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Court of Appeal, First District, Division 2, California.

200 ARGUELLO ASSOCIATES, LLC, Plaintiff and Appellant,

v.

Cherisse DYAS, et al., Defendants and Respondents.

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(San Francisco City and County Super. Ct. No. CGC–15–544426)

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Opinion

Kline, P.J.

***1** This case concerns the right of a landlord to set a market rate rent when the original tenant of a rent controlled apartment leaves and another occupant continues to reside in the unit. The specific question presented is whether landlords may be required to have their rights under a state law determined in local rent board administrative proceedings, subject to judicial review, or must be permitted to bypass administrative proceedings and bring the issue to court in the first instance. The trial court in the present case dismissed the landlord's complaint for declaratory relief, holding that the landlord failed to exhaust administrative remedies. Although we disagree with appellant's view that it would never be proper for a trial court to deny declaratory relief in such cases, in circumstances of this case we find the trial court abused its discretion. Accordingly, we will reverse.

STATEMENT OF THE CASE AND FACTS

Appellant 200 Arguello Associates, LLC, the owner of a residential apartment building, filed a complaint for declaratory relief on February 27, 2015, against the current resident of one of the units in the building. According to the allegations of the complaint, appellant completed its purchase of the apartment building in May 2014. The previous owner had leased the unit to Sherese Elsey in September 2010, with respondents Atwater and Nelson as guarantors. The written lease stated a monthly base rate of $1775 and provided, " 'When the last of the original occupants named in this contract has vacated the [Apartment], a new tenancy will be created for the purpose of determining the rent.' "

The following facts were stated on information and belief: Guarantors used the apartment to house domestic employees and paid the rent throughout the tenancy; Elsey was the guarantors' domestic employee at the beginning of the tenancy; guarantors informed the former owner in August of 2012 that Dyas, who was also their domestic employee, would be moving into the apartment; Dyas moved into the apartment as a lawful subtenant in September 2012; Elsey permanently vacated the apartment in September or October 2012, leaving Dyas as the sole occupant; the former owner in December 2012 asked guarantors and Dyas to enter a new lease agreement with an increased monthly base rent of $2000, and the proposed increase was "not rejected"; rent

increase notices served by the former owner were addressed to Elsey; and guarantors continued to pay an adjusted amount of $1,858.31 per month.

On June 14, 2014, pursuant to the Costa–Hawkins Rental Housing Act (Civ. Code, § 1954.50 et seq.)[1] (Act or Costa–Hawkins), appellant served a notice increasing the monthly base rent to $4,000. Guarantors and Dyas filed a petition for unlawful rent increase with the San Francisco Residential Rent Stabilization and Arbitration Board (Board), and a hearing was set for December 30, 2014. At the hearing, appellant withdrew the rent increase notice without prejudice and stated it would pursue declaratory relief in superior court.

***2** Appellant alleged that because the last original occupant under the lease agreement no longer resided at the apartment, it was permitted by the Act to increase Dyas's rent to an amount not restricted by the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Rent Ordinance) (S.F. Admin. Code, ch. 37). Appellant alleged that an actual and present controversy existed regarding the parties' rights and obligations under the lease and state law in that Dyas and guarantors were challenging appellant's ability to adjust rent under the Act, and jurisdiction in the superior court was proper because there was no pending rent increase (the withdrawal of the notice of rent increase having deprived the Board of jurisdiction) and the controversy concerned interpretation and applicability of a state statute. A judicial declaration was necessary and appropriate, it was alleged, to enable appellant to "ascertain its rights and duties and take all actions to comply with applicable state and local requirements and to avoid acting to its and the Building ownership's detriment," to enable appellant to "know it is entitled to raise the rent without subjecting itself and the Building ownership to liability under state and/or local housing laws," and because appellant required discovery and discovery was not allowed in Board proceedings.

Respondents filed a demurrer on April 10, 2015, claiming the complaint failed to state sufficient facts to constitute a cause of action because appellant had not exhausted its administrative remedy. Respondents argued that declaratory relief was not necessary and proper because appellant, by withdrawing its notice of rent increase at the rent board hearing, "decided to walk away from the hearing and shop for a different forum." According to respondents, appellant could have used the administrative remedy provided by the Rent Ordinance by filing a landlord petition for a determination of its rights, and a determination of rights under section 37.3, subdivision (d) of the Rent Ordinance[2] and section 6.14 of the San Francisco Rent Commission Rules and Regulations[3] (Rules) would be the "proper, more expeditious and affordable venue—an adequate administrative remedy."

After a hearing on May 12, 2015, the trial court sustained the demurrer without leave to amend, citing *DeLaura v. Beckett* (2006) 137 Cal.App.4th 542 (*DeLaura*) and *Flores v. Los Angeles Turf Club* (1961) 55 Cal.2d 736.

Appellant filed a notice of appeal on June 25, 2015.

DISCUSSION

"In August 1995, California enacted the Costa–Hawkins Rental Housing Act, [citation], which established 'what is known among landlord-tenant specialists as "vacancy decontrol," declaring that "[n]otwithstanding any other provision of law," all residential landlords may, except in specified situations, "establish the initial rental rate for a dwelling or unit." (Civ. Code, § 1954.53, subd. (a).)' (*DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 41.) The effect of this provision was to permit landlords 'to impose whatever rent they choose at the commencement of a tenancy.' (*Cobb v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351 [(*Cobb*)].)" (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1237.) In addition, "[i]f the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside 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 dwelling or unit prior to January 1, 1996." (Civ. Code, § 1954.53.)

***3** At the time the Act was being considered by the Legislature, according to a Senate Judiciary Committee analysis of the proposed legislation, most California cities with rent control permitted rent increases when a unit was vacated and rented by a new tenant, but five local jurisdictions had adopted vacancy control, prohibiting rent increases even upon such a new tenancy. (Sen. Com. on Judiciary Analysis of Sen. Bill No. 1257 (1995–1996 Reg. Sess.) as introduced Apr. 4, 1996, p. 5 (S.B. 1257 Analysis).)[4] The committee's analysis explained that the Act "would establish statewide guidelines for any local regulation of rental rates

for residential accommodations" and "would pre-empt more restrictive controls." (S.B. 1257 Analysis, p. 3.) Courts have since determined that the Act "preempts local rent control by permitting landlords to set the initial rent for vacant units." (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 130; *DeZerega v. Meggs, supra*, 83 Cal.App.4th at p. 41; *Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488, 489.)

" 'San Francisco's ordinance is consistent with the Costa–Hawkins Act in allowing a landlord to set the initial rental rate on vacated units. (S.F. Admin. Code, § 37.3, subd. (d)(1).)' " (*T & A Drolapas & Sons, LP v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2015) 238 Cal.App.4th 646, 652 (*Drolapas*), quoting *Mosser Companies v. San Francisco Rent Stabilization and Arbitration Bd.* (2015) 233 Cal.App.4th 505, 511 (*Mosser*).) The Rent Ordinance limits the rent increases landlords may impose upon "tenants in occupancy." (S.F. Admin. Code, § 37.3, subd. (a).) Subdivision (d)(2) of section 37.3 of the Rent Ordinance, which is expressly intended to be construed "consistent with" the Act (S.F. Admin. Code, § 37.3, subd. (d)(5)), provides that, with certain exceptions pertaining to serious health, safety, fire or building code violation, when "the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there," the landlord "may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996." (S.F. Admin. Code, § 37.3, subd. (d)(2)(A).)[5] This provision is consistent with and expressly tracks the language of section 1954.53, subdivisions (d)(2) of the Act.

