

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
April 28, 2022
5:00 P.M.
Meeting Will Be Conducted Via Zoom**

AGENDA

PUBLIC PARTICIPATION

The public may observe and/or participate in this meeting in many ways.

OBSERVE:

- To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10

- To observe the meeting by video conference, please click on the link below:
When: Apr 28, 2022 5:00 PM Pacific Time (US and Canada)

Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD FULL BOARD MEETING- April 28, 2022

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84950826923>

Or One tap mobile :

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COMMENT:

There are two ways to submit public comments.

- To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Instructions on how to “Raise Your Hand” are available [here](#).

- To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing “*9” to speak when Public Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Please unmute yourself by pressing “*6”.

If you have any questions, please email hearingsunit@oaklandca.gov .

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD SPECIAL MEETING

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. CONSENT ITEMS
 - a. Approval of Board Minutes, 3/24/2022 (pp. 3-11)
 - b. Approval of Board Minutes, 4/14/2022 (pp. 12-16)
5. SCHEDULING AND REPORTS
 - a. Program Updates: Rent Registry—Chanée Franklin Minor, *RAP Manager* & Allison Pretto, *Project Manager* (pp. 17-30)
6. APPEALS*
 - a. L20-0089, Haig Mardikian Telegraph & 23rd LLC v. Tenants (pp. 45-138)
 - b. T20-0093, Bolanos v. Olivieri (pp.139-516)
7. INFORMATION AND ANNOUNCEMENTS
 - a. Board Training—Rules of Evidence & Appeals (pp. 31-44)
8. DISCUSSION REGARDING A RESOLUTION TO SUPPORT THE CITY'S EVICTION MORATORIUM
9. ADJOURNMENT

**Staff appeal summaries will be available on the Rent Adjustment Program's website and the City Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.B and 2.20.090*

As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

Accessibility:

Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program (RAP) staff can be contacted via email at RAP@oaklandca.gov or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en Español, Cantonés, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a RAP@oaklandca.gov o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 RAP@oaklandca.gov 或致電 (510) 238-3721 或711 California relay service.

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING**

March 24, 2022

5:00 P.M.

VIA ZOOM CONFERENCE

OAKLAND, CA

MINUTES

1. CALL TO ORDER

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Vice Chair Oshinuga at 5:13 p.m.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant	X		
Vacant	Tenant			
Vacant	Tenant Alt.			
H. FLANERY	Tenant Alt.	X		
D. INGRAM	Undesignated	X*		
C. OSHINUGA	Undesignated	X		
E. TORRES	Undesignated	X		
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
T. WILLIAMS	Landlord	X		
N. HUDSON	Landlord	X		
Vacant	Landlord Alt.			
K. SIMS	Landlord Alt.			X

*Chair Ingram joined the meeting at 5:19 p.m.

Staff Present

Kent Qian
Harman Grewal
Victor Ramirez
Mike Munson

Deputy City Attorney
Business Analyst III (HCD)
Assistant Program Manager (RAP)
KTOP

3. CONSENT ITEMS

- a. Public comment was allowed for consent items. No members of the public spoke during public comment.
- b. Chair Ingram moved to approve the minutes from both the 2/24/2022 and 3/10/2022 full Board special meetings. Member R. Nickens, Jr. seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, E. Torres, N. Hudson, T. Williams,
R. Nickens, Jr., H. Flanery
Nay: None
Abstain: None

The minutes were approved.

4. OPEN FORUM

- a. Marisa Williams spoke and asked if this was the correct meeting for appeal hearings and asked what the process was. Staff confirmed that it was the correct meeting and explained the process.

5. APPEALS*

- a. L21-0028 & L21-0043, Glass v. Tenants

Appearances: Isaac Safier, Esq. Owner Representative

This case involved an owner petition for a certificate of exemption. In May 2021 the owner filed a petition for a certificate of exemption and RAP responded by sending a notice of incomplete petition due to missing proof of an Oakland business license, proof of payment of RAP fees, and proof of service of the petition on the tenants. In June, the owner responded to the notice of incomplete petition by filing another petition, claiming that the unit was exempt from the Rent Ordinance due to the unit being a condo. The second petition included proof of payment for an Oakland business license, proof of payment of RAP fees, and a proof of service for the petition.

In September 2021, the owner received a Notice of Settlement Conference and Hearing. In the hearing, the owner was advised that evidence must be submitted to RAP no less that 7 days prior to the hearing. Since evidence was not submitted for case L21-0028, it was dismissed. The owner appealed the

decision, contending that the hearing should be rescheduled because the owner submitted the documentation requested by the notice of incomplete petition for case L21-0043.

The owner representative contended that the initial case filed by the owner was L21-0028, but a notice of incomplete petition was sent for case L21-0043. The owner representative argued that no additional evidence was provided because there was confusion when a notice of incomplete petition was sent to the owner for case L21-0043. The owner representative contended that all of the evidence required for the filing of the petition was submitted to RAP. The owner representative argued that this petition is unopposed, is for a property that was built in 2008, and that underneath the ordinance, the petition should be granted as a matter of right since property was built subsequent to the ordinance. The owner representative contended that the property is exempt from the Rent Ordinance and that they're requesting for the case to be remanded so that the petition can be granted and the certificate of exemption can be issued.

After parties' arguments, questions to the parties, and Board discussion, Chair Ingram moved to 1) vacate the orders of dismissal for both petitions, and 2) to consolidate both petitions and remand it back to the Hearing Officer for a new hearing. Member N. Hudson seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, E. Torres, N. Hudson, T. Williams,
R. Nickens, Jr., H. Flanery
Nay: None
Abstain: None

The motion was approved.

b. T21-0029, Eason v. Bao

Appearances:	Yuan Qian Bao	Owner
	Lichun Ou	Owner Representative
	J'ean Eason	Tenant
	Hong	Mandarin Interpreter

The interpreter was sworn in by staff.

This case involved a tenant petition alleging decreases in housing services, which was granted in part and denied in part. The Hearing Officer granted a rent decrease of 5% for an on-going leaky window, 5% for mildew stains, and 15% for

failure to properly remove asbestos. The Hearing Officer also granted a further \$315 per month rent reduction for 36 months as restitution. The owner appealed the decision, contending that 1) the leaky window was fixed and that the tenant provided a photo from prior to the window being fixed and 2) that the tenant did not cooperate with the owner to fix the asbestos issue.

The owner contended that the leaky window was initially fixed and that he paid \$700 to the tenant for the repairs, but after three years, the window began to leak again. The owner argued that once the window began leaking again, it was fixed again, and that the photo that the tenant provided of the leaky window was taken prior to it being fixed. The owner argued that after the window was fixed again, the leaking stopped, which stopped the moisture and mildew. The owner argued that he hired a professional to fix the window, and that after the window was fixed, the tenant said that he was going to move out, but never did. The owner argued that the tenant then asked the owner to let him manage the property, but he refused. The owner argued that he does not trust the tenant to manage the property, and that once he refused to allow the tenant to manage the property, the tenant began threatening and blackmailing him.

The owner argued that the rent was decreased by thousands of dollars already and that the tenant just wants more money from him. The owner contended that he asked the tenant about the asbestos issue and how to handle it and that he asked the tenant to recommend licensed professionals for testing. The owner argued that the tenant did not respond to his request and said that he was going to move out, and asked him for money.

The tenant contended that the landlord consistently, including presently, relies on the tenants to make arrangements for repairs to be made to the units. The tenant argued that as a real estate professional, he is aware that repairs to the unit are not the responsibility of the tenants and are the responsibility of the landlord. The tenant argued that the owner did pay \$700 for the initial repairs, however, the tenant had to make the arrangements for the repairs to be made, paid for the repairs, and then deducted the \$700 from his monthly rent payment. The tenant contended that the initial repairs only addressed the window issue from the inside of the unit only, in which the repair person addressed the dry rotted wood and dry wall. The tenant argued that he informed the owner, both verbally and in writing, through the owner's niece who translates for him, that the outside of the window still needed to be addressed and repaired.

The tenant argued that the pictures that the owner is claiming were taken prior to the repairs were provided with his initial petition filing, but that both before and after pictures were provided. The tenant contended that the after pictures, which were taken a week prior to the hearing, showed that there were still brown water stains on the walls since the repairs to the outside of the window still were not made. The tenant argued that the only reason the problem has not gotten worse is because we were and are still currently in a drought and that if it had rained more, there would be more evidence that the window is still leaky. The tenant

argued that when it rained hard recently, the windows in the kitchen and living room leaked.

The tenant contended that he has offered to help the owner manage the property as a courtesy since he's a real estate professional and because there were and still continue to be multiple liabilities. The tenant argued that he has plenty of business in his profession and is not eager to or in need of managing the owner's property, nor has any reason to lie on, cheat, or steal from the owner. The tenant argued that the offer was made because the owner hires people who charge a price that the owner wants to pay and not the price that it actually costs make the correct repairs for the mentioned issues and that the owner declined his offer because of this.

The tenant argued that the owner has made multiple accusations that do not relate to the habitability issues of the unit, that the owner's age does not absolve or relieve him of his responsibilities as an owner and landlord, and that the owner needs to hire licensed or qualified professionals to make the correct repairs. The tenant argued that asbestos was discovered as a result of him personally hiring a licensed professional to inspect and test the ceiling and that whenever asbestos is found, it is required to be removed in its entirety. The tenant argued that the accusations that the owner has made are very offensive and that all past communications have been well documented to prove the tenant's case.

After parties' arguments, questions to the parties, and Board discussion, Member T. Williams moved to uphold the Hearing Officer's decision. Member N. Hudson seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, E. Torres, N. Hudson, T. Williams,
R. Nickens, Jr., H. Flanery
Nay: None
Abstain: None

The motion was approved.

c. T19-0472, T19-0473, T19-0474, T19-0475, T19-0476, T19-0479, T19-0480, T19-0482, Hoffman et al v. Alma Apartments LP

Appearances:	Gregory McConnell	Owner Representative
	David Stempel	Tenant
	Sulaiman Hyatt	Tenant
	James E. Vann	Tenant Representative

This case involved tenant petitions filed for decreased housing services due to the loss of an on-site resident manager. The Hearing Officer issued a decision that denied the tenant petitions, ruling that 1) the petitions were filed untimely and 2) even if the petitions were filed timely, the tenants did not demonstrate that the loss of the services in a resident manager led to a loss in housing services that would warrant a deduction in rent.

The tenants appealed the Hearing Decision, contending that 1) the petition was timely because the tenants assumed that another on-site manager would be hired after the previous manager resigned at the end of May 2019 and because the tenants did not learn about the property's decision to hire an off-site manager until a memo was served on July 30, 2019 and 2) the off-site manager installation of a metal lockbox was a reduction in housing services from having an on-site manager, which they had previously and is required by California state law.

The tenant representative contended that this case is straight forward and that the laws being violated are being clearly presented. The tenant representative argued that the Hearing Officer erred in their decision and that state law is being violated because on-site resident managers are required for buildings with 16 units or more. The tenant representative argued that the owner made a blatant attempt to avoid the law and that violations to the law are subject to penalties set forth in the Health and Safety code, which include fines and/or misdemeanor charges. The tenant representative argued that it is a crime to fail to comply with this law and that failure to comply opens the owner up to civil liability by the tenants filing suit. The tenant representative contended that the safety of the tenants can be at stake if this law is not complied with by the owner, especially in emergency situations.

The tenant representative argued that the tenants were unaware that the previous resident manager had left and that the owner had hired an off-site manager until they received the memo in July 2019. The tenant representative argued that the petitions were filed timely and within 90 days of receiving the memo. The tenant representative argued that the Hearing Officer missed the essential fact that the key keeper would not be living on-site, according to a notice provided by the owner, which was given a month after the tenants filed their petition. The tenant representative argued that the law states that the person designated as the resident manager must be an employee of the property owner and that the tenants submitted documents that show that the person who was designated was not an employee of the owner. The tenant representative contended that the tenants are requesting for the case to be remanded to the Hearing Officer for the sole purpose of determining the value of the loss of services suffered by the tenants as a result of the violations of the state's resident manager law.

The owner representative contended that the state law does not specifically require a resident manager and that it instead states that either a manager, janitor, housekeeper, or other responsible person is required to be on-site. The

owner representative argued that the tenants' entire argument is based on the idea that there was no 'resident manager' and that the law was being violated, which is untrue. The owner representative argued that the tenants filed their petition more than 90 days late since the petition was filed in October, even though the previous resident manager left in May. The owner representative contended that the extension to file a petition after the 90 days has passed is only allowed when there is an on-going reduction in services, which there was not.

The owner representative argued that by the time the petition was filed, a key keeper had been hired and retained at the property and that the Hearing Officer was aware of this and found that the key keeper satisfied the law and code requirements. The owner representative argued that the tenants did not prove that there were circumstances or services that were denied and that there was a responsible person living on-site at the time that the tenant petitions were filed. The owner representative argued that the Rent Ordinance states that if any petitions are being filed and claiming a reduction of services, that the petition must be filed within 90 days from the date of knowledge of the reduction in services, which they did not do. The owner representative argued that during the hearing, many tenants testified that they were aware that the previous resident manager was leaving and had even discussed it with the previous resident manager prior to her departure. The owner representative contended that they're requesting for the Hearing Officer's decision to be upheld in this case because it was based upon substantial evidence.

After parties' arguments, questions to the parties, and Board discussion, Chair Ingram moved to affirm the Hearing Officer's decision regarding there not being a reduction in housing services and to affirm that the filing was timely. Vice Chair Oshinuga made a friendly amendment to the motion to include affirm that the petitions were filed timely as they were based on the official notice sent by the owner that the services were being terminated and to affirm the Hearing Officer's decision regarding the decrease in housing services. Chair Ingram accepted the friendly amendment. Member T. Williams seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, N. Hudson, T. Williams, R. Nickens, Jr.,
H. Flanery, E. Torres
Nay: None
Abstain: None

The motion was approved.

6. Member T. Williams moved to take a five-minute break and to reconvene at 8:56 p.m. Member H. Flanery seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, N. Hudson, T. Williams, R. Nickens, Jr.,
H. Flanery
Nay: None
Abstain: E. Torres

The motion was approved.

7. DISCUSSION REGARDING A RESOLUTION TO SUPPORT THE CITY’S EVICTION MORATORIUM

- a. Public Comment was allowed for the Board’s discussion.
- James Vann spoke and mentioned that both the City and the County have been applauded for having such a strong moratorium in place in comparison to the state’s moratorium and that there has been lobbying to encourage the state to extend their moratorium. Mr. Vann mentioned that many people have applied for aide, but only half of the people who have applied have received it and that if the moratorium ends, there will be a tsunami of eviction notices. Mr. Vann stated that those who do owe rent as a result of the moratorium would still owe funds to their landlords even though they may have not received any financial assistance or secured employment. Mr. Vann stated that it is not the time to relax or end the eviction moratorium.
- b. Chair Ingram led a Board discussion regarding a lawsuit that was filed by landlords against the City of Oakland and Alameda County in an effort to lift the eviction moratorium. The Board discussed whether or not they wanted to be proactive and submit a resolution to City Council either in favor of or opposing the eviction moratorium. Board members shared their personal experiences and discussed their ideas and concerns regarding the eviction moratorium.

8. SCHEDULING AND REPORTS

- a. None

9. INFORMATION AND ANNOUNCEMENTS

- a. None

10. **ADJOURMENT**

- a. The meeting was adjourned at 9:41 p.m.

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING**

April 14, 2022

5:00 P.M.

VIA ZOOM CONFERENCE

OAKLAND, CA

MINUTES

1. CALL TO ORDER

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair D. Ingram at 5:00 p.m.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant	X		
P. VIRAMONTES	Tenant			X
J. DEBOER	Tenant Alt.	X		
Vacant	Tenant Alt.			
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated	X		
E. TORRES	Undesignated	X		
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
T. WILLIAMS	Landlord	X		
N. HUDSON	Landlord	X		
Vacant	Landlord Alt.			
K. SIMS	Landlord Alt.			X

Staff Present

Oliver Luby
Harman Grewal
Briana Lawrence-McGowan
Mike Munson

Deputy City Attorney
Business Analyst III (HCD)
Administrative Analyst I (RAP)
KTOP

3. RENEWAL— ADOPTION OF AB 361 RESOLUTION

- a. Public comment was allowed for the renewal of the adoption of AB 361 resolution. Denis Beaman spoke and asked for clarification as to what specifically AB 361 was. Chair Ingram explained that AB 361 allows for the Board to continue to meet virtually via Zoom while a local state of emergency is still in place. Denis Beaman asked what the state of emergency regarding COVID was at this point in time. Chair Ingram informed Mr. Beaman that the City of Oakland was still under a local state of emergency and that AB 361 allows the Board to continue to meet via Zoom.
- b. Chair Ingram moved to renew the adoption of AB 361 resolution. Vice Chair Oshinuga seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, E. Torres, R. Nickens, Jr., J. deBoer,
N. Hudson, T. Williams
Nay: None
Abstain: None

The motion was approved.

4. WELCOME NEW BOARD MEMBERS

- a. Chair Ingram and fellow Board members welcomed new Tenant Alternate Representative, John deBoer. Member deBoer introduced himself.
- b. Staff welcomed new Tenant Representative, Pedro Viramontes, who was not present at the meeting, and informed the Board that he would be present at the next full Board meeting.

5. OPEN FORUM

- a. Christopher Hann-Soden spoke about the current eviction moratorium. Mr. Hann-Soden stated that although the eviction moratorium may have had well intentions, it is negatively impacting him and forcing him to continue to live with his abusive ex in the home that he owns, which is a duplex. Mr. Hann-Soden mentioned that since the eviction moratorium makes no exceptions and doesn't require for tenants to demonstrate hardship due to the pandemic, he's forced to live, interact with, and provide indefinitely for his abuser. Mr. Hann-Soden recommended for the moratorium to be amended to allow some sort of exception for evictions.

6. APPEALS*

a. T20-0219, Laws v. Green Sage Management LLC

Appearances:	Matthew Laws	Tenant
	Lisa Giampaoli	Tenant Representative

This case involved a tenant petition contesting rent increases and claims of decreased housing services. A response was never filed by the owner and the Hearing Officer issued an Administrative Decision denying the tenant's petition, stating that a prior Hearing Decision for T18-0372 et al, a consolidated case regarding several units at the same property, had found the property to be exempt as new construction from the Rent Ordinance.

A timely appeal to the Administrative Decision was filed by the tenant on the grounds that the denial of the petition was based on the previous decision that was concurrently being appealed, and that the outcome of the appeal in the current case should be dependent solely upon the decision made in the appeal for T18-0372 et al. The appeal for case T18-0372 et al was heard by the Board on February 24, 2022 and the Board remanded the decision back to the Hearing Officer for reevaluation based on 1.) the live-work exemption in Rent Adjustment Program regulations, 2.) the lack of a time-based cut off for the requirement of no prior residential use in order for units created by conversion to qualify as new construction, and 3.) to determine whether the owner met by a preponderance of the evidence the burden of proof, establishing no prior residential use.

The tenant contended that the denial in case T20-0219 was entirely based upon a prior consolidated case, which included petitions filed by other tenants, related to the same property. The tenant contended that he filed petition T19-0218 in the prior consolidated case and that this case was appealed and heard by the Board on February 24, 2022. The tenant argued that the consolidated appeal case was remanded back to the Hearing Officer by the Board and that in case T20-0219, the entire decision rests upon the previously filed appeal for the consolidated petitions. The tenant argued that since the Appeal Decision in case T20-0219 is reliant upon the appeal decision for the consolidated case, which has been remanded, this current case should also be remanded to trail the consolidated case.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to remand the case back to the Hearing Officer with the recommendation of consolidating the case with T18-0372 et al. Member N. Hudson seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, E. Torres, R. Nickens, Jr., J. deBoer,
N. Hudson, T. Williams
Nay: None
Abstain: None

The motion was approved.

b. T21-0013, Quinones v. Othman

Appearances: Gregory Ching Tenant Representative

The owner appellant did not show up for the appeal hearing. The tenant representative mentioned that the owner and tenant made a settlement earlier in the day and that the owner appellant likely would not show up for the appeal hearing.

Member J. deBoer moved to dismiss the appeal. Vice Chair Oshinuga seconded the motion. Vice Chair Oshinuga withdrew his second to the motion.

Member J. deBoer amended his motion to dismiss the appeal subject to the showing of good cause for failure to appear. Vice Chair Oshinuga seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, E. Torres, R. Nickens Jr., J. deBoer,
N. Hudson, T. Williams
Nay: None
Abstain: None

The motion was approved.

7. SCHEDULING AND REPORTS

- a. Chair Ingram reported to the Board that he has begun meeting regularly with RAP's Manager and informed the Board that if there are any updates from those meetings, they will be reported back to the Board. Chair Ingram also asked for fellow Board members to report to him any questions or concerns that they may like to have reported to RAP's Manager.

- b. Staff reported to the Board and the public the City of Oakland's Equal Access office's Language Access Survey.

8. INFORMATION AND ANNOUNCEMENTS

- a. Eviction Moratorium Resolution Discussion: Chair Ingram let the Board know what falls within their reach as it relates to the Eviction Moratorium and making housing related policy recommendations to City Council. These include but are not limited to:
 - *RAP Fees*
 - *Tenant Protection Ordinance*
 - *Just Cause for Eviction Ordinance*
- b. Public comment was taken for the Board's Eviction Moratorium Resolution Discussion. 2 members of the public spoke:
 - Susan Hepp mentioned how the eviction moratorium was originally put into effect to protect people from evictions during the COVID-19 pandemic due to the financial hardships it has caused. Ms. Hepp stated that the moratorium took a blanket approach to all types of evictions and not just the COVID related evictions and mentioned that it would be nice to hear the Board discuss how that decision was made and if there are any thoughts as to when the moratorium will end.
 - Emily, a member of the Oakland Tenants Union, spoke for herself and stated that if the Board does make a recommendation to City Council, she hopes it would be to keep the moratorium, as it has been a lifeline for many tenants who have lost income due to the pandemic, including herself. Emily mentioned that the pandemic is still happening and that there has not been means testing to determine who qualifies for the moratorium, which has been something that has been helpful to tenants—especially those who don't have access to resources and those who don't speak English as their first language. Emily stated that the moratorium prevents landlords from harassing their tenants due to non-payment and that she hopes that the Board will strongly support keeping the eviction moratorium.
- c. Chair Ingram and the Board continued their previous discussion regarding the Eviction Moratorium Resolution, discussing their personal experiences and concerns, and potential recommendations that could be made to City Council.

9. ADJOURNEMENT

- a. The meeting was adjourned at 6:40 p.m.



CITY OF OAKLAND

Rent Adjustment Program

Rent Registration in Oakland

Chanée Franklin Minor & Allison Pretto

Rent Adjustment Program

April 28, 2022

AGENDA

What is a Rent Registry?

Benefits of a Rent Registry?

Issues to Consider

Stakeholder Feedback

WHAT IS A RENTAL REGISTRY?

An online tool that tracks and makes accessible basic information on rents, tenancies, and rental units.

How Does A Registry Work?

- ▶ Allows Tenancy Registration & Unit Status Updates
- ▶ Tracks Units' Rents
- ▶ Allows Access
 - ▶ Property Owners: View/Edit Contact Info & Tenancy Info
 - ▶ Tenants: View Unit Info (Read Only)
- ▶ Generates of Rent Information Notices for Owners & Tenants
- ▶ Manages & Stores Documents
- ▶ Integrates with Existing Online Fee Payment Platforms

Why Is It Important?

- ▶ It facilitates data collection & analysis
- ▶ It helps track rental housing trends and vacancies over time
- ▶ It supports accurate housing counseling services
- ▶ It allows for easier communication/outreach with tenants and property owners
- ▶ It allows owners to access accurate information for rent increase purposes
- ▶ It increases transparency, enforcement, and compliance



Benefits of a Rental Registry For Property Owners And Tenants

Benefits for Tenants

- ▶ It provides protection against illegal rent increases
- ▶ It tracks rent ceilings for No Fault Evictions
- ▶ It provides a deterrent against fraudulent owner move-in evictions
- ▶ It provides tenants with their own account and access to the information provided by the property owner
- ▶ It provides notice when an eviction notice is filed

Benefits for Property Owners

- ▶ It assists with managing revolving tenancies
- ▶ It assists with tracking capital improvements
- ▶ It makes it easier to calculate rent increases
- ▶ It prevents frivolous challenges to lawful rent increases
- ▶ It makes it easier to pay annual fees



Issues to Consider When Developing a Rental Registry

What Data To Collect?

Most Rental Registries require owners to record:

- Unit address
- Tenant contact information
- Initial and current rent charged for the unit
- Number of tenants
- Housing services provided



What Model of Rent Registration Could Oakland Adopt?

Los Angeles & San Francisco:
Require Annual Registration of Current Rents

Berkeley, East Palo Alto, & Santa Monica:
Calculates Maximum Allowable Rent - Rent Certification

Possible Penalties for Non-Compliance?

Failure to register a rental unit could result in one or more of the following:

- Prevent property owner from serving a rent increase notice (except Costa-Hawkins rent increases)
- Allow tenant to withhold rent
- Prevent property owner from filing a rent increase petition
- Provide a defense to an eviction



Cost to Build the Tool?

One-time system Build-out Costs	Ongoing Annual Maintenance Costs
\$150,000 to \$300,000	\$50,000



Questions?

Appeal Hearing Outline

I. Appellate Body

A. Full Board

1. Quorum.

a) Four.

b) One of each category of Board member first time matter comes up.

c) Any four Board members next time matter comes up.

d) Parties may waive requirement for one of each category, but not numerical quorum.

B. Appeal Panels

1. Quorum.

a) One of each category on Board member.

2. Should only hear appeals on issues already decided by the Board or more routine cases.

II. Appeals

A. Grounds for Appeal (Reg. 8.22.120B):

1. The decision is inconsistent with Rent Law, the Regulations, or prior Board decisions;

2. The decision is inconsistent with other Hearing Officer decisions;
3. New policy issue;
4. The decision violates federal, state, or local law;
5. The decision is not supported by “substantial evidence”.
6. The Hearing Officer made a procedural error denying sufficient opportunity adequately present claim or respond to opposing party; or
7. Owner denied a fair return.

B. Timelines and Deadlines

1. Party must appeal in 15 days after decision + 5 days for mailing.
 - a) If appeal is late, staff dismisses.
2. 10 day notice for appeal hearing.
3. Goal of hearing appeal w/i 30 days (give reasons in writing for each 30 day extension)
4. Postponements of Appeal Hearings
 - a) Granted by Board or staff.
 - b) Only for good cause and in the interest of justice.
 - (1) Illness.

(2) Travel plans scheduled before notice of hearing.

(3) Impractical to appear due to unforeseen circumstances or prearranged plans.

(4) Difficulty or inconvenience in appearing not sufficient.

c) Must be verified.

d) Mutual consent by parties.

e) Request must be submitted at earliest possible time prior to appeal hearing.

C. Appeal submissions.

1. Appeal must be on Board form.

2. Must state reason for appeal.

3. Must serve other parties.

4. Staff reviews for deficiency.

a) For example, failure state reasons for appeal.

b) Staff sends deficiency letter.

c) If not corrected, staff dismisses.

5. Limited to 25 pages (record is 2300).

D. Reconsideration by staff.

1. If appeal presents minor, facial error, Hearing Officer may be asked to review, correct, and issue corrected decision.

- a) For example, calculation error.

E. Failure to appear.

1. Appellant -- Board may dismiss.
2. Respondent – Board continues with appeal hearing, appellate must still put forward case.

F. Conduct of Appeal Hearing

1. Open and recorded.
2. Parties may be represented or assisted.
3. Parties may have translators, but if City is to provide, request must be made in advance.
4. Presentation.
 - a) Each side gets 15 minutes, unless Board votes otherwise.
 - b) 5 minutes for presentation.
 - c) 5 minutes for rebuttal.
 - d) 5 minutes for Board questions.
5. Comments by members of the public not considered.

6. Additional documents not provided with packet cannot be used.

a) Due process concerns, opposing party has a right to respond.

b) If documents are part of the record, they may be found in case file and referred to.

7. New evidence.

a) No new evidence may be presented at an appeal hearing.

b) Exceptions

(1) As proffer of what evidence might have been presented because party did not have opportunity to present at hearing and that is basis of appeal.

(2) As proffer of good cause for failure to appear.

c) Board does not consider evidence, but rather refers to Hearing Officer if proffer is sufficient.

(1) For example, if evidence is sufficient to constitute good cause for excuse, it is referred to

Hearing Officer to determine veracity. If it is not sufficient cause, no need to refer.

G. Board's Decision on Appeal

1. Voting

- a) Majority of those present required to overturn (provided quorum is present).
- b) Tie vote or no vote upholds decision.

2. Written Decision

- a) Staff prepares written decision; comes back Board consideration at subsequent meeting only if Board requests.
- b) Decision must include analysis articulating how the evidence supports the findings and how the findings support the conclusion.

III. Appeal on the record or de novo.

A. On the record.

- 1. No new testimony taken or documents submitted.
- 2. Parties allowed to argue and to discuss evidence before the hearing office, but not to submit new evidence.

3. The decisions must be apparent from documents or findings.
4. Parties can agree on what facts are from hearing below.
5. Staff prepares limited portion of record for Board.
 - a) Board may review the file at office or at Board meeting.
6. Record of oral proceedings not available unless:
 - a) Party transcribes or plays portion of hearing.
 - b) Board member listens at office or requests copy of recorded hearing.

B. De novo (new hearing).

1. Board takes new evidence (testimony and or documentary) on entire case or specific issues.
2. De novo or evidentiary hearings by the Board are not recommended:
 - a) Hearing Officers are better equipped to handle evidentiary hearings.
 - b) Board would have to make evidentiary rulings.
3. Must be at subsequent hearing to allow other party to prepare to contest evidence or to submit contrary evidence.

4. Witnesses must be sworn.

a) Representatives cannot testify.

IV. Evidence.

A. Decision must be based on preponderance of evidence.

B. Strict rules of evidence don't apply.

C. Board can accept hearsay, but give it appropriate weight.

1. Out of court statement offered for the truth.

2. One person testifying as to what another person says.

3. Primary issue is whether the testimony is reliable because it is not direct.

4. Must be other corroborative evidence.

D. Direct and circumstantial evidence.

1. Direct.

a) I saw her eat a piece of cake.

2. Circumstantial.

a) I saw the cake with a slice out and cake crumbs on her mouth.

E. Documents that are not agreed to as being true and correct should be attested to or certified.

F. Evaluating conflicting evidence.

1. Look at surrounding circumstances.

a) Are there other facts to support one side or the other.

2. Motivation of the person testifying.

3. Credibility of the person testifying.

G. Proffered evidence (offer of proof).

1. This is the evidence I would have presented or would present if I have had the opportunity to do so.

a) I can show why I was late.

V. Addressing Appeal Issues.

A. What issues did party appeal on?

B. Should the Board address issues that are apparent, but that neither party appealed on?

1. For example, when a party plainly missed a time deadline and the decision is in error on this point, but there is no appeal on this issue.

C. The Board should assume that issues not brought forward on appeal that are necessary to support the Hearing Officer's decision were correctly decided.

1. For example, that the tenant timely filed the petition or that the landlord gave the proper notices.

D. Substantial evidence.

1. The appellant who claims there was not substantial evidence supporting the decision has the burden of producing the evidence presented and demonstrating it was not substantial.

E. Findings do not support decision or a conclusion.

1. The findings point to an opposition conclusion.
 - a) Example: The finding states that housing services were decreased, but the conclusion is that no rent decrease was granted.

2. There is an analytical gap between the findings and the conclusion.

- a) The findings do not state “why” the conclusion follows.

- b) Example:

- (1) “The roof work was not a capital improvement.” (Why not?).

- (2) “The roof work was not a capital improvement

because it was just the repair of a small leak and not a replacement of the roof.”

VI. Burdens of Proof.

A. The party with the burden of proof must present evidence to meet that burden.

1. If the party with the burden fails to produce competent evidence, that party loses.

B. Examples of burdens.

1. Landlord.

a) Burden of proving eligibility for rent increase.

b) Exemption.

2. Tenant

a) Rent decrease.

VII. Options for Decisions.

A. Affirm hearing officer.

1. No action is affirmation.

2. Affirm with recalculation.

a) Staff performs recalculation and it becomes Board decision with or without further review.

B. Reverse hearing officer.

1. Make a new decision.

C. Remand to Hearing Officer.

1. Board gives instructions as to what issues to address.
2. Hearing officer may make new decision or keep existing decision.

VIII. Decision

- A. Decisions must be in writing.
- B. Decisions should have findings.
- C. The Board should respond to all issues raised on appeal.
- D. The Board should articulate the reasons for its decision.
- E. Board's decision is final as to City.
- F. Decision can only be appealed to court by writ.
 1. Court considers only case record.

IX. Types of Cases for Board.

A. Rent

1. Tenant.
 - a) Rent in excess of CPI.
 - b) Lack of notice at commencement.
 - c) Lack of notice with Rent Increase.
 - d) Decreased housing services.

- e) Uncured code violations.
- f) No timely summary after request.
- g) Contests exemption.

2. Landlord

- a) Rent increase.
- b) Exemption from Rent Law.

(1) Board does deal with Just Cause exemptions.

B. Just Cause for Eviction.

1. Protected status.

- a) Senior.
- b) Disabled.
- c) Catastrophically ill.

2. Time for rehabilitation longer than 3 months.

C. Relocation.

1. Amount of relocation benefits for redevelopment or other relocation.

- a) Not code enforcement relocation.

D. Housing Code

1. Interpretations of housing code.

X. Communications With the Board

A. Ex parte communications.

1. Parties communicating with the Board or Hearing Officer outside of the appeal process.

B. Non-parties speaking at Appeal Hearings.

1. Brown Act permits the public to speak on any item on the Board Agenda.
2. Because of due process and fairness considerations, the Board should not consider comments of non-parties at appeal hearings.

401755v2

CHRONOLOGICAL CASE REPORT

Case No.: L20-0089

Case Name: Haig Mardikian Telegraph & 23rd LLC v. Tenants

Property Address: 2308 Telegraph Avenue, Oakland, CA 94612

Parties: Aurora Vical (Tenant)
Catherine Colpitts (Tenant)
Christine McClintock (Tenant)
Daniel Schwarz (Tenant)
Danielle Bethke (Tenant)
Don Brown (Tenant)
Jason Jackson (Tenant)
Judah Lakin (Tenant)
Yong Park (Tenant)
Haig Mardikian (Owner)
Steve Edrington (Owner Representative)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	October 1, 2020
Tenant Response filed (Jackson)	November 17, 2020
Tenant Response filed (Schwarz)	November 17, 2020
Tenant Response filed (Bethke)	November 17, 2020
Tenant Response filed (McClintock)	November 17, 2020

000045

Tenant Response filed (Colpitts)	November 17, 2020
Tenant Response filed (Lakin)	November 17, 2020
Hearing Dates	June 14 & August 31, 2021
Owner Exhibit submitted	December 13, 2021
Hearing Decision mailed	December 14, 2021
Tenant Appeal filed	December 30, 2021
Order Re Extension of Time for Submission of Appeal Hearing Docs	January 6, 2022
Appeal Brief in Support of Tenants	February 11, 2022

RECEIVED

LSU-0089 RE/MA 3/17

City of Oakland
Rent Adjustment Program

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

OCT -1 2020

RENT ADJUSTMENT PROGRAM
OAKLAND

Property Owner Petition

Property Address: 2308 TELEGRAPH AV

Case: Petition: 11545

Date Filed: 10/1/2020

Party	Name	Address	Mailing Address	
Representative	Steven Edrington Edrington and Associates	1901 Harrison St 13th Floor Oakland, 94612		(510) 749-4880 chris@eddringtonandassociates.com
Owner	Haig Mardikian Telegraph and 23rd LLC	1801 Van Ness Ave Suite 320 San Francisco, 94109		(415) 986-0785 betty@haigmardikian.com
Tenant	Danielle Bethke	2308 TELEGRAPH AV 14 Oakland, CA 94612		
Tenant	Don Brown	2308 TELEGRAPH AV 11 Oakland, CA 94612		
Tenant	Catherine Colpitts	2308 TELEGRAPH AV 16 Oakland, CA 94612		
Tenant	Jason Jackson	2308 TELEGRAPH AV 3 Oakland, CA 94612		

City of Oakland

City of Oakland
Rent Adjustment Program
 250 Frank H. Ogawa Plaza, Suite 5313
 Oakland, CA 94612
 (510) 238-3721

Property Owner Petition
 Property Address: 2308 TELEGRAPH AV
 Case: Petition: 11545
 Date Filed: 10/1/2020

Party	Name	Address	Mailing Address	
Tenant	Judah Lakin	2308 TELEGRAPH AV 17 Oakland, CA 94612		
Tenant	Christine McClintock	2308 TELEGRAPH AV 15 Oakland, CA 94612		
Tenant	Yong Park	2308 TELEGRAPH AV 1 Oakland, CA 94612		
Tenant	Daniel Schwarz	2308 TELEGRAPH AV 4 Oakland, CA 94612		
Tenant	Aurora Vical	2308 TELEGRAPH AV 2 Oakland, CA 94612		

Total number of units on property **10**

Date on which you acquired the building

Type of units **Apartment, Room or Live-work**

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to the tenants in each unit affected by the petition? **No**

City of Oakland

**City of Oakland
Rent Adjustment Program**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

Property Owner Petition

Property Address: 2308 TELEGRAPH AV

Case: Petition: 11545

Date Filed: 10/1/2020

On what date was the RAP Notice first given?

Have you paid your business license? Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.) **Yes**

Oakland Business License number **00051626**

Have you paid the Rent Adjustment Program Service Fee (per unit)? The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. Note: If RAP fee is paid on time, the property owner may charge the tenant one half of the per-unit RAP Service fee. **No**

**City of Oakland
Rent Adjustment Program**
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

Property Owner Petition
Property Address: 2308 TELEGRAPH AV
Case: Petition: 11545
Date Filed: 10/1/2020

Reason(s) for Petition

Note: Justifications for Rent Increases other than the annual allowable rate are discussed in the Rent Adjustment Program Regulations – Appendix A, Sec. 10.

I (We) petition for approval of one or more rent increases on the grounds that the increase(es) is/are justified by:

Increased Housing Service Costs

Mediation

Mediation is an entirely voluntary process to assist you in reaching an agreement with the petitioner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree. The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

Would you like to request Mediation?

Yes

City of Oakland

City of Oakland

Rent Adjustment Program

250 Frank H. Ogawa Plaza, Suite 5313

Oakland, CA 94612

(510) 238-3721

Property Owner Petition

Property Address: 2308 TELEGRAPH AV

Case: Petition: 11545

Date Filed: 10/1/2020

City of Oakland

2019 BIZ TAX
CERTIFICATES

THIS DOCUMENT HAS A TRUE WATERMARK AND VISIBLE FIBERS DISCEARNIBLE FROM BOTH SIDES

CITY OF OAKLAND
BUSINESS TAX CERTIFICATE

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 85.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

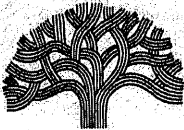
ACCOUNT NUMBER
00051626

DBA TELEGRAPH & 23RD LLC

BUSINESS LOCATION 2308 TELEGRAPH AVE
OAKLAND, CA 94612-2418

BUSINESS TYPE N Rental- Commercial

EXPIRATION DATE
12/31/2019



H G MARDIKIAN
HAIG G. MARDIKIAN
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109-8816

THIS DOCUMENT IS ALTERATION PROTECTED AND REFLECTS FLUORESCENT FIBERS UNDER UV LIGHT

A BUSINESS TAX CERTIFICATE IS REQUIRED FOR EACH BUSINESS LOCATION AND IS NOT VALID FOR ANY OTHER ADDRESS.

ALL OAKLAND BUSINESSES MUST OBTAIN A VALID ZONING CLEARANCE TO OPERATE YOUR BUSINESS LEGALLY. RENTAL OF REAL PROPERTY IS EXCLUDED FROM ZONING.

PUBLIC INFORMATION ABOVE THIS LINE TO BE CONSPICUOUSLY POSTED!

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TELEG/23rd

2020 BIZ
TAX CERT.

2308 Teleg

... 626

THIS DOCUMENT HAS A TRUE WATERMARK AND VISIBLE FIBERS DISCREASIBLE FROM BOTH SIDES

**CITY OF OAKLAND
BUSINESS TAX CERTIFICATE**

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 45.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.


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PUBLIC INFORMATION ABOVE THIS LINE TO BE CONSPICUOUSLY POSTED!

