyone. The Addison has attempted to increase rental criteria such as minimum verifiable income and credit score to stop the bleeding, which only hurts tenants and likely won't save a once-successful affordable housing project.

The law's massive exception for federally assisted housing also raises a serious equal protection concern. Why treat housing providers who do not rely on federal assistance differently than those who do? Since the formerly incarcerated will benefit most from federally assisted housing, it would seem that the city has it precisely backward: the law is structured in a manner as to thrust ex-offenders into the fully private housing market instead of helping them obtain housing assistance that will help ensure the housing stability that the city seeks to promote. Richmond, California, which has a similar background check ordinance, only applies rigid background check restrictions to affordable housing rather than the private housing market as a whole. Seattle's rationale for this exception is that federal law requires it, but that's simply false. HUD funding only asks that landlords check for a history of methamphetamine production or manufacture on the property of assisted housing. That hardly means the city is justified in wholly exempting assisted housing from the ordinance. Such an arbitrary exception for one category of housing likely won't survive a legal challenge.

Fair Chance Housing and first-in-time, together, mean that landlords have virtually no say over who occupies and controls their source of retirement, savings, or income source. Yet the city has thrust this burden on landlords without even attempting something that might look like a compromise. The federal government, for example, uses a certification program that gives ex-offenders a means of confirming through parole officers, employers, neighbors, and others that they haven't been engaged in criminal conduct and have remained clean since release. The city could require landlords to consider such certification and provide a valid reason for nonetheless rejecting the applicant. The city could also indemnify or publicly insure landlords willing to rent to ex-offenders or expand social service programs.

The city is rightly concerned about the disparate impact criminal records have on minorities. But perhaps the

city should look to reforming its long history of biased policing rather than saddling its housing market with unsustainable overregulation.[3]

ROOMMATE ORDINANCE

In 2019, Seattle became the first city to mandate that landlords allow roommates of the tenants' choosing. As with the other laws discussed above, the veneer may make some initial sense: Seattleites are struggling to find housing, so let's remove barriers to cohabitation. And as with the other laws, Seattle's city council appears almost willfully blind to the predictable fallout of their shortsightedness.

This ordinance "restrict[s] a landlord's ability to limit the number of persons residing in a rental unit." In essence, a landlord cannot legally prevent a tenant from inviting someone—anyone—to live on the landlord's property. The landlord must suffer occupancy by "the tenants, a tenant's immediate family, and the additional resident's immediate family," subject to local occupancy limits. The number of unknown and uninvited residents could swell to quite a crowd, given the remarkably broad definition of "immediate family," which encompasses obvious relationships like parents and siblings, plus "adult persons related by marriage" and anyone with whom the tenant or "additional resident" has ever had a "dating relationship," which is any "social relationship of a romantic nature."

The landlord has very little say over a transformation of his property into a small compound. The landlord has no power to screen or otherwise exclude a tenant's "immediate family" unless the "family" is on a sex offender registry. In other words, a tenant's deadbeat boyfriend has a nigh unassailable right to the landlord's property. This is a particularly egregious problem since Seattle has also passed an ordinance that forces landlords to bear the cost of any property damage resulting from domestic violence.

As for an "additional resident" invited by the tenant, the landlord retains only a sliver of control. The landlord can impose whatever screening criteria used to assess the original tenant—credit score, verifiable income, etc.—but must allow the "additional resident" (and *that* person's immediate family) to occupy the premises if those basic criteria are satisfied. Even if this "additional resident" ultimately fails to satisfy the landlords' criteria, they still will have enjoyed at least several months of living on the property because the tenant doesn't even need to notify the landlord of a new occupant on the property until thirty days have passed, and the landlord must allow that "additional resident" thirty days to join the rental agreement. Then the landlord can issue a written notice requiring the "additional resident" to vacate within 45 days. Nothing, however, prevents that additional resident from just moving back in a week later for another few months of legally protected couch-surfing.

From an affordable housing perspective, there is clear value to roommates. Allowing roommates can also benefit landlords, who can look to more than one individual should rent default. But stripping landlords of control over how many individuals living in a unit, and who those individuals are, is another matter.

As a practical matter, more occupants mean higher costs for maintenance and utilities, as well as a generally heightened chance of on-site issues that require the landlord's time and money. Landlords might be able to respond to this problem by increasing rent, but it appears that the city's prohibition on imposing conditions above those required of the original tenant would also include rent hikes to address increased costs and risks.

But the greater problem is the landlords' lack of control over the identity of who is living on the premises. In this sense, the "couch-surfer ordinance" resembles the first-in-time and background check laws because it removes control over tenant selection. But it's arguably worse than both, because, at least with respect to "immediate family" (e.g., deadbeat boyfriends), the landlord has almost no control, through criteria or otherwise, to decide whether that person stays or goes.