Appellant claims a right to increase Dyas's rent on the basis that she was not an original occupant of the unit but rather took over the lease from Elsey, who then ceased residing in the unit. Appellant alleged, as indicated above, that the guarantors informed the former owner that Dyas would be moving into the apartment while Elsey was still living there, and that after Elsey left, the former owner asked Dyas and the guarantors to enter a new lease with an increased rent, this request was "not rejected" and the guarantors have since paid an adjusted rent that is more than the rate under Elsey's lease but less than the proposed new rate. Appellant completed its purchase of the property approximately a year and a half after this alleged new lease agreement.

***4** These allegations suggest a number of potential factual questions relevant to appellant's claim. Assuming, as alleged in the complaint, that Dyas did not begin living in the unit with the landlord's permission at the inception of Elsey's tenancy, and therefore was not herself an original occupant,[6] there are several scenarios under which she could still be entitled to rent control protections. For example, if the prior landlord received written notice of Dyas's tenancy and thereafter accepted rent from her, a rent increase under the Act might be precluded. (Civ. Code, § 1954.53, subd. (d)(4), S.F. Admin. Code, § 37.3, subd. (d)(2)(C).) The increase could also be precluded if the prior owner entered a new lease with Dyas and the guarantors, or negotiated a rent increase with them, making Dyas a tenant in her own right,[7] or if the parties' conduct indicated Dyas was a tenant rather than Elsey's subtenant or assignee. (See, *Cobb, supra,* 98 Cal.App.4th at pp. 352–353.)[8] These are the sorts of questions that will have to be determined in order to establish the parties' rights, whether in administrative proceedings or in the superior court.

Appellant argues that because the Act fully occupies the field of regulation with respect to vacancy decontrol, it preempts local regulation on this topic, including imposition of an administrative hearing requirement. This is an inaccurate characterization of the issue presented. The trial court was not asked to, and did not, hold that the Rent Ordinance *requires* an administrative determination of a landlord's right to increase rent under the Act.[9] Nor does appellant argue that the Act preempts the Board from arbitrating rent increase disputes arising under the Act; appellant conceded in the trial court that the question was not "required to be heard in court" but argued that an action in superior court was more appropriate because the underlying factual questions required discovery procedures that are not available in rent board proceedings. The question on appeal is whether the trial court abused its discretion in denying appellant's request for declaratory relief on the ground that the issue of appellant's entitlement to increase rent under the Act should be presented to the Board rather than the court. As we will see, preemption is part of the equation only indirectly, as a basis for appellant's arguments that a landlord cannot be required to submit disputes involving the Act to the Board and the Board cannot be trusted to apply the Act properly in determining his right to increase rent.

***5** " 'The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.' (5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, §

817, p. 273.)" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79, italics omitted.) But "Code of Civil Procedure section 1060, which provides that a court '*may* make a binding declaration' ... of a litigant's rights or duties, must be read together with section 1061, which states: 'The court may refuse to [grant declaratory relief] in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.' (Code Civ. Proc., § 1061.)" (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647.) A trial court's determination "whether declaratory relief is 'necessary or proper' is subject to review under the abuse of discretion standard." (*DeLaura, supra,* 137 Cal.App.4th at p. 545, fn. 3; *Meyer,* at p. 647; *D. Cummins Corp. v. United States Fidelity & Guaranty Co.* (2016) 246 Cal.App.4th 1484, 1490.)

The language employed by courts describing the "necessary and proper" determination varies. Some state that declaratory relief may be denied where "adequate alternate relief" is available. (E.g., *California Ins. Guaranty Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1624 ["The availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief."].) Such alternative remedies must be " 'speedy and adequate or as well suited to plaintiff's needs as declaratory relief. [Citations.]' " (*Siciliano v. Fireman's Fund Ins. Co.* (1976) 62 Cal.App.3d 745, 755, quoting *Maguire v. Hibernia Sav. & Loan Soc.* (1944) 23 Cal.2d 719, 732 (*Maguire*).)

Appellant relies upon *Jones v. Robertson* (1947) 79 Cal.App.2d 813 (*Jones*), which stated that " '[i]t is only where the court believes that *more* effective relief can and should be obtained by another procedure and that for that reason a declaration will not serve a useful purpose, that it is justified in refusing a declaration because of the availability of another remedy.' " (*Id.* at p. 820, quoting Borchard's Declaratory Judgments (2d ed. pp. 302–303, italics in *Jones*.) *Jones* rejected the argument that plaintiffs alleging the defendant was violating a zoning ordinance were required to utilize the remedies provided by the ordinance for its enforcement, holding that declaratory relief is "cumulative" (Civ. Code, § 1062) and therefore proper despite the existence of other remedies. (*Jones*, at pp. 819–820.)

But the *Jones* court also quoted a less stringent standard expressed in two opinions of the California Supreme Court: "[T]he court said in *Maguire [,supra*,] 23 Cal.2d [at p.] 732, that before a court may deny declaratory relief on the ground that other remedies exist, 'it must clearly appear that the asserted alternative remedies are *available* to the plaintiff and that they are *speedy and adequate or as well suited* to the plaintiff's needs as declaratory relief.' To the same effect is the opinion in *Columbia Pictures Corp. v. De Toth* (1945) 26 Cal.2d 753, 761 [(*Columbia Pictures*)]." (*Jones, supra,* 79 Cal.App.2d at p. 820, italics added.)[10] *Maguire* explained, "While some authorities limit a trial court's discretion to refuse to make a declaration on the ground that other remedies are available to cases where special statutory proceedings have been provided for the particular type of case or where other remedies would afford more effective relief (see Borchard, Declaratory Judgments, pp. 302, 303, 325–331, 375; Anderson, Declaratory Judgments, pp. 521, 530; cf. *Communist Party v. Peek* [(1942)] 20 Cal.2d 536), all agree that before a court may properly exercise its discretion to refuse relief on that ground, it must clearly appear that the asserted alternative remedies are available to the plaintiff and that they are speedy and adequate or as well suited to the plaintiff's needs as declaratory relief. (See *Ermolieff v. R.K.O. Radio Pictures* [(1942)] 19 Cal.2d 543, 549; *Henderson v. Oroville–Wyandotte Irr. Dist.* [(1929)] 207 Cal. 215, 216; *Welfare Investment Co. v. Stowell*[(1933)] 132 Cal.App. 275, 278; Borchard, Declaratory Judgments, p. 293 et seq.)" (*Maguire,* at pp. 731–732.)

***6** This last point is unquestionable: Declaratory relief may not be denied due to the existence of alternative remedies where the alternatives would not provide relief *at least comparable* to that afforded by declaratory relief. Even cases expressing the stringent "more effective relief" standard appear to involve situations in which the alternative remedy would be *less* effective than a declaratory relief action. *In re Claudia E.* (2008) 163 Cal.App.4th 627, in finding a juvenile court erred by rejecting a motion for declaratory relief on the ground that counsel had not exhausted "any possible remedies," stated that the suggested alternative of a petition for writ of habeas corpus was not a "more effective" vehicle for relief. The court's explanation, however, focused on the fact that habeas corpus would not have provided equivalent or even adequate relief because the challenge was to an ongoing policy affecting more than this one case. "Children's counsel was not seeking release of the children to parental custody as a sanction for the Department's untimely filing of the petitions; rather, counsel was seeking a declaration that the Department had misconstrued the statutory time requirements and had an ongoing policy of filing supplemental petitions on a tardy basis. Under these circumstances, a writ of habeas corpus to release the children from protective custody would not have been a more effective remedy than declaratory relief. ([*Jones*

], *supra*, 79 Cal.App.2d at p. 819.)" (*In re Claudia E.*, at p. 634.)