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ACCOUNT STATEMENT



FIRST REPUBLIC BANK
It's a privilege to serve you®

SIMPLIFIED BUSINESS CHECKING

Statement Period:
January 01, 2020
January 31, 2020

Account Number:
XXX-XXX8-6834

TELEGRAPH AND 23RD LLC

ACCOUNT ACTIVITY

DATE	DESCRIPTION	AMOUNT
	Deposits and Credits	
01/06	DEPOSIT-CHECK	\$4,918.50
01/06	DEPOSIT-CHECK	\$11,324.00
01/09	DEPOSIT-CHECK	\$5,378.24
01/09	DEPOSIT-CHECK	\$1,495.00
01/10	CREDIT-SPECIAL DEP ADJ 1/9/20 \$1495	\$0.50
01/16	DEPOSIT-CHECK	\$6,745.99
01/29	DEPOSIT-CHECK	\$1,700.00
	Total Deposits and Credits	\$31,562.23
	Withdrawals and Debits	
01/14	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 01080723	\$129.56-
01/14	ACH DEBIT PAYCHEX - RCX/PAYROLL ID#85317100000030X	\$2,161.49-
01/15	ACH DEBIT PAYCHEX EIB/INVOICE ID#X85296600024693	\$267.62-
01/15	ACH DEBIT PAYCHEX TPS/TAXES ID#85321200006814X	\$754.85-
01/22	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 01086096	\$101.00-
01/22	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 01086105	\$101.00-
01/22	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 01086088	\$808.00-
01/24	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 01089001	\$67.00-
01/24	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 01088962	\$297.16-

005244-2-05244-004



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INCREASED HOUSING SERVICE COSTS (IHSC), p.1 Income and Expenses

Petition Date: 10/1/2020

			INCOME		
			Notes	2018	2019
1	Rents			\$105,798.62	\$128,790.08
2	Laundry				
3	Parking			\$9,029.00	\$9,480.00
4	Other, specify:				
5	Other, specify:				
6	Other, specify:				
7	Other, specify:				
8	(sum of lines 1-7)		Gross Operating Income	\$114,827.62	\$138,270.08

			EXPENSES		
			Notes	2018	2019
9	Business License Tax			\$1,847.40	\$1,804.01
10	Electricity/Gas			\$4,198.10	\$4,784.19
11	Furnishings				
12	Insurance			\$5,995.60	\$6,614.93
13	Laundry Expenses				
14	Parking Expenses				
15	Refuse removal			\$7,669.36	\$8,061.56
16	Replacement				
17	Security				
18	Taxes			\$7,804.78	\$17,850.29
19	Water/Sewer			\$4,414.50	\$4,989.63
20	Other: (specify note mortgage expenses and capital improvement expenses are not a part of IHSC calculation)				
21	Other: (specify note mortgage expenses and capital improvement expenses are not a part of IHSC calculation)				
22	Other: (specify note mortgage expenses and capital improvement expenses are not a part of IHSC calculation)				
23	(sum of lines 9-22)		Gross Operating Expenses	\$31,929.74	\$44,104.61

AND EITHER:			2018	2019
22	Maintenance/Repairs		\$1,585.00	\$8,057.00
23	Management expenses/accounting/legal		\$23,936.00	\$24,405.00
24	SUBTOTAL		\$25,521.00	\$32,462.00

OR:			2018	2019
25	8% of gross op. income on line 8		\$9,186.21	\$11,061.61
26	If verified expenses, enter expenses from line 24. Otherwise enter expenses from line 25. Use same line for both years		\$8,912.32	\$10,581.20
27			Total Operating Expenses	\$40,842.06
28			Difference in expenses (YR2-YR1)	\$54,685.81
				\$13,843.75

2308 Telegraph Ave - Increased Housing Services

Executive Summary and Table of Contents

Exhibit 1: Property Taxes

<u>Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>
4/4/2018	\$ 3,855.33	1	\$ 3,855.33	2
11/15/2018	\$ 3,949.45	3	\$ 3,949.45	4
4/2/2019	\$ 3,949.45	5	\$ 3,949.45	6
12/2/2019	\$ 4,085.84	7	\$ 4,085.84	8
12/16/2019	\$ 2,434.86	9	\$ 2,434.86	10
12/16/2019	\$ 7,380.14	12	\$ 7,380.14	13
TOTAL 2018	\$ 7,804.78		\$ 7,804.78	
TOTAL 2019	\$ 17,850.29		\$ 17,850.29	
Increase	\$ 10,045.51		\$ 10,045.51	

Exhibit 2: City of Oakland Business License Tax

<u>Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>
2/6/2018	N/A	N/A	\$ 1,847.40	1
2/6/2019	N/A	N/A	\$ 1,804.01	2
Increase (decrease)			\$ (43.39)	

Exhibit 3A: PG&E 2018

<u>Bill Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>
12/23/2018	\$ 318.49	1	\$ 318.49	Jan 2019 statement - check 1025
12/28/2018	\$ 260.62	2	\$ 260.62	Jan 2019 statement - check 1031
11/25/2018	\$ 227.79	3	\$ 227.79	5
11/26/2018	\$ 61.45	4	\$ 61.45	5
10/24/2018	\$ 136.20	8	\$ 136.20	9
9/23/2018	\$ 110.30	10	\$ 110.30	11
8/23/2018	\$ 171.77	12	\$ 171.77	13
9/23/2018	\$ 167.96	14	\$ 167.96	15
8/23/2018	\$ 108.83	16	\$ 108.83	17
7/24/2018	\$ 108.39	18	\$ 108.39	19
7/24/2018	\$ 179.45	20	\$ 179.45	21
6/22/2018	\$ 117.06	22	\$ 117.06	23
6/22/2018	\$ 167.96	24	\$ 167.96	25
5/23/2018	\$ 122.79	26	\$ 122.79	27
5/23/2018	\$ 148.09	28	\$ 148.09	29
4/24/2018	\$ 193.35	30	\$ 193.35	31
3/23/2018	\$ 218.93	33	\$ 218.93	34
3/23/2018	\$ 315.48	35	\$ 315.48	36
2/22/2018	\$ 216.18	37	\$ 216.18	38
2/22/2018	\$ 264.07	39	\$ 264.07	40
1/23/2018	\$ 256.51	41	\$ 256.51	42
1/23/2018	\$ 326.43	43	\$ 326.43	44

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Exhibit 3B: PG&E 2019

<u>Bill Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>	
1/30/2019	\$ 283.71	1	\$ 283.71	Feb 2019 statement - check 1001	
1/24/2019	\$ 409.82	2	\$ 409.82	Feb 2019 statement #2 - check 1044	
2/28/2019	\$ 260.45	3	\$ 260.45	March 2019 statement - check 1017 comb	
2/24/2019	\$ 417.53	4	\$ 417.53	March 2019 statement - check 1017 comb	
4/1/2019	\$ 240.56	6	\$ 240.56	April 2019 statement - check 1036 combir	
3/26/2019	\$ 393.13	7	\$ 393.13	April 2019 statement - check 1036 combir	
4/25/2019	\$ 206.04	9	\$ 206.04	May 2019 statement - check 1053	
5/31/2019	\$ 164.28	11	\$ 164.28	June 2019 statement - check 1060	
5/24/2019	\$ 182.63	12	\$ 182.63	June 2019 statement - check 1066	
6/25/2019	\$ 148.64	13	\$ 148.64	July 2019 statement - check 1075 combin	
7/1/2019	\$ 155.06	14	\$ 155.06	July 2019 statement - check 1075 combin	
7/31/2019	\$ 150.41	16	\$ 150.41	August 2019 statement - check 1083 coml	
7/25/2019	\$ 127.78	17	\$ 127.78	August 2019 statement - check 1083 coml	
8/29/2019	\$ 142.08	19	\$ 142.08	Sept 2019 statement - check 1092 combin	
8/25/2019	\$ 115.50	20	\$ 115.50	Sept 2019 statement - check 1092 combin	
10/1/2019	\$ 148.81	22	\$ 148.81	Oct 2019 statement - check 1105 combine	
9/25/2019	\$ 102.53	23	\$ 102.53	Oct 2019 statement - check 1105 combine	
10/30/2019	\$ 9.08	25	\$ 9.08	Nov 2019 statement - check 1122 combin	
10/24/2019	\$ 121.31	26	\$ 121.31	Nov 2019 statement - check 1122 combin	
12/2/2019	\$ 172.74	28	\$ 172.74	Dec 2019 statement - check 1140	
11/15/2019	\$ 75.08	29	\$ 75.08	Dec 2019 statement - check 1130 combin	
11/22/2019	\$ 194.16	30	\$ 194.16	Dec 2019 statement - check 1130 combin	
12/24/2019	\$ 319.17	32	\$ 319.17	Jan 2020 statement - check 1151 combine	
12/31/2019	\$ 243.69	33	\$ 243.69	Jan 2020 statement - check 1151 combine	
TOTAL 2018	\$ 4,198.10		\$ 4,198.10		
TOTAL 2019	\$ 4,784.19		\$ 4,784.19		
Increase	\$ 586.09		\$ 586.09		

Exhibit 4A: EBMUD 2018

<u>Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>	<u>Check total</u>	<u>Notes</u>
1/23/2018	\$ 674.25	1	\$ 674.25	2	\$ 1,354.65	Includes othe
4/3/2018	\$ 728.32	3	\$ 728.32	4	\$ 1,463.02	Includes othe
5/29/2018	\$ 698.02	5	\$ 698.02	6	\$ 1,457.06	Includes othe
7/31/2018	\$ 684.15	7	\$ 684.15	8	\$ 1,530.46	Includes othe
9/20/2018	\$ 729.44	9	\$ 729.44	10	\$ 1,635.67	Includes othe
11/13/2018	\$ 900.32	11	\$ 900.32	12	\$ 2,239.58	Includes othe

Exhibit 4B: EBMUD 2019

<u>Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>	<u>Check total</u>	<u>Notes</u>
1/15/2019	\$ 783.74	1	\$ 783.74	2	\$ 1,764.79	Includes othe
3/18/2019	\$ 778.56	3	\$ 778.56	4	\$ 1,595.07	Includes othe
5/16/2019	\$ 875.58	5	\$ 875.58	6	\$ 1,883.25	Includes othe
7/15/2019	\$ 957.44	7	\$ 957.44	8	\$ 2,049.98	Includes othe

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9/12/2019	\$	802.77	9	\$	802.77	10	\$	2,093.08	Includes othe
11/12/2019	\$	791.54	11	\$	791.54	12	\$	1,830.13	Includes othe
TOTAL 2018	\$	4,414.50		\$	4,414.50				
TOTAL 2019	\$	4,989.63		\$	4,989.63				
Increase	\$	575.13		\$	575.13				

Exhibit 5A: Waste Management 2018

<u>Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>
1/1/2018	\$ 624.67	1	\$ 624.67	2
2/1/2018	\$ 624.67	3	\$ 624.67	4
3/1/2018	\$ 624.67	5	\$ 624.67	6
4/1/2018	\$ 624.67	7	\$ 624.67	8
5/1/2018	\$ 624.67	9	\$ 624.67	10
6/1/2018	\$ 624.67	11	\$ 624.67	12
7/1/2018	\$ 653.45	13	\$ 653.45	14
8/1/2018	\$ 653.45	15	\$ 653.45	16
9/1/2018	\$ 653.61	17	\$ 653.61	18
10/1/2018	\$ 653.61	19	\$ 653.61	20
11/4/2018	\$ 653.61	21	\$ 653.61	22
12/1/2018	\$ 653.61	23	\$ 653.61	24

Exhibit 5B: Waste Management 2019

<u>Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>	
1/1/2019	\$ 653.61	1	\$ 653.61		Jan 2019 statement - check 1027
2/1/2019	\$ 653.61	2	\$ 653.61		Feb 2019 statement - check 1006
3/1/2019	\$ 653.61	3	\$ 653.61		Mar 2019 statement - check 1018
4/1/2019	\$ 652.23	4	\$ 652.23		Apr 2019 statement - check 1038
5/1/2019	\$ 653.44	5	\$ 653.44		May 2019 statement - check 1050
6/1/2019	\$ 653.44	6	\$ 653.44		Jun 2019 statement - check 1061
7/1/2019	\$ 690.27	7	\$ 690.27		Jul 2019 statement - check 1074
8/1/2019	\$ 690.27	8	\$ 690.27		Aug 2019 statement - check 1087
9/1/2019	\$ 690.27	9	\$ 690.27		Sept 2019 statement - check 1093
10/1/2019	\$ 690.27	10	\$ 690.27		Oct 2019 statement - check 1109
11/1/2019	\$ 690.27	11	\$ 690.27		Nov 2019 statement - check 1120
12/1/2019	\$ 690.27	12	\$ 690.27		Dec 2019 statement - check 1139
TOTAL 2018	\$ 7,669.36		\$ 7,669.36		
TOTAL 2019	\$ 8,061.56		\$ 8,061.56		
Increase	\$ 392.20		\$ 392.20		

Exhibit 6A: Farmers Insurance 2018

<u>Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>	<u>Notes</u>
1/23/2018	\$ 1,678.00	1	\$ 1,678.00	2	
2/22/2018	\$ 1,678.00	3	\$ 1,678.00	4	
3/26/2018	\$ 1,678.00	5	\$ 1,678.00	6	
4/26/2018	\$ 1,678.00	7	\$ 1,678.00	8	

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5/29/2018	\$ 1,741.75	9	\$ 1,741.75	10
6/25/2018	\$ 1,741.75	11	\$ 1,741.75	12
7/24/2018	\$ 1,741.75	13	\$ 1,741.75	14
8/28/2018	\$ 1,741.75	15	\$ 1,741.75	16
9/20/2018	\$ 1,741.75	17	\$ 1,741.75	18
10/22/2018	\$ 1,741.75	19	\$ 1,741.75	20
11/27/2018	\$ 1,741.75	21	\$ 1,741.75	22
12/19/2018	\$ 1,741.75	23	\$ 1,741.75	24

Exhibit 6B: Farmers Insurance 2019

<u>Date</u>	<u>Invoiced</u>	<u>Page No.</u>	<u>Paid</u>	<u>Page No.</u>	<u>Notes</u>
12/12/2019	\$ 2,007.58	1	\$ 2,007.58		Jan 2020 statement - check 1145
11/25/2019	\$ 2,007.58	3	\$ 2,007.58		Dec 2019 statement - check 1126
10/21/2019	\$ 1,426.58	5	\$ 1,426.58		Oct 2019 statement - check 1114
9/25/2019	\$ 2,671.58	7	\$ 2,671.58		Oct 2019 statement - check 1100
8/27/2019	\$ 1,924.58	9	\$ 1,924.58		Sept 2019 statement - check 1090
7/22/2019	\$ 1,924.58	11	\$ 1,924.58		Jul 2019 statement - check 1079
6/24/2019	\$ 1,924.58	13	\$ 1,924.58		Jul 2019 statement - check 1068
5/20/2019	\$ 1,924.62	15	\$ 1,924.62		May 2019 statement - check 1055
4/24/2019	\$ 1,741.75	17	\$ 1,741.75		Apr 2019 statement - check 1043
3/25/2019	\$ 1,741.75	19	\$ 1,741.75		Mar 2019 statement - check 1025
2/21/2019	\$ 1,741.75	21	\$ 1,741.75		Feb 2019 statement - check 1009
1/29/2019	\$ 1,741.75	23	\$ 1,741.75		Jan 2019 statement - ACH debit
TOTAL 2018	\$ 20,646.00		\$ 20,646.00		
Applicable					
29%	\$ 5,995.60		\$ 5,995.60		
TOTAL 2019	\$ 22,778.68		\$ 22,778.68		
Applicable					
29%	\$ 6,614.93		\$ 6,614.93		
Increase					
(applicable					
29% only):	\$ 619.33		\$ 619.33		
TOTAL					
INCREASE	\$ 12,174.87		\$ 12,174.87		





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2017-2018

For Fiscal Year Beginning July 1, 2017 and Ending June 30, 2018

ALAMEDA COUNTY SECURED PROPERTY TAX STATEMENT

Henry C. Levy, Treasurer and Tax Collector
1221 Oak Street, Room 131
Oakland, California 94612-4285

Parcel Number	Tracer Number	Tax Rate Area	Special Handling
8-665-12	02034600	17-022	

Location of Property
2308 TELEGRAPH AVE, OAKLAND
Assessed to on January 1, 2017
TELEGRAPH & 23RD

TELEGRAPH & 23RD
C/O MARDIKIAN ENTRPRSES
5 3RD ST # 1000
SAN FRANCISCO CA 94103-3221



Tax Rate Breakdown		
Taxing Agency	Tax Rate	Tax Amount
COUNTYWIDE TAX	1.0000%	1,447.75
VOTER APPROVED DEBT SERVICE :		
CITY OF OAKLAND 1	.2045%	296.05
SCHOOL UNIFIED	.1015%	146.95
SCHOOL COMM COLL	.0310%	44.88
BAY AREA RAPID TRANSIT	.0084%	12.16
EAST BAY REGIONAL PARK	.0021%	3.04
EBMUD SPEC DIST 1	.0011%	1.59
TOTAL	1.3486%	1,952.42

Fixed Charges and/or Special Assessments		
Description	Phone	Amount
MOSQUITO ABATEMENT	(800)273-5167	1.74
CSA PARAMEDIC	(800)441-8280	126.92
CSA VECTOR CONTROL	(800)273-5167	14.40
CITY EMERG MEDICAL	(510)238-2942	28.80
CITY PARAMEDIC SRV	(510)238-2942	22.92
SCHOOL MEASURE G	(510)879-8884	195.00
PERALTA CCD MEAS B	(800)792-8021	48.00
* OUSD MEASURE N	(510)879-8884	120.00
* OUSD MEASURE G1	(510)238-2942	120.00
VIOLENCE PREV TAX	(510)238-3201	140.30
KOREATOWN BID	(888)508-8157	3,902.80
SFBRA MEASURE AA	(510)670-6615	12.00
FLOOD BENEFIT 12	(800)273-5167	32.00
CSA VECTOR CNTRL B	(800)273-5167	2.04
MOSQUITO ASSESS 2	(800)273-5167	1.24
AC TRANSIT MEAS VV	(510)238-2942	96.00
CITY LIBRARY SERV	(866)403-2683	135.26
EBMUD WETWEATHER	(888)512-0316	154.34
* EAST BAY TRAIL LLD	(510)238-2942	5.44
CITY LANDSCP/LIGHT		599.04
* Possible Sr Exempt - Call Agency		
Total Fixed Charges and/or Special Assessments		5,758.24

Tax Computation Worksheet			
Description	Full Valuation	x Tax Rate	= Tax Amount
LAND IMPROVEMENTS	72,489		
FIXTURES	72,286		
TOTAL REAL PROPERTY	144,775		
PERSONAL PROPERTY			
GROSS ASSESSMENT & TAX	144,775	1.3486%	1,952.42
HOMEOWNERS EXEMPTION			
OTHER EXEMPTION			
NET ASSESSMENT AND TAX	144,775	1.3486%	1,952.42
			1,952.42
First Installment	Second Installment	Total Amount Due	
\$3,855.33	\$3,855.33	\$7,710.66	

PLEASE READ IMPORTANT MESSAGES

A FEE OF \$ 61.00 WILL BE IMPOSED ON ALL RETURNED OR DISHONORED PAYMENTS.

E-CHECK ACCEPTED THROUGH JUNE 30, 2018
ONLINE @ www.acgov.org/propertytax/ .

VISA, MASTERCARD, DISCOVER OR AMERICAN EXPRESS CREDIT CARDS ACCEPTED
ONLINE @ www.acgov.org/propertytax/ OR BY PHONE (510)272-6800, MOBILE @ www.acgov.org/mobile/apps/ THROUGH JUNE 30, 2018 . A CONVENIENCE FEE EQUAL TO 2.5% OF THE TAX AMOUNT DUE WILL BE ADDED TO YOUR TOTAL PAYMENT.


SUBSCRIBE TO RECEIVE E-MAIL ALERTS ABOUT IMPORTANT PROPERTY TAX DATES
ONLINE @ www.acgov.org/propertytax/ .

PLEASE SEE REVERSE FOR MORE INFORMATION

Tax Collector's Office
Payment Questions/Credit Card Payments
(510) 272-6800

Assessor's Office
Valuation/Exemption
(510) 272-3787 (510) 272-3770

Site	Paid Date	Serial	Routing	Account	PC	Amount	Sequence #	C:
VIEWPOINTE	20180410	2176	12104288	5614933355	000060	3,855.33	8318618847	

TELEGRAPH & 23RD LLC HAIG G MARDIKIAN 5 THIRD STREET STE 1000 SAN FRANCISCO, CA 94103-3202		WELLS FARGO BANK, N.A. www.wellsfargo.com 11-4288/1210	2176 4/4/2018
PAY TO THE ORDER OF: Henry C. Levy, Tax Collector, Alameda Cou		\$ **3,855.33	Details on Back Security Features Included
Three Thousand Eight Hundred Fifty-Five and 33/100		DOLLARS	
Henry C. Levy, Tax Collector Alameda County 1221 Oak St., Room 131 Oakland, CA 94612-4287		 AUTHORIZED SIGNATURE	
MEMO APN: 8-665-12			
⑈0000002176⑈ ⑆121042882⑆ 5614933355⑈			

UNION BANK D R WHITE TRS/TAX COL 7020010325	
03 0002 04/09/18 02034600 2 00044 22 00 01173 04/09/18 02034600 2 00044	

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2018 2018
 For Fiscal Year Beginning July 1, 2018 and Ending June 30, 2019

ALAMEDA COUNTY
SECURED PROPERTY TAX STATEMENT
 Henry C. Levy, Treasurer and Tax Collector
 1221 Oak Street, Room 131
 Oakland, California 94612

Parcel Number	Tracer Number	Tax Rate Area	Special Handling
8-665-12	02054200	17-022	

Location of Property
 2308 TELEGRAPH AVE, OAKLAND
 Assessed to on January 1, 2018
 TELEGRAPH & 23RD

TELEGRAPH & 23RD
 C/O HAIG G MARDIKIAN, MANAGER
 1801 VAN NESS AVE # 320
 SAN FRANCISCO CA 94109-8816

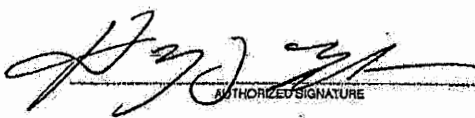


Description	Phone	Amount
MOSQUITO ABATEMENT	(800)273-5167	1.74
CSA PARAMEDIC	(800)441-8280	131.44
CSA VECTOR CONTROL	(800)273-5167	14.40
CITY EMERG MEDICAL	(510)238-2942	29.74
CITY PARAMEDIC SRV	(510)238-2942	23.66
SCHOOL MEASURE G	(510)879-8884	195.00
PERALTA CCD MEAS B	(800)792-8021	48.00
OUSD MEASURE N	(510)879-8884	120.00
OUSD MEASURE G1	(510)879-8884	120.00
VIOLENCE PREV TAX	(510)238-2942	144.80
KOREATOWN BID	(510)238-3201	3,902.80
CITY LIBRARY SRV-D	(510)238-2942	99.82
SFBRA MEASURE AA	(888)508-8157	12.00
FLOOD BENEFIT 12	(510)670-6615	32.00
CSA VECTOR CNTRL B	(800)273-5167	2.04
MOSQUITO ASSESS 2	(800)273-5167	1.24
AC TRANSIT MEAS VV	(800)273-5167	96.00
CITY LIBRARY SERV	(510)238-2942	139.64
EBMUD WETWEATHER	(866)403-2683	162.06
EAST BAY TRAIL LLD	(888)512-0316	5.44
CITY LANDSCP/LIGHT	(510)238-2942	599.04
Total Fixed Charges and/or Special Assessments		5,880.86

Tax Computation Worksheet			
Description	Full Valuation	x Tax Rate	= Tax Amount
LAND	73,938		
IMPROVEMENTS	73,731		
FIXTURES			
TOTAL REAL PROPERTY	147,669		
PERSONAL PROPERTY			
GROSS ASSESSMENT & TAX	147,669	1.3666%	2,018.04
HOMEOWNERS EXEMPTION			
OTHER EXEMPTION			
NET ASSESSMENT AND TAX	147,669	1.3666%	2,018.04
			2,018.04
First Installment	Second Installment	Total Amount Due	
\$3,949.45	\$3,949.45	\$7,898.90	

Tax Rate Breakdown		
Taxing Agency	Tax Rate	Tax Amount
COUNTYWIDE TAX	1.0000%	1,476.69
VOTER APPROVED DEBT SERVICE :		
COUNTY GO BOND	.0112%	16.53
CITY OF OAKLAND I	.1982%	292.68
SCHOOL UNIFIED	.1176%	173.66
SCHOOL COMM COLL	.0269%	39.72
BAY AREA RAPID TRANSIT	.0070%	10.34
EAST BAY REGIONAL PARK	.0057%	8.42
TOTAL	1.3666%	2,018.04

Site	Paid Date	Serial	Routing	Account	PC	Amount	Sequence #	Ci
VIEWPOINTE	20181121	2295	12104288	5614933355	000060	3,949.45	8514036662	

TELEGRAPH & 23RD LLC HAIG G MARDIKIAN 5 THIRD STREET STE 1000 SAN FRANCISCO, CA 94103-3202		WELLS FARGO BANK, N.A. www.wellsfargo.com 11-4288/1210	2295 11/15/2018
PAY TO THE ORDER OF <u>Henry C Levy, Tax Collector, Alameda Cty</u>		\$**3,949.45	Details on Back Security Features Included
Three Thousand Nine Hundred Forty-Nine and 45/100		DOLLARS	
Henry C Levy, Tax Collector, Ala 1221 Oak Street, Room 131 Oakland, CA 94612-4287		 AUTHORIZED SIGNATURE	
MEMO APN: 8-665-12			
⑈0000002295⑈ ⑆121042882⑆ 5614933355⑈			

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2018-2019
 For Fiscal Year Beginning July 1, 2018 and Ending June 30, 2019

ALAMEDA COUNTY
SECURED PROPERTY TAX STATEMENT

Henry C. Levy, Treasurer and Tax Collector
 1221 Oak Street, Room 131
 Oakland, California 94612

Parcel Number	Tracer Number	Tax Rate Area	Special Handling
8-665-12	02054200	17-022	

Location of Property
 2308 TELEGRAPH AVE, OAKLAND
 Assessed to on January 1, 2018
 TELEGRAPH & 23RD

TELEGRAPH & 23RD
 C/O HAIG G MARDIKIAN, MANAGER
 1801 VAN NESS AVE # 320
 SAN FRANCISCO CA 94109-8816



Tax Rate Breakdown		
Taxing Agency	Tax Rate	Tax Amount
COUNTYWIDE TAX	1.0000%	1,476.69
VOTER APPROVED DEBT SERVICE:		
COUNTY GO BOND	.0112%	16.53
CITY OF OAKLAND 1	.1982%	292.68
SCHOOL UNIFIED	.1176%	173.66
SCHOOL COMM COLL	.0269%	39.72
BAY AREA RAPID TRANSIT	.0070%	10.34
EAST BAY REGIONAL PARK	.0057%	8.42
TOTAL	1.3666%	2,018.04

Description	Phone	Amount
MOSQUITO ABATEMENT	(800)273-5167	1.74
CSA PARAMEDIC	(800)441-8280	131.44
CSA VECTOR CONTROL	(800)273-5167	14.40
CITY EMERG MEDICAL	(510)238-2942	29.74
CITY PARAMEDIC SRV	(510)238-2942	23.66
SCHOOL MEASURE G	(510)879-8884	195.00
PERALTA CCD MEAS B	(800)792-8021	48.00
OUSD MEASURE N	(510)879-8884	120.00
OUSD MEASURE G1	(510)879-8884	120.00
VIOLENCE PREV TAX	(510)238-2942	144.80
KOREATOWN BID	(510)238-3201	3,902.80
CITY LIBRARY SRV-D	(510)238-2942	99.82
SFBRA MEASURE AA	(888)508-8157	12.00
FLOOD BENEFIT 12	(510)670-6615	32.00
CSA VECTOR CNTRL B	(800)273-5167	2.04
MOSQUITO ASSESS 2	(800)273-5167	1.24
AC TRANSIT MEAS VV	(800)273-5167	96.00
CITY LIBRARY SERV	(510)238-2942	139.64
EBMUD WETWEATHER	(866)403-2683	162.06
EAST BAY TRAIL LLD	(888)512-0316	5.44
CITY LANDSCP/LIGHT	(510)238-2942	599.04

Total Fixed Charges and/or Special Assessments **5,880.86**

Tax Computation Worksheet			
Description	Full Valuation	x Tax Rate	= Tax Amount
LAND IMPROVEMENTS	73,938		
FIXTURES	73,731		
TOTAL REAL PROPERTY	147,669		
PERSONAL PROPERTY			
GROSS ASSESSMENT & TAX	147,669	1.3666%	2,018.04
HOMEOWNERS EXEMPTION			
OTHER EXEMPTION			
NET ASSESSMENT AND TAX	147,669	1.3666%	2,018.04
			2,018.04
First Installment	Second Installment	Total Amount Due	
\$3,949.45	\$3,949.45	\$7,898.90	

2019-2020
For Fiscal Year Beginning July 1, 2019 and Ending June 30, 2020

ALAMEDA COUNTY
SECURED PROPERTY TAX STATEMENT

Henry C. Levy, Treasurer and Tax Collector
1221 Oak Street, Room 131
Oakland, California 94612

Parcel Number	Tracer Number	Tax-Rate Area	Special Handling
8-665-12	02054100	17-022	

Location of Property
2308 TELEGRAPH AVE, OAKLAND
Assessed to on January 1, 2019
ADIUVANA INVEST INC & TELEGRAP

TELEGRAPH & 23RD LLC
1801 VAN NESS AVE # 320
SAN FRANCISCO CA 94109-8816



Description	Phone	Amount
MOSQUITO ABATEMENT	(800)273-5167	1.74
CSA PARAMEDIC	(925)867-3400	136.08
CSA VECTOR CONTROL	(800)273-5167	14.40
CITY EMERG MEDICAL	(510)238-2942	30.90
CITY PARAMEDIC SRV	(510)238-2942	24.60
SCHOOL MEASURE G	(510)879-8884	195.00
PERALTA CCD MEAS B	(800)792-8021	48.00
* OUSD MEASURE N	(510)879-8884	120.00
* OUSD MEASURE G1	(510)879-8884	120.00
VIOLENCE PREV TAX	(510)238-2942	150.44
KOREATOWN BID	(510)238-3201	4,097.94
CITY LIBRARY SRV-D	(510)238-2942	103.72
SPBRA MEASURE AA	(888)508-8157	12.00
FLOOD BENEFIT 12	(510)670-5212	32.00
CSA VECTOR CNTRL B	(800)273-5167	2.54
MOSQUITO ASSESS 2	(800)273-5167	1.24
AC TRANSIT MEAS VV	(800)273-5167	96.00
CITY LIBRARY SERV	(510)238-2942	145.10
EBMUD WETWEATHER	(866)403-2683	173.78
* EAST BAY TRAIL LLD	(888)512-0316	5.44
CITY LANDSCP/LIGHT	(510)238-2942	599.04
* Possible Sr Exempt - Call Agency		
Total Fixed Charges and/or Special Assessments		6,109.96

Tax Computation Worksheet			
Description	Full Valuation	x Tax Rate	= Tax Amount
LAND IMPROVEMENTS	75,417		
FIXTURES	75,206		
TOTAL REAL PROPERTY	150,623		
PERSONAL PROPERTY			
GROSS ASSESSMENT & TAX	150,623	1.3688%	2,061.72
HOMEOWNERS EXEMPTION			
OTHER EXEMPTION			
NET ASSESSMENT AND TAX	150,623	1.3688%	2,061.72
			2,061.72
First Installment		Second Installment	Total Amount Due
\$4,085.84		\$4,085.84	\$8,171.68

Tax-Rate Breakdown		
Taxing Agency	Tax Rate	Tax Amount
COUNTYWIDE TAX	1.0000%	1,506.23
VOTER APPROVED DEBT SERVICE :		
COUNTY GO BOND	.0108%	16.26
CITY OF OAKLAND 1	.1975%	297.48
SCHOOL UNIFIED	.1168%	175.93
SCHOOL COMM COLL	.0257%	38.71
BAY AREA RAPID TRANSIT	.0120%	18.07
EAST BAY REGIONAL PARK	.0060%	9.04
TOTAL	1.3688%	2,061.72

PLEASE READ IMPORTANT MESSAGES

A FEE OF \$ 61.00 WILL BE IMPOSED ON ALL RETURNED OR DISHONORED PAYMENTS.

SECOND INSTALLMENT PAYMENT, 2019-2020

PARCEL NO. 8-665-12
TRACER NO. 02054100

2

THIS AMOUNT DUE FEB. 1, 2020 → \$4,085.84

Pay this amount after APRIL 10, 2020
(This includes delinquent penalty of 10% and \$10.00 cost)

\$4,504.42

Do Not Use This Stub After June 30, 2020

SEND THIS STUB WITH YOUR SECOND PAYMENT

Make checks payable to: Henry C. Levy, Tax Collector, Alameda County

62020 0020541002 1000408584 00000000

E CHECK ACCEPTED THROUGH JUNE 30, 2020
ONLINE @ www.acgov.org/propertytax/

ACCOUNT STATEMENT



FIRST REPUBLIC BANK

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Page 5 of 7

005235-2-05235-004

Your Check Images-Continued Front

TELEGRAPH AND 23RD LLC 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109		FIRST REPUBLIC BANK 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109	1131 11/18/2019 CHECK # 1131
PAY TO THE ORDER OF: Henry C Levy, Tax Collector, Alameda Cty		12/2/2019	
Eight Hundred Sixty-Three and 21/100		\$ 863.21	
Henry C Levy, Tax Collector, Ala 1221 Oak Street, Room 131 Oakland, CA 94612-4287		DOLLARS	
MEMO APN: 8-665-10		AUTHORIZED SIGNATURE	
⑆001131⑆ ⑆321081669⑆ 80007386834⑆			

Check # 1131 Date 12/12/2019 Amount \$863.21

TELEGRAPH AND 23RD LLC 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109		FIRST REPUBLIC BANK 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109	1132 11/18/2019 CHECK # 1132
PAY TO THE ORDER OF: Henry C Levy, Tax Collector, Alameda Cty		12/2/2019	
One Thousand Three Hundred Thirty-Seven and 75/100		\$ 1,337.75	
Henry C Levy, Tax Collector, Ala 1221 Oak Street, Room 131 Oakland, CA 94612-4287		DOLLARS	
MEMO APN: 8-665-11		AUTHORIZED SIGNATURE	
⑆001132⑆ ⑆321081669⑆ 80007386834⑆			

Check # 1132 Date 12/12/2019 Amount \$1,337.75

TELEGRAPH AND 23RD LLC 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109		FIRST REPUBLIC BANK 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109	1133 11/18/2019 CHECK # 1133
PAY TO THE ORDER OF: Henry C Levy, Tax Collector, Alameda Cty		12/2/2019	
Four Thousand Eighty-Five and 84/100		\$ 4,085.84	
Henry C Levy, Tax Collector, Ala 1221 Oak Street, Room 131 Oakland, CA 94612-4287		DOLLARS	
MEMO APN: 8-665-12		AUTHORIZED SIGNATURE	
⑆001133⑆ ⑆321081669⑆ 80007386834⑆			

Check # 1133 Date 12/12/2019 Amount \$4,085.84

TELEGRAPH AND 23RD LLC 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109		FIRST REPUBLIC BANK 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109	1134 11/18/2019 CHECK # 1134
PAY TO THE ORDER OF: Henry C Levy, Tax Collector, Alameda Cty		12/2/2019	
One Thousand Two Hundred Ninety-Five and 27/100		\$ 1,295.27	
Henry C Levy, Tax Collector, Ala 1221 Oak Street, Room 131 Oakland, CA 94612-4287		DOLLARS	
MEMO APN: 8-665-13		AUTHORIZED SIGNATURE	
⑆001134⑆ ⑆321081669⑆ 80007386834⑆			

Check # 1134 Date 12/12/2019 Amount \$1,295.27

TELEGRAPH AND 23RD LLC 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109		FIRST REPUBLIC BANK 1801 VAN NESS AVE STE 200 SAN FRANCISCO, CA 94109	1135 11/18/2019 CHECK # 1135
PAY TO THE ORDER OF: Henry C Levy, Tax Collector, Alameda Cty		12/2/2019	
One Thousand Thirty-Three and 53/100		\$ 1,033.53	
Henry C Levy, Tax Collector, Ala 1221 Oak Street, Room 131 Oakland, CA 94612-4287		DOLLARS	
MEMO APN: 8-665-14		AUTHORIZED SIGNATURE	
⑆001135⑆ ⑆321081669⑆ 80007386834⑆			

Check # 1135 Date 12/12/2019 Amount \$1,033.53

Back

176001669 001131 00007386834 TELEGRAPH AND 23RD LLC	SECURITY FEATURES: Microprint, color, and other features. Do not cash if any of the features listed above are missing or appear altered. Payment will not be made on this check.	DEC 10 2019 8105 256 1 For Deposit Only Lot
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176001669 001132 00007386834 TELEGRAPH AND 23RD LLC	SECURITY FEATURES: Microprint, color, and other features. Do not cash if any of the features listed above are missing or appear altered. Payment will not be made on this check.	DEC 10 2019 8105 261 1 For Deposit Only Lot
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176001669 001133 00007386834 TELEGRAPH AND 23RD LLC	SECURITY FEATURES: Microprint, color, and other features. Do not cash if any of the features listed above are missing or appear altered. Payment will not be made on this check.	DEC 10 2019 8105 260 1 For Deposit Only Lot
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176001669 001134 00007386834 TELEGRAPH AND 23RD LLC	SECURITY FEATURES: Microprint, color, and other features. Do not cash if any of the features listed above are missing or appear altered. Payment will not be made on this check.	DEC 10 2019 8105 262 1 For Deposit Only Lot
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176001669 001135 00007386834 TELEGRAPH AND 23RD LLC	SECURITY FEATURES: Microprint, color, and other features. Do not cash if any of the features listed above are missing or appear altered. Payment will not be made on this check.	DEC 10 2019 8105 263 1 For Deposit Only Lot
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111 PINE STREET, SAN FRANCISCO, CALIFORNIA 94111, TEL (415) 392-1400 OR 1-800-392-1400
24 HOUR AUTOMATED BANKING SYSTEM 1-800-392-1407

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8 FRB 308 - 1/14

For Fiscal Year Beginning July 1, 2018 and Ending June 30, 2019

ALAMEDA COUNTY
SUPPLEMENTAL PROPERTY TAX STATEMENT

Henry C. Levy, Treasurer and Tax Collector
 1221 Oak Street, Room 131
 Oakland, California 94612

Parcel Number	Tracer Number	Tax-Rate Area	Special Handling
8-665-12	73140700	17-022	

Location of Property
 2308 TELEGRAPH AVE OAKLAND
 Assessed to:
 TELEGRAPH & 23RD LLC

TELEGRAPH & 23RD LLC

1801 VAN NESS AVE #320
 SAN FRANCISCO CA 94109

Taxing Agency	Tax Rate	Tax Amount
COUNTYWIDE TAX	1.0000%	3,563.39
VOTER APPROVED DEBT SERVICE		
COUNTY GO BOND	0.0112%	39.91
CITY OF OAKLAND 1	0.1982%	706.26
SCHOOL UNIFIED	0.1176%	419.05
SCHOOL COMM COLL	0.0269%	95.86
BAY AREA RAPID TRANSIT	0.0070%	24.94
EAST BAY REGIONAL PARK	0.0057%	20.31
TOTAL	1.3666%	4,869.72

Supplemental Value Computation Worksheet				
Description	New Value	- 2018-2019 Roll Value	- Prior Supp. Assessment	= Supplemental Assessment
LAND IMPROVEMENTS	614,619	73,938		540,681
	612,865	73,731		539,134
TOTAL	1,227,484	147,669		1,079,815
PLUS DISCONTINUED EXISTING EXEMPTION				
GROSS ASSESSMENT				1,079,815

Tax Computation Worksheet					
Description	Supplemental Assessment	x Tax Rate	= Tax Amount	x Pro Rate Factor	= Tax Due
GROSS ASSESSMENT & TAX	1,079,815	1.3666%	14,756.75	33.00%	4,869.72
NET ASSESSMENT & TAX	1,079,815	1.3666%	14,756.75	33.00%	4,869.72
TOTAL AMOUNT DUE					\$4,869.72

This supplemental property tax bill is IN ADDITION TO THE REGULAR PROPERTY TAX BILL. CHANGE OF OWNERSHIP FEB. 1, 2019

PLEASE READ IMPORTANT MESSAGES
 PRIOR NOTICE MAILED BY THE ASSESSOR 09/09/19

SECOND INSTALLMENT SECURED SUPPLEMENTAL TAX PAYMENT STUB 2

2



PARCEL NO.	8-665-12
TRACER NO.	73140700
THIS AMOUNT DUE APR. 30, 2020	\$2,434.86

Pay this amount after **APR. 30, 2020**
 (This includes delinquent penalty of 10% and \$10.00 cost)
\$2,688.34

SEND THIS STUB WITH YOUR SECOND PAYMENT

Make checks payable to: Henry C. Levy, Tax Collector, Alameda County

Supplemental Tax Payment Information
 The TOTAL AMOUNT DUE is payable by two installments that must be paid by the dates indicated on the installment payment remittance stubs attached to this bill. If the taxes are not paid, a 10% delinquent penalty attaches at 5 p.m. of the date indicated on each installment stub. A \$10 cost also attaches when the second installment becomes delinquent in addition to the 10% delinquent penalty and \$10 cost, it will be necessary to pay redemption penalties and a redemption fee from **JULY 1, 2020**.
 To pay the first and second installments at the same time, send both stubs and remit **\$4,869.72**
BY DEC. 31, 2019.