As with first-in-time and Fair Chance, the consequences are not difficult to predict. Landlords must now assume that every tenancy will be at maximum occupancy and heighten both rent and rental criteria to adjust. Since

landlords have no way to control who these unknown future occupants may be, so they have little choice but to assume the worst and plan ahead by underwriting the risk through rent hike. And yet the city claims to be promoting affordability.

WINTER EVICTION BAN

Another predictable outcome of all these limits on landlords' ability to vet tenants will be increased eviction rates. If landlords lack control at the front end to pick and choose tenants, they will inevitably have to exercise that control at the back end via eviction. But Seattle is fiddling with the back end, too.

Seattle, once again stepping into uncharted territory, passed the nation's first ban on winter evictions in early 2020. The ban bars landlords from evicting from December 1 through March 1 of every year, even if the tenant defaults on rent. On the optimistic end, it takes around landlord thirty days to evict a tenant, so the ban effectively makes it impossible for landlords to evict from November through at least February of every year unless the eviction is for certain criminal or dangerous behavior.

Once again, Seattle is engaging in unprecedented policy experiments with a predictably bad outcome: a tougher rental market for lower-income renters. Landlords will impose higher security deposits, stricter rental criteria, and higher rent to reduce the risks and pains of missing out on a full four or five months of rent.

The ban is also likely to encourage landlords to be quicker to evict. With a shorter window for leniency and informal rent reminders, a landlord ever aware that winter is coming will be less likely to work with a tenant on payment plans or bear with promises to catch up. Many landlords will have to budget under the shadow of a five-month yearly rent drought and, therefore can't afford leniency as renters struggle to catch up on back rent.

A DISASTROUS SYNERGY

Each of the four novel housing policies discussed above—first-in-time, background check ban, couch-surfer protections, and winter eviction ban—would alone be adequate to drive smaller landlords from the market, reduce the housing stock, and inflate housing prices. But in concert, these four policies, layered atop an already heavily regulated rental housing market, will transform a housing crisis into a housing disaster.

Many small landlords have already collapsed under regulatory fatigue, and they will continue to do so, selling their units to buyers looking to occupy or corporate entities that have the sophistication and capital to stomach the regulatory minefield. Either result will reduce the stock of affordable housing, large property management companies tend to charge higher rent. As noted above, 40% of small landlords had already sold or intended to sell as a result of the first-in-time rule and criminal background check ban. A few years and three more radical policies later, that number is only likely to grow.

Other landlords will convert their properties to alternative use, such as short-term rentals or commercial space. After all, the result of making one business more expensive and risky—which these policies all do—is to drive participants into a more profitable and less irritating alternative.

The burden will fall heaviest on the housing providers that Seattle's housing market needs the most—the small ones. Thanks to the city, landlords will lose an important income source, and renters will face an even tighter and pricier housing market.

The prospects for multi-family housing complexes do not look much better. Investors, wary of the underwriting costs involved in managing multi-family housing complexes in a regulatory labyrinth, will turn to fund other local projects or other communities, a phenomenon observed by the Wall Street Journal.[4] The result is a diminishing rental housing stock and a lag in multi-family housing construction. This kink in supply will inevitably drive up prices, while those daring enough to weather Seattle's rental housing market will raise rent yet higher to cover the underwriting costs involved in renting in such a risk-laden environment. In 2018, before several of the more onerous ordinances had

passed, just over one-fifth of landlords who had recently increased rent cited recent Seattle ordinances as the primary reason for doing so.

In addition to the upward pressures on rent, landlords will continue to ratchet up their rental criteria in an attempt to counter their lack of control over tenants. This cuts out low-income individuals with poor credit or rental histories—i.e., the very individuals that Seattle loudly claims to be helping.

The city has become enraptured with progressive abstractions while forgetting Kelly Lyles. The city, eager to lead the race toward "progress," has no time to consider the actual outcomes of the policies it continues to hoist on top of the pyre of a housing market that will soon shut out everyone the city intends to help.

Unfortunately, the city's ideas are spreading. Copycats have sprung up in other cities that lack the prudence to at least wait to see the fruits of Seattle's policies. Even then, cities are all too likely to point the finger in the wrong direction—at tech wealth, large developers, and avaricious landlords. But the real culprit is not difficult to pick out from the crowd. As a pair of Seattle landlords said in a Seattle Times opinion article early last year, "The council seems to have forgotten small landlords and local businesses. They are not fully considering what kind of Seattle they are creating."[5] As cities continue to watch Seattle's novel experiments in housing regulation, they should be sure to take away the right message. •

ENDNOTES

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