Baxter Healthcare Corp. v. Denton (2004) 120 Cal.App.4th 333, which appellant characterizes as stating the same "more effective relief" standard as *Jones*, in fact cites *Jones* in support of a statement that combines both of the standards *Jones* referred to: "However, it is only where an alternative remedy offers more effective relief, *or is as well suited to the plaintiff's needs* as is declaratory relief, that the court is justified in refusing a declaration because of the availability of another remedy. (*Jones[supra,]* 79 Cal.App.2d 813, 820.)" (*Baxter,* at p. 363, italics added.) The issue in *Baxter* was a business's obligation under Proposition 65 to provide warning of public exposure to specified carcinogenic chemicals unless the business could prove the exposure posed no significant risk of causing cancer in humans. The business sought a declaratory judgment that a chemical contained in medical devices it manufactured posed no significant risk of causing cancer; the regulatory agency argued the exemption sought by the business could only be raised as a defense in an enforcement action, not preemptively in an action for declaratory relief. (*Baxter*, at p. 355.) The court stated that raising the exemption as a defense would not be a "more effective remedy" because it would not provide "global relief concerning all of [the business's] products" but only establish no warning was required with regard to the particular product at issue; this would leave the business subject to multiple enforcement actions because the chemical was used in multiple products it produced. (*Id.* at p. 363.) As in *In re Claudia E., supra,* 163 Cal.App.4th 627, although worded in terms of the alternative remedy not being "more effective" than declaratory relief, the point was that the alternative could not provide even equivalent relief.

Filarsky v. Superior Court (2002) 28 Cal.4th 419 (*Filarsky*), employed the "more effective relief" language in explaining that even if a trial court has subject matter jurisdiction in a declaratory relief action under section 1060, "the court properly may refuse to grant relief where an appropriate procedure has been provided by special statute and the court believes that more effective relief can and should be obtained through that procedure. (*Holden v. Arnebergh* (1968) 265 Cal.App.2d 87, 91–92; see 5 Witkin, Cal. Procedure, *supra*, Pleading, §§ 822, 824, pp. 278, 280.)"[11] (*Filarsky*, at p. 433.) Despite the court's phrasing, the determinative issue in *Filarsky* was not that the alternative remedy was "more effective" but that it was an exclusive remedy established by the statutory scheme governing the dispute. The city sought a judicial declaration that it was not required to disclose documents sought by an individual under the California Public Records Act (CPRA). The CPRA prescribed "specific procedures for seeking a judicial determination of a public agency's obligation to disclose records" which differed from those applicable to declaratory relief actions under section 1060 and, among other things, permitted a declaratory relief proceeding to be commenced only by the individual seeking disclosure, not by the agency. (*Filarsky*, at pp. 426, 428.) Where "a special statutory scheme reflects an intention to *deny* the plaintiff the opportunity to seek declaratory relief, and where authorizing such relief pursuant to Code of Civil Procedure section 1060 would violate the policies underlying the statutory scheme," *Filarsky* held, the trial court would "abuse its discretion if it permitted the plaintiff, by initiating an ordinary declaratory relief action, to circumvent the particular procedures and other provisions specified by the Legislature in the statutory scheme that was intended to govern such disputes." (*Id.* at p. 433.)

***7** Unlike these cases, in which the alternatives to actions for declaratory relief involved a statutory scheme evincing an intent to displace ordinary declaratory relief actions (*Filarsky*) or offered a less effective form or scope of relief (*Claudia E., Baxter*), the alternative in the present case would be to pursue the same relief in a different tribunal. Whether determined by the superior court or through rent board proceedings, the question is whether appellant has a right to raise Dyas's rent because the original occupant no longer lives in the unit. The parameters of the asserted right and factual questions underlying it would be the same in either forum because the relevant provisions of the Rent Ordinance and applicable rules and regulations include the requirements of the Act and expressly state they must be interpreted to conform to those requirements.

Appellant nevertheless argues that proceedings before the Board are inadequate to protect its interests for reasons of two distinct types. The first, to which the majority of appellant's briefing is devoted, amounts to an argument that the Board cannot be trusted to fairly adjudicate landlords' rights under the Act. The second is that the procedures governing proceedings before the Board are inadequate to ensure the relevant evidence can be discovered and presented in that forum. As we will explain, because of particular circumstances in the present case, we agree that the more relaxed procedural rules applicable in proceedings before the Board render such proceedings an inadequate basis for denying declaratory relief here. We believe it critical,

however, to also explain why we disagree with appellant's arguments based on the preemptive effect of the Act and assumed bias of the Board. While appellant does not go so far as to claim that the Board lacks jurisdiction over disputes involving Costa–Hawkins rent increases, its argument that the Board has the ability to hear such disputes *only if the landlord chooses the administrative forum* seeks to deprive the trial court of discretion to find that declaratory relief is not necessary and proper because, in a given case, administrative proceedings provide an equivalent or better remedy. We reject this argument.

I.

DeLaura, supra, 137 Cal.App.4th at page 547, one of the two cases relied upon by the trial court in the present case, upheld a trial court's denial of declaratory relief to a landlord seeking a determination that her tenant was not a "protected tenant" who could not be evicted from the property,[12] finding proceedings before the rent board a "more appropriate statutory procedure" for determining the issue. The *DeLaura* court reasoned that the procedures set forth in the rent control ordinance for determining a tenant's claim of protected status provided a "far simpler and more affordable procedure for resolving" the issue, and allowing the landlord to pursue the action for declaratory relief, thereby subjecting the tenant to "significantly more protracted and costly legal proceedings," would "circumvent the strong tenant protections found in the rent ordinance." (*Ibid.*)

Appellant argues that *DeLaura* does not support the trial court's denial of declaratory relief in the present case because the issue to be determined in rent board proceedings in *DeLaura* —whether the tenant came within one of the protections of the rent control ordinance—arose directly under the local ordinance, whereas here the effect of the trial court's order is to condition the landlord's rights under state law upon resort to "the procedures of a local agency whose very laws that state law—Costa–Hawkins—was expressly enacted to preempt."[13] This argument points to the central theme of appellant's briefs—that the Act's preemption of the field of vacancy decontrol means questions concerning rent increases under the Act must be litigated in superior court to ensure landlords' rights are vindicated. According to appellant, the trial court's ruling undermines the purposes of the Act by putting "the very local agencies whose restrictive laws were preempted in the first place in charge of determining whether landlords can avail themselves of the protective rights that the Legislature has expressly granted. It makes the foxes the guardians of the henhouse."