1911 5731407002 8000243486 00000000

TELEGRAPH AND 23RD LLC

1141

Henry C. Levy, Tax Collector

12/16/2019

Real Estate Taxes
Real Estate Taxes
Real Estate Taxes
Real Estate Taxes
Real Estate Taxes

Parcel No. 8-665-10
Parcel No. 8-665-11
Parcel No. 8-665-12
Parcel No. 8-665-13
Parcel No. 8-665-14

136.43
669.37
2,434.86
676.23
515.29

FIRST REPUBLIC-HG 2018-2019 Supplemental Property Tax

4,432.18

TELEGRAPH AND 23RD LLC

1209

Henry C. Levy, Tax Collector

4/29/2020

Real Estate Taxes
Real Estate Taxes
Real Estate Taxes
Real Estate Taxes
Real Estate Taxes

Parcel No. 8-665-10
Parcel No. 8-665-11
Parcel No. 8-665-12
Parcel No. 8-665-13
Parcel No. 8-665-14

136.43
669.37
2,434.86
676.23
515.29

FIRST REPUBLIC-HG 2018-2019 Supplemental Property Tax

4,432.18

ACCOUNT STATEMENT



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Your Check Images-Continued Front

Back

005235-2-05235-004



TELEGRAPH AND 23RD LLC
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109

12/16/2019

PAY TO THE ORDER OF: Henry C. Levy, Tax Collector \$ **4,432.18

Four Thousand Four Hundred Thirty-Two and 18/100 DOLLARS

Henry C. Levy, Tax Collector
Alameda County
1221 Oak Street, Room 131
Oakland, CA 94612

MEMO: 2018-2019 Supplemental Property Tax

1141
11/16/2019
12/16/2019

321081669 001341

0000738834

DEC 27 2019 8100 2114 1
For Deposit Only Lot

Security Features: Microprint, watermark, and security threads.

Do not Cash!
If you cash this check, you may be liable for any amount not deposited.

Check # 1141 Date 12/31/2019 Amount \$4,432.18

TELEGRAPH AND 23RD LLC
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109

12/16/2019

PAY TO THE ORDER OF: Henry C. Levy, Tax Collector \$ **13,434.10

Thirteen Thousand Four Hundred Thirty-Four and 10/100 DOLLARS

Henry C. Levy, Tax Collector
Alameda County
1221 Oak Street, Room 131
Oakland, CA 94612

MEMO: 2019-2020 Supplemental Property Tax

1142
11/16/2019
12/16/2019

321081669 001342

0000738834

DEC 27 2019 8100 2113 1
For Deposit Only Lot

Security Features: Microprint, watermark, and security threads.

Do not Cash!
If you cash this check, you may be liable for any amount not deposited.

Check # 1142 Date 12/31/2019 Amount \$13,434.10

TELEGRAPH AND 23RD LLC
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109

12/16/2019

PAY TO THE ORDER OF: Yoon Carrasco \$ **300.00

Three Hundred and 00/100 DOLLARS

Yoon Carrasco
dba YCB Cleaning Services
1340 Orchard Avenue
San Leandro, CA 94577

MEMO

1143
11/16/2019
12/16/2019

321081669 001343

0000738834

DEC 27 2019 8100 2112 1
For Deposit Only Lot

Security Features: Microprint, watermark, and security threads.

Do not Cash!
If you cash this check, you may be liable for any amount not deposited.

Check # 1143 Date 12/26/2019 Amount \$300.00

TELEGRAPH AND 23RD LLC
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109

12/18/2019

PAY TO THE ORDER OF: Extra Space Storage of San Leandro \$ **382.66

Three Hundred Eighty-Two and 66/100 DOLLARS

Extra Space Storage of San Leandro
2000 Goodale Drive
San Leandro, CA 94577-3277

MEMO: Acct ID: 2506744/Unit #M533

1144
11/16/2019
12/18/2019

321081669 001344

0000738834

DEC 27 2019 8100 2111 1
For Deposit Only Lot

Security Features: Microprint, watermark, and security threads.

Do not Cash!
If you cash this check, you may be liable for any amount not deposited.

Check # 1144 Date 12/24/2019 Amount \$382.66

000074

2019-2020

For Fiscal Year Beginning July 1, 2019 and Ending June 30, 2020

ALAMEDA COUNTY
SUPPLEMENTAL PROPERTY TAX STATEMENT

Henry C. Levy, Treasurer and Tax Collector
1221 Oak Street, Room 131
Oakland, California 94612

Parcel Number	Tracer Number	Tax-Rate Area	Special Handling
8-665-12	73140800	17-022	

Location of Property
2308 TELEGRAPH AVE OAKLAND
Assessed to:
TELEGRAPH & 23RD LLC

TELEGRAPH & 23RD LLC

1801 VAN NESS AVE #320
SAN FRANCISCO CA 94109

Taxing Agency	Tax Rate	Tax Amount
COUNTYWIDE TAX	1.0000%	10,783.38
VOTER APPROVED DEBT SERVICE		
COUNTY GO BOND	0.0108%	116.45
CITY OF OAKLAND 1	0.1975%	2,129.72
SCHOOL UNIFIED	0.1168%	1,259.50
SCHOOL COMM COLL	0.0257%	277.13
BAY AREA RAPID TRANSIT	0.0120%	129.40
EAST BAY REGIONAL PARK	0.0060%	64.70
TOTAL	1.3688%	14,760.28

Supplemental Value Computation Worksheet				
Description	New Value	- 2019-2020 Roll Value	- Prior Supp. Assessment	= Supplemental Assessment
LAND IMPROVEMENTS	615,358	75,417		539,941
	613,603	75,206		538,397
TOTAL	1,228,961	150,623		1,078,338
PLUS DISCONTINUED EXISTING EXEMPTION				
GROSS ASSESSMENT				1,078,338

Tax Computation Worksheet					
Description	Supplemental Assessment	x Tax Rate	= Tax Amount	x Pro Rate Factor	= Tax Due
GROSS ASSESSMENT & TAX	1,078,338	1.3688%	14,760.29	100.00%	14,760.28
NET ASSESSMENT & TAX	1,078,338	1.3688%	14,760.29	100.00%	14,760.28
TOTAL AMOUNT DUE					\$14,760.28

This supplemental property tax bill is IN ADDITION TO THE REGULAR PROPERTY TAX BILL. CHANGE OF OWNERSHIP FEB. 1, 2019

PLEASE READ IMPORTANT MESSAGES
 @ PRIOR NOTICE MAILED BY THE ASSESSOR 09/09/19

Supplemental Tax Payment Information
 The TOTAL AMOUNT DUE is payable by two installments that must be paid by the dates indicated on the installment payment remittance stubs attached to this bill. If the taxes are not paid, a 10% delinquent penalty attaches at 5 p.m. of the date indicated on each installment stub. A \$10 cost also attaches when the second installment becomes delinquent. In addition to the 10% delinquent penalty and \$10 cost, it will be necessary to pay redemption penalties and a redemption fee from JULY 1, 2020.
 To pay the first and second installments at the same time, send both stubs and remit \$14,760.28
 BY DEC. 31, 2019.

SECOND INSTALLMENT SECURED SUPPLEMENTAL TAX PAYMENT STUB 2

2



PARCEL NO.	8-665-12
TRACER NO.	73140800
THIS AMOUNT DUE APR. 30, 2020 →	\$7,380.14
Pay this amount after APR. 30, 2020 (This includes delinquent penalty of 10% and \$10.00 cost)	\$8,128.15

SEND THIS STUB WITH YOUR SECOND PAYMENT

Make checks payable to: Henry C. Levy, Tax Collector, Alameda County

1911 4731408002 0000738014 00000000

TELEGRAPH AND 23RD LLC

1142

Henry C. Levy, Tax Collector

12/16/2019

Real Estate Taxes
Real Estate Taxes
Real Estate Taxes
Real Estate Taxes
Real Estate Taxes

Parcel No. 8-665-10
Parcel No. 8-665-11
Parcel No. 8-665-12
Parcel No. 8-665-13
Parcel No. 8-665-14

413.54
2,028.88
7,380.14
2,049.67
1,561.87

FIRST REPUBLIC-HG 2019-2020 Supplemental Property Tax

13,434.10

TELEGRAPH AND 23RD LLC

1210

Henry C. Levy, Tax Collector

4/29/2020

Real Estate Taxes
Real Estate Taxes
Real Estate Taxes
Real Estate Taxes
Real Estate Taxes

Parcel No. 8-665-10
Parcel No. 8-665-11
Parcel No. 8-665-12
Parcel No. 8-665-13
Parcel No. 8-665-14

413.54
2,028.88
7,380.14
2,049.67
1,561.87

FIRST REPUBLIC-HG 2019-2020 Supplemental Property Tax

13,434.10

ACCOUNT STATEMENT



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Your Check Images-Continued Front

TELEGRAPH AND TRSD LLC
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109

1141
12/16/2019

PAY TO THE ORDER OF: Henry C. Levy, Tax Collector \$ 4,432.18

Four Thousand Four Hundred Thirty-Two and 18/100 ***** DOLLARS

Henry C. Levy, Tax Collector
Alameda County
1221 Oak Street, Room 131
Oakland, CA 94612

MEMO: 2018-2019 Supplemental Property Tax

APPROVED SIGNATURE: *[Signature]*

⑆00114⑆ ⑆321081669⑆ 8000738683⑆

Check # 1141 Date 12/31/2019 Amount \$4,432.18

TELEGRAPH AND TRSD LLC
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109

1142
12/16/2019

PAY TO THE ORDER OF: Henry C. Levy, Tax Collector \$ 13,434.10

Thirteen Thousand Four Hundred Thirty-Four and 10/100 ***** DOLLARS

Henry C. Levy, Tax Collector
Alameda County
1221 Oak Street, Room 131
Oakland, CA 94612

MEMO: 2018-2020 Supplemental Property Tax

APPROVED SIGNATURE: *[Signature]*

⑆00114⑆ ⑆321081669⑆ 8000738683⑆

Check # 1142 Date 12/31/2019 Amount \$13,434.10

TELEGRAPH AND TRSD LLC
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109

1143
12/18/2019

PAY TO THE ORDER OF: Yvan Carrasco \$ 300.00

Three Hundred and 00/100 ***** DOLLARS

Yvan Carrasco
dba YCB Clearing Services
1340 Orchard Avenue
San Leandro, CA 94577

MEMO

APPROVED SIGNATURE: *[Signature]*

⑆00114⑆ ⑆321081669⑆ 8000738683⑆

Check # 1143 Date 12/26/2019 Amount \$300.00

TELEGRAPH AND TRSD LLC
1801 VAN NESS AVE STE 320
SAN FRANCISCO, CA 94109

1144
12/19/2019

PAY TO THE ORDER OF: Extra Space Storage of San Leandro \$ 382.66

Three Hundred Eighty-Two and 66/100 ***** DOLLARS

Extra Space Storage of San Leandro
2000 Doolittle Drive
San Leandro, CA 94577-3277

MEMO: Acct ID: 2506744/Unit #M593

APPROVED SIGNATURE: *[Signature]*

⑆00114⑆ ⑆321081669⑆ 8000738683⑆

Check # 1144 Date 12/24/2019 Amount \$382.66

Back

⑆00114⑆ ⑆321081669⑆ 8000738683⑆

DEC 27 2019 8100 7134 1
For Deposit Only Lot

Check for POST-DEPOSIT SERVICE
TRANSFER OF FUNDS, AUTOMATIC DEBIT

Do not detach
Any of the features listed above are not for or beyond stated
features. If you do not wish to use any of the features listed
above, please call 1-800-392-1407 for assistance and have
one of our agents assist you with the call.

⑆00114⑆ ⑆321081669⑆ 8000738683⑆

DEC 27 2019 8100 7133 1
For Deposit Only Lot

Check for POST-DEPOSIT SERVICE
TRANSFER OF FUNDS, AUTOMATIC DEBIT

Do not detach
Any of the features listed above are not for or beyond stated
features. If you do not wish to use any of the features listed
above, please call 1-800-392-1407 for assistance and have
one of our agents assist you with the call.

⑆00114⑆ ⑆321081669⑆ 8000738683⑆

DEC 27 2019 8100 7132 1
For Deposit Only Lot

Check for POST-DEPOSIT SERVICE
TRANSFER OF FUNDS, AUTOMATIC DEBIT

Do not detach
Any of the features listed above are not for or beyond stated
features. If you do not wish to use any of the features listed
above, please call 1-800-392-1407 for assistance and have
one of our agents assist you with the call.

⑆00114⑆ ⑆321081669⑆ 8000738683⑆

DEC 27 2019 8100 7131 1
For Deposit Only Lot

Check for POST-DEPOSIT SERVICE
TRANSFER OF FUNDS, AUTOMATIC DEBIT


Do not detach
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above, please call 1-800-392-1407 for assistance and have
one of our agents assist you with the call.

005235-2-05235-004



000077

Site	Paid Date	Serial	Routing	Account	PC	Amount	Sequence #	C:
VIEWPOINTE	20180212	2135	12104288	5614933355	000060	1,847.40	8711956091	

TELEGRAPH & 23RD LLC HAIG G MARDIKIAN 5 THIRD STREET STE 1000 SAN FRANCISCO, CA 94103-3202		WELLS FARGO BANK, N.A. www.wellsfargo.com 11-4288/1210	2135
		2/6/2018	
PAY TO THE ORDER OF <u>Oakland Business Tax</u>		**1,847.40	
One Thousand Eight Hundred Forty-Seven and 40/100			DOLLARS
Oakland Business Tax - 1			
MEMO 2018 Business Tax Declaration Account No. 00051		 AUTHORIZED SIGNATURE	
⑈0000002135⑈ ⑆12104288⑆ 5614933355⑈		⑈0000184740⑈	

JPMORGANCHASE BK NA		CR TO NMD
021318	>074909962<	PAYEE ALL
33105216	0101515	RTS RSVD
00854622	090	0000000563311229

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ACCOUNT STATEMENT



FIRST REPUBLIC BANK
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SIMPLIFIED BUSINESS CHECKING

Statement Period:
February 01, 2019 -
February 28, 2019

Account Number:
XXX-XXX8-6834

TELEGRAPH AND 23RD LLC

*New Acct
OPENED 1-31-2019
HGM 100% OWNER*

Page 3 of 6

ACCOUNT ACTIVITY

DATE	DESCRIPTION	AMOUNT
	Deposits and Credits (continued)	
02/13	DEPOSIT - BRANCH	\$1,329.00
02/20	DEPOSIT - BRANCH	\$1,500.00
02/21	DEPOSIT - BRANCH	\$6,050.00
02/28	DEPOSIT - BRANCH	\$3,918.50
	Total Deposits and Credits	\$33,768.50
	Withdrawals and Debits	
02/06	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957131	\$1,804.01
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957515	\$67.00
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957596	\$68.00
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957602	\$68.00
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957544	\$90.70
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957495	\$277.63
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957534	\$352.96
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957506	\$458.98
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957525	\$501.45
02/07	ACH DEBIT HDL CITY OF OAKLAND/BUS. TAX - POS Web 00957594	\$544.00


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24 HOUR AUTOMATED BANKING SYSTEM 1-800-392-1407

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2

FRB 308 - 1/14

2020 NOV 17 PM 12:14

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: 11/11/2020
	TENANT RESPONSE	

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER L - L20-0089

Your Name: jasonjackson	Complete Address (with Zip Code) 2308 Telegraph Ave #3 Oakland, CA	Telephone: 415-823-6085 Email: jmattjack@gmail.com
Your Representative's Name: self	Complete Address (with Zip Code) same as above	Telephone: same as above Email: same as above

Number of Units on the parcel: 9

Are you current on your rent? Yes YES No

Rental History:

Date you entered into the Rental Agreement for this unit: 11/6/2010

Date you moved into this unit: 11/8/2010

Is your rent subsidized or controlled by any government agency, including HUD (section 8)?

Yes No NO

Initial Rent: \$ 1100.00

Initial rent included (please check all that apply)

() Gas () Electricity Water Garbage () Parking () Storage () Cable TV ()

Other (if other please specify):

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM at any time during your tenancy in this unit?

Yes No

Please list the date you first received the Notice to Tenants 10/23/2019

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
10/23/2019	12/1/2019	\$ 1294	\$1340	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
10/11/2018	12/1/2018	\$ 1251	\$1294	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
10/10/17	12/1/2017	\$ 1223	\$1251	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
10/13/2016	12/1/2016	\$ 1199	\$1223	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
?	12/1/2015	\$1179	\$1199	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
?	12/1/2014	\$1157	\$1179	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
?	12/1/2013	\$1125	\$1157	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
?	12/1/2012	\$1100	\$1125	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Contested Justification(s) for Rent

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

- Banking
- Capital Improvements
- Increased Housing Service Costs

- Constitutional Fair Return
- Uninsured Repair Costs

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.



Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will send certain documents only electronically and not by first class mail.

I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this petition.

The Owner Petition specified that the owner had submitted more than 25 pages of documents to the Rent Adjustment Program. By checking this box, I request that the owner provide me with all documents submitted to the RAP that have not yet been sent to me. Additionally, I request that the owner provide me with all additional documents that may be filed with the RAP during the pendency of this case.

I/We declare under penalty of perjury pursuant to the laws of the State of California that everything I/we said in this petition is true and that all the documents attached to the petition are true copies of the originals.

Tenant Signature

11/11/2020
Date

Tenant Signature

Date

MEDIATION PROGRAM

Mediation is an optional process offered by the Rent Adjustment Program to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. The purpose of mediation is to find a mutual agreement that satisfies both parties. A trained third party will discuss the issues with both sides, look at relative strengths and weaknesses of each position, and consider both parties' needs in the situation. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing process. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you want to request mediation for your case.

I/We agree to have my/our case mediated by a Rent Adjustment Program staff mediator.

Tenant Signature

Date

Tenant Signature

Date

If English is not your primary language, you have the right to an interpreter in your primary language at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

I request an interpreter fluent in the following language at my Rent Adjustment proceeding:

Spanish (Español)

Cantonese

Mandarin

Other: _____

-END OF RESPONSE-

The owner is not entitled to the proposed increased.

The Landlord seeks to increase the rent based on increased housing services, however the evidence included in this petition is insufficient to justify an increase in rent based on increased housing services. In determining whether an increase in housing service costs justifies a rent increase in excess of the annual CPI increase, the annual operating expenses related to the property for the most recent year must exceed the previous year costs by more than the current annual increase. Please see OMC Regulations Section 10.0.

The evidence provided with the petition fails to establish the requirements as laid out by the regulation. In addition, the petition itself is deficient as it is missing information, including, but not limited to, the amount of the proposed rent increase. The evidence provided in support of the petition is vague and therefore insufficient to demonstrate that any such alleged increased costs inured to the tenants. The petition is deficient on its face and should be dismissed. In the alternative, it should be dismissed for lack of supporting evidence.

2020 Nov 17 PM 12:15



CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

CASE NUMBER L20-0089

TENANT RESPONSE CONTESTING RENT INCREASE

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Daniel Schwarz</i>	Complete Address (with Zip Code) <i>2308 Telegraph Ave, Apt 4 Oakland, CA 94612</i>	Telephone <i>(845) 264-2442</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 9

Are you current on your rent? Yes No

Rental History:

Date you entered into the Rental Agreement for this unit: 8 December 2019

Date you moved into this unit: 15 January 2020

Is your rent subsidized or controlled by any government agency, including HUD (section 8)?

Yes No

Initial Rent: \$ 2300.00

Initial rent included (please check all that apply)

Gas Electricity Water Garbage Parking Storage Cable TV Other
(if other please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM at any time during your tenancy in this unit?

Yes No

000085

Please list the date you first received the Notice to Tenants 08 December 2020

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
	None yet	\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No

Contested Justification(s) for Rent

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

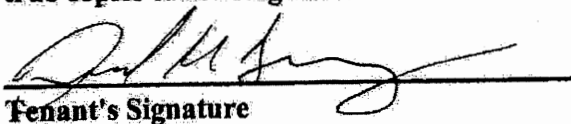
Banking
Capital Improvements
Increased Housing Service Costs

Uninsured Repair Costs
Constitutional Fair Return

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



Tenant's Signature

11/09/2020

Date

Tenant's Signature

Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent & Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment ONLY.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no

Tenant's Signature (for Mediation)

Date

Tenant's Signature (for Mediation)

Date

The owner is not entitled to the proposed increased.

The Landlord seeks to increase the rent based on increased housing services, however the evidence included in this petition is insufficient to justify an increase in rent based on increased housing services. In determining whether an increase in housing service costs justifies a rent increase in excess of the annual CPI increase, the annual operating expenses related to the property for the most recent year must exceed the previous year costs by more than the current annual increase. Please see OMC Regulations Section 10.0.

The evidence provided with the petition fails to establish the requirements as laid out by the regulation. In addition, the petition itself is deficient as it is missing information, including, but not limited to, the amount of the proposed rent increase. The evidence provided in support of the petition is vague and therefore insufficient to demonstrate that any such alleged increased costs inured to the tenants. The petition is deficient on its face and should be dismissed. In the alternative, it should be dismissed for lack of supporting evidence.



CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

2020 NOV 17 PM 12:11

CASE NUMBER L20-0089

TENANT RESPONSE CONTESTING RENT INCREASE

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name Danielle Bethke	Complete Address (with Zip Code) 2308 Telegraph Ave #14 Oakland, CA 94612	Telephone 707-486-3289
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 9

Are you current on your rent? Yes No

Rental History:

Date you entered into the Rental Agreement for this unit: 3/28/2010

Date you moved into this unit: 4/1/2010

Is your rent subsidized or controlled by any government agency, including HUD (section 8)?

Yes No

Initial Rent: \$ 950

Initial rent included (please check all that apply)

() Gas () Electricity Water Garbage () Parking () Storage () Cable TV () Other
(if other please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM at any time during your tenancy in this unit?

Yes No

000089

Please list the date you first received the Notice to Tenants 2/24/2011

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
2/18/2019	5/1/2019	\$1,131. ⁰⁰	\$1,170. ⁰⁰	Yes <input checked="" type="checkbox"/>	No
2/14/2018	5/1/2018	\$1,106. ⁰⁰	\$1,131. ⁰⁰	Yes <input checked="" type="checkbox"/>	No
2/22/2017	4/1/2017	\$1,084. ⁰⁰	\$1,106. ⁰⁰	Yes <input checked="" type="checkbox"/>	No
2/22/2016	4/1/2016	\$1,066. ⁰⁰	\$1,084. ⁰⁰	Yes <input checked="" type="checkbox"/>	No
2/11/2015	4/1/2015	\$1,046. ⁰⁰	\$1,066. ⁰⁰	Yes <input checked="" type="checkbox"/>	No
2/26/2014	4/1/2014	\$1,009. ⁰⁰	\$1,046. ⁰⁰	Yes <input checked="" type="checkbox"/>	No
2/28/2013	4/1/2013	\$976. ⁰⁰	\$1,009. ⁰⁰	Yes <input checked="" type="checkbox"/>	No
2/24/2011	4/1/2011	950. ⁰⁰	976. ⁰⁰	Yes <input checked="" type="checkbox"/>	No

Contested Justification(s) for Rent

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

SEE ADDENDUM 1

- Banking
- Capital Improvements
- Increased Housing Service Costs
- Uninsured Repair Costs
- Constitutional Fair Return

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

Daniel Becker
 Tenant's Signature

11/10/2020
 Date

 Tenant's Signature

 Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent & Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment ONLY.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no

Tenant's Signature (for Mediation)

Date

Tenant's Signature (for Mediation)

Date

ADDENDUM 1

The owner is not entitled to the proposed increased.

The Landlord seeks to increase the rent based on increased housing services, however the evidence included in this petition is insufficient to justify an increase in rent based on increased housing services. In determining whether an increase in housing service costs justifies a rent increase in excess of the annual CPI increase, the annual operating expenses related to the property for the most recent year must exceed the previous year costs by more than the current annual increase. Please see OMC Regulations Section 10.0.

The evidence provided with the petition fails to establish the requirements as laid out by the regulation. In addition, the petition itself is deficient as it is missing information, including, but not limited to, the amount of the proposed rent increase. The evidence provided in support of the petition is vague and therefore insufficient to demonstrate that any such alleged increased costs inured to the tenants. The petition is deficient on its face and should be dismissed. In the alternative, it should be dismissed for lack of supporting evidence.

TELEGRAPH AND 23RD STREET LLC
C/O HAIG G. MARDIKIAN ENTERPRISES LLC
1801 Van Ness Avenue, Suite 320
San Francisco, CA 94109
(415) 986-0785
Fax (415) 543-6360

March 18, 2019

Ms. Danielle Bethke
2308 Telegraph St., Apt. 14
Oakland, CA 94612

Dear Tenant:

In accordance with Oakland's Residential Rent Adjustment Program your rent is being raised 3.4% in the amount of \$39.00 per month. Therefore, effective as of **May 1, 2019** your monthly rent will be **\$1,170.00** plus the \$118.50 for your parking space for a total rent of **\$1,288.50**.

Also due at this time is your half of the Rent Program Service Fee in the amount of **\$34.00** pursuant to the Notice copied on the back of this letter. Please include this sum along with your rent.

Please sign both front and back of this notice and return the duplicate copy for our records. Thank you for your cooperation.

Served this 18th day of March, 2019, from San Francisco, California by First Class U.S. Mail.


Betty J. Rodriguez, Office Manager

Tenant Signature

Date

000093

2020 MAR 17 PM 12:15



RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

CASE NUMBER L20-0089

TENANT RESPONSE CONTESTING RENT INCREASE

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>CHRISTINE McCUNTOCK</i>	Complete Address (with Zip Code) <i>2308 TELEGRAPH AVE #15 OAKLAND, CA 94612</i>	Telephone <i>(415) 806-2527</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 9

Are you current on your rent? Yes No

Rental History:

Date you entered into the Rental Agreement for this unit: 1/14/11

Date you moved into this unit: 2/1/11

Is your rent subsidized or controlled by any government agency, including HUD (section 8)?

Yes No

Initial Rent: \$ 950.⁰⁰

Initial rent included (please check all that apply)

- Gas
 - Electricity
 - Water
 - Garbage
 - Parking
 - Storage
 - Cable TV
 - Other
- (if other please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM at any time during your tenancy in this unit?

Yes No

000094

Please list the date you first received the Notice to Tenants: 10/12

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
2/1/13	3/1/13				
2/1/13	3/1/13	\$ 950	\$ 977	Yes <input checked="" type="checkbox"/>	No
2/1/14	3/1/14	\$ 977	\$ 1079	Yes <input checked="" type="checkbox"/>	No
2/1/15	4/1/15	\$ 1019	\$ 1038	Yes <input checked="" type="checkbox"/>	No
2/22/16	4/1/16	\$ 1038	\$ 1056	Yes <input checked="" type="checkbox"/>	No
2/22/17	4/1/17	\$ 1056	\$ 1077	Yes <input checked="" type="checkbox"/>	No
3/14/18	5/1/18	\$ 1077	\$ 1102	Yes <input checked="" type="checkbox"/>	No
3/18/19	5/1/19	\$ 1102	\$ 1140	Yes <input checked="" type="checkbox"/>	No

Contested Justification(s) for Rent

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking

Uninsured Repair Costs

Capital Improvements


Constitutional Fair Return

Increased Housing Service Costs

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



 Tenant's Signature

11/5/20

 Date

 Tenant's Signature

 Date

Important Information

The Landlord seeks to increase the rent based on increased housing services, however the evidence included in this petition is insufficient to justify an increase in rent based on increased housing services. In determining whether an increase in housing service costs justifies a rent increase in excess of the annual CPI increase, the annual operating expenses related to the property for the most recent year must exceed the previous year costs by more than the current annual increase. Please see OMC Regulations Section 10.0.

The evidence provided with the petition fails to establish the requirements as laid out by the regulation. In addition, the petition itself is deficient as it is missing information, including, but not limited to, the amount of the proposed rent increase. The evidence provided in support of the petition is vague and therefore insufficient to demonstrate that any such alleged increased costs inured to the tenants. The petition is deficient on its face and should be dismissed. In the alternative, it should be dismissed for lack of supporting evidence.

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent & Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment ONLY.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

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You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no

Tenant's Signature (for Mediation)

Date

Tenant's Signature (for Mediation)

Date

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR TENANT RESPONSE (PLUS ANY ATTACHED DOCUMENTS) ON THE PROPERTY OWNER OR THE PROPERTY OWNER'S REPRESENTATIVE.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the owner (or the owner's representative) together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with your Petition.
- Please number sequentially any additional documents you produce with your Petition.

RESPONSES FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

The undersigned has served the:

TENANT RESPONSE

(And Additional Documents) For APT. S# 3, 4, 14, 15, 16, 17
and (write number of attached pages) 9 attached pages (not counting the Response form or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below, and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Haig Mardikian, Telegraph and 23rd LLC
Address	1801 VAN NESS AVE SUITE 320
City, State, Zip	SAN FRANCISCO, CA 94109

Name	Steven Edrington - Edrington & Associates
Address	1901 Harrison St. 13th Floor
City, State, Zip	Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 11/12/2020 (insert date served).

Danielle Bethke

PRINT YOUR NAME

Danielle Bethke

SIGNATURE

11/12/2020

DATE

2020 NOV 17 09:12:15



CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

CASE NUMBER L20-0089

TENANT RESPONSE CONTESTING RENT INCREASE

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>CATHERINE COLPITS</i>	Complete Address (with Zip Code) <i>2308 TELEGRAPH AVE #16 OAKLAND, CA 94612</i>	Telephone <i>(415) 568-0267</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 9

Are you current on your rent? Yes No

Rental History:

Date you entered into the Rental Agreement for this unit: 8/31/2010

Date you moved into this unit: 9/1/2010

Is your rent subsidized or controlled by any government agency, including HUD (section 8)?

Yes No

Initial Rent: \$ 1232 / mo.

Initial rent included (please check all that apply)

() Gas () Electricity () Water () Garbage () Parking () Storage () Cable TV () Other
(if other please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM at any time during your tenancy in this unit?

Yes No

000099

Please list the date you first received the Notice to Tenants 7/18/2011

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
7/15/2019	9/1/2019	\$1479 -	\$1531 -	Yes <input checked="" type="checkbox"/>	No
		\$	\$	Yes <input checked="" type="checkbox"/>	No
7/13/2017	9/1/2017	\$1398 -	\$1430 -	Yes <input checked="" type="checkbox"/>	No
7/11/2016	9/1/2016	\$1370	\$1398	Yes <input checked="" type="checkbox"/>	No
		\$	\$	Yes	No
7/23/2012	9/1/2012	\$1257 -	\$1295	Yes <input checked="" type="checkbox"/>	No
7/18/2011	9/1/2011	\$1232 -	\$1257 -	Yes <input checked="" type="checkbox"/>	No

Contested Justification(s) for Rent

NOTE: I RECEIVED NOTICES FOR 2018, 2015, 2014 & 2013, NOT LISTED ABOVE, BUT WAS UNABLE TO LOCATE THOSE NOTICES.

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

- Banking
- Capital Improvements
- Increased Housing Service Costs

- Uninsured Repair Costs
- Constitutional Fair Return

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

[Signature]
Tenant's Signature

11/10/2020
Date

Tenant's Signature

Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent & Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment ONLY.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no

Tenant's Signature (for Mediation)

Date

Tenant's Signature (for Mediation)

Date

TELEGRAPH AND 23RD STREET LLC
C/O HAIG G. MARDIKIAN ENTERPRISES LLC
1801 Van Ness Avenue, Suite 320
San Francisco, CA 94109
(415) 986-0785
Fax (415) 543-6360

July 15, 2019

Ms. Catherine Colpitts
2308 Telegraph St., Apt. 16
Oakland, CA 94612

Dear Tenant:

In accordance with Oakland's Residential Rent Adjustment Program your rent is being raised 3.5% in the amount of \$52.00 per month. Therefore, effective as of **September 1, 2019** your monthly rent will be **\$1,531.00** plus the \$118.50 for your parking space for a total rent of **\$1,649.50**.

Also due at this time is your half of the Rent Program Service Fee in the amount of **\$34.00** pursuant to the Notice copied on the back of this letter. Please include this sum along with your rent.

Please sign both front and back of this notice and return the duplicate copy for our records. Thank you for your cooperation.

Served this 15th day of July, 2019, from San Francisco, California by First Class U.S. Mail.


Betty J. Rodriguez, Office Manager

Tenant Signature

Date

000102

The Landlord seeks to increase the rent based on increased housing services, however the evidence included in this petition is insufficient to justify an increase in rent based on increased housing services. In determining whether an increase in housing service costs justifies a rent increase in excess of the annual CPI increase, the annual operating expenses related to the property for the most recent year must exceed the previous year costs by more than the current annual increase. Please see OMC Regulations Section 10.0.

The evidence provided with the petition fails to establish the requirements as laid out by the regulation. In addition, the petition itself is deficient as it is missing information, including, but not limited to, the amount of the proposed rent increase. The evidence provided in support of the petition is vague and therefore insufficient to demonstrate that any such alleged increased costs inured to the tenants. The petition is deficient on its face and should be dismissed. In the alternative, it should be dismissed for lack of supporting evidence.

2020 NOV 17 PM 12:15



CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

CASE NUMBER L20-0089

TENANT RESPONSE CONTESTING RENT INCREASE

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name JUDAH LAKIN	Complete Address (with Zip Code) 2308 TELEGRAPH AVE. APT. 17 OAKLAND, CA 94612	Telephone 216-408-5212
Your Representative's Name REPRESENTING MYSELF	Complete Address (with Zip Code) SAME AS ABOVE	Telephone SAME AS ABOVE

Number of Units on the parcel: 9 (BEST GUESS)

Are you current on your rent? Yes No

Rental History:

Date you entered into the Rental Agreement for this unit: 07/24/2009

Date you moved into this unit: 08/01/2009

Is your rent subsidized or controlled by any government agency, including HUD (section 8)?

Yes No

Initial Rent: \$ 950/month

Initial rent included (please check all that apply)

Gas Electricity Water Garbage Parking Storage Cable TV Other
(if other please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM at any time during your tenancy in this unit?

Yes No

000104

Please list the date you first received the Notice to Tenants 07/24/2009

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
SEE ADDENDUM 1		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No

Contested Justification(s) for Rent

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

SEE ADDENDUM 2

Banking

Capital Improvements

Increased Housing Service Costs


Uninsured Repair Costs

Constitutional Fair Return

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



 Tenant's Signature

11/11/2020

 Date

 Tenant's Signature

 Date

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I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no

Tenant's Signature (for Mediation)

Date

Tenant's Signature (for Mediation)

Date

APPENDIX 1

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
07/21/2010	09/01/2010	\$950	\$976	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
07/20/2011	09/01/2011	\$976	\$996	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
unknown	09/01/2012	\$996	\$1026	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
07/19/2013	09/01/2013	\$1026	\$1047	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
07/19/2014	09/01/2014	\$1047	\$1067	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
07/18/2015	09/02/2015	\$1067	\$1085	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
07/13/2016	09/01/2016	\$1085	\$1107	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
unknown	09/01/2017	\$1107	\$1132	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
07/21/2018	09/01/2018	\$1132	\$1171	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
unknown	09/01/2019	\$1171	\$1212	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

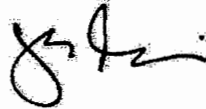
JR

ADDENDUM 2

The Landlord seeks to increase the rent based on increased housing services, however the evidence included in this petition is insufficient to justify an increase in rent based on increased housing services. In determining whether an increase in housing service costs justifies a rent increase in excess of the annual CPI increase, the annual operating expenses related to the property for the most recent year must exceed the previous year costs by more than the current annual increase. Please see OMC Regulations Section 10.0.

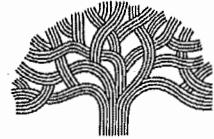
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I ALSO REQUEST THAT THE OWNER PROVIDE ME WITH ALL DOCUMENTS
SUBMITTED TO THE HAP THAT HAVE NOT YET BEEN SENT TO ME. ADDITIONALLY,
I REQUEST THAT THE OWNER PROVIDE ME WITH ALL ADDITIONAL DOCUMENTS
THAT MAY BE FILED DURING THE PENDING OF THIS CASE.



TENANT NAME
YONG PARK
APT. NO. 1 + 1 Parking Space
Sec Dep: \$3,600
Move in Date: 3/1/2019
Rent: \$2,450 \$118.50 Pk'g
Total Rent: \$2,568.50 as of 3/1/19
AURORA VICERAL
APT. NO. 2 + 1 Parking Space
Sec Dep: None \$25 Key Dep
Rent: \$354.00 + \$118.50 Pk'g
Total Rent: \$472.50 as of 5/1/19
JASON JACKSON 415-823-6085
APT NO 3 + No Parking Space
Sec Dep: \$1,650.00
Move in Date: 11/06/10
Rent: \$1,340.00
Total Rent: \$1,340.00 as of 12/01/19
JOSHUA MARQUEZ
APT. NO. 4 + 1 Parking Space
Sec Dep: \$3,500 + \$25 key dep.
Move in Date: 9/01/21
Rent: \$2,000.00 + \$177.75 Parking
Total Rent: \$2,177.75 as of 9/01/21
DON C. BROWN
APT. NO. 11 + 2 Parking Spaces
Sec Dep: 0 \$25 Key Dep
Rent: \$472.00 + \$237 Pk'g
Total Rent: \$709.00 as of 5/1/19
NGOC-TRAM NGUYEN
APT. NO. 14 + 1 Pk'g Space
Sec Dep: \$2,212+\$25 key (move in 11/1/21)
Rent: \$ 1,475.00 + \$177.75 Pk'g
Total Rent: \$1,652.75 as of 11/01/21

TENANT NAME
JORGE ANGLIN
APT. NO. 15 Move in Date: 12/18/21
Sec Dep: \$2,325.00
Rent: \$1,550.00 as of 12/18/21
DANIELLE BETHKE
APT. NO. 16 + 1 Pkg Space/move in: 9/1/21
Sec Dep:\$2,887+\$25KeyDep
Rent: \$ 1,925.00 + \$118.50 Pk'g
Total Rent: \$2,043.50 as of 9/01/21
JUDAH LAKIN & AMBRI PUKHRAJ
APT. NO. 17 + 1 Parking Space
Sec Dep: \$1,425 + \$50 2 keys
Move in Date: 8/01/09
Rent: \$1,212.00 + \$118.50 Pk'g
Total Rent: \$1,330.50 as of 9/1/19



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

HEARING DECISION

CASE NUMBER: L20-0089 Haig Mardikian Telegraph & 23rd v. Tenants

PROPERTY ADDRESS: 2308 Telegraph Avenue, Oakland, CA

DATE OF HEARING: June 14, 2021
August 31, 2021

DATE OF DECISION: December 14, 2021

APPEARANCES: Haig Mardikian, Owner
Steve Edrington, Owner Representative
Chris Paizis, Owner Representative
Betty Rodriguez, Property Manager
Robin Levitt, Property Manager
Xavier Johnson, Tenant Representative
Christine McClintock, Tenant – Unit 15
Judah Lakin, Tenant – Unit 17
Katie Colpitts, Tenant – Unit 16
Ambri Pukhraj, Tenant – Unit 17
Danielle Bethke, Tenant – Unit 14
Sara Huffman, Tenant – Unit 14
Jennie DeLeon, Tenant – Unit 16
Jason Jackson, Tenant – Unit 3

SUMMARY OF DECISION

The owner's petition is granted.

CONTENTIONS OF THE PARTIES

On October 1, 2020, the owner filed a Property Owner Petition for Approval of Rent Increase based on Increased Housing Service costs.

Tenants from six units filed a response and tenants from five units appeared for the Hearing.

THE ISSUE

Is a rent increase based on Increased Housing Service costs justified and, if so, in what amount?

EVIDENCE

Rent History and RAP Notice

The subject property is a residential building consisting of nine (9) residential units and one (1) commercial unit. At the hearing, the owner testified that he previously owned 50% of the subject property and he now owns 100%. Due to this change in ownership, the property taxes have increased exponentially and he is seeking approval for a rent increase based on increased housing service costs primarily due to the increase in property taxes. He further testified that he is seeking an increase based on 8% of the gross operating income and has not submitted any expenses for maintenance/repairs or management expenses/accounting/legal. Finally, the owner testified at the hearing that all tenants previously received the RAP Notice. Copies of the Rap Notices served on the tenants were received into evidence.¹

Increased Housing Service Costs

The owner representative submitted hundreds of documents which consisted of invoices, receipts, and copies of checks to support his claim of increased housing service costs between calendar year 2018 and 2019. These documents were received into evidence and the following expenses were verified:

Category	2018 Expenses	2019 Expenses
Business License Tax	\$1,847.40 ²	\$1,804.01 ³
Electricity/Gas (PG&E)	\$4,198.10 ⁴	\$4,784.19 ⁵
Insurance	\$5,995.60 ⁶	\$6,614.93 ⁷
Refuse Removal	\$7,669.36 ⁸	\$8,061.56 ⁹
Taxes	\$7,804.78 ¹⁰	\$17,850.29 ¹¹
Water/Sewer (EBMUD)	\$4,414.50 ¹²	\$4,989.63 ¹³

¹ Exhibit 7

² Exhibit 2

³ Exhibit 2

⁴ Exhibit 3A

⁵ Exhibit 3B

⁶ Exhibit 6A

⁷ Exhibit 6B

⁸ Exhibit 5A

⁹ Exhibit 5B

¹⁰ Exhibit 1

¹¹ Exhibit 1

¹² Exhibits 4A

¹³ Exhibit 4B

Total Operating Expenses	\$31,929.74	\$44,104.61
Difference in Gross Operating Expenses Between 2018 and 2019	\$12,174.87	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Increased Housing Service Costs

A rent increase in excess of the CPI Adjustment may be justified by increased housing service costs. These costs are services provided by an owner related to the use or occupancy of a rental unit. They include, but are not limited to, "insurance . . . lighting, heat, water . . . refuse removal . . ." ¹⁴ In determining whether there has been an increase in housing service costs, the annual operating expenses for the previous two years are compared. ¹⁵ In this case, the relevant years are 2018 and 2019. If costs have increased, the annual amount of increase is divided by the gross monthly operating income, and rents may be increased by the resulting percentage. ¹⁶

The owner representative submitted documentation verifying an increase in housing service costs, specifically an increase in gross operating expenses in the amount of \$12,174.87 and in total operating expenses in the amount of \$14,050.27. The attached Table sets forth the proper calculation for a rent increase based upon the qualifying increased housing service costs. The calculation shows an allowable rent increase per unit of 8.8%.