***8** Appellant assumes a conflict between state and local law that does not exist. As we have described, the provisions of the Rent Ordinance and related rules that would govern administrative proceedings in this case are, in substance, the same as the provisions of the Act, and expressly direct that they are to be interpreted in a manner consistent with the requirements of the Act. Thus, the Board would be required to apply the same substantive definitions and rules in determining whether appellant is entitled to increase Dyas's rent as would the trial court. The question is clearly within the province of the Rent Board, which is charged with implementing and enforcing an ordinance that contains the vacancy decontrol provisions required by the Act. Indeed, the legislative history of the Act suggests the Legislature expected the vacancy decontrol requirements of the Act to be implemented by local rent control boards. The Legislative Counsel's Digest for Assembly Bill No. 1164, by which the Act was adopted in 1995, stated, "Since the bill would impose new duties on those local agencies administering existing ordinances that establish maximum rents for the hiring of residential real property by requiring local agencies to apply different standards in administrative proceedings, the bill would impose a state-mandated local program." While this language is directed at the state constitutional provision regarding grants to reimburse local governments for costs of a state mandated "new program or higher level of service" (Cal. Const. Art. XIIIB, § 6, Gov. Code, § 17561),[14] it reflects an expectation that the requirements of the Act would be effectuated through local rent control schemes. And, as cases in this court demonstrate, the question whether a landlord is entitled to raise rent after the last original occupant leaves a unit is one with which the Board is familiar. (*Drolapas, supra,* 238 Cal.App.4th 646 [affirming Board determination that landlord could not raise rent for son, who remained in possession after parents, the original tenants, moved out]; *Mosser, supra*, 233 Cal.App.4th 505 [same].)[15]

Appellant **points** to *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, 46–47 (*Mobilepark*), for its statement that local government cannot determine whether the criteria for state preemption have been met. The statute at issue in *Mobilepark* exempted long term leases of spaces in mobile home parks from local rent control. (*Id.* at p. 36.) The local rent control ordinance purported to implement the state law exemption but in fact mandated compliance with additional local requirements before such a

lease could be offered to a tenant. (*Id.* at pp. 44–45.) With regard to one of the provisions it examined, the court stated, "the ordinance permits local control over leases that have otherwise qualified for exemption from rent control under state law, and thus it is inimical to the terms of the statute. As argued by the owners in their reply brief: 'When the state has set the standards for exempting a legal area from local control, it is axiomatic that the local government cannot determine whether the criteria for preemption are met. To allow the local government to do so places the power to determine preemption in precisely the wrong hands.' " (*Mobilepark,* at p. 46.)

The present case does not challenge a local ordinance requiring that the applicability of vacancy control provisions mandated by state law be determined by the Board, or imposing requirements for that determination that differ from those of the Act. Thus, there is no issue of a local ordinance being preempted, as in *Mobilepark.* As we have said, the same substantive rules would be applied regardless of the forum in which this dispute is determined.

Nor is this case like another upon which appellant relies, a case described in *Santa Monica Rent Control Bd. v. Pearl Street, LLC* (2003) 109 Cal.App.4th 1308 (*Pearl Street*). The described superior court case resulted in an order requiring the rent board to strike portions of rent control regulations that imposed substantive requirements inconsistent with the Act.[16] Appellant apparently sees the Rent Ordinance as similarly imposing inconsistent requirements. He argues that the Act "does not require landlords to prove in an administrative proceeding, to the satisfaction of the Rent Board, that the requirements of [the Act] are satisfied" and was intended to take "the ability to set rental rates for vacant units out of the hands of local governments." But, unlike the case appellant relies upon, the present case does not involve the Board attempting to apply local regulations that impose requirements inconsistent with the Act. As we have said, the challenge is not to the Board's regulations—which do not require the landlord to take any steps prior to issuing a notice of increase under Costa–Hawkins—but to the trial court's order that declaratory relief was not necessary and proper.[17] Absent any conflict between the Rent Ordinance and the Act, appellant's argument—that the trial court's order was inconsistent with the Act's purpose because it put the "power to determine whether a landlord can avail him—or herself of [the Act's] provisions in the hands of the very local agencies whose powers were preempted"—amounts to nothing more than an attack on the Board's ability to act objectively.

***9** The California Supreme Court cases that, as appellant puts it, recognize "it is not appropriate for local agencies to condition the enforcement of state law rights upon compliance with local administrative procedures, particularly when the state laws in question were designed to preempt local laws and the local requirements threaten to frustrate state law rights," also fail to persuade us that a trial court can never refuse declaratory relief on a question implicating Costa–Hawkins. In *Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 287, the trial court denied an injunction sought under state law because the plaintiffs had not exhausted administrative remedies provided under local law. The local administrative requirements imposed conditions and restrictions on the exercise of the statutory rights the plaintiffs were trying to enforce (*id.* at p. 287 & fn. 2), and the Supreme Court held the plaintiffs could not be required to exhaust administrative remedies "that are in conflict with state law." (*Id.* at p. 287.) In the present case, again, the Rent Ordinance does not conflict with the Act. As we have stressed, its provisions concerning vacancy decontrol are intended to be, and directed to be interpreted as, consistent with the Act.

Schifando v. City of Los Angeles (2003) 31 Cal.4th 1074, 1080 (*Schifando*), held that an employee claiming employment discrimination was not required to exhaust the administrative remedy required by the city charter in addition to the administrative remedy under the Fair Employment and Housing Act (FEHA) before filing a FEHA action in superior court. The court's conclusion that the "benefits of judicial economy, agency expertise, and potential for swift resolution of grievances" were better served by allowing public employees to choose which remedy to pursue and exhaust only the administrative remedies of the chosen forum was based on concern that the differences between the state and city administrative schemes, with FEHA offering greater protections that could be undermined by required compliance with the city's procedures, could defeat the Legislature's intent in FEHA to give employees "the maximum opportunity to vindicate their civil rights against discrimination." (*Schifando*, at pp. 1086, 1081–1088.) The present case is not analogous. There is no conflicting administrative procedure under the Act; to the contrary, as earlier discussed, the legislative history indicates that the Legislature intended the Act to be applied through local administrative procedures and in substance the Rent Ordinance is consistent with the Act.

Birkenfeld v City of Berkeley (1976) 17 Cal.3d 129, 136, held that a charter amendment requiring a landlord to obtain a "certificate of eviction" from the city before seeking to recover possession of a rent-controlled unit was invalid because it conflicted with the eviction procedures prescribed by state law. State law provided for a "summary repossession procedure ... intended to be a relatively simple and speedy remedy that obviates any need for self-help by landlords." (*Id.* at p. 151.) To obtain the certificate of eviction required by the charter amendment, the landlord had to satisfy a number of evidentiary and procedural requirements. (*Id.* at p. 150.) *Birkenfeld* held that "[t]o require landlords to fulfill the elaborate prerequisites for the issuance of a certificate of eviction by the rent control board before they commence the statutory [repossession] proceeding would nullify the intended summary nature of the remedy." (*Id.* at p. 151.) No such conflict between state and local remedies appears in the present case.

Appellant also analogizes to federal civil rights cases holding that states may not frustrate federally established rights by imposing state administrative exhaustion requirements. (*Patsy v. Board of Regents* (1982) 457 U.S. 496 (*Patsy*) [state could not require exhaustion of administrative remedies before plaintiff could bring 42 U.S.C. § 1983 action in federal court]; *Felder v. Casey* (1988) 487 U.S. 131, 147, fn. 4 (*Felder*) [states could not impose exhaustion requirements even when section 1983 claims presented in state courts].) This is the portion of appellant's brief that most overtly argues landlords' rights cannot be assured protection in proceedings before the Board. Appellant argues that the role of state courts in protecting "fundamental state law rights like those conferred on landlords by [the Act]" is analogous to the duty of federal courts to protect fundamental rights, likening the need to protect against states' antipathy toward federally established rights discussed in the civil rights cases[18] to a need to protect the "minority" of landlords in San Francisco against the "majority" of tenants[19] and the city's "hostility" toward the Act.[20]

***10** Appellant's right to raise rent pursuant to the Act is not equivalent to the constitutional rights protected under title 42 of the United States Code section 1983. *Patsy* and *Felder* found in title 42, United States Code section 1983 a legislative intent to afford immediate access to federal courts, unencumbered by any state procedural hurdles, because the point of the legislation was to protect against the "evil" of discrimination by the states. (*Patsy, supra,* 457 U.S. at pp. 504–507; *Felder, supra,* 487 U.S. at p. 147 & fn. 4.) The Act evinces no similar intent to provide unfettered access to the courts but simply an intent to prohibit, on a statewide level, a particularly strict form of rent control employed in a small number of local jurisdictions. The "narrow and well-defined purpose" of the legislation is "to prohibit the strictest type of rent control that sets the maximum rental rate for a unit and maintains that rate even after vacancy." (*Mosser, supra,* 233 Cal.App.4th at p. 513.)[21] San Francisco does not have such vacancy control, and did not even before the Act prohibited it. (S.B. 1257 Analysis, p. 6.)[22] Even accepting for purposes of discussion appellant's assumption that local government officials in San Francisco seek to afford maximum protection to tenants, we see no basis for inferring a general bias in the Board's adjudicative function.[23]

II.

***11** The procedural differences between proceedings before the Board and those in superior court present an entirely different issue. Appellant argues that the Board's procedures are inadequate for resolution of the issue presented here because they give the landlord no means of discovering facts about a tenant's status, as they do not give the landlord power to compel production of documents or to depose witnesses or compel their appearance at hearings, and in the present case the relevant information is almost entirely in respondents' hands. This argument is not presented as a matter of due process, although respondents treat it as such. Nor is it necessary for us to view it as a question of whether Board proceedings offer appellant a *more* effective remedy than declaratory relief, as appellant maintains. In this particular case, the factual issues are such that the procedures governing the administrative proceedings are plainly inadequate to serve appellant's needs in presenting its case.

The Rent Board's Rules give each party the rights "to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her." (Rules, § 11.17, subd. (b).) Oral evidence may be taken only upon "oath or affirmation." (*Id.*, subd. (a).) If respondents do not testify on their own behalf, they "may be called and examined as if under cross-examination." (*Id.*, subd. (b).) "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are

accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions." (*Id.*, subd. (c).) Absent timely and proper objection, relevant hearsay evidence is admissible for all purposes, and hearsay evidence is admissible over objection if it would be admissible under the rules applicable in a civil action or if the administrative law judge determines it is sufficiently reliable and trustworthy. (*Ibid.*) "If a party fails to appear at a properly noticed hearing or fails to file a written excuse for non-appearance prior to a properly noticed hearing, the Administrative Law Judge may, as appropriate: continue the case; decide the case on the record in accordance with these rules; dismiss the case with prejudice; or proceed to a hearing on the merits." (Rules, § 11.14, subd. (a).)

Appellant was not the landlord when Elsey or Dyas first moved into the apartment. Any information about these tenancies necessarily had to be obtained from the prior landlord, Elsey, Dyas and/or the guarantors. To be sure, appellant must have had some access to information in the hands of the former landlord or others; Elsey's initial lease was offered as an exhibit and appellant was able to make the allegations included in the complaint, albeit on information and belief. Dyas was living in the apartment when appellant purchased the property, and appellant knew the lease was not in Dyas's name. As the purchaser of residential rental property, it is reasonable to believe appellant would have made some inquiry of the seller to determine the status of current residents. But the extent of the information appellant has been able to obtain from the former landlord, or would be able to obtain in the course of Board proceedings, would depend on the former landlord's willingness to cooperate, as well as what information was still in that landlord's possession. Similarly, while appellant could attempt to speak with other tenants in the building or neighbors who might be aware of when Dyas moved in or when Elsey moved out, appellant would have no way to ensure their cooperation. The relevant information is most directly in the hands of Elsey, Dyas and the guarantors, all of whom might be expected to be hesitant to volunteer information that would assist appellant. While appellant would be able to cross examine these parties under oath if they appeared at the hearing, appellant would not be able to compel their appearance. Accordingly, appellant could not be assured any means of obtaining the information necessary to clarify the issues underlying its claimed entitlement. While an administrative law judge might view Dyas's and/or the guarantors' absence as validating appellant's claim, the judge would not be required to do so—especially to the extent the burden of proof was on appellant.

***12** The parties dispute which of them would bear the burden of proof in Board proceedings. Section 37.8, subdivision (b)(1), of the Rent Ordinance—which neither party cites—provides that landlords seeking to impose rent increases which exceed the limitations established by the Ordinance "must request an arbitration hearing as set forth in this section. *The burden of proof is on the landlord.*" (Italics added.) Section 11.18 of the Rules provides, "In any proceeding before the Board or any Administrative Law Judge thereof, the landlord shall have the burden of proving that an increase in rent in excess of the allowable annual rent increase is justified. The tenant shall have the burden of proving that there has been (1) an increase in the dollar amount of the rent in excess of the limitations, (2) a rent increase due to reduction in housing services without a corresponding reduction in rent, and/or (3) a failure to perform ordinary maintenance and repair as required under state and local law." Appellant interprets these provisions as imposing the burden on the tenant to prove the landlord is trying to raise the rent more than allowed under the ordinance, after which the landlord bears the burden of proving justification for the increase.

Appellant also cites several provisions (S.F. Admin. Code, § 37.8, subds. (b)(2)(B), (e)(5)(A) & (e)(5)(B)) applicable to rental units that fall under the Rehabilitation Assistance Program (S.F. Admin. Code, ch. 32 (RAP)). These provisions govern hearings following a landlord's notice of a rent increase exceeding the limitations of section 32.73 of the Rent Ordinance, which restricts rents in areas designated for RAP loans prior to July 1, 1977. Section 37.8, subdivision (b)(2)(B), of the Rent Ordinance allows tenants in RAP units in areas designated prior to July 1, 1977, to petition for a hearing where the landlord has noticed such an increase, with the *burden of proof to be on the landlord.* Section 37.8, subdivision (e)(5)(A) and (e)(5)(B), of the Rent Ordinance set forth the standards by with the administrative law judge is to make findings (which differ for units in areas designated prior to or after July 1, 1977), again with the *burden of proof on the landlord.*

Respondents, by contrast, cite the provision in section 37.8, subdivision (b)(2)(A), of the Rent Ordinance that "[t]enants of non-RAP rental units and tenants of RAP rental units in areas designated on or after July 1, 1977, may request arbitration hearings where a landlord has ... imposed a nonconforming

rent increase which is null and void. *The burden of proof is on the tenant.*"[24]

Appellant thus relies upon provisions that apply only if the premises at issue is a RAP unit in an area designated for RAP loans prior to July 1, 1977, while respondents rely on a provision that applies only if the premises is not a RAP unit, or is a RAP unit in an area designated *after* July 1, 1977. As we are aware of nothing in the record indicating whether the property is a RAP rental or, if so, when the area was designated, we have no way to determine which of the provisions in section 37.8 would apply here.

Read collectively, however, it is apparent that in a Board proceeding appellant would bear the burden of proving at least the facts initially establishing that it had a right to raise Dyas's rent pursuant to the Act, section 37.3, subdivision (d), and Rule 6.15. The reasonable conclusion to be drawn from section 37.8, subdivision (b)(2)—the only support respondents offer for their assertion that they would bear the burden of proof—read in conjunction with section 11.18 of the Rules, is that respondents would have the burden of establishing that appellant sought to increase Dyas's rent beyond the amount ordinarily permitted by the Ordinance, with appellant then bearing the burden of proving the increase was "justified" by facts showing the applicability of the Act. Even assuming respondents would have the burden of proof on any relevant defense, such as waiver (Rules, § 6.14, subd. (c)),[25] appellant would first have to marshal evidence supporting its claimed right under the Act.