While this Hearing Decision permits the owner to increase the rent, this rent increase cannot be served at this time. No rent increase greater than CPI (1.9% effective July 1, 2021) can be served on any tenant during the Emergency Moratorium. Once the Emergency Moratorium is lifted, the owner may serve a rent increase permitted by this Hearing Decision.

ORDER

1. Owner Petition L20-0089 for Approval of Rent Increase is granted.
2. The maximum approved amount per month for an increase based on increased housing service costs is 8.8%. The specific rent increase amount for each unit subject to the rent increase is listed below:

Unit 1 - \$215.60
Unit 2 - \$31.15
Unit 3 - \$117.92

¹⁴ Regulations, Section 10.1

¹⁵ Regulations, Section 10.1.1

¹⁶ Regulations, Section 10.1.1

Unit 4 – \$176.00
Unit 11 - \$41.54
Unit 14 - \$129.80
Unit 15 - \$136.40
Unit 16 - \$169.40
Unit 17 - \$106.66

3. The rent increase will be effective thirty (30) days after the owner serves the rent increase notice, together with a RAP Notice, and the attached Decision Summary. If the rent increase is served by mail, it will be effective thirty-five (35) days after service. The owner must wait twelve (12) months from the effective date of the last rent increase before he may raise the rent again.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: December 14, 2021

Maimoona Ahmad

Maimoona Ahmad
Hearing Officer, Rent Adjustment Program

CALCULATION OF IHSC RENT INCREASE

(Increased Housing Costs, p.2)

Calculation of Increase as a Percentage

1	RBR, Apdx A, §10.1.1 (Income and Expenses, line 29)	Annual expenses increased by	\$14,050.27
2	(line 1 divided by 12)	Average monthly increased expenses	\$1,170.86
3	(from Income-Expenses Worksheet)	Monthly gross operating income	\$11,522.51
4	(line 2 divided by line 3)	Relationship between increased expenses/Income	10.16%
5		Is percent increase greater than CPI?	YES
6		What is maximum % rent increase on effective date?	8.80%
		Is increase greater than maximum allowed?	YES

CPI Rate beginning:	
1-Jul-2014	1.9%
1-Jul-2015	1.7%
1-Jul-2016	2.0%
1-Jul-2017	2.3%
1-Jul-2018	3.4%
1-Jul-2019	3.5%
1-Jul-2020	2.7%

Oakland Maximum Allowable	
1-Jan-2014	10.0%
21-Jul-2020	6.1%
1-Aug-2021	8.8%
1-Aug-2022	Out of Range

Unit	Base rent	Allocation of Increase: CPI or IHSC or Maximum%?	\$ Increase	maximum New Base Rent
Unit 1	\$2,450.00		\$215.60	\$2,665.60
Unit 2	\$354.00		\$31.15	\$385.15
Unit 3	\$1,340.00		\$117.92	\$1,457.92
Unit 4	\$2,000.00		\$176.00	\$2,176.00
Unit 11	\$472.00		\$41.54	\$513.54
Unit 14	\$1,475.00		\$129.80	\$1,604.80
Unit 15	\$1,550.00		\$136.40	\$1,686.40
Unit 16	\$1,925.00		\$169.40	\$2,094.40
Unit 17	\$1,212.00		\$106.66	\$1,318.66
Monthly	\$12,778.00		\$1,124.46	
Annual	\$153,336.00			

INCREASED HOUSING SERVICE COSTS (IHSC), p.1 Income and Expenses

Petition Date: 10/1/2020
 Soonest Possible Effective Date of Increase: 2/1/2022

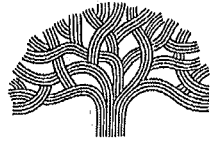
		INCOME		
		Notes	2018	2019
1	Rents		\$105,798.62	\$128,790.08
2	Laundry			
3	Parking		\$9,029.00	\$9,480.00
4	Other, specify:			
5	Other, specify:			
6	Other, specify:			
7	Other, specify:			
8	(sum of lines 1-7)	Gross Operating Income	\$114,827.62	\$138,270.08

		EXPENSES		
		Notes	2018	2019
9	Business License Tax		\$1,847.40	\$1,804.01
10	Electricity/Gas		\$4,198.10	\$4,784.19
11	Furnishings			
12	Insurance		\$5,995.60	\$6,614.93
13	Laundry Expenses			
14	Parking Expenses			
15	Refuse removal		\$7,669.36	\$8,061.56
16	Replacement			
17	Security			
18	Taxes		\$7,804.78	\$17,850.29
19	Water/Sewer		\$4,414.50	\$4,989.63
20	Other: (note mortgage expenses and capital improvement expenses are not a part of IHSC calculation)			
21	Other: (note mortgage expenses and capital improvement expenses are not a part of IHSC calculation)			
22	Other: (note mortgage expenses and capital improvement expenses are not a part of IHSC calculation)			
23	(sum of lines 9-22)	Gross Operating Expenses	\$31,929.74	\$44,104.61

AND EITHER:		2018	2019
22	Maintenance/Repairs		
23	Management expenses/accounting/legal		
24	SUBTOTAL		

OR:		2018	2019
25	8% of gross op. income on line 8	\$9,186.21	\$11,061.61
26	This calculates the larger of line 24 or 25	\$9,186.21	\$11,061.61

27		Total Operating Expenses	\$41,115.95	\$55,166.22
28		Difference in expenses (YR2-YR1)	\$14,050.27	



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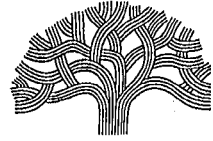
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Dated: December 14, 2021

Maimoona Ahmad
Maimoona Ahmad
Hearing Officer, Rent Adjustment Program



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Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
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CA Relay Service 711

Notice re: Rent Increase
Moratorium

On March 27, 2020, the Oakland City Council adopted an Ordinance imposing a moratorium on all rent increases that exceed the consumer price index (CPI) unless required to provide a fair return. The current CPI effective July 1, 2021 - June 30, 2022 is 1.9%.

This rent increase moratorium remains in effect for the duration of the Local Emergency. The ordinance is still in effect and will remain in effect until the Local Emergency is declared to be over.

While a property owner may receive a hearing decision allowing for a rent increase larger than the current CPI, no rent increase for an amount larger than the CPI may be served until the Local Emergency has ended. The only exception to this moratorium is if the owner has received a final decision from the Rent Adjustment Program granting a rent increase to provide a fair return.

If the rent increase moratorium continues after July 1, 2022, and if the maximum rent increase allowed has increased above 8.8%,¹ the property owner may ask for a Compliance Hearing to recalculate the allowable increase.

For more information on the moratorium, please visit our website at www.oaklandca.gov/rap or email us at rap@oaklandca.gov.

¹ The City Council changed the maximum rent increase from 10 percent to align with the allowable increase under state law, the Tenant Protection Act of 2019 (TPA). The current TPA maximum is 8.8% until July 31, 2022.

PROOF OF SERVICE

Case Number L20-0089

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Hearing Decision

Hearing Decision Summary

Notice:re Rent Increase Moratorium

Owner

Haig Mardikian, Telegraph and 23rd LLC
1801 Van Ness Ave Suite 320
San Francisco, CA 94109

Owner Representative

Steven Edrington, Edrington and Associates
1901 Harrison St 13th Floor
Oakland, CA 94612

Tenant

Aurora Vicerai
2308 TELEGRAPH AV 2
Oakland, CA 94612

Tenant

Catherine Colpitts
2308 TELEGRAPH AV 16
Oakland, CA 94612

Tenant

Christine McClintock
2308 TELEGRAPH AV 15
Oakland, CA 94612

Tenant

Daniel Schwarz
2308 TELEGRAPH AV 4
Oakland, CA 94612

000119

Tenant

Danielle Bethke
2308 TELEGRAPH AV 14
Oakland, CA 94612

Tenant

Don Brown
2308 TELEGRAPH AV 11
Oakland, CA 94612

Tenant

Jason Jackson
2308 TELEGRAPH AV 3
Oakland, CA 94612

Tenant

Judah Lakin
2308 TELEGRAPH AV 17
Oakland, CA 94612

Tenant

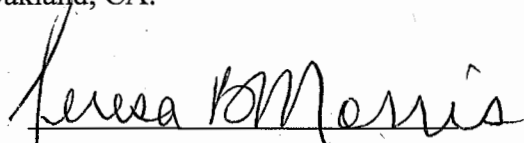
Yong Park
2308 TELEGRAPH AV 1
Oakland, CA 94612

Tenant Representative

Xavier Johnson, Centro Legal de la Raza
3022 International Boulevard Suite 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **December 14, 2021** in Oakland, CA.



Teresa Brown-Morris

Oakland Rent Adjustment Program

000120



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

For date stamp.

APPEAL

Appellant's Name JUDAH LAKIN AND AMBRE PUKHRAJ		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 2308 TELEGRAPH AVENUE, APT. 17, OAKLAND, CA, 94612			
Appellant's Mailing Address (For receipt of notices) 2308 TELEGRAPH AVENUE, APT. 17 OAKLAND, CA, 94612		Case Number L-20-0089	Date of Decision appealed 12/14/2021
Name of Representative (if any)		Representative's Mailing Address (For notices)	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*

2) Appealing the decision for one of the grounds below (required):

- a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
- b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
- c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
- d) The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
- e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must not exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5).

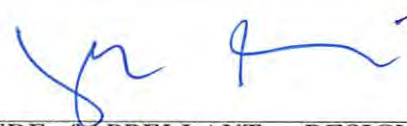
Please number attached pages consecutively. Number of pages attached: 0.

A Brief will be forthcoming w/in 15 DAYS OF FILING THE APPEAL.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •

I declare under penalty of perjury under the laws of the State of California that on December 30, 2021, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Haig Nardikian, Telegraph + 23 rd LLC
<u>Address</u>	1801 Van Ness Ave, Suite 320
<u>City, State Zip</u>	SAN FRANCISCO, CA, 94109
<u>Name</u>	Steven Edington, Edington and Associates
<u>Address</u>	1901 HARBOUR St. 13 th FLOOR
<u>City, State Zip</u>	OAKLAND, CA, 94612

	12/30/2021
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except jurisdiction issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

For more information phone (510) 238-3721.



CITY OF OAKLAND

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of:

RAP APPEAL FORM

(insert name of document served)

And Additional Documents

and (write number of attached pages) 0 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	<u>HARB MARTELON, TELEGRAPH AND 23rd LLC</u>
Address	<u>1801 VAN NESS AVE SUITE 320</u>
City, State, Zip	<u>SAN FRANCISCO, CA . 94109</u>

Name	Steven Edrington, Edrington and Associates
Address	1901 HARRISON STREET, 13 th FLOOR
City, State, Zip	OAKLAND, CA, 94612

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 12/30/2021 (insert date served).

Josiah Calton

PRINT YOUR NAME

[Handwritten Signature]

SIGNATURE

12/30/2021

DATE



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

**ORDER RE EXTENSION OF TIME FOR SUBMISSION OF APPEAL
HEARING DOCUMENTS**

Case No./Name: L20-0089, Haig Mardikian Telegraph & 23rd v. Tenants

Property Address: 2308 Telegraph Avenue, Oakland, CA

Background: The Hearing Decision in this matter was issued on December 14, 2021, and also mailed to the parties on December 14, 2021.

On December 30, 2021, the Rent Adjustment Program (RAP) received an Appeal Form¹ from Tenants Judah Lakin and Ambri Pukhraj, Unit 17, as well as a request for a 60-day extension for the submission of documents in support of their appeal. The Tenant Appellants stated that they needed additional time to prepare their supporting documents, given the fact that they received the Hearing Decision "right before the holidays" and that they were encountering challenges in reaching their representative, who was on vacation through the end of 2021. They requested a 60-day extension for filing their supporting documents.

According to Rent Ordinance Regulation 8.22.120(A)(2), a party who files an appeal must file any supporting argument and documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposing party. This would require that the Tenant Appellants file any supporting argument and documentation by January 14, 2022.

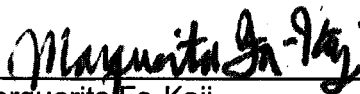
According to Rent Ordinance Regulation 8.22.120(A)(5), RAP staff "in its discretion, may modify or waive the above requirements for good cause." The fact that the Hearing Decision was received immediately prior to the holiday season, and that the tenant representative was on vacation at that time, constitutes good cause. There is not good cause, however, to grant the requested 60-day extension, given the necessity of providing Appeal Board packets to Board members in a timely manner to allow a full review of all materials before the Appeal Hearing. Therefore, the Tenant Appellants are

¹ According to the Proof of Service submitted with the Appeal Form, the Tenants served the Owner and Owner Representative with the Appeal Form by mailing it to them on December 30, 2021.

hereby granted a 30-day extension of the deadline for filing any supporting argument and documentation.

GOOD CAUSE APPEARING, the Tenant Appellants are hereby granted an extension to file any supporting argument and documentation pursuant to Rent Ordinance Regulation 8.22.120(A)(2), along with a proof of service on the opposing party, until 5:00 pm on February 14, 2022.

DATED: January 4, 2022



Marguerita Fa-Kaji
Acting Senior Hearing Officer
Rent Adjustment Program

000128

PROOF OF SERVICE
Case Number L20-0089

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Order of Re-Extension of Time for Submission of Appeal Hearing Documents

Owner

Haig Mardikian
Telegraph and 23rd LLC
1801 Van Ness Ave, Suite 320
San Francisco, CA 94109

Owner Representative

Steven Edrington
Edrington and Associates
1901 Harrison St, 13th Floor
Oakland, CA 94612

Tenant

Aurora Vicerai
2308 Telegraph Ave, #2
Oakland, CA 94612

Tenant

Catherine Colpitts
2308 Telegraph Ave, #16
Oakland, CA 94612

Tenant

Christine McClintock
2308 Telegraph Ave, #15
Oakland, CA 94612

Tenant

Daniel Schwarz
2308 Telegraph Ave, #4
Oakland, CA 94612

000129

Tenant

Danielle Bethke
2308 Telegraph Ave, #14
Oakland, CA 94612

Tenant

Don Brown
2308 Telegraph Ave, #11
Oakland, CA 94612

Tenant

Jason Jackson
2308 Telegraph Ave, #3
Oakland, CA 94612

Tenant

Judah Lakin
2308 Telegraph Ave, #17
Oakland, CA 94612

Tenant

Yong Park
2308 Telegraph Ave, #1
Oakland, CA 94612

Tenant Representative

Xavier Johnson
Centro Legal de la Raza
3022 International Boulevard, Suite 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 06, 2022** in Oakland, CA.



Merna Attalla

Administrative Assistant II

Rent Adjustment Program

000130

APPEAL BRIEF IN SUPPORT OF TENANTS in Case No. L20-0089

To: Rent Adjustment Program
Fr: Judah Lakin and Ambri Pukhraj

Case No: L-20-0089
Case Title: Haig Mardikian Telegraph & 23rd LLC v. Tenants
Property Address: 2308 Telegraph Avenue, Oakland, CA 94612

ARGUMENT

Judah Lakin and Ambri Pukhraj hereby submit the attached arguments in support of their appeal in Case No. L20-0089. As an initial matter, we requested an extension of time for 60 days to provide these arguments. Our argument was as follows:

We were served with this on December 14, 2021. There seems to be no opportunity to request more time to submit our arguments. The form says you have to submit them within 15 days of filing this form. Given that this was served right before the holidays, and that our representative, copied here, is out on vacation (as are most offices) through the end of the year, I find it very problematic, and a basic violation of due process that we are expected to complete this form within 20 days and our arguments 15 days thereafter. I haven't even been able to communicate with our representative to see if he will continue to represent us on appeal. I also believe that we are still waiting on cases we requested which could support our appeal. In addition, the idea that we could prepare this within 15 days is simply unfair. **As a result, I request a 60 day continuance to file our brief/arguments.** If there is a form to request this, please let me know. Otherwise, this email will serve as my request. We need time to do research and write our response, which needs to be done on top of our actual jobs.

On, January 4, 2022, our request for an extension of time was granted in part—we received 30 days instead of 60 days. As an initial matter, we continue to object to a lack of adequate time to prepare our submission. After filing our notice of appeal. we learned that our previous representative left his position, and his prior organization informed us that no one else has capacity to represent us. As such, we are proceeding pro se.

In turn, 30 days is simply insufficient time to provide an adequate response. Over the last thirty days, our child's school has been closed multiple times due to Omicron and we each have had to miss work as a result. Our ability to research the relevant issues here was thus even more limited than normal. Moreover, only this week was I able to access some files from the RAP, and I still have not had time to look at them. It is particularly confounding that as Omicron continues to rage and the moratorium remains in effect in Oakland—such that the hearing decision cannot even go into effect until after July 1, 2022—the Rent Adjustment Program finds it unreasonable to grant us a further extension to present our case. It is not clear at all how any one—other than us, the tenants—are prejudiced by an additional 30 days. We believe the RAP's decision to only grant our continuance for 30 days is a basic violation of due process and our right to a full and fair hearing.

On the merits of the decision, we believe it is inconsistent with the regulations. According to Appendix A of the Rent Adjustment Program Regulations, increased housing services costs are “services provided by the landlord and related to the use or occupancy of a rental unit...”¹ The landlord included in their calculation about a \$10,000 increase in taxes on the rental property. The taxes do not have a connection to the tenants use or occupancy of the rental unit. The Landlords did not sufficiently demonstrate at the time of the hearing how the payment of taxes pertains to the use and occupancy of the rental unit. And, in fact, they presented no evidence demonstrating that the increase in property taxes somehow inures to the tenants.

Moreover, the hearing officer's analysis on this point is lacking. In fact, there is literally no analysis within the hearing officer's “Findings of Fact and Conclusions of Law.” The hearing officer simply states there has been an increase in housing service costs, while failing to mention

¹ Oakland Rent Adjustment Program Regulations Appendix A Section 10.1

that nearly ALL of it is related to an increase in property tax. She does mention this above in the Evidence section, where she explains that the landlord “is seeking approval for a rent increase based on increased housing services due to the increase in property taxes.” But, the hearing office cites to the regulations, and nowhere does she state that “property taxes” are properly included as a housing service. The hearing officer mentions that the change in ownership from the landlord owning 50% of the property to owning 100% of the property triggered an increase in the property taxes. Setting aside that property taxes are not a “housing service,” it is not clear why the landlord, as a result of doubling his investment, should be able to pass off a cost to his tenants. After all, if he previously owned 50% of the building, and now owns 100% of the building, he is also getting 100% of the rent, which should more than offset the increase in property taxes. The hearing office cites to “hundreds of documents” submitted by the Landlord, but none of them actually support an increase in housing services. As articulated above, the only significant increase is the property taxes. As a result to being legally erroneous, the hearing officer’s decision is not supported by substantial evidence.

In addition, we are unaware of any other decision by the RAP that has allowed for an increase in housing services based either exclusively, or almost exclusively, on an increase in property taxes. And, neither the Landlords nor the hearing officer have cited to any precedent supporting their position. As a result, we believe the decision is both inconsistent with decisions by other hearing officers and presents a new issue that has not been decided by the Board, and deserves a more careful look than it got here.

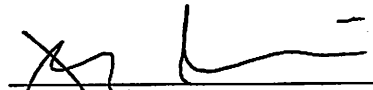
Finally, the 8.8% increase in rent is particularly troubling here, even setting aside the arguments above. First, we believe that the transfer of ownership that is referenced in the hearing officer’s decision, was done to preserve intra-family wealth. We believe the Landlord’s brother

gave up his 50% share in the business, which resulted in a re-assessment of the building and the increase in property taxes. Setting aside that the owner had been benefitting from a seriously reduced property value for years and years, a passage of property between family members that results in an increase in property taxes should not be passed on tenants and masked as an “increase in housing services.” This is a basic violation of due process, fairness, and contravenes the purposes behind rent control laws. Second, in the past year, over half of the units in the building have turned over and are now being rented by new tenants. As a result, the Landlords were able to raise those units to market rate, and their attempt to squeeze even more money out of the remaining tenants—like us, who have been here for a decade or more and regularly pay our rent—is troubling. Third, and finally, the Landlords here are now a small operation. They own many buildings, including commercial real estate, throughout the east bay and San Francisco. By contrast, we are small business owners in the east bay, and our other tenants who will be affected include elderly individuals on a fixed income. If our rent is going to be hiked up due to increased housing services, it seems only fair that such an increase should actually be accompanied by increased services to us as tenants. The Landlords here have failed to much such a showing.

In light of the aforementioned, Tenants respectfully request that the Appeals Board reverse the prior grant of a rent increase, find that it was legally erroneous to grant housing services increase based on an increase property taxes. The Appeals Board should find that there was not sufficient evidence laid forth by the property owner in the hearing to demonstrate that taxes should constitute an increased housing services cost.

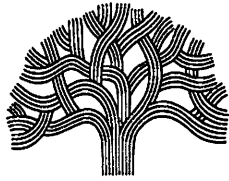
Date: February 10, 2022

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a short vertical stroke.

Judah Lakin

Ambri Pukhraj



CITY OF OAKLAND

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of:

Appeal Brief in Support of Tenant's Appeal (total of 5 pages)
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 0 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	HABE Pardikian, Telegraph + 23rd LLC
Address	1801 Van Ness Avenue, Suite 320
City, State, Zip	SAN FRANCISCO, CA, 94109

Name	Steven Edington, Edington and Associates
Address	1901 Harrison St, 13th Floor
City, State, Zip	OAKLAND, CA, 94612

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
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City, State, Zip	

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Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 02/11/2022 (insert date served).

JOHN CAHEN
PRINT YOUR NAME

[Handwritten Signature]
SIGNATURE

02/11/2022
DATE

CHRONOLOGICAL CASE REPORT

Case No.: T20-0093

Case Name: Bolanos v. Olivieri

Property Address: 959 42nd Street, Oakland, CA 94608

Parties: Gina Fresquez (Owner)
Jill Broadhurst (Owner Representative)
Miriam Bolanos (Tenant)
Samantha Beckett (Tenant Representative)

OWNER APPEAL:

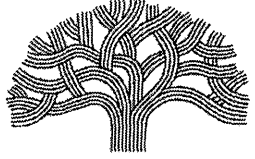
<u>Activity</u>	<u>Date</u>
Tenant Petition filed	March 4, 2020
Owner Response filed	May 26, 2020
Owner Response Exhibit submitted	July 10, 2020
Tenant Evidence submitted	July 13, 2020
Tenant Exhibit submitted— Statement of Arguments	July 20, 2020
Hearing Date	November 18, 2020
Hearing Decision mailed	March 17, 2021
Owner Appeal filed	April 6, 2021

000139

Owner Appeal Exhibit submitted	June 24, 2021
Appeal Hearing Date	July 8, 2021
Appeal Decision mailed	August 17, 2021
Tenant Statement of Arguments	September 30, 2021
Supplemental Tenant Evidence Submission	September 30, 2021
Owner Rebuttal to Tenant Statement of Arguments	October 4, 2021
Owner Statement of Arguments	October 4, 2021
Remand Hearing Date	October 12, 2021
Remand Hearing Exhibit List	October 12, 2021
Remand Decision mailed	January 13, 2022
Owner Appeal filed	February 1, 2022

7/20

T20-0093 RC/MA



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

RECEIVED
For date stamp
2020 MAR -4 PM 4:02

TENANT PETITION

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

Please print legibly

Your Name Miriam Bolanos	Rental Address (with zip code) 959 42nd St. Oakland CA 94608	Telephone: 925-255-3152
		E-mail:
Your Representative's Name Micaela Alvarez Centro Legal de la Raza	Mailing Address (with zip code) 3022 International Blvd. Ste 410 Oakland, CA 94601	Telephone: 510-806-8609
		Email: malvarez@centrolegal.org
Property Owner(s) name(s) Jack Olivieri	Mailing Address (with zip code) 4734 Shetland Ave. Oakland, CA 94605	Telephone:
		Email:
Property Manager or Management Co. (if applicable) Gina Fresquez	Mailing Address (with zip code) 25538 South Gold Ridge Drive Castro Valley, CA 94552	Telephone: 510-220-5226
		Email: ginafresquez@sbcglobal.net

Number of units on the property: 2

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

I. GROUNDS FOR PETITION: Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input checked="" type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked

	rent increase.
X	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
X	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
X	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
X	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
X	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
X	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
X	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

II. RENTAL HISTORY: (You must complete this section)

Date you moved into the Unit: 10/1/2013 Initial Rent: \$ 1000 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
2/24/2020	4/1/2020	\$ 2500	\$ 2600	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/23/2019	3/1/2020	\$ 1980	\$ 2500	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/9/2019	2/1/2020	\$ 1800	\$ 1980	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3/1/2019	4/1/2019	\$ 1700	\$ 1800	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4/1/2018	5/1/2018	\$ 1600	\$ 1700	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2/1/2018	3/1/2018	\$ 1500	\$ 1600	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes No

Have you lost services originally provided by the owner or have the conditions changed?

Yes No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:


- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

IV. VERIFICATION: The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.



Tenant's Signature

03.2.20

Date

V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File This form must be **received** at the offices of the City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22. Board Staff cannot grant an extension of time to file your petition by phone. For more information, please call: (510) 238-3721.

File Review

Your property owner(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the Property Owner's Response. The petition and attachments to the petition can be found by logging into the RAP Online Petitioning System and accessing your case once this system is available. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?

- _____ Printed form provided by the owner
- _____ Pamphlet distributed by the Rent Adjustment Program
- _____ Legal services or community organization
- _____ Sign on bus or bus shelter
- _____ Rent Adjustment Program web site
- _____ Other (describe): _____

Tenant Petitioner
Miriam Bolanos
959 42nd Street
Oakland, CA 94601

Addendum A- Rent Increases

Date you received the notice	Date increase goes into effect	Monthly rent increase		Are you contesting this increase	Did you receive the RAP notice with this increase
		From:	To:		
6/28/2016	8/1/2016	1400	1500	Yes	No
12/1/2013	1/1/2014	1000	1400	Yes	No

Please note: I received a letter in mid-December 2019 informing me that my rent would be raised 11 times throughout 2020. Thus far, it appears that the property manager intends to increase my rent every month until December 2020. It would be an unreasonable burden on myself and the Rent Adjustment Program to file a new petition each time I receive the individual written notices of these increases as I would be filing a new petition every month. Instead I am attaching the letter and contesting all of these proposed increase in this petition.

In addition, since I moved in to my unit in October 2013, I have made many of my rent payments in cash and was not provided receipts by the owner. I received numerous rent increases without written notice.

In an effort to provide accurate information on this petition I asked the property manager, Gina Fresquez, for a rent ledger on January 30, 2020. She claimed that the owner did not maintain a ledger and she did not provide me with any records.

I have listed the rent increases I wish to challenge on this petition to the best of my ability and used all available records to recall them with accuracy.

000145

Tenant Petitioner
 Miriam Bolanos
 959 42nd Street
 Oakland, CA 94608

Addendum B-Bad Conditions

Note: I calculated the estimated value of loss of service by weighing how much each problem affected my health and safety of and my ability to live comfortably in the premises.

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
Heater does not turn on consistently. It emits bad odors when turned on.	Since move in 10/2013	Tenants first notified owner verbally in January-February 2014	N/A	8%
Windows are deteriorated, do not seal properly, and lack proper insulation.	Since move in 10/2013	Tenants first notified owner verbally in January-February 2014	N/A	10%
Mold throughout house stemming from improper insulation and deteriorated windows, walls, and ceilings.	Since move in 10/2013	Tenants first notified owner verbally in January-February 2014	N/A	10%
Walls and ceilings throughout house are cracked and peeling.	Since move in 10/2013	Tenants first notified owner verbally in January-February 2014	N/A	12%
Rodent and racoon Infestation	Since move in 10/2013	Tenants first notified owner verbally in January-February 2014	Partially abated February 2020	15%

December 9, 2019

Via Certified Mail

WITHOUT PREJUDICE

Miriam Bolanos
959 42nd St
Oakland, CA 94608

Nena,

I have received your response to my father's previous letter dated November 25, 2019. I am writing this letter on behalf of my father, Jack Olivieri.

My father has decided to keep the house for the time being. As mentioned in the previous letter, and as you and I have previously discussed, it is his desire to obtain fair market rental value for the house within a year. Although my father has the legal right to raise the rent to full market value with the legally required 60 day notice, he intends to raise the rent to full market value gradually over a period of one year. This will provide you with time to obtain additional income or funds if you choose to stay in the house, or to allow you time to find alternate housing that may be more affordable for you.

Based upon a comparison of comparable rental houses in the area, the current fair market value for the house you are renting is approximately \$3,200. For the purpose of determining rent increases over a period of one year, it is projected that the fair market rental value for the house will increase to approximately \$3,500 within one year. Based upon this projection and the current monthly rental rate of \$1,800 per month, he is providing the following options for achieving fair market rental value within one-year from January 1, 2020.

Month	Rent Schedule (Current Rent: \$1,800)			
	Option 1	Option 2	Option 3	Option 4
January 2020	No Increase	No Increase	No Increase	No Increase
February 2020	\$1,980	\$1,980	No Increase	No Increase
March 2020	\$2,500	\$2,400	\$2,800	No Increase
April 2020	\$2,600	\$2,400	\$2,800	No Increase
May 2020	\$2,700	\$2,700	\$3,000	\$3,300
June 2020	\$2,800	\$2,700	\$3,000	\$3,300
July 2020	\$2,900	\$3,000	\$3,200	\$3,300
August 2020	\$3,000	\$3,300	\$3,200	\$3,400
September 2020	\$3,100	\$3,300	\$3,400	\$3,400
October 2020	\$3,200	\$3,300	\$3,400	\$3,400
November 2020	\$3,400	\$3,500	\$3,500	\$3,500
December 2020	\$3,500	\$3,500	\$3,500	\$3,500

Unless we hear from you otherwise, the rent adjustments will follow the schedule listed under Option 1 in the above rent schedule. Therefore, effective February 1, 2020, your rent will be increased from the current \$1,800 per month to \$1,980 per month. This is a 10 percent rent increase which by California law requires a 30 day notice. I have included the required 30-day notice for this rent increase.

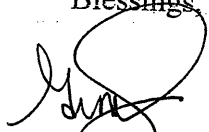
You will be provided with the 30-day and 60-day notices required by California law prior to rent increases after February 1, 2020.

Please let me or my father know prior to December 21, 2019, if you prefer any of the other options in the above rent increase schedule so that he may revise the attached 30-day notice and issue the required 60-day notice for any rent increase beginning on March 1, 2020.

The above information reflects my father's current intentions. The information presented in this letter shall not be considered as binding upon him and does not constitute a waiver of any his legal rights as a landlord, including but not limited to his right to adjust the rent to fair market value by providing the required 60-day written notice.

As you have informed me, we understand that you have obtained legal assistance in response to my father's previous letters. My father does not discourage you from doing so as it is important for you to know your legal rights, and he fully desires to act within the law in order to avoid a potentially costly legal dispute. Also, based upon the goodwill he has extended to you over many years and that which he continues to extend to you by offering not to exercise his right to raise your rent to the full market value with the minimum legally prescribed period of 60-days, please be advised that he reserves the right to make adjustments to your monthly rental rate, as permitted within the law, to offset his costs for legal assistance to respond to any complaint letters you or legal counsel may submit or to defend himself in any legal action which you may bring against him.


Blessings,



Gina Presquez
on Behalf of Jack Olivieri

attach: Thirty-Day Notice of Rental Increase

RECEIVED

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. MAY 26 2020 RENT ADJUSTMENT PROGRAM OAKLAND PROPERTY OWNER RESPONSE
---	--	--

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T20-0093

Your Name Gina Fresquez	Complete Address (with zip code) 25538 South Gold Ridge Drive Castro Valley, CA 94552	Telephone: Email:
Your Representative's Name (if any) Jill Broadhurst BIG CITY Property Group, Inc.	Complete Address (with zip code) PO BOX 13122 Oakland, CA 94661	Telephone: 510-838-0655 Email: bigcitypg@gmail.com
Tenant(s) Name(s) Miriam Bolanos	Complete Address (with zip code) 959 42nd Street Oakland CA 94608	
Property Address (If the property has more than one address, list all addresses) 959 42nd Street Oakland CA 94608		Total number of units on property 1

Have you paid for your Oakland Business License? Yes No Lic. Number: 00009281
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Have you paid the current year's Rent Program Service Fee? Yes No APN: 012-1020-030-00
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Date on which you acquired the building: /// 1942, in family

Is there more than one street address on the parcel? Yes No

Type of unit (Circle One) House Condominium/ Apartment, room, or live-work

For more information phone (510)-238-3721.

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you can provide organized documentary evidence demonstrating your entitlement to the increase prior to your hearing. This documentation may include proof of payment, receipts, invoices and permits. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

Date of Contested Increase	Banking (Deferred Annual Increases)	Increased Housing Service Costs	Uninsured Repair Costs	Fair Return
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you are justifying additional contested increases, please attach a separate sheet.

II. RENT HISTORY If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on 10/2014

The tenant's initial rent including all services provided was: \$ 1400 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants? Yes _____ No X I don't know _____

If yes, on what date was the Notice first given? _____

Is the tenant current on the rent? Yes _____ No X Currently not paid April(\$2500), May(\$2500) and March short \$700= \$5700

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

Date Notice Given (mo/day/year)	Date Increase Effective	Rent Increased		Did you provide the "RAP NOTICE" with the notice of rent increase?
		From	To	
12/9/19	2/1/20	\$ 1800	\$ 1980 *	Y Yes XY No
1/3/19	3/1/19	\$ 1700	\$ 1800	Y Yes XY No
4/1/18	5/1/18	\$ 1600	\$ 1700	Y Yes XY No
2/1/17	3/1/17	\$ 1500	\$ 1600	Y Yes XY No
2/1/16	3/1/16	\$ 1400	\$ 1500	Y Yes XY No

*Paid \$1980 February, then went down to \$1800 in March, then ended rent payments claiming COVID. Miriam has not provided requested COVID documentation per state ordinance.

III. EXEMPTION

If you claim that your property is exempt from Rent Adjustment (Oakland Municipal Code Chapter 8.22), please check one or more of the grounds:

The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). **If claiming exemption under Costa-Hawkins, please answer the following questions on a separate sheet:**

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)? **NO**
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)? **NO**
3. Was the prior tenant evicted for cause? **NA**
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building? **NO**
5. Is the unit a single family dwelling or condominium that can be sold separately? **NO**
6. Did the petitioning tenant have roommates when he/she moved in? **NO**
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building? **NA**

The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.

On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** less than 30 days.

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction. (The exemption can only apply where both (a) a property owner has applied for the exemption prior to 10/20/17 and (b) RAP has issued the certificate of exemption for that building.)

The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.


IV. DECREASED HOUSING SERVICES

If the petition filed by your tenant claims **Decreased Housing Services**, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

***SEE ATTACHED RESPONSE AND EXHIBITS**

V. VERIFICATION

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



Property Owner's Signature

5/22/20

Date

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center.. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

File Review

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

Mediation Program

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff member at no charge.

Property Owner's Signature

Date



SECTION I - OWNER INFORMATION

1. ACCOUNT NUMBER: 00009282

3. Owner Name: Margery Isola

2. Mailing Address:

4. Rental Location: 959 42ND ST

OAKLAND, CA 94608-3711



MARGERY ISOLA
4734 SHETLAND AVE
OAKLAND, CA 94605-5629

5. Total Number of Units per Alameda County Records : 2

SECTION II - CLOSE ACCOUNT

THE RENTAL PROPERTY IN OAKLAND WAS SOLD OR DISCONTINUED ON:

Month _____ Day _____ Year _____

Rental properties that have sold or discontinued after January 1, 2020 are required to pay the RAP fee in full by filling out Section III, IV and V. Otherwise, sign and date Section V.

SECTION III - EXEMPTIONS CLAIMED FOR 2020

Claim all that apply (see reverse side for explanation):

- A. Owner Occupied Unit A. _____
- B. Off the Rental Housing Market (attach explanation) B. /
- C. Motel, Hotel or Rooming House C. _____
- D. Hospital, Convent or Monastery D. _____
- E. Newly Constructed E. _____

6. TOTAL NUMBER OF EXEMPT UNITS CLAIMED (add Lines A-E): 6. /

*pd. v # 165
2-22-20*

SECTION IV - NET CHARGEABLE UNITS

7. NET CHARGEABLE UNITS: 7. /

(deduct Line 6 from the total units pre-printed on Line 5)

8. FEE DUE 8. \$ 101.00

(multiply Line 7 by \$101.00)

9. PENALTY DUE 9. \$

(if paying after March 2, 2020 see box to the right)

10. INTEREST DUE 10. \$

(if paying after March 2, 2020 see box to the right)

11. PRIOR AMOUNT DUE 11. \$ 0.00

12. TOTAL DUE (add Lines 8-11) 12. \$ 101.00

If paying after March 2, 2020
PENALTY DUE (on tax):
3/3/2020 - 4/1/2020 add 10%
4/2/2020 - 5/1/2020 add 25%
5/2/2020 - until paid add 50%
INTEREST DUE (on tax + penalty):
3/3/2020 - until paid add 1% per calendar month

Payment Options:

Payment Options: ONLINE: [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com) Pay by VISA, MasterCard, Discover or eCheck
 Enter account number: 00009282 and PIN: 967730

BY MAIL: Send one check per account made payable to "City of Oakland - RAP" DO NOT SEND CASH
 WALK IN: Cash, Check, VISA, MasterCard or Discover (see reverse for hours and holidays)

SECTION V - SIGNATURE

I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct

Print Name	Signature	Date	Phone Number
Jack Olivieri	<i>Jack Olivieri</i>	2-17-20	(510) 220-5226

WELLS FARGO

Check Details

Check Number 165
Date Posted 03/03/20
Check Amount \$101.00

JACK & OLIVERI
GINA OLIVERI FRESQUEZ
4784 BRETHERTON AVE
OAKLAND, CA 94605-5229

059 42nd St.

165
11-2222/2210 4048
7234874861

2-22-20
Date

Pay to the Order of City of Oakland RAP \$ 101.00

One hundred one Dollars

Wells Fargo Bank, N.A.
C# 66666
wellsfargo.com

For Acct. 00009282 Jack Oliveri

CREDIT TO ACCT OF PAYEE.
LACK OF ENDORSEMENT
GUARANTEED 240-TRX 45650

For your security, information like account numbers, signatures, and the ability to view the backs of checks have been removed from the images. You can see full or partial fronts and backs of the images by using the link at the top of the window.

Equal Housing Lender

**CITY OF OAKLAND
BUSINESS TAX CERTIFICATE**

**ACCOUNT
NUMBER**

00009281

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 85.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

DBA

OLIVIERI JACK G & DORIS TRS



EXPIRATION DATE

12/31/2020

BUSINESS LOCATION

959 42ND ST
OAKLAND, CA 94608-3711

BUSINESS TYPE

M Rental- Residential



MARGERY ISOLA
4734 SHETLAND AVE
OAKLAND, CA 94605-5629

A BUSINESS TAX
CERTIFICATE IS REQUIRED
FOR EACH BUSINESS
LOCATION AND IS NOT VALID
FOR ANY OTHER ADDRESS.

ALL OAKLAND BUSINESSES
MUST OBTAIN A VALID
ZONING CLEARANCE TO
OPERATE YOUR BUSINESS
LEGALLY. RENTAL OF REAL
PROPERTY IS EXCLUDED
FROM ZONING.

PUBLIC INFORMATION
ABOVE THIS LINE TO BE
CONSPICUOUSLY POSTED.

000155

May 22, 2020

Landlord Response

Case # T20-0093

This petition should be dismissed for the following reasons:

This property is exempt from rent control and is subject to provisions under Costa Hawkins.

This parcel is one dwelling unit with multiple storage buildings and garages on an oversized lot.

Oakland RAP has no jurisdiction, the landlord requests that this petition be dismissed.

Additional Information:

Tenant, Miriam Bolanos, moved into 959 42nd Street on October 2014 at a base rent of \$1400.

There are no issued code violations from any government agency.

Property is a single family dwelling, there is no 2nd dwelling unit on the parcel. Structure in question is storage.

Per Oakland Municipal Code 15.08.170, a "dwelling unit" is a residential building, or portion thereof, which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation for not more than one family of a congregate residence from not more than 10 persons (See Exhibit A).

There is no power, gas, water or garbage service to this building. There is no water heater, kitchen or bathroom facilities in this structure. This structure does not meet the criteria for "dwelling unit", therefore should not be considered as a legitimate basis for this tenant to be under rent control (See Exhibit B).

Further, the tenant stores her personal items in this storage unit. The lease agreement includes use of all the structures on the parcel. Therefore the tenant's argument that there is a 2nd building on the parcel falls short, there is no other tenancy or lease agreement with another party on this parcel (See Exhibit C).

Tenant Petition

Tenant incorrectly states the base rent and move-in date (please see property owner response).