***13** The facts determinative of appellant's right to raise Dyas's rent, as we have said, concern matters such as when she moved into the apartment and under what terms, when Elsey moved out, and what agreements Dyas and/or the guarantors had with the prior landlord. While disputed factual issues may be present in many Costa–Hawkins cases, the present case is complicated by the fact that the tenants' occupancy pre-dated the current landlord's ownership of the premises and by the role of the guarantors. The complaint alleged that the guarantors maintained the apartment as housing for their domestic employees. If in fact the guarantors paid the rent, it is they who would be directly affected by the rent increase and they, rather than the actual tenants, who had an on-going relationship with the prior landlord. One of the obvious factual questions in this scenario is what agreements may have existed between the guarantors and the former landlord, which Dyas might have known nothing about, to ensure continuation of rent control protections despite changes in the actual tenants. We offer no opinion on how such a prior agreement might affect the outcome of this case; the point is that appellant would be able to learn of one only from the prior landlord or the guarantors. Without either the benefit of discovery procedures to compel production of documents, and conduct depositions or the ability to compel witnesses to appear for the hearing, appellant would be unable to obtain evidence even to evaluate the strength or weakness of its position in advance of the hearing. And since none of the relevant parties would be obliged to attend the hearing, appellant would not even be assured an opportunity to cross examine those in possession of the facts.

As earlier mentioned, *DeLaura, supra,* 137 Cal.App.4th 542, affirmed a San Francisco trial court's denial of declaratory relief, viewing proceedings under the Rent Ordinance as a more appropriate and more expeditious means of resolving the dispute. Respondents argue that *DeLaura* is "absolutely on point." We disagree. The *DeLaura* court noted that the facts in that case were "fixed" (*DeLaura,* at p. 546); the task for whichever tribunal heard the issue would be only to apply the governing legal standards to those facts. This is a critical distinction between *DeLaura* and the present case.[26] Unlike Rent Board proceedings, in a superior court action for declaratory relief, the availability of formal discovery procedures and ability to compel witnesses' presence at trial would ensure appellant's ability to ascertain the facts relevant to proving—or disproving—its entitlement to the rent increase it claims. In *DeLaura*, because there were no factual issues to be determined, the absence of discovery or subpoena power in an administrative proceeding was not a relevant consideration.

Nor would appellant be assured an opportunity to further develop the facts through judicial review of a decision by the Board. Pursuant to the Rent Ordinance, the decision of an administrative law judge may be appealed to the Board (Rent Ord., § 37.8, subd. (f)(1)), which has discretion whether to hear the appeal (*id.*, subd. (f)(3)), and a party make seek judicial review of a decision by the Board (*id.*, subd. (f)(9)). But judicial review under Code of Civil Procedure section 1094.5 does not entail a " 'trial de novo.' " (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101 (*Pomona Valley Hospital*).) " 'The inquiry in such a case shall extend to the questions whether the respondent [agency] has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the

manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.' (Code Civ. Proc., § 1094.5, subd. (b).)" (*Besaro Mobile Home Park, LLC v. City of Fremont* (2012) 204 Cal.App.4th 345, 354.) The general rule is that a hearing on a writ of administrative mandamus is conducted "solely on the record of the proceeding before the administrative agency" (*Pomona Valley Hospital,* at p. 101), although there are circumstances in which additional evidence may be considered on a remand to the agency or directly by the superior court.[27] (*Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 532; *Pomona Valley Hospital,* at pp. 101–102; Code Civ. Proc., § 1094.5, subd. (e).)

***14** We will not speculate as to how these principles would apply if appellant were to receive an unfavorable decision from the Board and pursue a petition for writ of administrative mandamus. The point is that this case presents clear potential for appellant to be severely hampered in developing its case in the administrative forum and, at best, uncertainty as to subsequent relief available through judicial review. At worst, the factual predicate for appellant's claim could be permanently established under the constraints of the administrative forum, potentially undermining its rights under the Act. These concerns are similar to those expressed in *Schifando, supra,* 31 Cal.4th at pages 1083–1085, in which the court was concerned that facts found at in local administrative proceedings without benefit of "adequate discovery, presentation of evidence, and cross examination," after only "deferential judicial review," would have res judicata effect in subsequent proceedings under FEHA. In that event, "aggrieved employees would not have had the chance to develop their cases (through adequate discovery, presentation of evidence, and cross-examination, rights not guaranteed at the City's hearing) to the extent the Legislature intended." (*Schifando,* at pp. 1083–1085.)[28]

For the above-stated reasons, we conclude that the trial court abused its discretion in finding the availability of rent board proceedings an adequate basis for denying declaratory relief in this case. We reiterate, however, that our decision is limited. In many, if not most cases, Rent Board proceedings will be adequate to resolve questions over landlords' right to rent increases under Costa–Hawkins and a trial court would be fully justified in denying declaratory relief. The administrative forum offers significant advantages as a less expensive and more expeditious arena for dispute resolution, and issues concerning rent increases are clearly within the Board's area of authority and expertise. As has been observed with respect to a landlord claiming a different state law basis for avoiding a rent control restriction, "[t]he Board cannot be prevented from carrying out its regulatory function every time a landlord claims its leases are exempt from rent control." (*Village Trailer Park, Inc. v. Santa Monica Rent Control Bd.* (2002) 101 Cal.App.4th 1133, 1138.) In *DeLaura, supra,* 137 Cal.App.4th at page 547, our colleagues explained that "[p]ermitting a landlord to dispute or verify the status of a tenant's rights by an action for declaratory relief when there is a far simpler and more affordable procedure for resolving the issue would circumvent the strong tenant protections found in the rent ordinance." Similarly, those tenant protections will be undermined if landlords in Costa–Hawkins cases routinely pursue declaratory relief actions in lieu of proceedings before the Board. We do not intend our decision to encourage such a result. But in the perhaps unique circumstances of this particular case, the petition should not have been denied.

DISPOSITION

The judgment is reversed and the matter remanded for proceedings consistent with the views we have expressed.

We concur:

Richman, J.

Stewart, J.

All Citations

Not Reported in Cal.Rptr., 2017 WL 1967748

Footnotes

1 Further statutory references will be to the Civil Code unless otherwise specified.

2 As relevant to the present case, section 37.3, subdivision (d) of the Rent Ordinance, labeled "Costa–Hawkins Rental Housing Act (Civil Code Sections 1954.50 et seq.)," sets forth "conditions" for property owners' establishment of "Initial

Rental Rate Upon Sublet or Assignment" (Rent Ord., § 37.3, subd. (d)(2)) that are expressly "intended to be" and directed to "be construed to be consistent with the Costa–Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)" (Rent Ord., § 37.3, subd. (d)(5).)

3 Section 6.14 of the Rules "is intended to comply with Civil Code Section 1954.50 et seq. and shall not be construed to enlarge or diminish rights thereunder." (Rules, § 6.14, subd. (f).)

4 Senate Bill No. 1257 was the predecessor to Assembly Bill No. 1164, by which the Act was enacted. (Senate Transportation & Housing Committee Analysis of Sen. Bill No. 184 (Mar. 24, 2011) p. 4.)