The rent increases stated by the tenant are incorrect, and tenant has never paid anything over \$1980. A one-time rent payment of \$1980 was made in February 2020. March 2020 she returned back to \$1800 upon consulting with her tenant counsel, Centro Legal de La Raza. She has not paid rent for April or May, stating she has been affected by Covid. Owner has requested the appropriate documentation from the tenant per state order and has not been provided with anything.

Tenant- Addendum A (created by Centro Legal on behalf of Mariam): tenant did not live in home in 12/2013 nor 1/2014. Tenant moved in 10/2014 at a rental rate of \$1400. Regarding the 2016 increase to \$1500, that went into effect March 2016 (See Exhibit D).

000156

Tenant also incorrectly states that all rent payments were in cash since 10/2013, this is incorrect.

Many payments were in the form of a cashier's check, but also personal checks (See Owner exhibit E).

Tenant- Addendum B (created by Centro Legal, on behalf of Mariam)

The listed dates owner was notified were prior to this tenant even moving into the unit. Again, Mariam moved in October 2014. Therefore, owner rejects this list of 'bad conditions' and believes the tenant and counsel are attempting to extract a settlement from an owner who has gone above and beyond in taking care of this tenant and their specific needs. We ask that Addendum B be dismissed.

An inspection report dated 8/16 further highlights no issues with the heater or thermostat. Windows are mentioned as single-paned and not energy efficient to today's standards, but again, do not fall into habitability (See Exhibit F).

Tenant's complaints of windows and a lack of insulation are not considered habitability and should be dismissed. Minor cracks and peeling paint are cosmetic and not considered habitability; these conditions should be dismissed as well.

Owner has never been notified, and is unaware of any mold concerns, other than what may accumulate on single paned windows due to condensation and poor cleaning maintenance of the home.

Owner Documentation - TO BE PRESENTED AT A LATER DATE

- A.) City of Oakland definition of "dwelling unit" and "residential unit" per municipal code.
- B.) Utility communication validating no service
- C.) Pictures- demonstrating use, storage
- E.) Bank statement printouts demonstrating personal check and cashier check deposits and amounts.
- D.) Text and mailed communication between tenant and owner demonstrating move-in date and payment acknowledgement, as well as overall level of attention owner has given to the tenant.
- F.) Inspection Report conducted on 8/17/16

July 9th, 2020

Landlord Evidence Response

Case # T20-0093

Owner Documentation Submitted:

- A.) City of Oakland definition of “dwelling unit” and “residential unit” per municipal code; Costa Hawkins language defining “residential real property”
 - B.) Utility communication validating no service
 - C.) Pictures- demonstrating use, storage
 - D.) Text and mailed communication between tenant and owner demonstrating move-in date and payment acknowledgement, as well as overall level of attention owner has given to the tenant.
 - E.) Bank statement printouts demonstrating personal check and cashier check deposits and amounts.
 - F.) Inspection Report conducted on 8/17/16
-

Based on the evidence submitted above the property owner’s position remains that this petition should be dismissed for the following reasons:

This property is exempt from rent control and is subject to provisions under Costa Hawkins.

This parcel is one dwelling unit with multiple storage buildings and garages on an oversized lot.

As stated in the earlier narrative, Ms. Bolanos’ lease includes use of ALL structures on the property lot.

Additional Information:

Concerning the habitability issues, some points were addressed in the original response. The owner refutes all assertions made by the tenant and her attorney. Further, on 1/25/20 Thom Fresquez conducted a home inspection with Ms. Bolanos present. A follow-up letter was sent to Ms. Bolanos regarding the visit. At no time did Ms. Bolanos mention any items needing attention, including the heater or supposed mold. Mr. Fresquez did not witness any of the mold that is noted in Addendum B.

000158

A

15.08.170 - Definitions (HSC Section 17910, et seq.).

For the purpose of this Code, certain terms, phrases, words, and their derivatives shall be construed as specified either in this Section or as specified in the Oakland Building Construction Code. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. *Webster's Third New International Dictionary of the English Language, Unabridged, copyright 2016*, shall be considered as providing ordinary accepted meanings. Words in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

ACCESSORY BUILDING is a detached subordinate building, the use of which is customarily incidental to that of the main building or the main use of the land and which is located on the same lot or parcel with the main building of use.

APARTMENT HOUSE is a residential building or portion thereof which contains three or more dwelling units and, for the purposes of this Code, includes residential condominiums and Joint Live Work Quarters and Urban Core/Conversion Residence Quarters as defined in the Oakland Building Code.

BEDROOM is a sleeping room having a minimum 2 feet 4 inches wide by 6 feet 8 inches high door opening communicating directly with other internal areas of a dwelling unit and containing a separate closet.

BUILDING CODE is the Oakland Building Construction Code, as currently adopted and amended.

BUILDING OFFICIAL is the Official in charge of the Building Department of the City of Oakland, or his or her designee, and his or her successor in title.

COMMUNITY KITCHEN is a kitchen in a hotel or lodging house used individually or collectively by the occupants, but not used commercially to serve a dining room or the public.

CONGREGATE RESIDENCE is any residential building or portion thereof that contains facilities for living, sleeping and sanitation, as required by this Code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels, motels, or lodging houses.

COURT is a space, open and unobstructed to the sky, located at or above finished grade on a lot and bounded on three or more sides by walls of a building.

DWELLING is a residential building or portion thereof which contains not more than two dwelling units.

*** DWELLING UNIT is a residential building, or portion thereof, which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation for not more than one family or a congregate residence for not more than 10 persons.

EFFICIENCY DWELLING UNIT is a dwelling unit containing only one habitable room and meeting the requirements of Section 15.08.210.B, Exception 1, of this Code.

FIRE CHIEF is the Chief of the Fire Services Agency of the City of Oakland, or his or her designee, and his or her successor in title.

GUEST ROOM is a room or rooms used or intended to be used for sleeping purposes by a person hiring or occupying the room or rooms. Every 100 square feet of superficial floor area in a dormitory shall be considered to be a guest room.

HABITABLE SPACE (ROOM) is space in a residential building or structure intended or used for living, sleeping, eating, or cooking. Bathrooms, water closet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

HEALTH OFFICER is head of the Department of Environmental Health of Alameda County, or his or her designee.

HEARING EXAMINER is a person who is qualified by training and experience to conduct administrative hearings of appeals in accordance with Article IX of this Code.

HOT WATER is potable water supplied to plumbing fixtures at a temperature of not less than 110° F.

HOTEL (MOTEL) is a residential building containing six or more guest rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by guests.

HOUSEKEEPING ROOM is a dwelling unit containing only one habitable room and meeting the requirements of Section 15.08.210.B, Exception 2, of this Code.

LODGING HOUSE is any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor, or otherwise.

LOT is a subdivided piece or parcel of land fronting on a public street or a private access easement and described by reference to a recorded plat or by metes and bounds.

MECHANICAL CODE is the Oakland Building Construction Code, as currently adopted and amended.

NUISANCE is one or more of the following:

1. A public nuisance known at common law or in equity jurisprudence;
2. An attractive nuisance that may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot, including but not limited to, an abandoned well, shaft, basement, pool or pond, or excavation; an abandoned

- refrigerator or motor vehicle; a structurally unsound fence or structure; lumber, trash, fence, debris, or vegetation; or narcotics or other controlled substances and related paraphernalia that may prove a hazard for inquisitive minors;
3. Whatever is unsafe to life and limb, as determined by the Building Official or the Fire Chief, or detrimental to public health or the health of the occupants, as determined by the Health Officer;
 4. Overcrowding a room with occupants;
 5. Insufficient ventilation or illumination;
 6. Inadequate or unsanitary sewage disposal system or plumbing facilities;
 7. Uncleanliness, as determined by the Health Officer;
 8. Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the Health Officer.

OCCUPANT is any person using any building or structure or portion thereof as habitable space, with or without the knowledge or consent of the property owner.

OPEN STORAGE is storage on private property other than in a completely enclosed building. Materials shall be deemed to be held in Open Storage even though screened from public view, or view of residents of adjacent property, by a fence or other such partition.

OPERATOR is any person who has charge, care, or control of a building, or part thereof, in which dwelling units or guest rooms are let.

PLUMBING CODE is the Oakland Building Construction Code as currently adopted and amended.

PUBLIC CORRIDOR (HALLWAY) is an enclosed, continuous and unobstructed means of egress to a public way which includes an intervening hallway, passageway, vestibule, stairway, landing, or platform within a building, but not within any apartment, guest room, or suite of rooms.

RECYCLABLES are materials, goods, vehicles, machinery, appliances, products or articles, either new or used, with or without monetary value, which are suitable for re-use.

RESIDENTIAL BUILDING is a building or structure, or portion thereof, which is used or designed or intended to be used for human habitation including living, sleeping, cooking or eating or any combination thereof.



ROOM is an unsubdivided and enclosed portion of the interior of a building but not including an enclosed show window.

RUBBISH is combustible and noncombustible waste material, other than garbage (solid organic waste), including, but not limited to, paper stock, rags, cartons, boxes, wood, excelsior, rubber, leather, vegetation trimmings and cuttings, cans, metal, mineral matter, glass, crockery, dust, and the residue from burning

wood, coal, or coke.

SLEEPING ROOM is a habitable room in a residential building which does not contain a water heater, water closet, bidet, bathtub, shower receptor, clothes washer or dryer, or food cooking appliance; and does not open directly into a garage or carport; and otherwise meets minimum standards of health and safety for sleeping as determined by the Building Official.

VENT SHAFT is a court which is used to ventilate a water closet, bath, shower receptor, utility room or other service room.

WINDOW is a glazed exterior opening, including a glazed door, which opens onto a yard, court, or a vent shaft.

YARD is an open space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this Code, on the lot on which a building is situated.

(Ord. No. 13407, § 4(Exh. A), 12-13-2016)



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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273] (*Part 4 enacted 1872.*)

TITLE 5. HIRING [1925 - 1997.270] (*Title 5 enacted 1872.*)

CHAPTER 2.7. Residential Rent Control [1954.50 - 1954.535] (*Title 5 added by Stats. 1995, Ch. 331, Sec. 1.*)

1954.50. This chapter shall be known and may be cited as the Costa-Hawkins Rental Housing Act.

(*Added by Stats. 1995, Ch. 331, Sec. 1. Effective January 1, 1996.*)

1954.51. As used in this chapter, the following terms have the following meanings:

- (a) "Comparable units" means rental units that have approximately the same living space, have the same number of bedrooms, are located in the same or similar neighborhoods, and feature the same, similar, or equal amenities and housing services.
- (b) "Owner" includes any person, acting as principal or through an agent, having the right to offer residential real property for rent, and includes a predecessor in interest to the owner, except that this term does not include the owner or operator of a mobilehome park, or the owner of a mobilehome or his or her agent.
- (c) "Prevailing market rent" means the rental rate that would be authorized pursuant to 42 U.S.C.A. 1437 (f), as calculated by the United States Department of Housing and Urban Development pursuant to Part 888 of Title 24 of the Code of Federal Regulations.
- (d) "Public entity" has the same meaning as set forth in Section 811.2 of the Government Code.
- (e) "Residential real property" includes any dwelling or unit that is intended for human habitation.
- (f) "Tenancy" includes the lawful occupation of property and includes a lease or sublease.

(*Added by Stats. 1995, Ch. 331, Sec. 1. Effective January 1, 1996.*)

1954.52. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

- (1) It has a certificate of occupancy issued after February 1, 1995.
- (2) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units.
- (3) (A) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, as specified in subdivision (b), (d), or (f) of Section 11004.5 of the Business and Professions Code.
- (B) This paragraph does not apply to either of the following:
 - (i) A dwelling or unit where the preceding tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827.
 - (ii) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value. The initial rent amount of the unit for purposes of this chapter shall be the lawful rent in effect on May 7, 2001, unless the rent amount is governed by a different provision of this chapter. However, if a condominium dwelling or unit meets the criteria of paragraph (1) or (2) of subdivision (a), or if all the dwellings or units except one have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then subparagraph (A) of paragraph (3) shall apply to that unsold condominium dwelling or unit.

000163

(C) Where a dwelling or unit in which the initial or subsequent rental rates are controlled by an ordinance or charter provision in effect on January 1, 1995, the following shall apply:

(i) An owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998.

(ii) Commencing on January 1, 1999, an owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all new tenancies if the previous tenancy was in effect on December 31, 1995.

(iii) The initial rental rate for a dwelling or unit as described in this paragraph in which the initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not, until January 1, 1999, exceed the amount calculated pursuant to subdivision (c) of Section 1954.53. An owner of residential real property as described in this paragraph may, until January 1, 1999, establish the initial rental rate for a dwelling or unit only where the tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of Section 1161 of the Code of Civil Procedure.

(b) Subdivision (a) does not apply where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(c) Nothing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.

(d) This section does not apply to any dwelling or unit that contains serious health, safety, fire, or building code violations, excluding those caused by disasters for which a citation has been issued by the appropriate governmental agency and which has remained unabated for six months or longer preceding the vacancy.

(Amended by Stats. 2004, Ch. 568, Sec. 4. Effective January 1, 2005.)

1954.53. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial rental rate for a dwelling or unit, except where any of the following applies:

(1) The previous tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827, except a change permitted by law in the amount of rent or fees. For the purpose of this paragraph, the owner's termination or nonrenewal of a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, shall be construed as a change in the terms of the tenancy pursuant to Section 827.

(A) In a jurisdiction that controls by ordinance or charter provision the rental rate for a dwelling or unit, an owner who terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant may not set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement. For any new tenancy established during the three-year period, the rental rate for a new tenancy established in that vacated dwelling or unit shall be at the same rate as the rent under the terminated or nonrenewed contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant, plus any increases authorized after the termination or cancellation of the contract or recorded agreement.

(B) Subparagraph (A) does not apply to any new tenancy of 12 months or more duration established after January 1, 2000, pursuant to the owner's contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, unless the prior vacancy in that dwelling or unit was pursuant to a nonrenewed or canceled contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant as set forth in that subparagraph.

(2) The owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) The initial rental rate for a dwelling or unit whose initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not until January 1, 1999, exceed the amount calculated pursuant to subdivision (c).

(b) Subdivision (a) applies to, and includes, renewal of the initial hiring by the same tenant, lessee, authorized subtenant, or authorized sublessee for the entire period of his or her occupancy at the rental rate established for the initial hiring.

(c) The rental rate of a dwelling or unit whose initial rental rate is controlled by ordinance or charter provision in effect on January 1, 1995, shall, until January 1, 1999, be established in accordance with this subdivision. Where



**EAST BAY
MUNICIPAL UTILITY DISTRICT**

(B)

May 13, 2020

Mrs. Gina Oliveiri-Fresquez
(via ginafresquez@sbcglobal.net)

**Re: 959 42nd Street, #Rear
Oakland, CA 94608
Meter # : 86242124**

Dear Mrs. Gina Oliveiri-Fresquez:

Our record shows that there is no active water service at the above referenced address for about 10 years.

Should you have any questions regarding this matter, please call our Contact Center at 1-866-403-2683 between the hours of 8:00 and 4:30pm, Monday thru Friday.

Sincerely,

Contact Center
East Bay Municipal Utility District

Construction Date: AV # 118976970 959 42ND ST OAKLAND

(B)

From: Johnson, DJ (dajj@pge.com)

To: thom_fresquez@sbcglobal.net

Date: Wednesday, May 13, 2020, 10:02 AM PDT

Good Morning Thomas,

The gas meter removal is scheduled for 5-19-20 between 8a-12p. Someone must be on site to provide access to the home (they may need to light pilot lights, safety check, etc).

Please be advised the *appointment is scheduled barring and emergencies or inclement weather*. Thank you and have a good day.

DJ JOHNSON | Sr. New Business Representative

Service Planning | 4801 Oakport St, Oakland, CA 94601

E: dajj@pge.com | O: 510-437-2007 | M: 510-682-0034

From: Johnson, DJ

Sent: Monday, May 11, 2020 4:49 PM

To: thom_fresquez@sbcglobal.net

Subject: RE: RFI: AV # 118976970 959 42ND ST OAKLAND

Hi Thomas,

The job has just been submitted to a clerk for scheduling. We are awaiting a date and I will notify you as soon as provided. Should hear back in the next 3-5 business days. Thank you and have a good evening.

DJ JOHNSON | Sr. New Business Representative

Service Planning | 4801 Oakport St, Oakland, CA 94601

E: dajj@pge.com | O: 510-437-2007 | M: 510-682-0034

From: Johnson, DJ

Sent: Monday, May 11, 2020 6:50 AM

000166

To: thom_fresquez@sbcglobal.net
Subject: RE: RFI: AV # 118976970 959 42ND ST OAKLAND

Looks good, thank you. I will request scheduling before the day is up.

DJ JOHNSON | Sr. New Business Representative

Service Planning | 4801 Oakport St, Oakland, CA 94601

From: Thomas Fresquez <thom_fresquez@sbcglobal.net>
Sent: Friday, May 08, 2020 4:21 PM
To: Johnson, DJ <DAJj@pge.com>
Subject: RE: RFI: AV # 118976970 959 42ND ST OAKLAND

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****

Done. Here you go.

000167



Details of Gas Charges

11/15/2019 - 12/09/2019 (25 billing days)

Service For: 959 42ND ST REAR
Service Agreement ID: 8613512217 CLOSED
Rate Schedule: G1 T Residential Service

Service Information

Meter # 40974274
Current Meter Reading 4,140
Prior Meter Reading 4,140
Total Usage 0.000000 Therms
Baseline Territory T
Serial S

11/15/2019 - 11/30/2019	Your Tier Usage	1	2
Tier 1 Allowance	22.08 Therms (16 days x 1.38 Therms/day)		
Tier 1 Usage	0.000000 Therms @ \$1.30040		\$0.00
Additional Transportation Charge*			1.58
Oakland Utility Users' Tax (7.500%)			0.12
* Adjustment for a minimum transportation charge of \$0.09863/day			

(B)

12/01/2019 - 12/09/2019	Your Tier Usage	1	2
Tier 1 Allowance	16.29 Therms (9 days x 1.81 Therms/day)		
Tier 1 Usage	0.000000 Therms @ \$1.36907		\$0.00
Additional Transportation Charge*			0.89
Oakland Utility Users' Tax (7.500%)			0.07
* Adjustment for a minimum transportation charge of \$0.09863/day			

Total Gas Charges \$2.66



(B)



000169



Sent from AT&T Yahoo Mail on Android

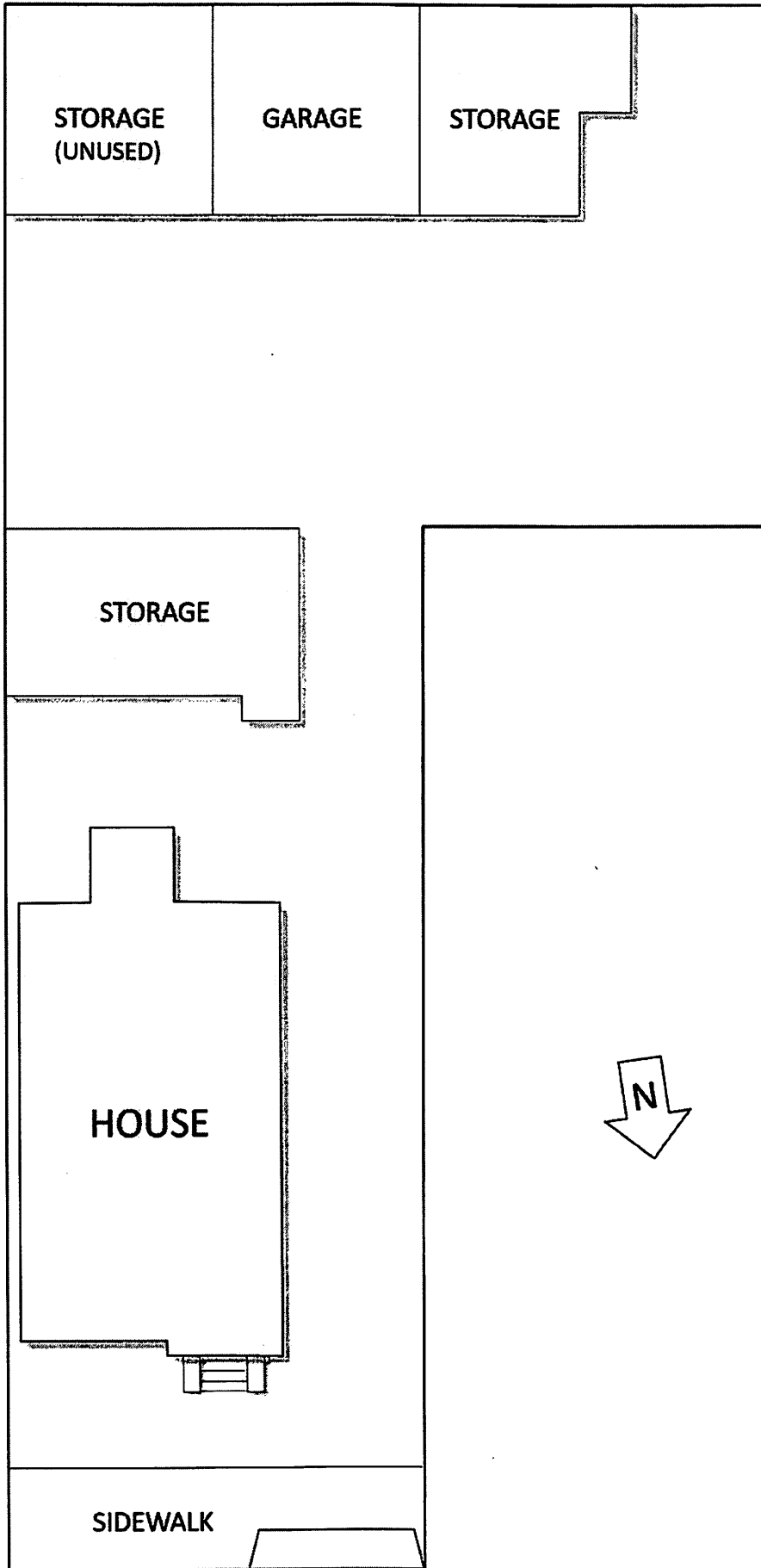
On Fri, May 8, 2020 at 12:40 PM, Johnson, DJ

<DAJj@pge.com> wrote:

Hi Thomas,

Please send updated pic once affixed to the house line and I'll get you in the schedule. Thank you.

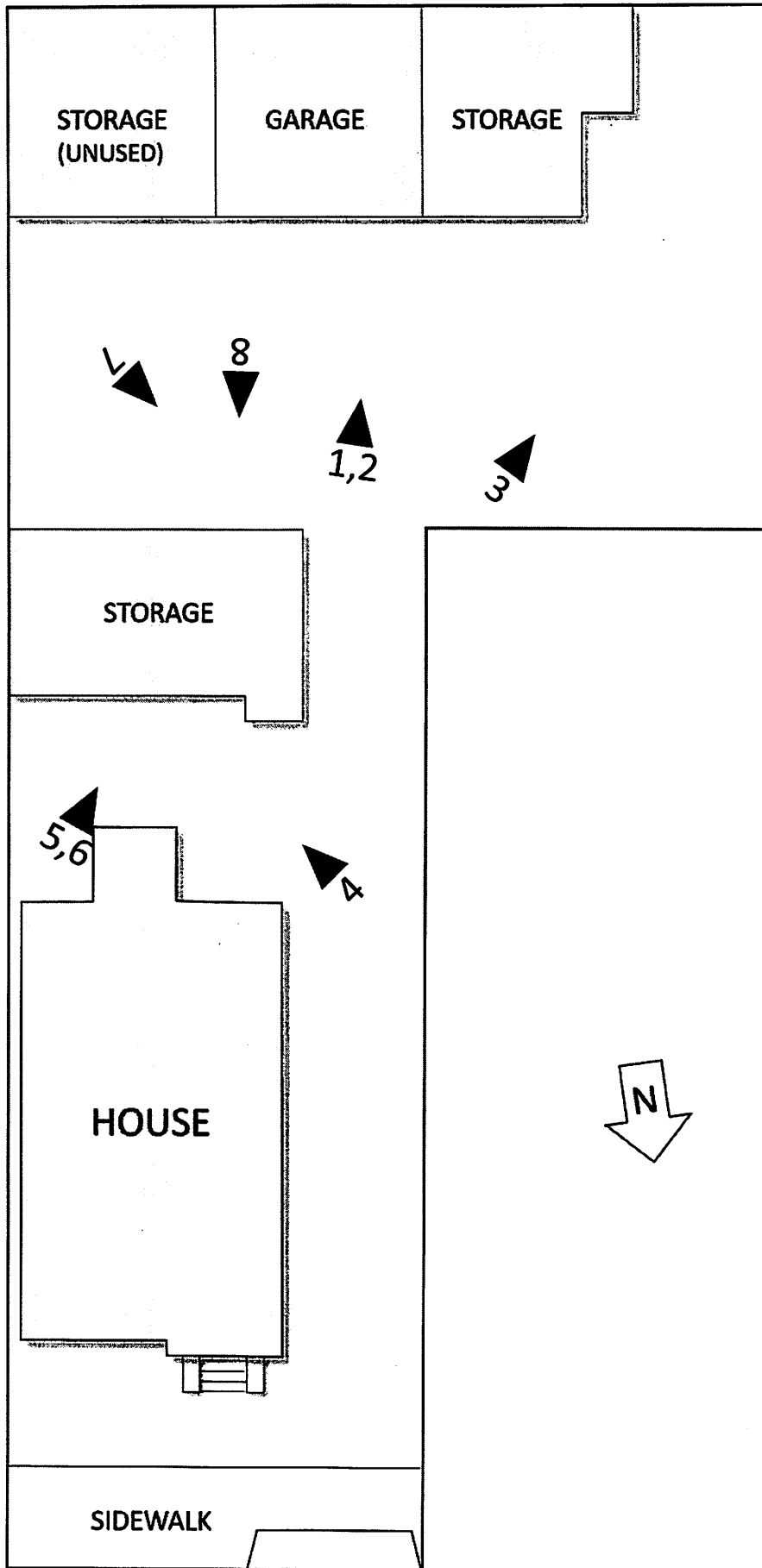
000170



①

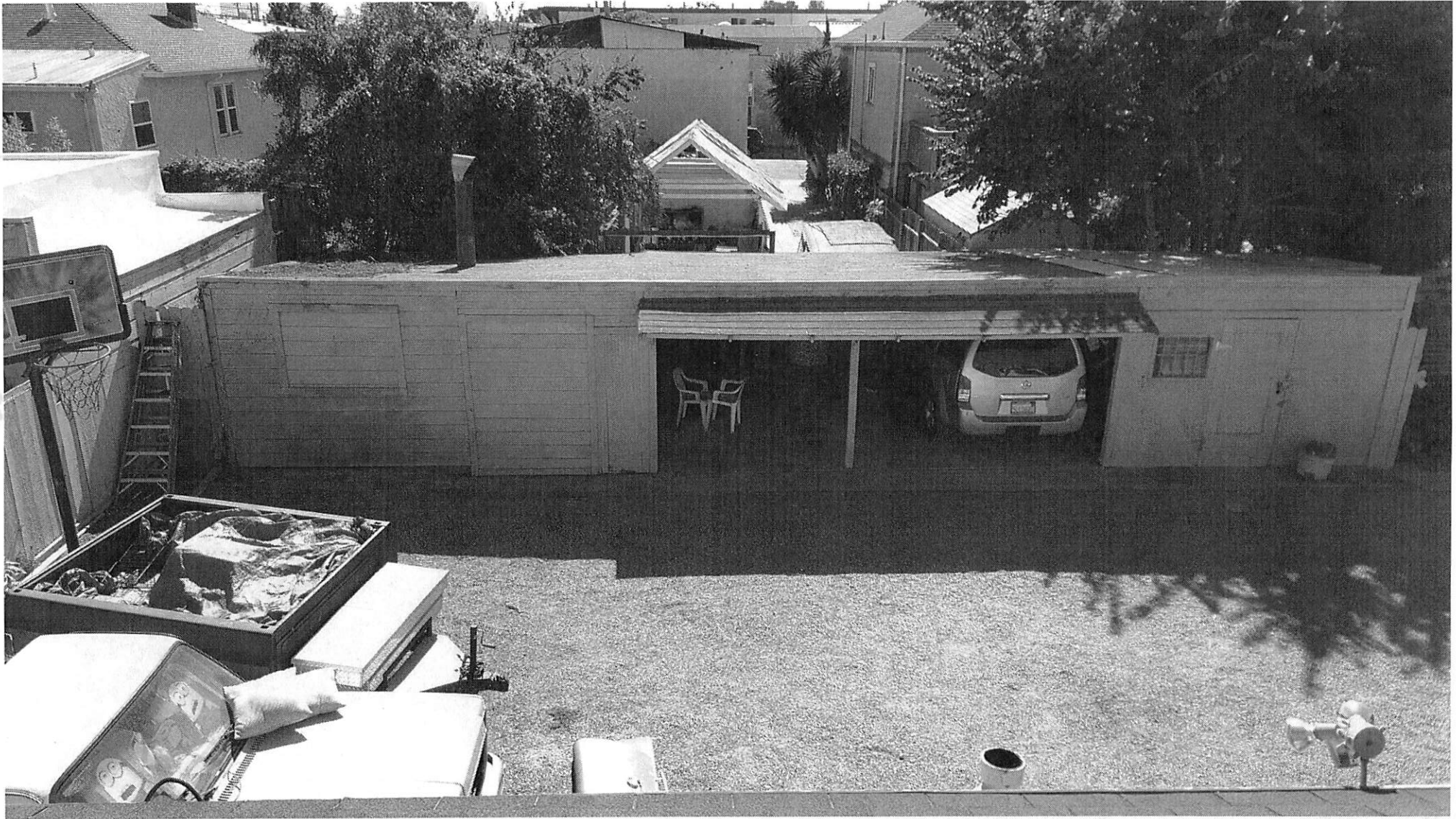
42ND STREET

000171



42ND STREET

000172



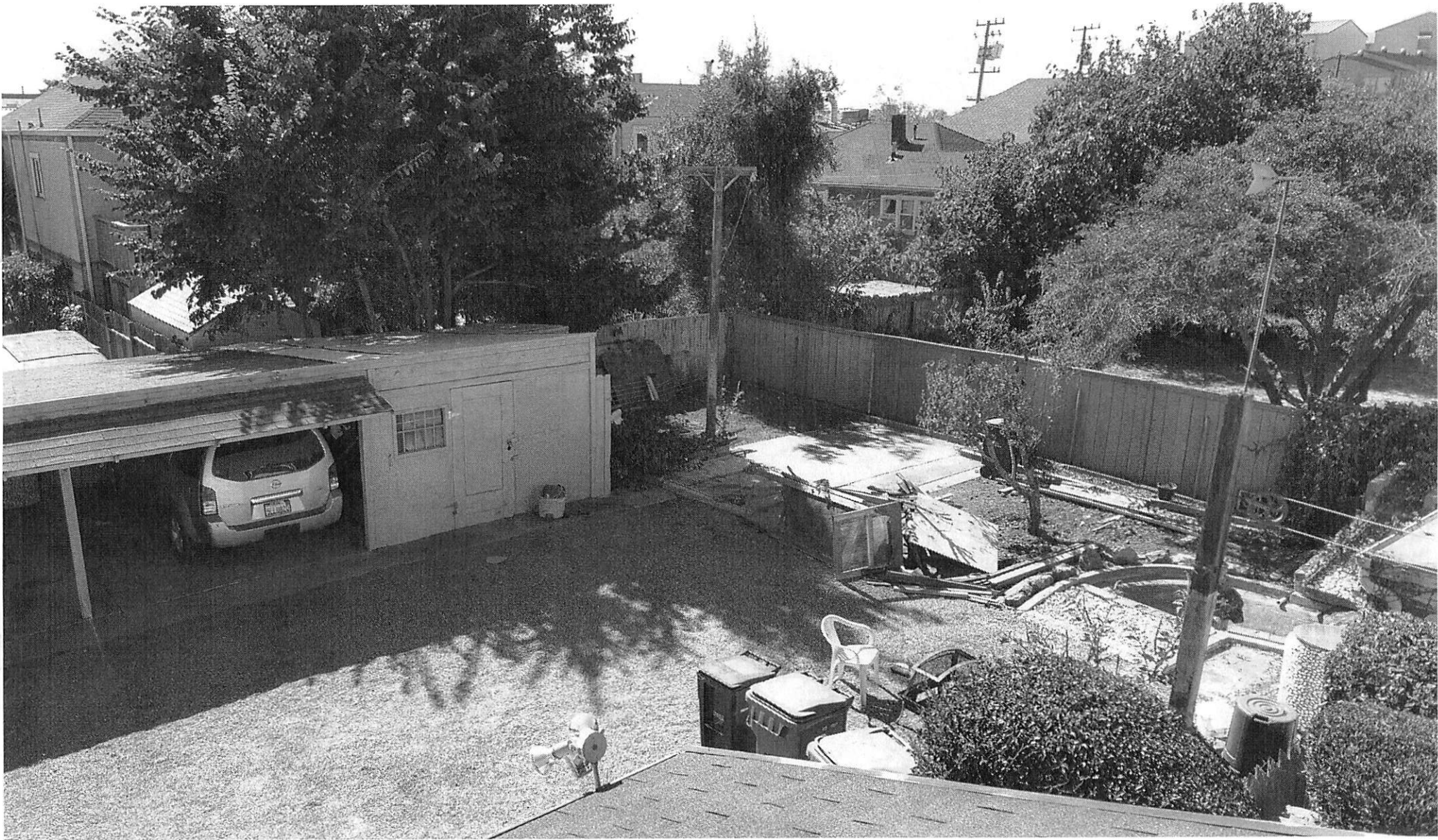
October 3, 2016

1
000173



1

000174



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Feb 26, 2016

4
000176



Feb 26, 2016

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6

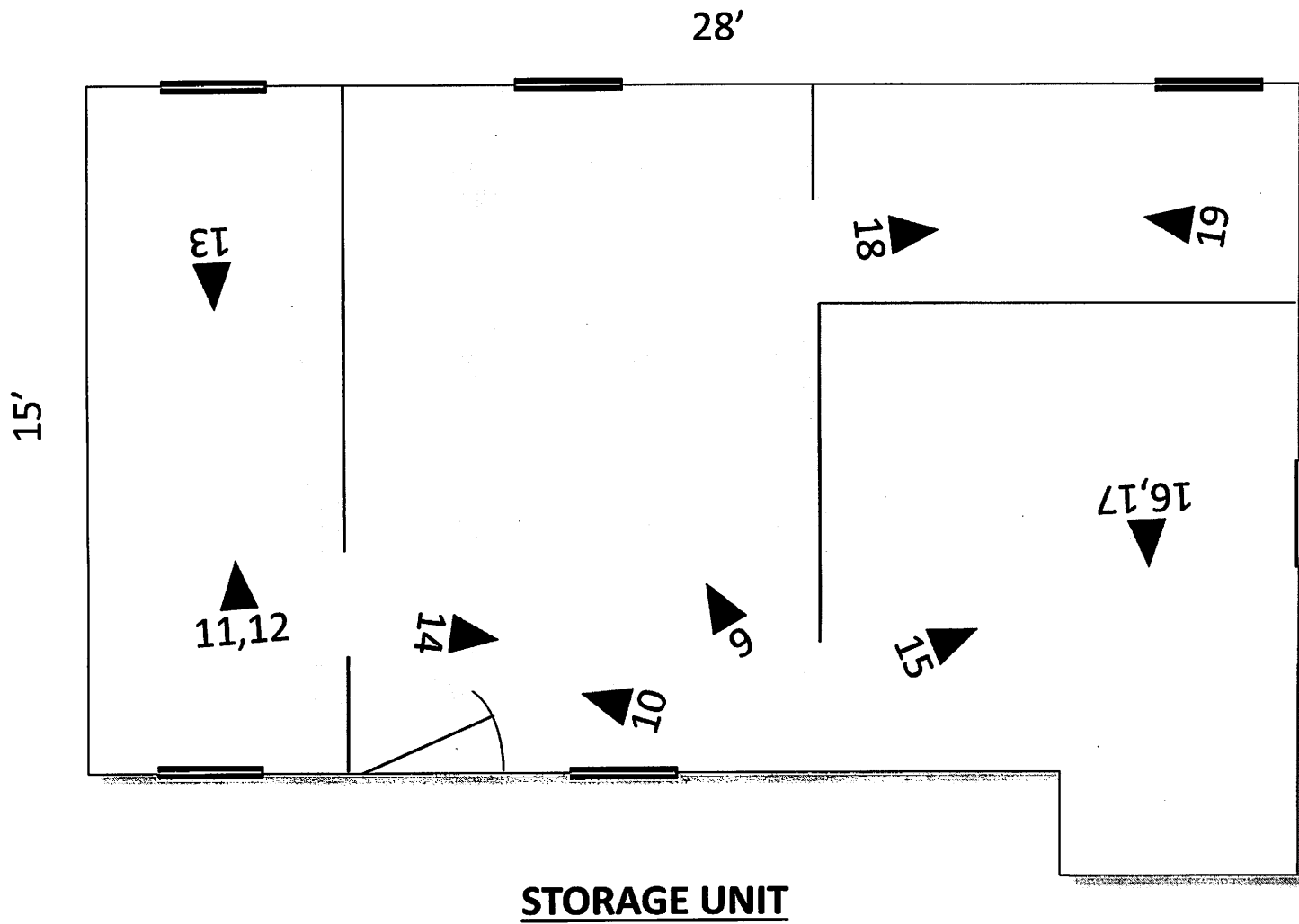
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▲
Photo Number and Direction





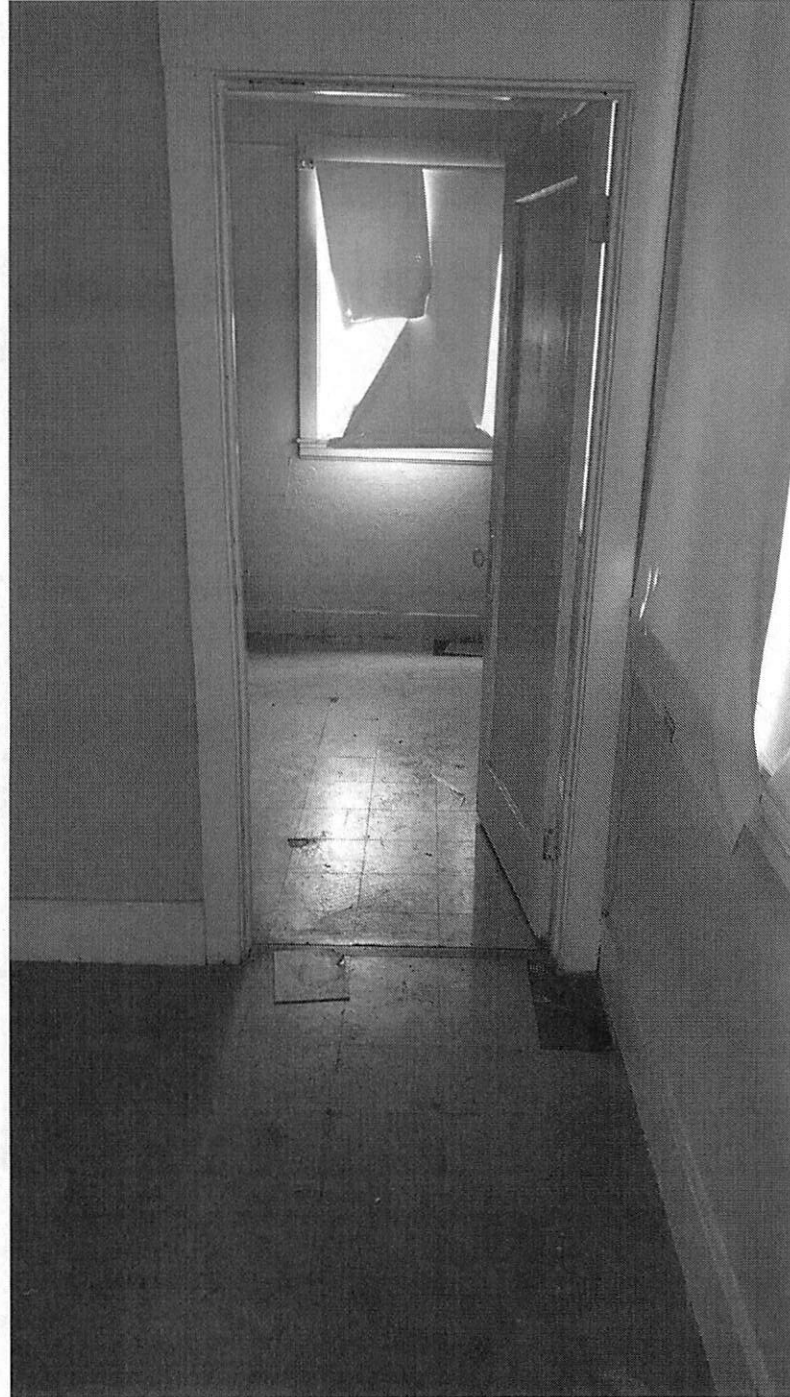
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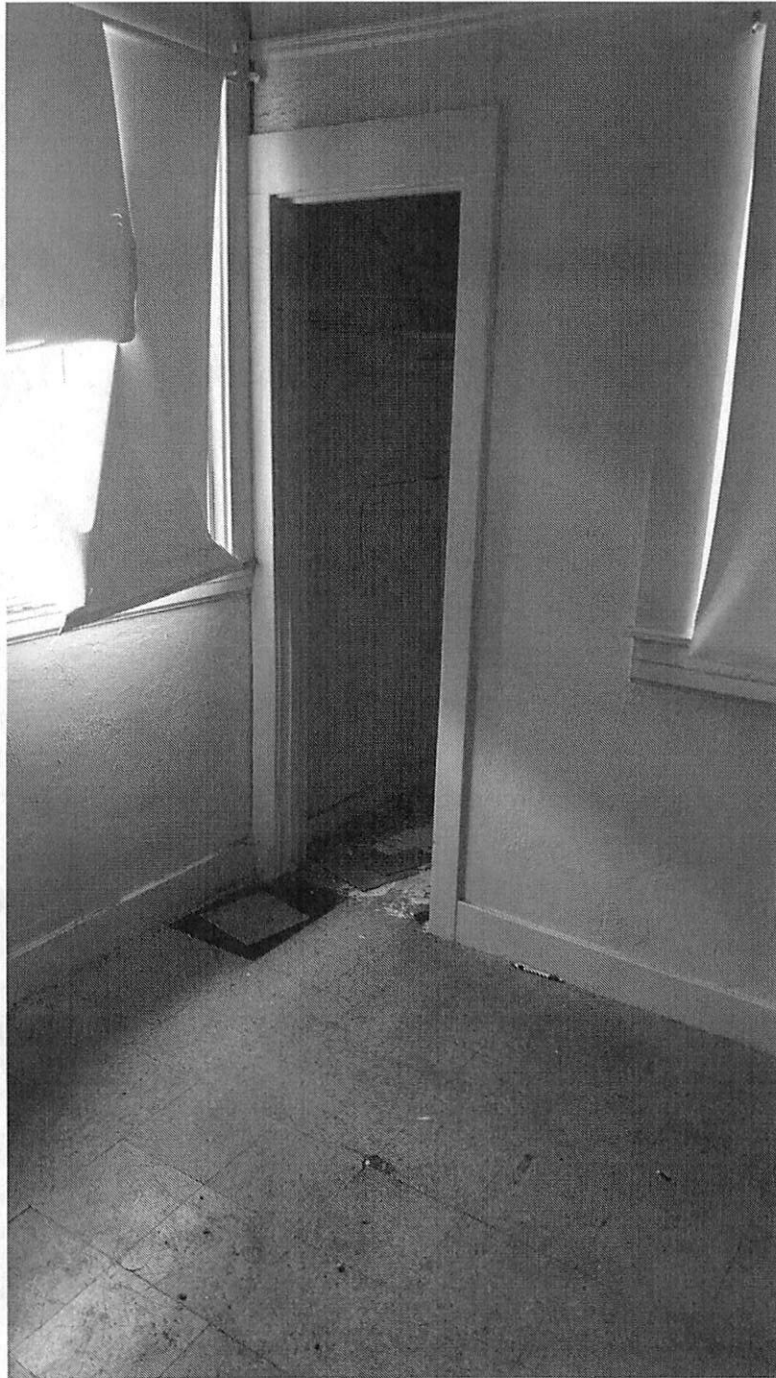
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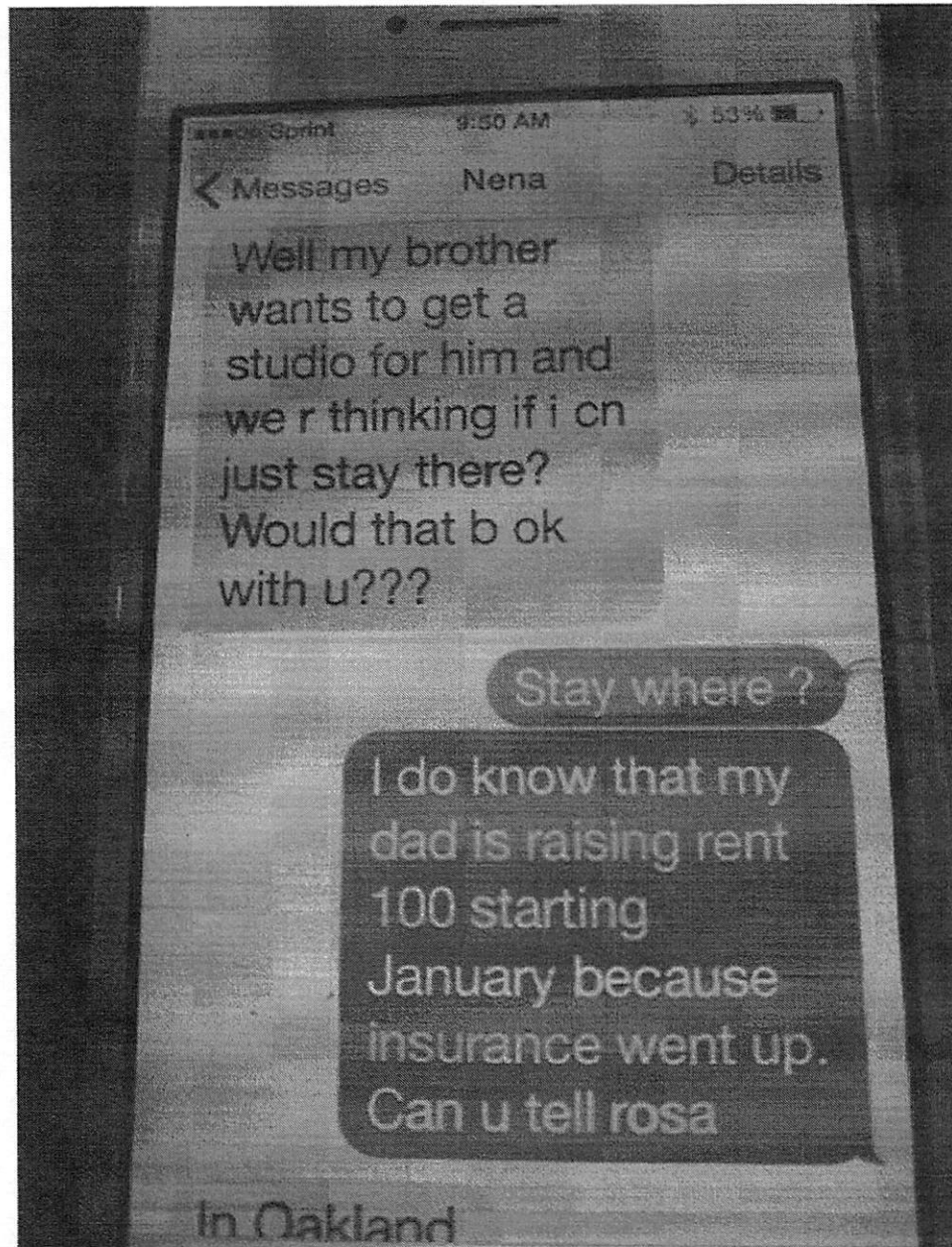
19
000192

Move-IN Text Chain

(D)

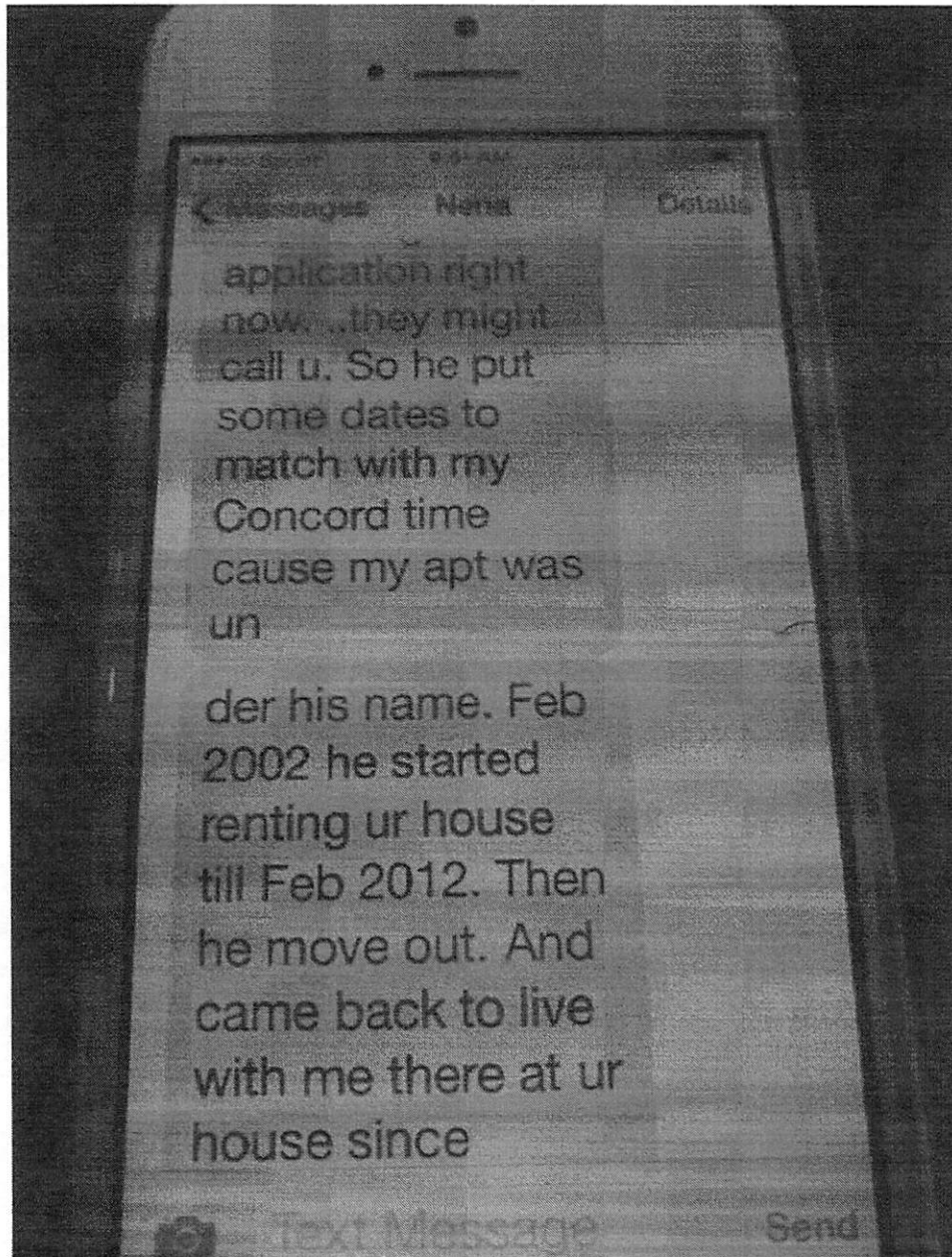


9/23/2014





9/24/2014





Printed from Chase Personal Online

6/2018 - 2/2019 \$1700.00
3/2019 - 1/2020 1800.00
2/20 - current 1980.00

\$1,700.00

Total

Jun 6, 2018
Post date

203
Check #

(E)

Deposit slip

\$1,700.00

Checks

\$1,700.00


MIRIAM A BOLANOS
959 42ND ST
EMERYVILLE, CA 94608-3711

203
11-4288/1210 4715
9993078535

06.05.18
Date

Pay to the Order of Jack Olivieri \$ 1,700.00
Seventeen hundred 0/100 — Dollars

WELLS FARGO
Wells Fargo Bank, N.A.
California
wellsfargo.com

For Rent 

⑆ 121042882⑆ 9993078535⑆ 00203

Account # 9993078535

Routing # 121042882



Printed from Chase Personal Online

\$1,700.00

Total

Jul 6, 2018
Post date

11606140
Check #

Deposit slip

\$1,700.00

Checks

\$1,700.00

0000118 11-24
Office AU # 1210(D)

CASHIER'S CHECK 0011606140

Remitter: MIRIAM A DOLANOS
Operator I.D.: u838432

PAY TO THE ORDER OF *****JACK OLIVIERI***** July 05, 2018

*****One thousand seven hundred dollars and no cents***** ****\$1,700.00****

Payee Address:
Memo: RENT FOR JULY

VOID IF OVER US \$ 1,700.00
Richard Long
CONTROLLER

WELLS FARGO BANK, N.A.
440 TASSAJARA RD
DUBLIN, CA 94568
FOR INQUIRIES CALL (408) 364-3122

#0011606140# ⑆ 21000248⑆486⑆ 511467⑆

Security Features included. Details on Back.

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,700.00

Total

Aug 7, 2018
Post date

11606222
Check #

Deposit slip

\$1,700.00

Checks

\$1,700.00

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

0000116 Office AU #	11-24 121000	CASHIER'S CHECK	0011606222
Remitter: MIRIAM A BOLANG Operator I.D.: us11637			August 08, 2018
PAY TO THE ORDER OF ***JACK OLIVIERI***			**\$1,700.00**
One thousand seven hundred dollars and no cents			
Payee Address: Memo: RENT			VOID IF OVER US \$ 1,700.00
WELLS FARGO BANK, N.A. 4400 TASSAJARA RD DUBLIN, CA 94568 FOR INQUIRIES CALL (480) 304-3122			<i>Richard Long</i> CONTROLLER

00011606222# 12100024814861511467#

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,700.00

Total

Sep 7, 2018
Post date

8907046
Check #

Deposit slip

\$1,700.00

Checks

\$1,700.00

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

0000000 Office AU #	11-24 121000	CASHIER'S CHECK	0008907046
Remitter: MIRIAM A BOLANOS Operator I.D.: US38283			September 05, 2018
PAY TO THE ORDER OF ***JACK OLIVIERI***			**\$1,700.00**
One thousand seven hundred dollars and no cents			
Payee Address: Memo: WELLS FARGO BANK, N.A. 151 40TH ST OAKLAND, CA 94611 FOR INQUIRIES CALL (408) 304-3122		VOID IF OVER US \$ 1,700.00 <i>Richard Terry</i> CONTROLLER	Security Features included. Details on Back.

⑈0008907046⑈ ⑆121000248⑆ 511467⑈

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$4,271.00

Total

Oct 10, 2018

Post date

2

Checks deposited

Deposit slip

\$4,271.00

Checks

\$1,700.00

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

0000083 11-24
Office AU # 1210(8)

CASHIER'S CHECK 0008907165

Remitter: MIRIAM A BOLANOS
Operator I.D. cu0005903

PAY TO THE ORDER OF ***JACK OLIVIERI *** October 08, 2018

One thousand seven hundred dollars and no cents **\$1,700.00**

Payee Address:
Memo:
WELLS FARGO BANK, N.A.
151 40TH ST
OAKLAND, CA 94611
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US \$ 1,700.00
Richard Long
CONTROLLER

① Security Features Included. ② Details on Back.

⑈0008907165⑈ ⑆121000248⑆486⑆ 511467⑈

Account # 4861511467

Routing # 121000248

Check # 8907165

\$2,571.00



Printed from Chase Personal Online

\$1,700.00

Total

Feb 19, 2019
Post date

22804232
Check #

Deposit slip

\$1,700.00

Checks

\$1,700.00

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

0000228 11-24
Office AU 9 12100

CASHIER'S CHECK 0022804232

Remitter: MIREIAM BOLLANDS
Operator ID: 0486101

PAY TO THE ORDER OF ***JACK OLIVIERI*** February 05, 2019

One thousand seven hundred dollars and no cents **\$1,700.00**

Payee Address:
Memo:
WELLS FARGO BANK, N.A.
6100 BROADWAY
OAKLAND, CA 94611
FOR INQUIRIES CALL (408) 304-3122

VOID IF OVER US \$ 1,700.00
Richard Long
CONTROLLER

#00 22804 23 2# 0121000 2486101 511467#

Security Features Included. Details on Back.

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,800.00

Total

Mar 12, 2019
Post date

11909535
Check #

Deposit slip

\$1,800.00

Checks

\$1,800.00

PRINTED ON LINED MARK PAPER - HOLD TO LIGHT TO VIEW - FOR ADDITIONAL SECURITY FEATURES, SEE BACK.

0000118 11-24
Office AU # 1210(8)

CASHIER CHECK

0011909535

March 05, 2019

***\$1,800.00**

VOID IF OVER US \$ 1,000.00

Richard Kery
CONTROLLER

PAY TO THE ORDER OF *** JACK OLIVIERI ***

One thousand eight hundred dollars and no cents

Payee Address:
Memo:
WELLS FARGO BANK, N.A.
18000 HESPERIAN BLVD
SAN LORENZO, CA 94580
FOR INQUIRIES CALL (480) 394-5122

⑆00 ⑆1909535⑆ ⑆121000248⑆486⑆ 511467⑆

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,800.00

Apr 9, 2019
Post date

8907713
Check #

Total

Deposit slip

\$1,800.00

Checks

\$1,800.00

PRINTED ON LINE MARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

000000	11-04	CASHIER'S CHECK	0008907713
Office AU #	1210(8)		
Remitter: MIRIAM POLANOS Operator I.D.: 4272676			April 05, 2019
PAY TO THE ORDER OF ***JACK OLIVIERI***			**\$1,800.00**
One thousand eight hundred dollars and no cents			
Payee Address: Memo: RENT			VOID IF OVER US \$ 1,500.00
WELLS FARGO BANK, N.A. 131 40TH ST OAKLAND, CA 94611 FOR INQUIRIES CALL (480) 394-3122			<i>Richard Kery</i> CONTROLLER

Security Features Included. Details on Back.

⑈0008907713⑈ ⑆121000248⑆486⑆ 511467⑈

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,800.00

Total

Jul 19, 2019
Post date

8908041
Check #

Deposit slip

\$1,800.00

Checks

\$1,800.00

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

000008	11-24	CASHIER'S CHECK	0008908041
Office AU #	1210(8)		
Remitter: MIRIAM BOLANDE	Operator I.D.: 4861466		July 05, 2019
PAY TO THE ORDER OF ***JACK OLIVIERI***			**\$1,800.00**
One thousand eight hundred dollars and no cents			
Payee Address:	Memo: RENT		
WELLS FARGO BANK, N.A. 151 40TH ST OAKLAND, CA 94611 FOR INQUIRIES CALL (408) 394-3122			VOID IF OVER US \$ 1,800.00 <i>Richard Long</i> CONTROLLER

Security Features included. Details on Back.

⑈0008908041⑈ ⑆21000248⑆4861 511467⑈

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,800.00

Total

Sep 24, 2019
Post date

8908243
Check #

Deposit slip

\$1,800.00

Checks

\$1,800.00

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

000008 Office AU #	11-24 1210(2)	CASHIER'S CHECK	0008908243
Remitter: MRSAM SOLANOS Operator I.D.: 0644720 0275876			September 05, 2019
PAY TO THE ORDER OF ***JACK OLIVIERI***			**\$1,800.00**
One thousand eight hundred dollars and no cents			
Payee Address: Memo: WELLS FARGO BANK, N.A. 151 40TH ST OAKLAND, CA 94611 FOR INQUIRIES CALL (408) 394-3122		VOID IF OVER US \$ 1,000.00 <i>Richard Henry</i> CONTROLLER	Security Features Included. Details on Back.

⑈0008908243⑈ ⑆121000248⑆4866 511467⑈

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,800.00

Total

Oct 23, 2019
Post date

8908358
Check #

Deposit slip

\$1,800.00

Checks

\$1,800.00

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

0000089 Office AU #	11-24 1210(8)	CASHIER'S CHECK	0008908358
Remitter: MIRIAM BOLANGS Operator I.D.: u509651			October 04, 2019
PAY TO THE ORDER OF ***JACK OLIVIERI***			**\$1,800.00**
One thousand eight hundred dollars and no cents			
Payee Address: Memo: WELLS FARGO BANK, N.A. 151 40TH ST OAKLAND, CA 94611 FOR INQUIRIES CALL (408) 394-3122			VOID IF OVER US \$ 1,600.00 <i>Richard Long</i> CONTROLLER

Security Features Included. Details on Back.

⑆0008908358⑆ ⑆121000248⑆4861511467⑆

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,980.00

Total

Feb 18, 2020

Post date

1743401217

Check #

Deposit slip

\$1,980.00

Checks

\$1,980.00

PRINTED ON LINE MARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

0817434 11-24
 Check AU # 1210(0)

CASHIER'S CHECK 1743401217

Remitter: MERIAM BOLANOS
 Operator I.D.: 0501428

PAY TO THE ORDER OF ***JACK OLIVEIRI*** February 05, 2020

One thousand nine hundred eighty dollars and no cents **\$1,980.00**

Payee Address: RENT
 Memo: RENT

VOID IF OVER US \$ 1,980.00
Richard Kery
 CONTROLLER

WELLS FARGO BANK, N.A.
 1199 40TH ST
 EMERYVILLE, CA 94608
 FOR INQUIRIES CALL (480) 394-3122

1743401217# @ 210002481486 511467#

Security Features Included. ED Details on Back.

Account # 4861511467

Routing # 121000248



Printed from Chase Personal Online

\$1,800.00
Total

Mar 16, 2020
Post date

1743401263
Check #

Deposit slip

\$1,800.00

Checks

\$1,800.00

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

0017434 Office A/U #	11-24 12100	CASHIER'S CHECK	1743401263
Remitter: MIRIAM BOLANOS Operator I.D.: 4573521 4298790			March 05, 2020
PAY TO THE ORDER OF ***JACK OLIVIERI***			**\$1,800.00**
One thousand eight hundred dollars and no cents			
Payee Address: Memo: RENT			VOID IF OVER US \$ 1,000.00
WELLS FARGO BANK, N.A. 1199 40TH ST EMERYVILLE, CA 94608 FOR INQUIRIES CALL (800) 364-3122			<i>Richard Kary</i> CONTROLLER

1743401263# @ 121000248@4861511467#

Account # 4861511467

Routing # 121000248



SPECIALTY

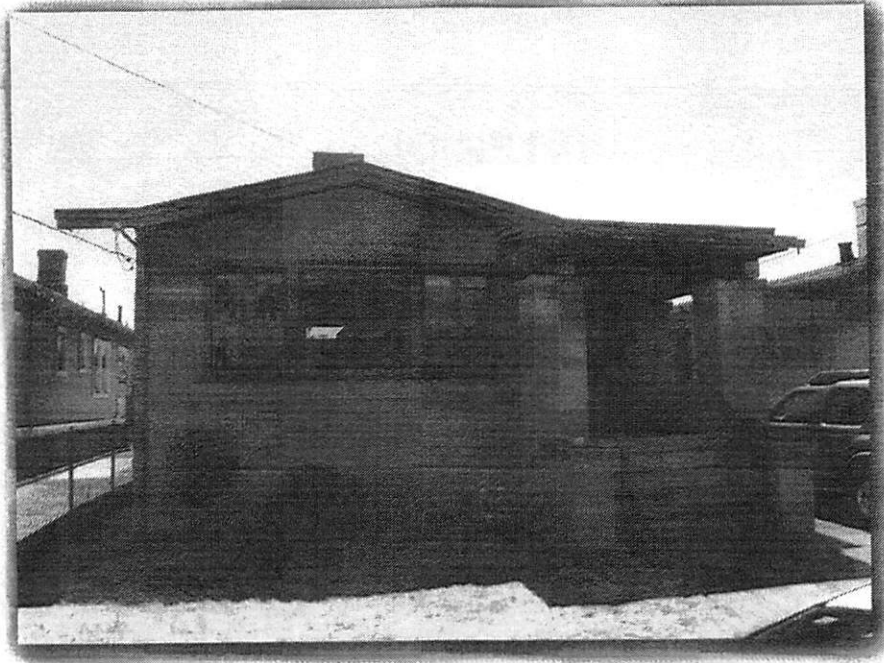
INSPECTIONS

(F)

261 Spring Street
Pleasanton, CA 94566

☎ (925) 249-9611 ☎ (925) 249-9511

Property Inspection Report



959 42nd St., Oakland, CA

Prepared for: Tom Frequez

Inspection Date: 08/17/2016 Time: 2:00 pm

Report Number: 959 42nd St. Oakland 1708

Inspector: Perry Knowlton

Payment Info: 8/17/2016 / \$645.00
Check / 115

000210

* Heat Exchanger

Note: The heat exchanger, also referred to as the combustion chamber, is the area in the heater where combustion takes place. The nature and configuration of most furnaces is that the openings of the heat exchanger prevents visual access to most of its surface. Thus, any observations available to the building inspector will necessarily be limited and we can make no guarantee that the heat exchanger is crack free. A definitive evaluation of the heat exchanger is available from the local utility company or heating contractor.

* Thermostat

The thermostat appears to be properly installed and the unit responded to the user's inputs.

General Comment

Maintenance: The furnace is in need of cleaning and servicing. We recommend a HVAC contractor be retained for a tune-up to ensure safe and efficient operation.

Investigate Further: For attention to the items noted, we recommend a heating contractor be retained for further evaluation and repair.

INTERIOR

Description

- Number of bedrooms: 3
- Number of bathrooms: 1
- The walls were: Plaster
- Ceilings: Plaster
- Floor: Wood, Carpet, Vinyl

Observations and Recommendations

Overview

Note: Our review of the interior includes inspection of walls, ceilings, floors, stairs, balconies, railings and smoke detectors. These features are visually examined for excessive wear and general state of repair. Some of these components may not be visible because of furnishings and/or storage. In such cases these items are not inspected. It is not uncommon for sections of the interior floors to be slightly sloped. This condition is the result of typical support system settlement and/or framing irregularities. Individual perception and sensitivity to floor sloping and/or settlement varies greatly. If these condition are of concern, more detailed evaluation should be obtained from a qualified engineer. Measurement and evaluation of floor slope is beyond the scope of our inspection.

The interior components mentioned above were inspected and found to be properly installed and in

serviceable condition, except as noted below or elsewhere in the report.

Ceiling

The ceiling was in serviceable condition, except as noted elsewhere in this report.

The ceiling was in serviceable condition, except as noted elsewhere in this report.

Repair: The ceiling is damaged in the dining room. We recommend repair or refinishing.



Floor

The floors have a good appearance and are in serviceable condition, with exceptions noted below, or elsewhere in this report.

The interior floors showed typical wear and tear, but were in generally serviceable condition.

Smoke Detectors

Buildings built since about 1990 have required smoke detectors on each floor (including basements), in the corridors leading to all sleeping areas, and in all bedrooms. Pressing the test button on smoke detectors only verified battery and/or horn function, but does not test the sensor(s) in the unit(s). California law requires the seller to transfer a home with proper working smoke detectors. The seller and buyer are required to sign the Smoke Detector Statement of Compliance prior to the close of escrow. Smoke detectors should be checked periodically in accordance with the manufacturer's recommendations to ensure they remain fully operational. We recommend that smoke detector batteries be changed with any change in occupancy and twice a year thereafter. A convenient time to change batteries is the changing of your clocks in Spring and Fall.

Health & Safety: There were no smoke detectors in the building. Whether or not installation is required prior to the sale of this building, we recommend installing detectors where currently required by the state.

Health & Safety: No CO detectors were installed in the building. We recommend the installation of a Carbon Monoxide detectors where currently required by the state.

Walls

The finished walls were in good condition, except as noted elsewhere in this report.

Maintenance: There are blemishes and/or minor cracks in the walls. These blemishes and/or cracks

appear to be cosmetic in nature, and can be repaired in the course of routine maintenance to restore their cosmetic appearance.

Heat Source

Note: The building uses a gravity furnace heater as the only source of heat. There were no heat ducts installed in the bedrooms.

General Comment

Investigate Further: Due to the heavier presence of personal belongings, access to the components of home was limited. Conditions in need of repair may be discovered once the building is cleared of storage.

Maintenance: The interior of the building shows normal wear and tear. We make no attempt to list all conditions we deem cosmetic in nature. The affected surfaces can be repaired in the course of routine maintenance and upgrading.

Investigate Further: For attention to the conditions observed we recommend you retain the services of the appropriate trades person.

WINDOWS/DOORS

Description

- **Window type:** Horizontal sliding units, Casement units
- **Window Material:** Wood, Metal
- **Glazing:** Single pane
- **Door Types:** Wood swinging
- **Door glazing:** Single Pane

Observations and Recommendations

Overview

The windows and doors are visually examined for signs of excessive or unusual wear and general state of repair. The condition, extent and/or presence of flashing that may have been installed beneath the finished exterior and the finished surfaces cannot be determined without destructive testing. Unless we observe signs of leakage or other conditions to warrant it, we do not recommend further inspection of these inaccessible areas. During extreme weather conditions, it is not unusual for some leakage to occur around doors and windows. This leakage can be reduced by annually inspecting these areas for gaps and cracks around the finished exterior surfaces and trim. All gaps should be caulked, sealed, and maintained to help reduce water entry. Window channels and weep holes should be routinely cleaned to allow for proper drainage. The owner or occupant should be consulted regarding the maintenance and repair history of the doors and windows to determine the nature, extent and frequency of maintenance and repair that has been necessary and performed to date.

For buildings with dual pane windows, failed seals (condensation) on insulated glass units are very often difficult to identify and sometimes can only be seen when the sun is shining through and the windows are clean. We make every effort to identify failed seals, however; we can make no guarantee that all windows with failed seals have been identified. Once you move in, you may notice failed seals that we were unable to identify at the time of inspection. Failed seals lose some of their insulating value but are primarily a cosmetic deficiency. If the possibility of failed seals is unacceptable after you take possession, we recommend you have all windows further evaluated by a glass contractor prior to the expiration of your contingency period.

The windows and doors appear properly installed and in serviceable condition, except as noted below or elsewhere in the report.

Windows

★ The windows tested appear to be properly installed and generally in serviceable condition, with exceptions noted below or elsewhere in this report.

Upgrade: The building has metal frame single pane windows throughout. Several windows were weathered and are older. These type of windows are not energy efficient with low insulation properties. In order for the building to be energy efficient dual-pane windows should be installed. Upgrading and replacing the windows may be necessary over time.

Health & Safety: Some of the windows are not safety glass and could be hazardous if broken. Because it is harder to break and less likely to cause injury if broken, tempered glass is now required in specified locations. These locations include, but are not limited to, all door glass, most large windows which have their bottom edge less than 18 inches above the floor or ground, windows near doors and floors, and windows in showers and bathtubs. The building has been remodeled over the years and the newer installations have this feature, but the older locations do not have tempered glass. There is no requirement to retrofit these locations, but a greater margin of safety would be achieved by upgrading and installing safety glazing in these areas as well.

Maintenance: A number of old wooden windows were weathered. We recommend they are sealed and protected before they deteriorate and require replacement.

Note: The wooden windows in the front room appeared original and were not tested to prevent damage.

Doors

The interior and exterior doors appear to be properly installed and in serviceable condition.

July 13, 2020

Analyst Mr. Robert Costa
City of Oakland
Rent Adjustment Program
Department of Housing and Community Development
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Via Email

RE: Tenant Evidence Submission for Case No. T20-0093

Dear Analyst Costa:

Please find the attached the evidence submission in support of Case No. T20-0093.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns at (510) 214-2379 or by email at xjohnson@centrolegal.org.

Sincerely,

Xavier Johnson
Tenants' Rights Program
Legal Fellow

City of Oakland Rent Adjustment Program
Miriam Bolanos
Tenant Evidence Submission

Case Number: T20-0093

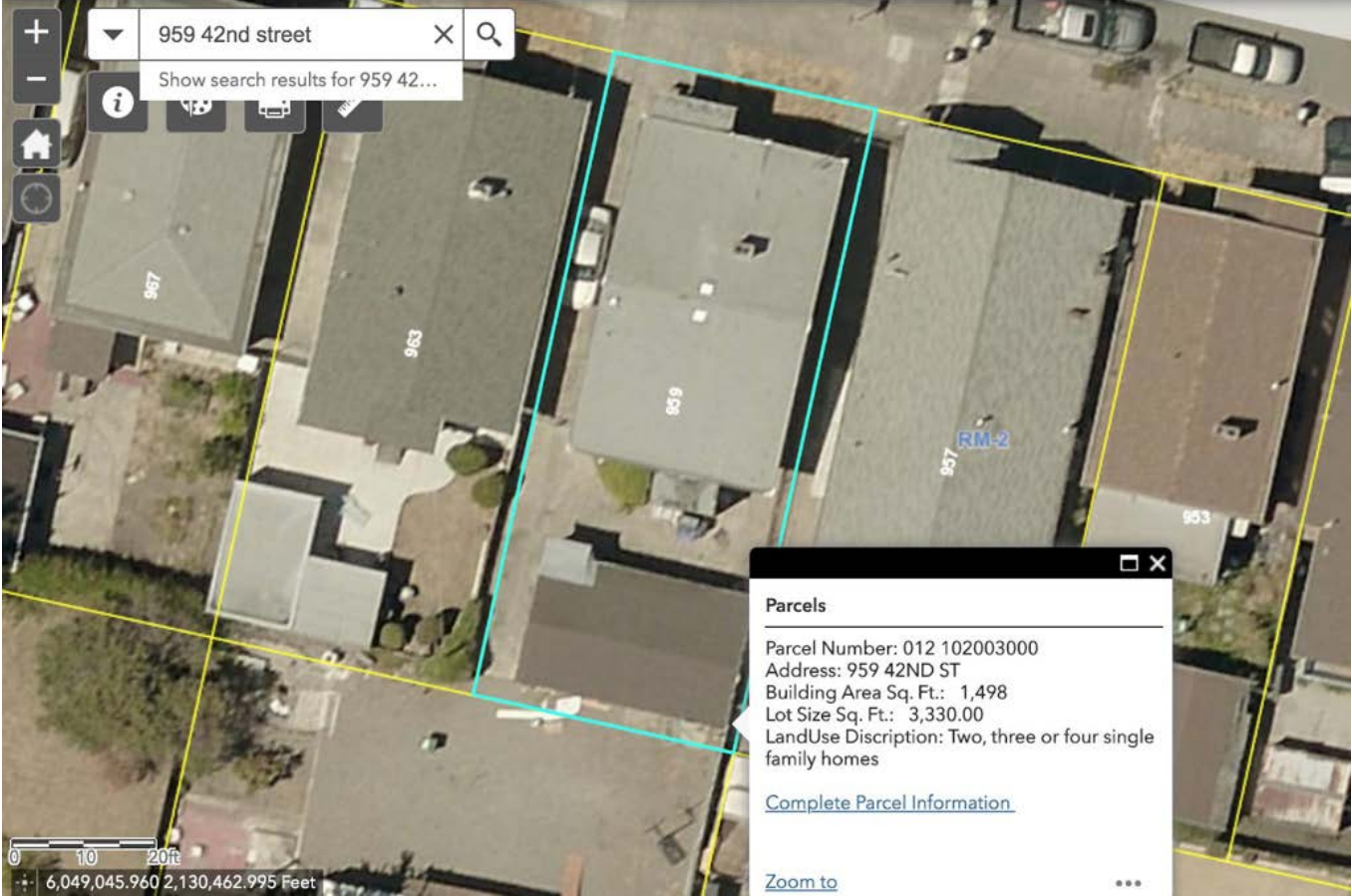
<u>Exhibit</u>	<u>Document Description</u>	<u>Page Numbers</u>
A	City of Oakland Planning and Zoning Map	4
B	Alameda County Assessor property information record	6
C	City of Oakland Building permit RE1604751 inspection log	8
D	Photos of second unit and utility meters taken 3/2/2020	10-22
E	Declaration of Miriam Bolanos	24-26
F	Rent Increase Notices	28-31
G	Correspondence with Gina Fresquez	33-48
H	Rent payment records	50-72
I	Condition 2: Windows are deteriorated, do not seal properly and lack proper insulation (photos taken 3/2/2020)	74-90
J	Condition 3: mold throughout unit (photos taken 3/2/2020)	92-94
K	Condition 4: Walls and ceilings throughout unit are cracked and peeling (photos taken 3/2/2020)	96-117

Exhibit A



959 42nd street

Show search results for 959 42...



Parcels

Parcel Number: 012 102003000
Address: 959 42ND ST
Building Area Sq. Ft.: 1,498
Lot Size Sq. Ft.: 3,330.00
LandUse Discription: Two, three or four single family homes

[Complete Parcel Information](#)

[Zoom to](#)

0 10 20ft
6,049,045.960 2,130,462.995 Feet

Exhibit B

ONLINE SERVICES

[Assessor's Office](#) | [Treasurer-Tax Collector](#) | [New Query](#)

PROPERTY ASSESSMENT INFORMATION

ASSESSOR'S OFFICE

2020 - 2021 Assessment Information

Parcel Number:	12-1020-30
Assessor's Map: (Map image is not to scale)	Map Disclaimer
Use Code:	2100
Description	Two, three or four single family homes
Land	\$22,418.00
Improvements	\$24,630.00
Fixtures	0
Household Personal Property	0
Business Personal Property	0
Total Taxable Value	\$47,048.00
Exemptions	
Homeowner	0
Other	0
Total Net Taxable Value	\$47,048.00

[Additional Assessment Information](#) | [Property Tax Information](#)

Adobe Acrobat Reader is required to view the maps. Click [here](#) to download.


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Exhibit C



Update Results



CITY OF OAKLAND

Record Detail with Inspection Log

Record ID: RE1604751

Description: 200amp main service upgrade. (PG&E app#112170383)

APN: 012 102003000

Address: 959 42ND ST

Unit #:

Date Opened: 12/30/2016

Record Status: Final

Record Status Date: 4/12/2017

Job Value: \$0.00

Requestor:

:

Business Name: CARTER ELECTRIC

License #: 952003

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
2/27/2017	Steve Johnson	Frame	Partial	Date: 2/27/2017 Okay to release two 125 amp services at duplex. Zoning approval for location at front okay with required paint and screening.
4/12/2017	Ken Palmer	Final Electrical	Pass	Date: 4/12/2017 Final OK

**For real-time, direct access to information
via the Internet, 24 hours a day -
<https://aca.accela.com/oakland>**

Exhibit D





000225





000227



000228







000231









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000236

Exhibit E

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Micaela Alvarez (SBN 319908)
CENTRO LEGAL DE LA RAZA
3022 International Blvd., Suite 410
Oakland, California 94601
Telephone: (510) 437-1863
Facsimile: (510) 437-9164
Email: malvarez@centrolegal.org

Attorney for Petitioner Miriam Bolanos

**RENT ADJUSTMENT PROGRAM
CITY OF OAKLAND**

MIRIAM BOLANOS,

Petitioner,

v.

JACK OLIVIERI

Respondent.

Case No.: T20-0093

**DECLARATION OF MIRIAM
BOLANOS IN SUPPORT OF TENANT
PETITION**

Hearing Date: July 20, 2020
Hearing Time: 10:00 a.m.

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DECLARATION OF MIRIAM BOLANOS

I, MIRIAM BOLANOS, declare:

1. I have personal knowledge of the facts contained in this declaration. The facts are true and accurate. I have reviewed this declaration and the statements accurately reflect the facts and my own personal knowledge. I am competent to testify to these facts if called on to do so.

2. There are two separate dwelling units located at 959 42nd Street, Oakland, CA. There is a front unit, located closer to the street, and a rear unit behind it.

3. I am currently a tenant of the front unit.

4. I was a tenant of the rear unit from approximately 1997 until 2006.

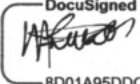
5. During the time that I lived in the rear unit on the property, the front unit was simultaneously occupied by a separate household.

6. I ended my tenancy in the rear unit and moved to Walnut Creek in or around 2006.

7. I moved and began a new tenancy in the front unit of 959 42nd Street, Oakland, CA in October, 2013 and I have lived there ever since.

8. During my time as a tenant in the front unit, I have not had access to the rear unit or used it for any purpose.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed in Oakland, California on July 13, 2020.

DocuSigned by:

8D01A95DDC403...

Miriam Bolanos

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DECLARATION OF NOEL MUNGER

1. I, Noel Munger, affirm that I am competent to interpret between English and Spanish. I am fluent in both written and spoken English and Spanish. I translated this declaration from English to Spanish for Miriam Bolanos.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed in Oakland, California on July 13, 2020.

DocuSigned by:
Noel Munger
A67138FD7739477...

Noel Munger

Exhibit F

December 9, 2019

WITHOUT PREJUDICE

Via Certified Mail

Miriam Bolanos
959 42nd St
Oakland, CA 94608

Nena,

I have received your response to my father's previous letter dated November 25, 2019. I am writing this letter on behalf of my father, Jack Olivieri.

My father has decided to keep the house for the time being. As mentioned in the previous letter, and as you and I have previously discussed, it is his desire to obtain fair market rental value for the house within a year. Although my father has the legal right to raise the rent to full market value with the legally required 60 day notice, he intends to raise the rent to full market value gradually over a period of one year. This will provide you with time to obtain additional income or funds if you choose to stay in the house, or to allow you time to find alternate housing that may be more affordable for you.

Based upon a comparison of comparable rental houses in the area, the current fair market value for the house you are renting is approximately \$3,200. For the purpose of determining rent increases over a period of one year, it is projected that the fair market rental value for the house will increase to approximately \$3,500 within one year. Based upon this projection and the current monthly rental rate of \$1,800 per month, he is providing the following options for achieving fair market rental value within one-year from January 1, 2020.