5 This provision does not apply "where one or more of the occupants of the premises, pursuant to the agreement with the owner provided for above (37.3(d)(2)), remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit." (S.F. Admin. Code, § 37.3, subd. (d)(2)(B).) Additionally, "[a]cceptance of rent by the owner shall not operate ... as a waiver of an owner's right to establish the initial rent unless the owner has received written notice from the tenant that is a party to the agreement and thereafter accepted rent." (S.F. Admin. Code, § 37.3, subd. (d)(2)(C).)

6 "The plain meaning of an 'original occupant ... who took possession of the dwelling or unit pursuant to the rental agreement' (§ 1954.53, subd. (d)(2)) is an individual who has resided in the dwelling from the start of the tenancy with the landlord's permission." *(Mosser, supra,* 233 Cal.App.4th at p. 512.) Under the Board's rules, " '[o]riginal occupant(s)' means one or more individuals who took possession of a unit with the express consent of the landlord at the time that the base rent for the unit was first established with respect to the vacant unit." (Rules, § 6.14, subd. (a)(1).)

7 "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, subd. (t).) A tenancy may be created by consent and acceptance of rent, despite the absence of a lease. (*Getz v. City of West Hollywood* [(1991)] 233 Cal.App.3d [625,] 629.)" (*Cobb, supra,* 98 Cal.App.4th at p. 352.)

8 In *Cobb,* after the original tenant's son had lived with her for some time without the landlord's permission, the tenant moved out for health reasons. Because the landlord knew the tenant had departed, accepted rent from the son and negotiated rent increases solely with him, the *Cobb* court viewed the landlord as having deemed the son to be his sole tenant. (*Cobb, supra,* 98 Cal.App.4th at p. 352.) Additionally, the court explained, the son could not be viewed as a subtenant or assignee after his mother moved out, as neither her nor the son's conduct implied she retained any interest in the apartment (so as to make the son a sublessee), and there was no evidence she intended to transfer her right to occupy the apartment to her son (to support finding an assignment). (*Id.* at pp. 352–353.)

9 Under the Board's rules, a tenant is entitled to file a petition contesting a landlord's notice of rent increase under the Act, as respondents did in this case. (Rules, § 6.14.) A landlord *may* petition for a Board determination concerning a rent increase under the Act (pursuant to Rules, §§ 1.21 and/or 6.14 and/or Rent Ord., § 37.3, subd. (d)), but, as the Board's form for such petitions makes abundantly clear, is not required to do so.

10 Appellant asserts that *Jones* cited *Columbia* in support of its conclusion that an alternative remedy must be "more effective" than declaratory relief to justify denial. In fact, as indicated in the text, *Jones* cited *Columbia* for the statement that alternative remedies must be " 'speedy and adequate or as well suited to plaintiff's needs as declaratory relief.' " (*Jones, supra,* 79 Cal.App.2d at p. 820.)

11 *Holden v. Arnebergh, supra,* 265 Cal.App.2d at pages 91–92, did not impose a requirement of "more effective" relief; it applied the principle that "the court does not abuse its discretion in refusing to entertain [a declaratory relief] action where otherwise plaintiff has a speedy and adequate remedy."

12 Section 37.9, subdivision (i)(1), of the Rent Ordinance extends eviction protection to a tenant who has lived in the unit for at least 10 years and is at least 60 years old or disabled, or has lived in the unit for at least five years and is catastrophically ill.

13 Appellant's suggestion that the Act was expressly enacted to preempt San Francisco law is a mischaracterization: The Act was enacted to preempt the strictest form of local vacancy control measures (*Mosser, supra,* 233 Cal.App.4th at p.

513), and (as will be discussed), San Francisco was *not* one of the cities that had adopted vacancy control. (S.B. 1257 Analysis, p. 6.)

14 Government Code section 17575 provides: "When a bill is introduced in the Legislature, and each time a bill is amended, on and after January 1, 1985, the Legislative Counsel shall determine whether the bill mandates a new program or higher level of service pursuant to Section 6 of Article XIIIB of the California Constitution. The Legislative Counsel shall make this determination known in the digest of the bill and shall describe in the digest the basis for this determination. The determination by the Legislative Counsel shall not be binding on the commission in making its determination pursuant to Section 17555."

15 According to Board records submitted to the trial court in support of respondents' demurrer, the Board received 49 landlord "Costa–Hawkins" petitions in July 2013 through June 2014, and five during the month of February 2015.

16 The case described by *Pearl Street* resulted in a trial court order prohibiting the rent board from using two of its regulations, one stating that a tenancy of less than four months was prima facie evidence the tenancy was a sham, requiring the landlord to demonstrate the tenancy was valid in order to be granted a vacancy decontrol rent increase, and the other stating that loss of a tenant would not be deemed a voluntary vacancy if there was a single incident of harassment or intimidation. (*Pearl Street, supra,* 109 Cal.App.4th at p. 1319.) These regulations were found to be preempted because the Act "contains no provisions respecting the number of months the former tenant lived in the unit, nor whether such tenant and the landlord parted friends or enemies," and permitted the owner to notify the board of a rent increase rather than "the other way around." (*Id.* at pp. 1319–1320.)

17 *Pearl Street* itself is not particularly relevant. Appellant argues *Pearl Street* is "entirely consistent with the conclusion that the enforcement of this pre-emptive state law is best left to the state courts, and is entirely inconsistent with the trial court's ruling herein," based on the *Pearl Street* court's statement that "[w]hen the Board is presented with circumstances that cause it, in good faith, to believe a landlord is attempting to circumvent state or local rent control law with a sham tenancy, an action for declaratory relief is a valid means of determining whether the landlord is entitled to the rent it claims." (*Pearl Street, supra,* 109 Cal.App.4th at p. 1320.) That statement was part of the court's explanation that the Board's action for declaratory relief did not violate a prior court order prohibiting use of regulations it found preempted because, in seeking declaratory relief, the Board was not applying the regulations but instead asking the court to resolve the issue they would have addressed. (*Ibid.*) The court's conclusion that the Board could properly seek a determination in superior court as to whether a landlord was "attempting to evade state or local law" says nothing about whether it is an abuse of discretion for a trial court to view proceedings before the rent board as the appropriate forum for determining, in the first instance, whether the facts support a landlord's claim of entitlement to a rent increase under the Act due to the last original occupant having terminated his or her tenancy.

18 Appellant points to the United States Supreme Court's analysis in *Patsy* of the federal statute's legislative history, which began with the recognition that " '[t]he very purpose of [section] 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative, or judicial.' " (*Patsy, supra,* 457 U.S. at p. 503, quoting *Mitchum v. Foster* (1972) 407 U.S. 225, 242.) The Court noted several themes in the legislative debates that indicated an exhaustion of state administrative remedies requirement would be inconsistent with legislative intent: Congress intended to provide "immediate access to the federal courts" to individuals deprived of, or threatened with deprivation of, constitutional rights, regardless of contrary state law; believed state authorities had been unable or unwilling to protect constitutional rights or punish violators and mistrusted state fact-finding processes due to juries' local prejudices; and believed the federal legislation supplemented state remedies, allowing a plaintiff to choose which forum to utilize. (*Patsy,* at pp. 504–507; see *Felder, supra,* 487 U.S. at p. 147, fn. 4.) *Felder* emphasized this history—the enactment of section 1983 in response to the "evil" of "widespread deprivations of civil rights in the Southern States" —in holding that states could not impose exhaustion requirements even when section 1983 claims are presented in state, rather than federal, courts.