Month	Rent Schedule (Current Rent: \$1,800)			
	Option 1	Option 2	Option 3	Option 4
January 2020	No Increase	No Increase	No Increase	No Increase
February 2020	\$1,980	\$1,980	No Increase	No Increase
March 2020	\$2,500	\$2,400	\$2,800	No Increase
April 2020	\$2,600	\$2,400	\$2,800	No Increase
May 2020	\$2,700	\$2,700	\$3,000	\$3,300
June 2020	\$2,800	\$2,700	\$3,000	\$3,300
July 2020	\$2,900	\$3,000	\$3,200	\$3,300
August 2020	\$3,000	\$3,300	\$3,200	\$3,400
September 2020	\$3,100	\$3,300	\$3,400	\$3,400
October 2020	\$3,200	\$3,300	\$3,400	\$3,400
November 2020	\$3,400	\$3,500	\$3,500	\$3,500
December 2020	\$3,500	\$3,500	\$3,500	\$3,500

Unless we hear from you otherwise, the rent adjustments will follow the schedule listed under Option 1 in the above rent schedule. Therefore, effective February 1, 2020, your rent will be increased from the current \$1,800 per month to \$1,980 per month. This is a 10 percent rent increase which by California law requires a 30 day notice. I have included the required 30-day notice for this rent increase.

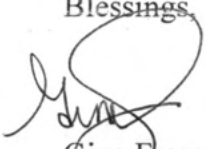
You will be provided with the 30-day and 60-day notices required by California law prior to rent increases after February 1, 2020.

Please let me or my father know prior to December 21, 2019, if you prefer any of the other options in the above rent increase schedule so that he may revise the attached 30-day notice and issue the required 60-day notice for any rent increase beginning on March 1, 2020.

The above information reflects my father's current intentions. The information presented in this letter shall not be considered as binding upon him and does not constitute a waiver of any his legal rights as a landlord, including but not limited to his right to adjust the rent to fair market value by providing the required 60-day written notice.

As you have informed me, we understand that you have obtained legal assistance in response to my father's previous letters. My father does not discourage you from doing so as it is important for you to know your legal rights, and he fully desires to act within the law in order to avoid a potentially costly legal dispute. Also, based upon the goodwill he has extended to you over many years and that which he continues to extend to you by offering not to exercise his right to raise your rent to the full market value with the minimum legally prescribed period of 60-days, please be advised that he reserves the right to make adjustments to your monthly rental rate, as permitted within the law, to offset his costs for legal assistance to respond to any complaint letters you or legal counsel may submit or to defend himself in any legal action which you may bring against him.

Blessings,



Gina Fresquez
on Behalf of Jack Olivieri

attach: Thirty-Day Notice of Rental Increase

**THIRTY-DAY NOTICE OF RENTAL INCREASE
AND
CHANGE IN TERMS OF TENANCY**

TO: Miriam Bolanos , and to all occupants in possession of the premises located at:

**959 42nd Street
Oakland, CA 94608**

YOU WILL PLEASE TAKE NOTICE that effective February 1, 2020, rent for the subject premises shall be increased to the sum of \$ \$1,980.00 per month. This amount is commensurate with similar properties in the same market. As a single-family home, the property is exempt from the Oakland Rent Adjustment Ordinance pursuant to Section 8.22.030(A)(7) of said Ordinance and the Costa-Hawkins Act, as codified by California Civil Code Section 1954.52.

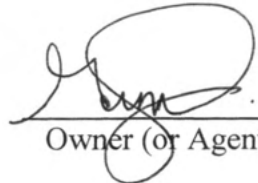
Additionally, YOU WILL PLEASE TAKE NOTICE of the following changes to the terms of your tenancy:

No smoking is permitted inside the house.

The only authorized residents of the house, in addition to yourself, are your sons Daniel and Miguel. Subleasing to others is not permitted.

No animals are permitted in the house other than the cat you currently have.

DATED: December 9, 2019



Owner (or Agent) For Jack Olivieri

SIXTY-DAY NOTICE OF RENTAL INCREASE

TO: Miriam Bolanos, and to all occupants in possession of the premises located at:

**959 42nd Street
Oakland, CA 94608**

YOU WILL PLEASE TAKE NOTICE that effective March 1, 2020, rent for the subject premises shall be increased to the sum of \$ \$2,500.00 per month. This amount is commensurate with similar properties in the same market. As a single-family home, the property is exempt from the Oakland Rent Adjustment Ordinance pursuant to Section 8.22.030(A)(7) of said Ordinance and the Costa-Hawkins Act, as codified by California Civil Code Section 1954.52.

DATED: December 23, 2019

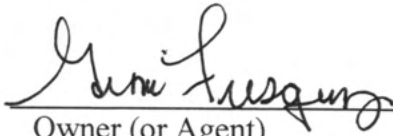
 (For Jack Olivieri)
Owner (or Agent)

Exhibit G

10/01/2019

Nena Bolanos
959 42nd Street
Oakland, CA. 94608

Dear Nena,

This letter is to officially notify you of my intent to sell the property located at 959 42nd Street in Oakland.

I am providing you with a 2 months' notice of my intention to sell the property. This will give you time to find a new residence.

During these next two months, our realtor may have to show the prospective buyers the property but Gina Fresquez will make sure you are aware of this and will make sure it is convenient for you.

Thank you Nena.



Jack Olivieri

10/08/2019

Jack Olivieri
4734 Shetland Ave
Oakland, CA 94605

Ref: Notice Received 10/01/2019

Mr. Olivieri,

I am writing to you today to inform you that per the legal advice that I received today, your Notice (see attached copy) that I received on 10/01/2019 is invalid. Since the notice is invalid, I do not plan to vacate the property where for over 5 years I have been living and paying rent for.

Because your intention is to sell the property located at 959 42nd St in Oakland, please provide 24hrs notice via text, email, written notice, or a voicemail when any realtor plans to show the property to prospective buyers. I request that each realtor that enters the property leave his/her business card on my dining room table.

Sincerely,

Miriam Bolanos
959 42nd Street
Oakland, CA 94608

Cc: Y. Fuentes Ganga

November 25, 2019

WITHOUT PREJUDICE

Via Certified Mail

*COPY OF LETTER HAND DELIVERED
ON 11/25/19 AT 12:00 PM*

Miriam Bolanos
959 42nd St
Oakland, CA 94608

Nena,

I am writing this letter on behalf of my father, Jack Olivieri.

My father received your letter in response to his previous letter dated October 1, 2019, informing you of his intent to sell his property, your current residence, at 959 42nd Street in Oakland. In your letter you informed my father that you do not plan on vacating the property at this address. My father was not aware of the City of Oakland's rental laws at the time he wrote the letter to you. However, upon receiving your letter I have researched the City's rental laws for him, and I have informed him that selling of a rental unit is not a valid basis for eviction per the City of Oakland's Just Cause for Eviction Ordinance.

Please allow me to explain the background of my father's letter. I would also like to inform you of your rights as a tenant and Jack's rights as an owner.

You and your mother have been dear friends of our family for many years as you both provided care for my grandmother, Margie, in the house in which you currently live. After the passing of my grandmother 11 years ago, your mother asked my mother and father if she could stay in the house and pay rent. My parents never wanted to be landlords, but at you mother's request they agreed to rent the house to her. This was only intended to be for a short period of time, so they charged her a minimal rent of \$500. This was well below the market rate. Your mother remained in the house for 5 years during which time you moved in. After your mother moved, my father allowed you to stay in the house and maintained the rent well below the market rate. My father is not a business man, and he does not even really care to make a profit from the house, but he does need to cover his costs of ownership. Each time my father wanted to raise the rent, you requested that he reduce and/or delay the rent increases. My father has raised the rent gradually, but the rent increases have been less than the increases in the market value, so my father is still charging rent that is well below the market value of the house you are renting.

I have previously mentioned to you that my father has been wanting to work toward achieving fair market value for the house to cover ownership costs and costs for maintenance that has been performed and that is currently overdue. He recently replaced the main electrical service panel at a cost of over \$5,000, and the house is in need of approximately \$140,000 in maintenance work including replacing the foundation,

repairing wood rot and termite damage, replacing the stucco, seismic retrofitting and other work required to maintain the value of the house.

Due to the cost of the maintenance work that is required and the low rent he has been receiving for the house, Jack cannot afford to keep the house. Additionally, being that Jack is also 83 years old and in deteriorating health, he does not have the energy or mental acuity to handle the task of making arrangements and overseeing the maintenance work required. Thom and I have been working to help him by meeting with contractors to obtain quotes to perform the maintenance work. However, this has been a time consuming task as it has been difficult to find contractors to perform the work, and when contractors tell us they will perform the work, they don't show up. We have been trying for three years to have at least some of the work performed, but we are unable to continue to devote the time required to do this since both of our parents are in deteriorating health, and we spend the little time we have caring for them and attending to their needs.

Since it makes no sense financially or otherwise for my father to keep the house under the current arrangements, it was his desire to have the house vacated and put on the market after performing some minimal work to improve the resale value of the house. However, after receiving your letter and researching the rental laws, we now realize that although this was a logical approach for my father as a property owner, it is not a valid approach under the City's rental laws.

I have met with an attorney to obtain an understanding of the City's rental laws, and I have discussed these with my father. Due to the situation my father is in, as described above, we have identified the options described below. In order to provide you an opportunity to be involved in the decision he makes, I am presenting these options to you on behalf of my father, along with the anticipated impacts of each option for both you and my father. My father is asking for you to consider each of these options, and to let him know your thoughts on these.

Option 1: Sell the house with you remaining as a tenant at the time of sale

It has been a difficult for my father and I to entertain this option as my mother was raised from birth in the house, and we have many fond memories of my grandparents living there as well.

With this option, I anticipate there will be the following outcomes. 1.) The new owner will buy the property as their residence. In this case, the owner has the right to evict you under Oakland's Just Cause for Eviction Ordinance, provided they pay you moving expenses. I believe that under this ordinance you may be entitled to compensation in the amount of \$8,758.43. 2.) The new owner may buy the unit to maintain it as a rental unit or to re-develop the property. In this case, the new owner would not have the right under the Just Cause for Eviction Ordinance to evict you. However, since the house is not subject to rent control, the new owner would have the right to raise your rent to the full market value provided they provide you with a

notice 60 days in advance. Otherwise, they may offer you compensation to vacate the property under the Tenant Move Out Agreement Ordinance.

Under this option, the unfortunate disadvantage to Jack is that in addition to losing an estimated \$80,000 in rental revenue over the past 19 years by renting the house to you and your mother for well under the market value, he would also not be able to obtain the full market value for the house with it occupied by a current tenant. The reason for this is that with the house occupied, potential buyers cannot see the full potential of the house and potential repairs that are needed. Also, the new buyer would be subject to the inconvenience and the potential significant costs to pay your moving expenses or to compensate you to vacate the property.

Please know that these costs will be incurred by Jack as opposed to the buyer in the form of a lower sale price. It is anticipated that this option will cost Jack an estimated amount of \$50,000 due to the loss in value of the property. This cost will be in addition to the previously mentioned loss in rental income he has incurred. In addition to you and your mother reaping the estimated \$80,000 financial benefit resulting from paying lower than market rate rent, my father's kindness has also enabled you to raise your family in a comfortable house in a good neighborhood which you would have otherwise been unable to afford.

Option 2: You agree to voluntarily vacate the house within 4 months

You have no legal obligation to accept this option. However, my father believes that in consideration of the goodwill he and my late mother, Doris, have shown you and your mother over the past 19 years by keeping your rent well below market value, this is the most fair option for him as it would enable him to obtain the highest fair market value for the house and limit the financial sacrifice he has made as a result of the kindness he and my late mother have extended to you.

If you agree to this option, my father will agree to not raise your current rent for the remaining 4 months as a continued gesture of goodwill and to encourage your voluntary cooperation.

Option 3: Keep the house and raise the rent to market value

Since the house is a single family unit which does not fall under Oakland's Rent Adjustment Program Ordinance, Jack has the legal right to raise the rent to market value provided he provides you with the legally required notice of 60 days. I have found numerous comparable houses that rent for between \$2,800 and \$3,500 per month. Without physically looking at these other houses, I don't know where the actual market value would fall, but I anticipate it would be at the higher end since you have the benefit of a more desirable area, a separate storage unit, and significant off-street parking which the lower priced properties do not appear to have.

As a close friend of our family, it would not be my father's intent to raise your rent to full fair market value with only the legally required 60 day notice. However, in order to entertain keeping the house, he will need to achieve fair market value for the house by increasing the rent gradually over a period of one year. He can work with you to arrive at a plan for achieving this, and he will provide you with the advance notices required by the Rent Adjustment Program Ordinance.

This option would still not permit my father to afford to keep the house in the long-term due to the cost of the needed maintenance work. Therefore, at some point in the near future, he will still need to sell the house. However, this option would permit you to stay in the house until you are forced to vacate by a new owner, or provide you with time to search for other housing which may be more affordable for you in the longer term.

Please let my father know which of the above options would be acceptable to you. Otherwise, please let him know if you have any other ideas that you would like to offer. I ask that you keep in mind the goodwill my father and my late mother have extended to you when evaluating the above options.

Please respond to this letter by no later than December 7, 2019. If you would like to respond by phone, please call me at (510) 220-5226 as opposed to calling my father as he is hard of hearing. Otherwise, you may send a response to my father in writing if you prefer.

In the meantime, my father requests the following:

In order to help my father keep his insurance rates low, and for safety reasons, please do not smoke in the house. My father will notify the insurance company that he has established a no-smoking policy for the house.

It is our understanding that the house is only occupied by you and your two adult sons. Subleasing to others is not permitted.

Please do not house any animals other than the cat you currently have.

Blessings,

ORIGINAL SIGNED BY

Gina Fresquez
on Behalf of Jack Olivieri



Noel Munger <nmunger@centrolegal.org>

959 42nd St.

4 messages

Noel Munger <nmunger@centrolegal.org>
To: ginafresquez@sbcglobal.net

Fri, Jan 31, 2020 at 3:25 PM

Hi Gina,

Thanks for taking the time to talk to me yesterday. As I mentioned, if you are represented by counsel regarding Ms. Bolanos' tenancy, please provide me with your attorney's contact info so I may communicate with them.

Ms. Bolanos requests a rent ledger for the entire duration of her tenancy starting when she moved into the unit in October 2013 at a monthly rental rate of \$1000. You may send a paper copy to her address or send me a scan and I can ensure she receives it.

Additionally, please note that the rent increases you have served on Ms. Bolanos are unlawful. Ms. Bolanos' unit is not separately alienable from the other dwelling unit on the property. Accordingly, the property does not qualify for a Costa Hawkins exemption from rent control. Ms. Bolanos requests that you please rescind the rent increases in writing at your earliest convenience. I encourage you to consult with an attorney or take advantage of the resources provided by the Rent Adjustment Program. More information is available here: <https://www.oaklandca.gov/topics/allowable-rent-increases>.

Best,
Noel Munger

--

**Noel Munger** *he/him*

Tenants' Rights Housing Advocate

T 510-947-9898

centrolegal.org**Noel Munger** <nmunger@centrolegal.org>
To: ginafresquez@sbcglobal.net

Thu, Feb 27, 2020 at 2:27 PM

Hi Gina,

What is the best mailing address to reach you at?

Best,
Noel Munger
[Quoted text hidden]

--

000253



Noel Munger *he/him*
Tenants' Rights Housing Advocate
T 510-947-9898
centrolegal.org

Gina Fresquez <ginafresquez@sbcglobal.net>
To: Noel Munger <nmunger@centrolegal.org>

Thu, Feb 27, 2020 at 4:44 PM

[25538 South Gold Ridge Drive](#)
[Castro Valley, CA 94552](#)

[Quoted text hidden]

Noel Munger <nmunger@centrolegal.org>
To: Gina Fresquez <ginafresquez@sbcglobal.net>

Thu, Mar 5, 2020 at 2:38 PM

Thanks Gina,

Ms. Bolanos has filed a petition with the Rent Adjustment Program and our office represents her in this matter. Prior to the unlawful rent increases she received in December 2019, Ms. Bolanos' monthly rent was \$1800. Accordingly, she will continue to pay \$1800 until the Rent Adjustment Program issues a final determination regarding her lawful rent amount. If you wish to settle this matter before the case goes to hearing, please don't hesitate to reach out to me.

Additionally, Ms Bolanos requests the following repairs and maintenance:

1. There are still rodent entry points around the house perimeter. As you know, there has been a problem with raccoons and other pests living beneath the house. Ms. Bolanos requests that the entry points all be sealed and any other necessary pest control measures be taken to fully abate the infestation.
2. The heater does not turn on consistently. When Ms. Bolanos can manage to get it to turn on, it emits a foul odor. It needs the attention of a professional. Vacuuming the heater is insufficient and does not fix the odor issues.
3. The windows throughout the house are deteriorated, do not seal well, and lack proper insulation. Not only does this make the house extremely cold at times, it creates ideal conditions for condensation and mold growth. The inadequate weatherproofing of the house forces Ms. Bolanos to spend large amounts of time scrubbing and combating mold growth.
4. Due to inadequate weatherproofing and deferred maintenance, the walls and ceilings are cracking and peeling throughout the residence. This deterioration exacerbates the mold issues.

Ms. Bolanos raised these issues numerous times over the years with Mr. Olivieri, however they were never sufficiently addressed. Please provide a timeline for repairs at your earliest convenience.

Additionally, Ms. Bolanos will pay the \$34 RAP fee this month as you have requested.

Thank you for your attention to these matters.

Sincerely,
Noel Munger

[Quoted text hidden]

--

000254



Noel Munger *he/him*

Tenants' Rights Housing Advocate

T 510-947-9898

centrolegal.org

February 4, 2020

Via Certified Mail

Miriam Bolanos
959 42nd St
Oakland, CA 94608

Nena,

This is in response to the attached email I received on January 31, 2020, from Noel Munger with Centro Legal de la Raza.

Mr. Munger has advised in his message that you are requesting a copy of a rent ledger for the entire duration of your tenancy. My father has not maintained a rent ledger. Therefore, he does not have one to provide to you.

Mr. Munger also states in his message that the rent increase served upon you is unlawful. The basis provided by Mr. Munger for this statement is that your unit is *"not separately alienable from the other dwelling unit on the property. Accordingly, the property does not qualify for a Costa Hawkins exemption from rent control."* This position is incorrect in that there are no units on the property other than the unit you are occupying that would be considered a "dwelling unit" under California law.

It is presumed that Mr. Munger may be referring to the building behind your residence as "the other dwelling unit" he makes mention of in his statement. However, this building is not legally considered a dwelling unit for the following reasons:

1. It has not been occupied as a residential dwelling since my father acquired the property in 2008, and it has remained continuously vacant during this time.
2. It has been uninhabitable due to the following:
 - a. There are no functioning utility services. The water service line to the house is broken at an unknown location between the meter and the house. Therefore, there is no potable water available to the unit. The gas service line is broken at an unknown location between the meter and the house. Therefore, there are no functioning facilities for providing heat and hot water. The wiring for the electrical service between the PG&E meter and the unit, as well as the wiring within the unit, is unsafe. Therefore, the PG&E electrical service for the unit has been discontinued as a precaution. The sanitary sewer is broken between the unit and the sewer main in the street. Therefore, there are no functioning sanitary provisions for the unit.
 - b. The roof leaks.
 - c. Water intrusion has compromised a portion of the structure.

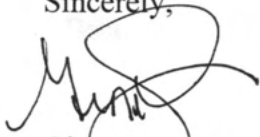
Due to the extensive nature of the work that would be required to bring the unit into compliance with the required legal standards for residential occupancy, my father considers it economically infeasible to utilize the unit as a dwelling. Therefore, since my father acquired the property in 2008, the unit has been used exclusively as a storage unit by you and my father.

Since my father has not offered the unit for rent as a residential dwelling since he has owned the property, the unit has not been considered to be on the rental housing market throughout the time he has owned the property. This is supported by annual statements filed with the Oakland Rent Adjustment Program certifying that the unit has been off the rental housing market.

Furthermore, the property is not owned by a corporation or a real estate investment trust.

For the above reasons, the unit in which you reside is considered a single-family dwelling which is exempt from rent control under the Costa Hawkins Rental Housing Act. Therefore, the rent increases in the notices served upon you are lawful, and my father hereby denies your request to rescind these rent increases.

Sincerely,



Gina Fresquez
on Behalf of Jack Olivieri

attach: email from Noel Munger

Noel Munger <nmunger@centrolegal.org>
To: ginafresquez@sbcglobal.net

Fri, Jan 31, 2020 at 3:25 PM

Hi Gina,

Thanks for taking the time to talk to me yesterday. As I mentioned, if you are represented by counsel regarding Ms. Bolanos' tenancy, please provide me with your attorney's contact info so I may communicate with them.

Ms. Bolanos requests a rent ledger for the entire duration of her tenancy starting when she moved into the unit in October 2013 at a monthly rental rate of \$1000. You may send a paper copy to her address or send me a scan and I can ensure she receives it.

Additionally, please note that the rent increases you have served on Ms. Bolanos are unlawful. Ms. Bolanos' unit is not separately alienable from the other dwelling unit on the property. Accordingly, the property does not qualify for a Costa Hawkins exemption from rent control. Ms. Bolanos requests that you please rescind the rent increases in writing at your earliest convenience. I encourage you to consult with an attorney or take advantage of the resources provided by the Rent Adjustment Program. More information is available here: <https://www.oaklandca.gov/topics/allowable-rent-increases>.

Best,
Noel Munger



Noel Munger *he/him*
Tenants' Rights Housing Advocate
T 510-947-9898
centrolegal.org

February 4, 2020

Via Certified Mail

Miriam Bolanos
959 42nd St
Oakland, CA 94608

Nena,

On January 25, 2020, my husband, Thomas Fresquez, performed an inspection of your residence on behalf of my father, Jack Olivieri. You were provided advance notification of this inspection via my letter dated December 23, 2019.

My husband reported to me the following observations:

- The smoke alarm in the hallway has been removed. This alarm was recently installed to comply with the building permit requirements when the electrical service panel was upgraded.
- You have replaced the carbon monoxide alarm that was previously installed with a new unit you purchased and installed. The carbon monoxide alarm has been installed in the hallway outside of the bedrooms and bathroom.
- The locks on the front door have been replaced. You have not provided my father with keys for the new locks. My husband requested that you provide my father with a complete set of keys for the new locks.

My husband asked you if there were any issues with the house requiring repair or maintenance. You reported that you have intermittently overheard what you believe to be raccoons beneath the house, although you mentioned that this activity has recently stopped.

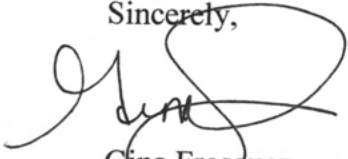
My husband offered to vacuum the floor furnace for you. You informed him that you have recently vacuumed the furnace, and that you regularly do so to minimize odors resulting from debris, such as cat hair, that accumulates in the furnace. Therefore, you informed him that you did not believe it was necessary for him to vacuum the furnace.

Based upon the inspection performed and your comments, my father will take the following actions:

- The removed smoke alarm will be replaced with a new unit. The installation of the smoke alarm will be documented with photos. You are advised that tampering with, removing, or taking any action to prevent the proper operation of the smoke detector is illegal. You are also required to report any malfunctioning smoke alarm immediately. A fee of \$1,000 will be imposed for tampering with any smoke alarms.
- The opening to the basement at the rear of the house will be covered to prevent the entry of raccoons.

Please provide my father with a complete set of keys for all entries to the house within 15 days from the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Gina Fresquez', written over the word 'Sincerely,'.

Gina Fresquez
on Behalf of Jack Olivieri

February 24, 2020

Miriam Bolanos
959 42nd St
Oakland, CA 94608

Nena,

We are required to pay annual fees to the Oakland Rent Board in the amount of \$101 per year. Owners can pass through \$34 of these fees to tenants (see below).

Therefore, in addition to your April rent, please provide payment in the amount of \$34 for the Rent Board Fees.

Rent Board Fees

Oakland Rent Board

Annual Allowable Rent Increase: 3.5% (July 1, 2019 - June 30, 2020)

Rent Adjustment Program Fee

UPDATED: Annual fees are \$68 per unit and are due March 1 (however, this fee has just been increased to \$101). Owners can pass through \$34 to tenants.



Sincerely

A handwritten signature in black ink, appearing to read "Gina Fresquez".

Gina Fresquez
on Behalf of Jack Olivieri

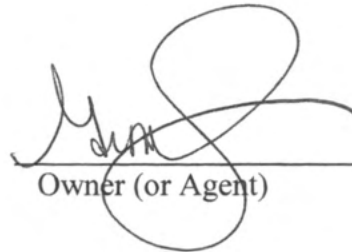
THIRTY-DAY NOTICE OF RENTAL INCREASE

TO: Miriam Bolanos, and to all occupants in possession of the premises located at:

**959 42nd Street
Oakland, CA 94608**

YOU WILL PLEASE TAKE NOTICE that effective April 1, 2020, rent for the subject premises shall be increased to the sum of \$2,600.00 per month. This amount is commensurate with similar properties in the same market. As a single-family home, the property is exempt from the Oakland Rent Adjustment Ordinance pursuant to Section 8.22.030(A)(7) of said Ordinance and the Costa-Hawkins Act, as codified by California Civil Code Section 1954.52.

DATED: February 24, 2020



Owner (or Agent)

Exhibit H

Site	Paid Date	Serial	PC	Amount	Sequence #	C:
VIEWPOINTE	20180306	197	000060	1,600.00	8614564841	

MIRIAM A BOLANOS
 959 42ND ST
 EMERYVILLE, CA 94608-3711

197
 11-4288/1210 4715
 9993078535

03-05-18
Date

Pay to the Order of Jack Olivieri \$ 1,600⁰⁰
Sixteen hundred ⁰⁰/₁₀₀ Dollars

For Rent.

WELLS FARGO Wells Fargo Bank, N.A. California wells.fargo.com

Security Features. Details on Back.

[Signature]

~~Chase Bank 030514 1741319 944220041418~~

Jack Olivieri

Copyright © 2002-06 Wells Fargo & Company. All rights reserved.

Site	Paid Date	Serial	PC	Amount	Sequence #	Ci
VIEWPOINTE	20180406	199	000060	1,600.00	8414437273	

MIRIAM A BOLANOS
959 42ND ST
EMERYVILLE, CA 94608-3711

199
11-4288/1210 4715
9993078535

Date 04-05-18

Pay to the Order of Jack Olivieri \$ 1,600⁰⁰
Sixteen hundred 0/100 Dollars

WELLS FARGO
Wells Fargo Bank, N.A.
California
wellsfargo.com

For Rent [Signature]

JPMorganChaseBank 040607 741132 943980102026

8610459336
Jack Olivieri

Copyright © 2002-06 Wells Fargo & Company. All rights reserved.

Site	Paid Date	Serial	PC	Amount	Sequence #	Ci
VIEWPOINTE	20180510	200	000060	1,700.00	8212333359	

MIRIAM A BOLANOS
959 42ND ST
EMERYVILLE, CA 94608-3711

200
11-4288/1210 4715
9993078536

05.05.18 DATE

Pay to the Order of Jack Olivieri \$ 1,700⁰⁰
Seventeen hundred & 00/100 Dollars

WELLS FARGO Wells Fargo Bank, N.A. California wells Fargo.com

For Rent [Signature]

[Redacted]

Part 0 Olivieri
8610459336

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Site	Paid Date	Serial	PC	Amount	Sequence #	Ci
VIEWPOINTE	20180606	203	000060	1,700.00	8811446074	

MIRIAM A BOLANOS
959 42ND ST
EMERYVILLE, CA 94608-3711

203
11-4288/1210 4715
9993078535

Date 06.05.18

Pay to the Order of Jack Olivieri \$ 1,700.00
Seventeen hundred 0/100 — Dollars

For Rent

WELLS FARGO Wells Fargo Bank, N.A. California wellsfargo.com

[Signature]

8610-59336
Jack Olivieri

JPMORGAN CHASE BANK 050613 741132 943980056790

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Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 07/05/18
Serial Number: 0011606140
Account: [REDACTED]
Purchaser: MIRIAM A BOLANOS

\$1,700.00

One thousand seven hundred dollars and no cents

CB, AU, Sequence Num: 21 0000116 0136
Date and Time: 07/05/18 05:13 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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54 of 147

2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 08/06/18
Serial Number: 0011606222
Account: [REDACTED]
Purchaser: MIRIAM A BOLANOS

\$1,700.00

One thousand seven hundred dollars and no cents

CB, AU, Sequence Num: 23 0000116 0127
Date and Time: 08/06/18 04:59 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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55 of 147

2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 09/05/18
Serial Number: 0008907046
Account: [REDACTED]
Purchaser: MIRIAM A BOLANOS

\$1,700.00

One thousand seven hundred dollars and no cents

CB, AV, Sequence Num: 23 0000089 0098
Date and Time: 09/05/18 04:00 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 10/06/18
Serial Number: 0008907165
Account: [REDACTED]
Purchaser: MIRIAM A BOLANOS

\$1,700.00

One thousand seven hundred dollars and no cents

CB, AU, Sequence Num: 22 0000089 0023
Date and Time: 10/09/18 10:23 AM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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57 of 117
2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 11/05/18
Serial Number: 0020507960
Account: [REDACTED]
Purchaser: MIRIAM A BOLANOS

\$1,700.00

One thousand seven hundred dollars and no cents

CB, AU, Sequence Num: 29 0000205 0079
Date and Time: 11/05/18 04:28 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

Electronically generated image

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 12/05/18
Serial Number: 0008907365
Account: [REDACTED]
Purchaser: MIRIAM A BOLANOS

\$1,700.00

One thousand seven hundred dollars and no cents

CE, AU, Sequence Num: 20 0000089 0088
Date and Time: 12/05/18 05:31 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 02/05/19
Serial Number: 0022804232
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,700.00

One thousand seven hundred dollars and no cents

CB, AU, Sequence Num: 03 0000228 0107
Date and Time: 02/05/19 06:21 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 03/05/19
Serial Number: 0011909534
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 09 0000119 0160
Date and Time: 03/05/19 05:51 PM

Pay to the Order of: JAEL OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 04/05/19
Serial Number: 0008907713
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AV, Sequence Num: 01 0000089 0049
Date and Time: 04/05/19 04:45 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 06/05/19
Serial Number: 0008907939
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 02 0000089 0136
Date and Time: 06/05/19 05:59 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 07/05/19
Serial Number: 0008908041
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 08 0000089 0010
Date and Time: 07/05/19 11:04 AM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 08/05/19
Serial Number: 0008908140
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 01 0000089 0083
Date and Time: 08/05/19 12:03 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

Electronically generated image

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 09/05/19
Serial Number: 0008908243
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 02 0000089 0045
Date and Time: 09/05/19 12:05 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

Electronically generated image

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 10/04/19
Serial Number: 0008908358
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 22 0000089 0148
Date and Time: 10/04/19 05:06 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

Electronically generated image

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2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 11/05/19
Serial Number: 0008908479
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 22 0000089 0143
Date and Time: 11/05/19 04:43 PM

Pay to the Order of: JACK OLIVIERI

Payee Address: ,
Wells Fargo Bank, N.A.

Electronically generated image

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68 of 147

2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 12/05/19
Serial Number: 0008908599
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 05 0000089 0122
Date and Time: 12/05/19 06:24 PM

Pay to the Order of: JACK OLIVIER

Payee Address: ,
Wells Fargo Bank, N.A.

Electronically generated image

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Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 01/04/20
Serial Number: 0008908705
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,800.00

One thousand eight hundred dollars and no cents

CB, AU, Sequence Num: 04 0000089 0157
Date and Time: 01/06/20 04:49 PM

Pay to the Order of: JACK OLIVIERI

Payee Address:
Wells Fargo Bank, N.A.

Electronically generated image

1747584044

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76 of 117
2/25/2020



Wells Fargo Bank Cashier's Check Credit Copy

Date Issued: 02/05/20
Serial Number: 1743401217
Account: [REDACTED]
Purchaser: MIRIAM BOLANOS

\$1,980.00

One thousand nine hundred eighty dollars and no cents

CB, AU, Sequence Num: 05 0017434 0076
Date and Time: 02/05/20 05:29 PM

Pay to the Order of: JACK OLIVEIRI

Payee Address: ,

Wells Fargo Bank, N.A.

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0017434
Office AU #

11-24
1210(8)

CASHIER'S CHECK



Remitter: MIRIAM BOLANOS
Purchaser: MIRIAM BOLANOS
Operator Account: [REDACTED]
Operator I.D.: [REDACTED]
Funding Source: Cash

March 05, 2020

PAY TO THE ORDER OF *** JACK OLIVIERI ***

One thousand eight hundred dollars and no cents

\$1,800.00

Payee Address: RENT
Memo:

WELLS FARGO BANK, N.A.
1199 40TH ST
EMERYVILLE, CA 94608
FOR INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER—IF THIS INSTRUMENT IS LOST,
STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION
AND REISSUANCE. AS A CONDITION TO CANCELLATION AND
REISSUANCE, WELLS FARGO & COMPANY MAY IMPOSE A
FEE AND REQUIRE AN INDEMNITY AGREEMENT AND BOND.

VOID IF OVER US \$ 1,000.00

NON-NEGOTIABLE

Purchaser Copy

8004 M4203 90090016

Exhibit I





000289⁷⁵⁹⁶¹⁶⁷





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Exhibit J



000306





Exhibit K

























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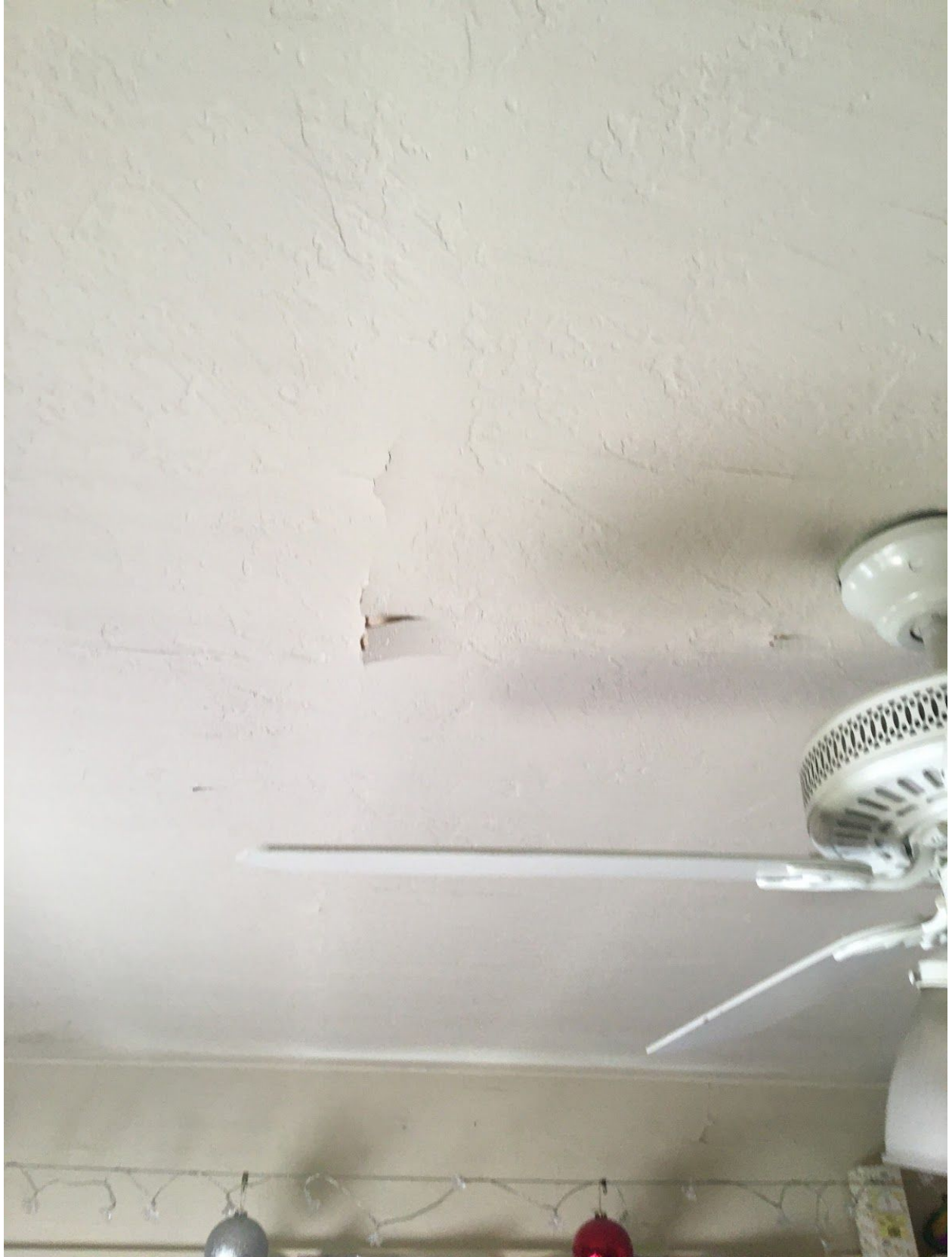




000325



000326





000328



000329





Xavier Johnson
CENTRO LEGAL DE LA RAZA
3022 International Boulevard, Suite 410
Oakland, CA 94601
Phone: (510) 214-2379
XJohnson@centrolegal.org
Tenant Representative

STATEMENT OF ARGUMENTS

I. THE BUILDING IS A DUPLEX ACCORDING TO CITY AND COUNTY RECORDS AND PRIOR USE

To be exempt from rent control under state law, a property must be separately alienable in title from any other dwelling unit.¹ In the present case, property records from the City of Oakland and Alameda County clearly demonstrate that the subject property has two dwelling units that are not separately alienable. The subject property is a duplex containing two dwelling units.

A. *THE PROPERTY IS A DUPLEX ACCORDING TO CITY AND COUNTY RECORDS*

The property is a duplex under both the City and County records. The Rent Adjustment Program (RAP) has historically determined the number of dwelling units at the property based on records for Alameda County and the City of Oakland. The Oakland Code provides that the owner has the right to obtain building records and permits from the City of Oakland for “an existing building or structure of its approved occupancy or use, the number of dwelling units, the number and designations of approved habitable rooms or spaces,…”²

The subject address for this tenant petition has a number of government records and databases which indicate that the property is a duplex, and at the very least, at some point in the past, the subject property had two dwelling units on the premises. The City of Oakland planning department lists it as a multi-dwelling property,³ the Alameda County assessor lists it as a multi-dwelling property,⁴ the inspection log from an electrical panel installation in 2017 approves the release of two separate electrical lines and refers to the property as a duplex,⁵ and, finally, photos taken on March 2, 2020 show the separate unit, a separate mailbox, separate gas meters, and the new separate electrical meters with labeling for front and rear unit.⁶ RAP should continue to give deference and presumptive value to the determinations made by the Planning Department, County, and by the owner’s actions themselves.

B. *THE SECOND UNIT HAS BEEN ACTUALLY USED AS A DWELLING UNIT*

¹ Cal. Civ. Code Section 1954.53

² OMC 15.08.160

³ Tenant Exhibit A

⁴ Tenant Exhibit B

⁵ Tenant Exhibit C

⁶ Tenant Exhibit D

RAP precedent has held that where a space is rented as a dwelling unit it is to be treated as a dwelling unit. In *Haley et al. v. Golden State Ventures*, T15-0229 the property owner claimed the property was for commercial use, but the appeals board decided that where a commercial non-residential space is used with the knowledge of the owner, it is a dwelling unit covered by the Rent Adjustment Ordinance.⁷

The property in question constitutes a duplex because the tenant has actually occupied both the front and rear units.⁸ Between the years 1997 and 2006 the tenant occupied the rear unit while the front unit was simultaneously occupied by a separate household.⁹ The tenant actually resided in the rear unit at the property and was actually the last person to live in the rear unit before moving to the front unit in 2013.¹⁰ Since then, the owners have taken steps to upgrade the electric utilities to the rear unit, with PG&E adding a second utility meter and designating the space as a duplex.¹¹

C. WHAT CONSTITUTES A DWELLING UNIT IS DETERMINED BY CALIFORNIA LAW, NOT THE BUILDING MAINTENANCE CODE

The Hearing Officer should apply the definition of “dwelling unit” outlined in the California Civil Code. Indeed, the Court of Appeal for the First District decided on May 29, 2020 that it is the state law definition of “dwelling unit” that is dispositive for this question.

The California Civil Code defines a “dwelling unit” as, “a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.”¹² This definition is tied to the actual use of the physical space as a dwelling unit and not on how the building or space was originally designed to be used. Part of the logic for this is that under California law, the implied warranty of habitability means that any space actually used for the purposes of habitation must meet certain basic standards for human occupancy. Where a property owner rents a substandard space, they are not permitted to argue that the implied warranty of habitability is inapplicable simply because the space was not designed for human habitation. In fact, owners who rent substandard dwelling units are held liable for renting substandard spaces to tenants. To hold otherwise would make the implied warranty of habitability utterly useless.

The property owner argues that Oakland’s Building Maintenance Code definition of dwelling unit should be applied here, and it is true that some RAP precedent supports this, but all of those decisions occurred prior to the *Owens* case (discussed below) and are no longer good law.¹³ The First District Court of Appeal has stronger precedential value than RAP decisions. Certainly, a local building maintenance code cannot supersede state law definitions of a dwelling

⁷ *Haley et al. v. Golden State Ventures*, T15-0229

⁸ Tenant Exhibit E, p.25

⁹ Tenant Exhibit E, p.25

¹⁰ Tenant Exhibit E, p.25

¹¹ Tenant Exhibit C, p.8

¹² Cal Civ. Code. Section 1940(c)

¹³ The cases in the RAP appeals index referencing the building maintenance code for the definition of “dwelling unit” all take place in 2015 or earlier, and none are bolstered by the support of a Superior Court or Court of Appeal. Accordingly, it is our argument that these cases are no longer good law with respect to the Rent Adjustment Program. The *Owens* case specifically addresses the Oakland Rent Adjustment Program and Oakland’s Municipal Code.

unit, where the question at hand is on the interpretation and application of a state law exemption such as Costa Hawkins.