19 Appellant offers statistics to show that tenants substantially outnumber landlords in San Francisco, arguing that this explains the hostility toward landlords of local elected officials who are "well aware of this political reality" and quoting the California Supreme Court's observation that "probably the most fundamental" of the protections offered by the doctrine

of separation of powers "lies in the power of the courts to test legislative and executive acts by the light of constitutional mandate and in particular to preserve constitutional rights, whether of individual or minority, from obliteration by the majority." (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 141 [discussing standards of judicial review of administrative decisions].)

20 Appellant notes that San Francisco's mayor was a sponsor of proposed legislation that sought to impose additional restrictions on property owners wanting to withdraw rental accommodations from the market (Analysis of Sen. Bill No. 364, Sen. Com. on Transportation and Housing (4/14/2015) p. 6) and cites a number of cases striking down San Francisco ordinances as preempted by the Act or the Ellis Act (Gov. Code, § 7060 et seq.), which protects landlords' right to evict tenants in order to take residential rental properties off the market. (E.g., *Bullard v. San Francisco Residential Rent Stabilization Bd., supra,* 106 Cal.App.4th 488 [Act]; *Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072 (*Bullock*) [local requirements for conversion of residential hotel units to other uses preempted by Ellis Act]; *Johnson v. City and County of San Francisco* (2006) 137 Cal.App.4th 7 [local notice requirement preempted by Ellis Act].)

21 Legislative analysis of the proposed bill explained that, at the time it was introduced in 1995, 14 cities applied rent controls to residential rental housing, a majority of which allowed "vacancy decontrol" (allowing the property owner to raise rent upon a voluntary vacancy of the unit) or "vacancy decontrol/recontrol" (removing the unit from rent control upon voluntary vacancy, allowing landlord to set a new rental rate for a new tenant, then reestablishing rent control for the duration of the new tenancy) and five of which had adopted "vacancy control" measures (disallowing rent increases when a rental unit was vacated and rented by a new tenant). (S.B. 1257 Analysis, pp. 5–6.) The analysis discussed various arguments for and against eliminating "local rule on vacancy control": Proponents viewed the bill as "a moderate approach to overturn 'radical' vacancy control ordinances which unduly and unfairly interferes [*sic*] into the free market" while opponents saw it as an "inappropriate intrusion into the right of local communities to enact housing policy to meet local needs." (*Id.* at p. 7.) The issues of concern included whether strict vacancy control deterred construction of new rental housing and investment or contributed to owners' removal of rental properties from the market; the cost of administration of vacancy control legislation; whether strict vacancy decontrol laws benefitted " 'yuppies' " and hurt the lower income households rent controls were designed to protect. (*Id.* at pp. 7–14.)

22 The five cities identified in the committee analysis as having vacancy control were Berkeley, Santa Monica, Cotati, East Palo Alto and West Hollywood. (S.B. 1257 Analysis, p. 6.)

23 Amici curiae, San Francisco Association of Realtors, Small Property Owners of San Francisco Institute and San Francisco Apartment Association, in arguing that the Board does not provide an impartial forum due to its purpose of "keeping housing affordable for San Francisco renters," states that "several Courts of Appeal have intimated that the Rent Board did not act neutrally towards landlords." This is an overstatement. Amici cite *Bullock, supra,* 221 Cal.App.3d at page 1092, footnote 10, in which the owner of a residential hotel whose efforts to convert the property to other uses had been thwarted by the city's enforcement of a local ordinance alleged, among other things, a cause of action under title 42, United States Code section 1983 based in part on allegations that the relevant city agency was biased against landlords and employed inadequate procedures for hearings and preparation of records. (*Bullock,* at pp. 1089–1092.) The court did not state that the agency had acted in a biased manner but rather that the owner had alleged sufficient facts to survive a demurrer. In the cited footnote 10, the court commented that it had recently dismissed one of the owner's cases against the city due to the inadequate tape recording of the administrative proceedings and that "Division One of this court has criticized the procedures of the City's designated administrative agency and intimated that an agency decision 'was based in part on passion or prejudice.' (*Campbell v. Residential Rent Stabilization & Arbitration Bd.* (1983) 142 Cal.App.3d 123, 129–130 [text & fn. 3].)" (*Bullock,* at p. 1092, fn. 10.) The *Campbell* opinion did state that a hearing officer's order reducing rent for all tenants at a rental property based on one tenant having an inoperable doorbell "seems to be a rather draconian response, and one which suggests that the decision was based in part on passion or prejudice" (*Campbell*, at pp. 129–130), although the court noted that the hearing officer might have taken into account her finding that the landlord had intimidated some of the tenants. (*Id.* at p. 130, fn. 5.) In any event, we do not view these two instances of apparent bias in proceedings some 16 and 33 years ago as a sufficient basis to infer the kind of systemic bias that would justify concluding the Board cannot objectively evaluate the evidence in the cases adjudicated under its purview.

24 Under section 9.10 of the Rules, a tenant "may file a summary petition if the landlord gives a rent increase which fails to comply with the provisions set forth in Section 37.3 of the Ordinance." This section of the Rules is silent on the question of burden of proof.

25 Section 6.14, subdivision (c), of the Rules provides, "When all original occupants(s) no longer permanently reside in a rental unit ... the landlord may establish a new base rent any subsequent occupant(s) who is not a co-occupant ... *unless the subsequent occupant proves* that the landlord waived his or her right to increase the rent by" one of three means: "[a]ffirmatively representing to the subsequent occupant" that he or she may remain at the original occupant's rental rate; failing to serve notice of a rent increase or reservation of right to raise rent within the requite time period; or accepting rent from the subsequent occupant without reserving the right to increase rent within the specified time. (Italics added.)

26 Further distinguishing *DeLaura,* resort to remedies under the Rent Ordinance in that case would not have precluded the landlord from proceeding in superior court, with the benefit of discovery. There, the Rent Ordinance gave the landlord two choices: "A landlord may challenge a tenant's claim of protected status either by requesting a hearing with the Rent Board or, at the landlord's option, through commencement of eviction proceedings ...." (Rent Ord., § 37.9, subd. (i)(4).) In the context of rent increases under the Act, while the Rent Ordinance permits a landlord to notify the tenant of an increase as an alternative to petitioning the Board for an increase (Rent Ord., § 37.8, subd. (b)); Board Landlord Petition), neither alternative involves a judicial forum, and if the landlord notices a rent increase, the tenant is entitled to challenge it by petitioning the Board. (Rent Ord., § 37.8, subd. (b)); Board Tenant Petition.)

27 Code of Civil Procedure section 1094.5, subdivision (e), provides: "Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case." (*Pomona Valley Hospital, supra,* 55 Cal.App.4th at p. 101.) A court exercises independent judgment when the agency decision will "substantially affect" a "fundamental vested right"; otherwise, the court reviews the administrative record "to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law." (*Bixby, supra,* 4 Cal.3d at pp. 143–144; *Amerco Real Estate Co. v. City of West Sacramento* (2014) 224 Cal.App.4th 778, 783.)

28 The conflict in *Schifando* was particularly stark because FEHA provided its own administrative process, with far greater procedural protections; hence the court's concern that requiring exhaustion of City Charter procedures "might deprive a victim of discrimination of a civil right created by the Legislature." (*Schifando, supra,* 31 Cal.4th at p. 1085.) Costa–Hawkins does not prescribe its own administrative procedures and, as we have said, the Legislature appears to have expected it to be enforced through local rent boards. Still, *Schifando* highlights the significance the procedures governing development and presentation of a case with disputed facts.