The building maintenance code applies to real property “*used, designed or intended to be used*, for human occupancy and habitation and all accessory buildings and structures on the same lot or parcel.”¹⁴ Under the building maintenance code, it is the owner’s responsibility to maintain safety of all buildings whether commercial or residential.¹⁵ The Building Maintenance Code definition of dwelling unit is designed to demonstrate what is minimally necessary for human occupation, not to define the jurisdiction of RAP.

The Building Maintenance Code states that it “is not intended to amend, repeal, or supersede provisions of any other codes, regulations, or ordinances of the City of Oakland, including but not limited to, the Demolition Ordinance.”¹⁶ Under the Building Maintenance Code, where there is a conflict between the building maintenance code and other codes or ordinances, the most restrictive which provides the “higher standard of safety or public benefit shall prevail and control.”¹⁷

As mentioned above, application of the Building Maintenance Code to this case would violate state law. The California Court of Appeal for the First District has found that, “the meaning of a ‘dwelling unit’ under building and planning codes is not in pari materia with the meaning under rent control ordinances.”¹⁸ In other words, the meaning of “dwelling unit under Building and Planning Codes is not dispositive of what constitutes a dwelling unit under the laws of California. More is needed in the analysis.” In the *Owens* case, the court specifically endorses the definition of dwelling unit under California law and rejects the Oakland Building Maintenance Code definition cited by the Property Owner. The California definition, as mentioned above, is “any area understood to be committed [] to the habitation of a given tenant or tenants to the exclusion of others.”¹⁹ Here, the declaration of the tenant indicates that the tenant does not have and has not had access to the rear unit now or at any time since their current tenancy began.²⁰

Affirming the property owner’s interpretation of “dwelling unit” would not only directly contradict Court of Appeal precedent, it would also allow property owner neglect to destroy tenant protections. Tenants in duplexes will be placed in an untenable situation of being required to prove that the second unit in a duplex is habitable. This is entirely unrealistic and unfair because the tenants will lack access or control to view or see these units. Zoning and planning are public spaces where the tenant can obtain records on the occupancy of the property. Rent control protections should be consistent with the publicly accessible resources to which the tenants have access to, and not on information that will usually be exclusively under the control of the property owner. Moreover, if the owner’s interpretation is accepted it will be an incentive to reduce housing stock, by permitting owners to let dwelling units fall into disrepair, designating

¹⁴ OMC 15.08.170

¹⁵ OMC 15.08.080

¹⁶ OMC 15.08.030

¹⁷ OMC 15.08.060

¹⁸ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 1

¹⁹ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 1

²⁰ Tenant Exhibit E, p. 25

the unit as a single-family residence, and then raise the rent so high that formerly rent-controlled tenants will no longer be able to afford to live at the unit.

While it is true that the rear unit has been vacant for many years, a property owner's neglect and bad faith cannot and should not be a justification for removing a unit from rent control. It is contrary to the intent of the Rent Adjustment Ordinance and the Building Maintenance Code to allow duplexes to fall into disrepair and out of rent control coverage. Finally, if the owner seeks to take either one or both of the units off of the rental market, there are specific Oakland and State laws that provide a lawful mechanism to do so.

II. THE PROPERTY OWNER HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF STATE LAW TO REMOVE THE UNITS FROM THE MARKET

In annual RAP filings, the owner has indicated that the unit is eligible for the "off-the-market" exemption. In fact, the exemption the property owner is claiming is inapplicable to this scenario. The "off-the-market" exemption to RAP fees and RAP's jurisdiction is intended to provide a local implementation mechanism for the Ellis Act. The Rent Adjustment Ordinance defines "Ellis Act Ordinance" as "the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential units from the market pursuant to ... The Ellis Act." The Ellis Act provides that

*"no public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, **compel the owner** of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease, except for guestrooms or efficiency units within a residential hotel..."*²¹

The intent behind the Ellis Act is to allow a property owner to exit the business of renting dwelling units entirely.²² The Ellis Act allows property owners to go out of the residential rental business entirely by evicting their tenants and withdrawing **all** units from the market, even if the landlords could make a fair return, the property is habitable, and the landlords lack approval for future use of the land."²³ However, the owner must completely exit the market removing all of their units from the rental market. The key question is whether local laws presently compel the owner to remain in the business of renting units.

The Owner's Response, as well as Business License Tax documents claim that one of the two units are "off the rental market." In this case the owner has not exercised their rights under the Ellis Act, because the owner has not attempted to exit the rental market entirely. The owner is continuing to rent the other dwelling unit at the property to the tenant that is party to this petition. To access the Ellis Act exemption the owner would need to follow the appropriate process within the City of Oakland to comply with an Ellis Act eviction.

Where a property owner seeks to evict an Oakland tenant under the Ellis Act, they must provide written notice to the Rent Adjustment Program, and disclose the number of units being removed, the names of all tenants affected, and the lawful rent to be paid on the date of the

²¹ Cal Gov. Code Section § 7060(a)

²² *Daro v. Superior Court*, 151 Cal.App.4th 1079

²³ *Daro v. Superior Court*, 151 Cal.App.4th 1079

notice.²⁴ Further, owners in these circumstances are required to provide advance notice to the tenants and make relocation payments to all affected tenants.²⁵ The owner has provided no documentation or evidence that these steps have been followed with respect to either unit. The owner may consider the rear unit “off-the-market,” but that does not mean the front unit, where the tenant lives, should be treated as a separately alienable single-family home. If the owner wishes to exit the market, the Ellis Act provides a lawful mechanism to terminate the tenancy in the front unit and remove the unit from the rental market. The RAP decision issued here should not grant them license to skirt these procedures.

III. CONCLUSION

City records clearly demonstrate that the property is a duplex. Sworn statements by the tenant indicate the property was used as a duplex. Public policy dictates that the property should be legally treated as a duplex.

Both the State of California and the City of Oakland have a commitment to ensuring that rental housing stock is and remains safe and habitable. Oakland Municipal Code specifies that rent control was established in the city with the recognition that there was a “shortage of decent, safe, affordable, and sanitary residential rental housing.”²⁶

Now, in response to a tenant petition, the owner claims the property is no longer covered under rent control due to the owner’s neglect. This is unconscionable, and completely inconsistent with legislative intent and purposes behind Costa Hawkins, the Ellis Act, and the Oakland Rent Adjustment Ordinance. Rather than giving the tenant relocation payments necessary for exiting the rental market, the owner is attempting to circumvent the appropriate legal processes. Until the owner follows the appropriate processes, the dwelling units continue to fall under RAP’s jurisdiction and RAP is empowered to stop this very situation by granting the tenant’s petition and incentivizing the owner to make repairs now.

To allow the owner to remove this unit from the rental market simply by being negligent, and without following the proper procedures is simply not permissible under the laws of California and Oakland. Accordingly, we request you please grant the tenant’s petition.

Xavier Johnson
Legal Fellow
Centro Legal de la Raza

²⁴ OMC Section 8.22.430(A)(1)(a)-(d)

²⁵ OMC Section 8.22.450

²⁶ OMC Section 8.22.010

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

HEARING DECISION

CASE NUMBER: T20-0093 Bolanos v. Olivieri
PROPERTY ADDRESS: 959 42nd Street, Oakland, CA
DATE OF HEARING: November 18, 2020
DATE OF DECISION: March 17, 2021
APPEARANCES: Miriam Bolanos, Tenant
Xavier Johnson, Tenant Representative
Noel Munger, Witness/Tenant Representative
Vanessa Cardenas, Interpreter
Jill Broadhurst, Owner Representative
Gina Fresquez, Property Manager/Owner's Daughter
Tom Fresquez, Owner's Son-in-Law

SUMMARY OF DECISION

The tenant's petition is granted.

CONTENTIONS OF THE PARTIES

On March 4, 2020, the tenant filed a petition contesting all prior rent increases and claiming that her housing services have decreased.

The basis for the tenant's petition includes the following:

- The CPI and/or banked rent increase notices I was given were calculated incorrectly;
- The increases exceed the CPI Adjustment and are unjustified or are greater than 10%;
- I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI and available banked rent increase;
- No written notice of the Rent Program was given to me together with the rent increases I am contesting;

000337

- The property owner did not give me the required form “Notice of the Rent Adjustment Program” at least 6 months before the effective date of the rent increases;
- The rent increases were not given to me in compliance with State law;
- The increase I am contesting is the second increase in my rent in a 12-month period;
- There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance;
- The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner; and
- The proposed rent increase would exceed an overall increase of 30% in 5 years.

The owner filed a timely response claiming that the subject property is exempt from the Rent Adjustment Program as a single-family dwelling.

THE ISSUES

- (1) Is the subject property exempt from the Rent Adjustment Program?
- (2) If not exempt, when, if ever, did the tenant receive the form Notice to Tenants (RAP Notice)?
- (3) If not exempt, are the contested rent increases valid?
- (4) If not exempt, have the tenant’s housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Rent History

The tenant stated on her petition and testified at the hearing that she moved into the subject property in October of 2013 at an initial rent of \$1,000.00. The tenant stated on her petition and testified at the hearing that she is contesting the following rent increases:

1. From \$1,000.00 to \$1,400.00 effective January of 2014.
2. From \$1,400.00 to \$1,500.00 effective August of 2016.
3. From \$1,500.00 to \$1,600.00 effective March of 2018.
4. From \$1,600.00 to \$1,700.00 effective May of 2018.
5. From \$1,700.00 to \$1,800.00 effective April of 2019.
6. From \$1,800.00 to \$1,980.00 effective February of 2020.¹
7. From \$1,980.00 to \$2,500.00 effective March of 2020.²

¹ Tenant Exhibit F

² Tenant Exhibit F

At the hearing, the tenant testified that she paid \$1,800.00 in rent in January of 2020, \$1,980.00 in rent in February of 2020 and \$1,800.00 in rent in March of 2020. The property manager confirmed receipt of these rent payments. The tenant submitted rent receipts verifying rent payments from March of 2018 through March of 2020.³ The tenant did not submit rent receipts for payments prior to March of 2018, stating that many of the rent payments were in cash and she did not receive receipts for them. The tenant further testified that she has not paid any rent since April of 2020, claiming financial hardship due to the Covid-19 pandemic. The property manager confirmed that the tenant did not pay rent in April of 2020 and has not paid any rent since then.

The property manager disputed the tenant's testimony regarding move-in date and initial rent, testifying that the tenant moved into the subject unit in October of 2014 at an initial rent of \$1,400.00. The property manager submitted copies of text messages from the tenant, dated September 23, 2014, showing that the tenant requested to move into the subject property in September of 2014.⁴ The text messages indicate that the property manager agreed to allow the tenant to move into the front unit with her mother, Rosa Lemus, who was already a tenant in the unit.

RAP Notice

The tenant stated on her petition and testified at the hearing that she never received the RAP Notice. The owner representative testified that the RAP Notice was not served because the subject property is exempt from the Rent Adjustment Program.

Costa-Hawkins Exemption for a Single-Family Dwelling

Testimony of Noel Munger – Tenant Representative

At the hearing, the tenant representative Noel Munger testified that the subject property is a duplex, or at the very least, at some point in the past, it had two dwelling units on the premises. He referred to the two units as the front unit and the rear unit. He submitted several government records which indicate that the property is a duplex. A City of Oakland Planning and Zoning Map which describes the subject property as a multi-dwelling property and shows two structures on one parcel.⁵ A document from the County of Alameda, Office of the Assessor, entitled Property Assessment Information.⁶ This document lists the property as a multi-dwelling property and describes it as consisting of "2, 3, or 4, single family houses". He submitted a City of Oakland Building Permit RE1604751 Record Detail with Inspection Log for an electrical panel installation in 2017 which approves the release of two separate electrical lines and refers to the property as a duplex.⁷ Finally, he submitted photographs taken on March 2, 2020, which

³ Tenant Exhibit H

⁴ Owner Exhibit 3

⁵ Tenant Exhibit A

⁶ Tenant Exhibit B

⁷ Tenant Exhibit C

show the exterior of the rear structure on the parcel, separate mailboxes, separate gas meters, and the new separate electrical meters with labeling for front and rear unit.⁸

Testimony of Tenant – Miriam Bolanos

The tenant testified that there are two dwelling units on the subject property, a front unit closer to the street and a rear unit behind it. She is currently a tenant in the front unit. She was previously a tenant of the rear unit from approximately 1997 through 2006. During that time the front unit was occupied by a separate household. In 2006 she ended her tenancy in the rear unit and relocated to Walnut Creek. When she vacated the rear unit, she left behind her refrigerator. She began a new tenancy in the front unit in October of 2013 and has resided there ever since. At the time she moved into the front unit, her mother and brother were already residing there. The tenant testified that since she moved into the front unit, she has not had keys to the rear unit and has not used the rear unit. A Declaration reiterating the tenant's testimony was received into evidence.⁹

Testimony of Owner Representative – Jill Broadhurst

The owner representative testified that the subject property consists of a single-family dwelling, multiple storage units, and a garage on an oversized lot. She submitted Declarations from the owner Jack Olivieri, property manager Gina Fresquez, owner's grandson Anthony Fresquez, and a neighbor Joseph Schwan, all stating that the rear structure has been used as a storage unit by the tenant. The owner representative further testified that the rear structure has not had power, gas, garbage or water service for years. She submitted utility bills verifying lack of service to the rear unit.¹⁰ She also submitted interior photographs of the rear structure showing that the structure was used for storage, including storage of the tenant's items, such as the refrigerator.¹¹ Finally, the owner representative submitted a Real Property Tax Assessor Record printout which describes the property as a single-family residence.¹²

Testimony of Property Manager/Owner's Daughter – Gina Fresquez

The property manager testified that the rear structure the tenant claims is a second residential unit is a storage unit, not a residential unit. The subject property was rented to the tenant as a single-family dwelling and the tenant has had access to the entire property during her tenancy. The subject property has not been used as a duplex for the duration of the tenant's tenancy in the front unit. The property manager further testified that the tenant has a key to the rear unit and has used the rear unit for storage. The rear structure has only been intended for use as a storage unit.

⁸ Tenant Exhibit D

⁹ Tenant Exhibit E

¹⁰ Owner Exhibit 1

¹¹ Owner Exhibit 2

¹² Owner Exhibit 6

Arguments

The owner representative argues that the rear unit is a storage unit, and has not been utilized as a residential unit for the duration of the tenant's tenancy in the front unit. The owner representative further argues that the City of Oakland Building Maintenance Code defines a dwelling unit as a "residential building, or portion thereof, which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation for not more than one family or a congregate residence for not more than 10 persons".¹³ Further, the Costa Hawkins Rental Housing Act defines residential real property as "any dwelling or unit that is intended for human habitation".¹⁴ The owner representative argues that there are no utilities currently servicing the rear unit, is not intended for human habitation and does not meet the definition of a dwelling unit. The record clearly demonstrates that the rear unit is a storage unit.

The tenant representative argues that the property records from the City of Oakland and Alameda County clearly demonstrate that the subject property has two dwelling units that are not separately alienable. Further, the rear unit has actually been used as a dwelling unit in the past. Between the years 1997 and 2006 the tenant occupied the rear unit while the front unit was simultaneously occupied by a separate household. The tenant was the last person to live in the rear unit before moving to the front unit. The prior residential use of the rear unit supports the conclusion that the subject property is a duplex. Finally, the tenant representative argues that the definition of dwelling unit outlined in the California Civil Code should apply, not the definition in the Building Maintenance Code. California Civil Code defines a dwelling unit as "a structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household".¹⁵ This definition is tied to the actual use of the physical space as a dwelling unit and not on how the building or space was originally designed to be used. Again, the rear unit was previously used as a residential unit, prior to the tenant's tenancy in the front unit. Therefore, it is a dwelling unit, regardless of how the space was originally intended to be used.

Decreased Housing Services

With her petition, the tenant submitted the following list of decreased housing services.

Heat: The tenant testified that the heater does not turn on consistently and emits a bad odor when it is on. She notified the owner of this issue verbally during her first winter in the unit. The owner testified that there was a Property Inspection Report prepared for the subject property in August of 2016 and no issues with the heater were

¹³ OMC 15.08.170

¹⁴ Civil Code Section 1954.51(e)

¹⁵ Civil Code Section 1940(c)

noted in the report. A copy of the report was received into evidence.¹⁶ After the owner received notice of this issue from the tenant's attorney in late 2019, an inspection of the unit was conducted by Tom Fresquez on January 25, 2020. During the inspection, the heat did turn on and off. Mr. Fresquez offered to vacuum the furnace area to remove debris that may be causing the odor. The tenant declined, stating she regularly vacuumed the area to remove cat hair and other debris, and that helped minimize the odor.

Windows, Mold, Walls and Ceiling: The tenant testified that the windows are deteriorated, don't seal properly and lack proper insulation. Due to the inadequate weatherproofing of the windows, there is mold in the unit and cracking paint on the walls and ceiling. Photographs of the windows, mold, and paint were received into evidence.¹⁷ The tenant testified that she notified the owner verbally of these issues shortly after she moved into the unit. The owner representative testified that the owner did not receive notice of these issues until the tenant's attorney notified the owner in writing in late 2019. Additionally, the tenant did not complain about these issues during the inspection on January 25, 2020. The tenant testified that she did not complain about these issues during the inspection because she was afraid of her rent being increased again.

Rodents: The tenant testified that there is a rodent and racoon infestation in the unit. She notified the owner of this issue and it was partially abated in February of 2020. However, she can still hear raccoons in the basement.

The owner representative testified that after the tenant raised this issue during the inspection on January 25, 2020, Mr. Fresquez sealed all potential rodent entry points in the basement. He also had an exterminator inspect the property and the exterminator did not observe any rodent or raccoon activity and did not suggest any other actions other than sealing potential entry points in the basement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Costa-Hawkins Exemption for a Single-Family Dwelling

The Costa-Hawkins Rental Housing Act¹⁸ provides that a dwelling or unit which is separately alienable from the title to any other dwelling or unit is exempt from local rent control, except under certain circumstances. The Oakland Rent Adjustment Program specifically states that if a unit is covered under Costa-Hawkins it is exempt from the Ordinance¹⁹.

Here, the owner is seeking an exemption from the City of Oakland's Rent Adjustment Ordinance for the subject property based on Costa-Hawkins. The general rule of law about exemptions is that they are to be "strictly construed." See *DaVinci v.*

¹⁶ Owner Exhibit 5

¹⁷ Tenant Exhibits I, J, and K

¹⁸ Civil Code Section 1954.52(a)(3)

¹⁹ O.M.C. §8.22.030(A)(7)

San Francisco Residential Rent Board, (1992) 5 Cal. App. 4th 24, 27. In *DaVinci* the Court cited *Barnes v. Chamberlain* (1983) 147 Cal. App. 3rd 762 in stating that:

"In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception. ... One seeking to be excluded from the sweep of the general statute must establish that the exception applies."

Additionally, the Court in *DaVinci* stated that the rules regarding the interpretation of a municipal ordinance are the same rules as those that govern the construction of statutes. *DaVinci* at 27, citing *City of Los Angeles v. Los Olivos Mobile Home Park* (1989) 213 Cal. App. 3d 1427, 1433. In other words, an owner has the burden to prove an exemption, and any attempt to exempt a property from the Ordinance must be strictly construed.

Based on the record and the testimony of the parties, it is undisputed that the subject property consists of two structures on one parcel. Although the owner argues that the rear structure is a storage unit, the City of Oakland and Alameda County records submitted by the tenant support the conclusion that the two structures are both dwelling units that are not separately alienable.²⁰ The records received into evidence refer to the subject property as a multi-dwelling property. The City of Oakland permit records refer to the property as a duplex.²¹ Additionally there are separate mailboxes, separate gas meters, and separate electrical meters with labeling for front and rear unit, supporting the argument that the rear unit was utilized as a residential unit at some point in the past.²² Although the rear unit is currently functioning as a storage unit with no utilities servicing it, the evidence shows that it had the potential to function as a dwelling unit in the past.

Indeed, the tenant testified that she has actually occupied both the front and rear units as a tenant. Between the years 1997 and 2006 she occupied the rear unit while the front unit was simultaneously occupied by a separate household. The Hearing Officer is persuaded by the tenant's argument that the prior use of the rear unit as a dwelling unit supports the conclusion that the subject property is a duplex, even if the rear unit is currently vacant and used for storage.

Finally, the Hearing Officer is persuaded by the tenant's argument that the California Civil Code definition of dwelling unit should apply in this case, not the Oakland Building Maintenance Code. The California Court of Appeals for the First District has found that, "the meaning of a "dwelling unit" under building and planning codes is not in pari materia with the meaning under rent control ordinances."²³ In the

²⁰ Tenant Exhibits A, B, and C

²¹ Tenant Exhibit C

²² Tenant Exhibit D

²³ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal. App. 5th 739, decided 5/29/2020, page 1

Owens case, the court specifically endorses the definition of dwelling unit under California law and rejects the Oakland Building Maintenance Code definition. The California definition, is “any area understood to be committed to the habitation of a given tenant or tenants to the exclusion of others.”²⁴ Here, the tenant testified that she occupied the rear unit while the front unit was simultaneously occupied by another household from approximately 1997 through 2006. Affirming the owner’s interpretation of dwelling unit would allow property owner neglect to destroy tenant protections. Tenants in duplexes will be placed in an untenable situation of being required to prove that the second unit in a duplex is habitable. This is unfair because the tenants lack access or control over these units. Zoning and planning are public spaces where the tenant can obtain records on the occupancy of a property.

Based on the record, the owner has not sustained her burden to prove an exemption from the Rent Adjustment Program.

RAP Notice

It is undisputed that the tenant never received the RAP Notice.

Move-In Date and Initial Rent

There was conflicting testimony regarding the tenant’s move-in date and initial rent. The tenant testified that she moved into the unit in October of 2013 at an initial rent of \$1,000.00. The property manager testified that the tenant moved into the unit in October of 2014 at an initial rent of \$1,400.00. The property manager submitted text messages showing that the tenant requested to move into the front unit on September 23, 2014. The Hearing Officer credits the property manager’s testimony and finds that the tenant moved into the front unit in October of 2014 at an initial rent of \$1,400.00.

Invalid Rent Increases

The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy²⁵ and together with any notice of rent increase²⁶. Because the RAP Notice was not provided to the tenant at the start of the tenancy or together with any of the notices of rent increases, all contested rent increases are invalid.

Additionally, the Rent Adjustment Ordinance states that an owner seeking a rent increase in excess of the CPI Rent Adjustment or available banking must first petition the Rent Adjustment Program and receive approval for the rent increase before the rent

²⁴ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal. App. 5th 739, decided 5/29/2020, page 1

²⁵ O.M.C. Section 8.22.060(A)

²⁶ O.M.C. Section 8.22.070(H)(1)(A)

increase can be imposed²⁷. Furthermore, a rent increase in excess of the CPI Rent Adjustment or available banking must be justified on one or more grounds listed in the Rent Adjustment Ordinance.²⁸

The owner did not receive approval from the Rent Adjustment Program before issuing the contested rent increases. The contested rent increases are further invalidated for this reason. The tenant's base rent remains \$1,400.00, the amount prior to the first contested rent increase. Because the tenant paid the rent increases, the tenant is entitled to restitution for rent overpayments, but the restitution is limited to three (3) years prior to the hearing²⁹. (See chart below).

Additionally, any restitution shall be offset by the rent owed to the owner due to non-payment of rent from April of 2020 through March of 2021. The owner is owed back-rent in the amount of \$16,800.00 (\$1,400.00 x 12 months).

Decreased Housing Services

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent³⁰ and may be corrected by a rent adjustment.³¹ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy, or one that is required to be provided in a contract between the parties, or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Further, an owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted.

Additionally, the tenants have the burden of proof with respect to each claim.

Heat: The owner representative testified credibly that the heat turns on and off. Additionally, the odor can be minimized by frequent vacuuming of debris around the furnace. Compensation for this claim is denied.

Windows, Mold, Walls, and Ceiling: The tenant testified credibly that the windows are deteriorated and lack inadequate weatherproofing, resulting in mold and cracking paint on the walls and ceiling. The photographs submitted by the tenant corroborate the tenant's testimony. Additionally, the Hearing Officer credits the tenant's testimony that she verbally notified the owner of this issue shortly after moving into the unit. This claim affects the habitability of the unit and the tenant is entitled to a 5% rent reduction until the windows are repaired. The tenant is also entitled to restitution for past decreased

²⁷ O.M.C. §8.22.065(A)

²⁸ O.M.C. §8.22.070(C)1

²⁹ HRRAB Appeal Decisions T06-0051 (*Barajas/Avalos v. Chu*) & T08-0139 (*Jackson-Redick v. Burks*)

³⁰ O.M.C. Section 8.22.070(F)

³¹ O.M.C. Section 8.22.110(E)

housing services but restitution is limited to three (3) years prior to the hearing³². (See chart below).

Rodents: The owner representative testified credibly that after the inspection on January 25, 2020, all potential rodent entry points in the basement were sealed. Additionally, an exterminator inspected the property and did not observe any rodent activity and did not suggest any other actions other than sealing potential entry points in the basement. Compensation for this claim is denied.

RENT OVERPAYMENTS

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Dec-17	1-Feb-18	\$1,500	\$1,400	\$100.00	3	\$300.00
1-Mar-18	1-Apr-18	\$1,600	\$1,400	\$200.00	2	\$400.00
1-May-18	1-Mar-19	\$1,700	\$1,400	\$300.00	11	\$3,300.00
1-Apr-19	1-Jan-20	\$1,800	\$1,400	\$400.00	10	\$4,000.00
1-Feb-20	28-Feb-20	\$1,980	\$1,400	\$580.00	1	\$580.00
1-Mar-20	31-Mar-20	\$1,800	\$1,400	\$400.00	1	\$400.00
TOTAL OVERPAID RENT						\$8,980.00

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. of Months	Amount Overpaid
Windows, Mold & Paint	1-Dec-17	1-Nov-20	\$1,400.00	5%	\$70.00	36	\$2,520.00
TOTAL LOST SERVICES							\$2,520.00

ORDER

1. Petition T20-0093 is granted.
2. The contested rent increases are invalid. The tenant's base rent is \$1,400.00.
3. Due to ongoing decreases in housing services, the tenant's rent is reduced by 5% (\$70.00). The tenant's current legal rent, before consideration of restitution, is \$1,330.00 a month. The tenant may begin paying the reduced rent of \$1,330.00 once this Hearing Decision is final. The decision is final if

³² HRRAB Appeal Decisions T06-0051 (*Barajas/Avalos v. Chu*) & T08-0139 (*Jackson-Redick v. Burks*)

no party has filed an Appeal within 20 days of the date the Hearing Decision is mailed to all parties

4. Due to rent overpayments and past decreased housing services, the tenant is owed restitution in the amount of \$11,500.00. However, the owner is owed \$16,800.00 in back-rent due to non-payment of rent. Therefore, the owner is owed a net amount of \$5,300.00. This underpayment is adjusted by a rent increase for 12 months in the amount of \$441.66 a month.
5. If the tenant wishes to, the tenant can repay the restitution owed to the owner at any time. If the tenant does so, the monthly increase for restitution ends at the time the owner is provided restitution.
6. If the owner repairs the windows and related mold and paint issues, the owner can increase the rent by 5% (\$70.00 a month). In order to increase the rent after the owner restores services, the owner must provide the necessary notice pursuant to Civil Code § 827 and the Rent Adjustment Ordinance.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: March 17, 2021

Maimoona Ahmad

Maimoona Sahi Ahmad
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T20-0093

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Hearing Decision

Owner

Gina Fresquez
25538 South Gold Ridge Drive
Castro Valley, CA 94552

Owner Representative

Jill Broadhurst
Big City Property Group Inc.
PO Box 13122
Oakland, CA 94661

Tenant

Miriam Bolanos
959 42nd Street
Oakland, CA 94608

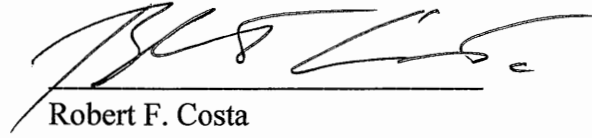
Tenant Representative

Xavier Johnson
Centro Legal De La Raza
3022 International Boulevard, Suite 410
Oakland, CA 94601

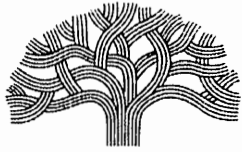
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 17, 2021 in Oakland, CA.

A handwritten signature in black ink, appearing to read 'R. F. Costa', written over a horizontal line.

Robert F. Costa
Oakland Rent Adjustment Program



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

For date stamp.

APPEAL

Appellant's Name Gina Fresquez		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 959 42nd Street Oakland CA 94608			
Appellant's Mailing Address (For receipt of notices) 25538 South Gold Ridge Drive Castro Valley, CA 94552		Case Number T20-0093	
		Date of Decision appealed March 17, 2021	
Name of Representative (if any) BIG CITY Property Group Jill Broadhurst		Representative's Mailing Address (For notices) PO BOX 13122, Oakland CA 94661	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

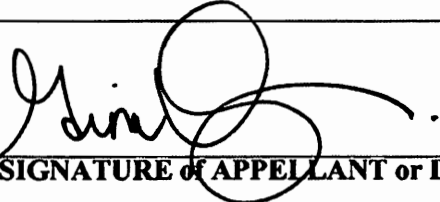
For more information phone (510) 238-3721.

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 6 TOTAL

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •
 I declare under penalty of perjury under the laws of the State of California that on _____, 20____, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Miriam Bolanos
Address	2159 42nd St
City, State Zip	Oakland CA 94608
Name	
Address	
City, State Zip	

	4-6-2021
SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

Landlord Appeal

CASE T20-0093

April 6th, 2021

Landlord refutes the hearing officer's determination and believes the decision was inconsistent with controlling law and facts presented.

- 1- **MATH/CLERICAL ERRORS.** Landlord disagrees with the determination of the ongoing decrease in housing services and a subsequent credit. Hearing officer awards the tenant a 5% credit for windows. Landlord rejects this determination.

To be deemed untenable (uninhabitable) under 1941.1 of the California Civil Code, the building must "substantially" lack one of the the cited, listed issues. The condition of weatherstripping of windows is not included in the listed issues and does not constitute a lack of weatherproofing, as weatherstripping, and weatherproofing, are not one and the same. The single pane windows function as designed. This was identified in the report from the home inspection performed in 2016. Lack of weatherstripping in good condition, which is not required by code, does not render the building as "substantially lacking" effective weatherproofing.

To be deemed a substandard building, under Health & Safety Code 17920.3, and breach the implied warranty of habitability, the listed condition must be one that exists to the extent it "endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof." The Petitioner provided no evidence showing that lack of weatherstripping on single pane windows endangered the life, limb, health, safety or welfare of the tenant. Similarly, no evidence was provided by the Petitioner showing that cracked paint or plaster, or even the presence of mold, endangered the life, limb, health or safety of the tenant.

As to the presence of mold, it is important to note as well that it was "minor" and as single pane windows sweat, the accumulation of moisture on the surface of the single pane windows occurs when the window is properly functioning. Without routine cleaning of the windows, which is the responsibility of the tenant, it would not be unexpected that accumulation of moisture on the windows due to condensation would lead to the mold growth.

The windows are single-paned, all lock, had existing weatherstripping, and are not cracked or damaged. Further, the tenant **NEVER** mentioned **ANY** issue with maintenance needed on the windows, as demonstrated in the previous communications between the tenant and Mr. Fresquez. Tenant's testimony fails to meet the burden of proof and is not supported. Further, an inspection report was originally submitted with petition, and windows were not highlighted by the licensed INSPECTOR as an issue requiring any maintenance or repairs.

Petitioner also did not provide any evidence other than verbal testimony that the landlord had constructive knowledge of any of the decreased housing service issues claimed in the petition. Therefore, the petitioner did not meet their burden of proof to establish when the owner knew, or

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should have known, about the claimed decreased housing services. The owner, however, submitted evidence that the claimed decreased housing services did **not** exist at the time the petitioner claimed she informed the owner, and that the owner did not have constructive knowledge of the claimed issues. Although the hearing officer noted conflicting testimony of the petitioner, the hearing officer ignored the evidence submitted by landlord and relied solely upon the Petitioner's verbal testimony.

Landlord seeks this credit be rejected and removed from the decision.

2- GROUNDS FOR APPEAL.

- a.) The decision is inconsistent with OMC 8.22, Rent Board Regulations and prior decisions. OMC 8.22.030(a)(7) exempts from its jurisdiction dwelling units, pursuant to Costa-Hawkins (California Civil Code § 1954.52). Dwelling units exempt under Costa-Hawkins include those in which "it is alienable separate from the title to any other dwelling unit." The property at issue is a single family residence with two separate structures used for storage. It is uncontested that the third structure is not a dwelling unit. It also is uncontested that during the current occupancy of Petitioner, the second structure had **not** been used as a dwelling unit, and **only** as a storage unit. At issue is whether the second structure "is" a dwelling unit. It is not, so the property is a single family residence (dwelling unit) with other structures (not dwelling unit(s)). Therefore, the title to the dwelling unit is alienable from any other "dwelling unit" and the property is exempt from the Oakland Rent Control Ordinance.

Petitioner contended that the second structure was a dwelling unit because 1) the California State definition should apply rather than the Oakland Building Code, and 2) that the unit had a history of being used as a dwelling. The Owens case is cited for proposition that California State law should apply. The City of Oakland Building Code defines "dwelling unit" as:

"DWELLING UNIT is a single unit providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation."
OMC 15.08.170 – Definitions.

The State of California defines "dwelling unit" as:

"Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household." Cal. Civ. Code 1940(c).

Although respondent believes that the Oakland Building Code definition should apply, the finding that the California law definition applies does not change the calculus or result. The second structure was not used as a home, residence, or sleeping place during the current tenancy of Petitioner. Thus, the property remains a single family residence (a single dwelling unit) with additional structures (non-dwelling units) and has title alienable from any other dwelling unit. Therefore, under OMC 8.22.030(a)(7), the property is exempt from Oakland Rent Control.

Petitioner then claims that a historical use defines the second structure as a dwelling unit. This too is incorrect and directly contradicts the Owens case on which the decision relies. In Owens, the owner of a single family residence rented out rooms with separate lease agreements for occupants and the occupants could use those rooms to live, at the exclusion of others. The Court found that just because the property was originally a single family residence did not mean that it was being used as a single family residence. The subject property in the Owen's case focused on the **current use** of the property, which was a multiple dwelling, by renting to several different occupants, and therefore, subject to rent control. The rationale is that the property is to be judged by its current use. The same holds true here in that, the use of the property during Petitioner's occupancy has been as a single-family residence with a storage structure in back. The back structure has not been used, nor is it available to be used, as a separate living unit. Accordingly, use of the property during this tenancy has been as a single family residence with alienable title separate from any other dwelling unit and is, therefore exempt from Oakland Rent Control.

b.) Hearing officer in Owen's case found use in a Single Family Dwelling as a predicate for the decision. This case challenges use and therefore, following the same line of thought, the use of one structure on this parcel is different than the next, which would mean it does NOT meet the burden of reason. There is only ONE dwelling on the parcel. The other structures DO NOT HAVE A KITCHEN, DO NOT HAVE A BATH, HAVE ONLY BEEN USED AS STORAGE, AND WERE NEVER INTENDED TO BE USED AS DWELLINGS. To interpret the logic as a "potential to function", per the hearing officers decision, is not a determination and further violates the rationale of the Owen's decision.

c.) This property has not been used as a multi-dwelling unit during this tenancy, or with this owner. The Alameda County Tax documentation states **there is only one single-dwelling structure** on site, which the hearing officer completely omits from her decision. The "2 or more structures" category provided by the **City of Oakland records refer to category of parcel but not ITS USE**. The hearing officer's decision on this interpretation is misdirected.

Further, the tenant has use of ALL structures (home, garage, and storage) while living on site. That was determined by the refrigerator and small pieces of furniture Ms. Bolanos stores in the storage unit. There is no one else renting on the property, nor has there ever been another tenancy during Ms. Bolanos' term. Evidence to the electric utility of other structures, being in the owner's name further demonstrates no other use or tenancy aside for storage was possible.

d.) This decision overrides county and state code determinations. It further ignores owner testimony and the legal proof from state and county agencies submitted by landlord.

e.) It is NOT the intent of the rent board to find **ANY** other property on a parcel and claim it is habitable and/or a dwelling unit for the purpose of having it under the Oakland Rent Ordinance.

The decision demonstrates a strong bias towards the tenant lawyer's testimony, and little to the validity of the sworn, notarized statements and evidence and statute provided by the landlord.

g.) To deny the owner a single family dwelling determination, as stated in county documents, and as supported by subsequent hearing decisions, denies a fair rate of return. To roll back rent and invalidate subsequent increases to the inception date, that were valid based on Costa Hawkins, denies the owner a fair rate of return. The owner has also incurred significant costs debating issues that are supported by law and testament.

000354

Landlord is demanding the appeal be granted, and the decision be remanded back to the hearing officer for a second, more detailed review. A decision based on ALL the evidence and sworn testimony, following state law, should be awarded to the landlord in this matter.

Landlord Appeal

CASE T20-0093

June 24, 2021

Landlord refutes the hearing officer's determination and believes the decision was inconsistent with controlling law and facts presented.

GROUNDINGS FOR APPEAL

- a.) The decision is inconsistent with OMC 8.22, Rent Board Regulations and prior decisions.

Petitioner rents a single-family dwelling with a separate structure (rear unit) on the property. Petitioner claims that the separate structure is a dwelling unit which is not separate and alienable from the title to the unit occupied by Petitioner.

The Landlord's position is rear unit has not been used as a dwelling unit, and has only been used as a storage unit. Landlord maintains that the rear unit is not a dwelling unit as during Petitioner's tenancy, the structure **has not been used** as a home, residence or sleeping place by any person who has maintained a household. Therefore, the structure does not meet the State of California's definition of a dwelling unit

The Landlord's position that the rear unit is not a dwelling unit is supported by the attached permit issued by the City of Oakland to demolish the rear unit which establishes that the rear unit is a "Utility/Miscellaneous Structure," and is not a dwelling unit. This permit was applied for prior to the hearing and was not issued until after the hearing. The determination of the Permitted Occupancy Group of the rear unit was based upon a planning study performed by the City of Oakland that was required prior to issuing the demolition permit. Therefore, the City of Oakland has officially determined that the second structure is not a dwelling unit.

- b.) The decision demonstrates a strong outward bias towards Petitioner by crediting Petitioner's testimony, without any supporting evidence, and despite numerous demonstrable falsehoods in Petitioner's written and verbal testimony, *while dismissing the validity of the sworn, notarized statements and evidence and statute provided by the Landlord.*
- c.) Petitioner entered into evidence correspondence between the Landlord and Petitioner which were marked as *"without prejudice."* Such correspondence is not admissible in subsequent

court, arbitration, or adjudication proceedings. However, this correspondence was admitted as evidence by the hearing officer without providing a legal basis to support doing so. Admission of this correspondence is improper, has prejudiced the Landlord and violates the Landlord's right to an independent and impartial hearing.

- d.) The hearing decision, ***incorrectly cites or completely omits***, testimony that is material to the case. Listening to the hearing recording will demonstrate the testimony that was given and presented.
- e.) The hearing officer awards Petitioner a 5% credit based upon the testimony of Petitioner without requiring **any evidence** to satisfy Petitioner's burden of proof that the landlord had constructive knowledge of said issues, **while dismissing the validity of the sworn, notarized statements and evidence provided by the Landlord** refuting Petitioner's testimony.

Landlord is seeking that an appeal be granted, and the decision be remanded back to the hearing officer for a second, more detailed and accurate review. A decision based on ALL the evidence and sworn testimony, following state law, should be determined.

Permits for which no major inspection has been approved within 180 days shall expire by limitation. No refund more than 180 days after expiration or final.



CITY OF OAKLAND

CASE T20-0093

959 42ND ST

959 42ND ST

250 FRANK H. OGAWA PLAZA ▪ 2ND FLOOR ▪ OAKLAND, CA 94612

Planning and Building Department
www.oaklandnet.com

PH: 510-238-3891
FAX: 510-238-2263
TDD: 510-238-3254

Permit No: RB2003483 Residential Building - Demolition Permit Issued: 4/22/2021
 Job Site: 959 42ND ST Schedule Inspection by calling: 510-238-3444
 Parcel No: 012 102003000
 District:
 Project Description: Demolish 420sf detached structure at rear of sfd ./Per DRX210264 okay to demo de attached accessory structure
 Related Permits: DRX210264

	<u>Name</u>	<u>Applicant</u>	<u>Address</u>	<u>Phone</u>	<u>License #</u>
Owner-Builder:	OLIVIERI JACK G	X	4734 SHETLAND AVE OAKLAND, CA	510-537-5226	
Owner:	OLIVIERI JACK G TR		4734 SHETLAND AVE OAKLAND, CA		

PERMIT DETAILS: Residential/Building/Demolition

General Info
 J Number: 119098 Detached Garage <400 sq ft: No Report - Soil/Geotech:

Building Information
 Demo Type: Entire Demo # Of Stories: 1 Permitted Building Use: Miscellaneous Structure
 Construction Type: VB - Combustible Construction, No Fire Rating # Of Dwelling Unit: 0 Permitted Occupancy Group: U Utility / Miscellaneous Structure
 # of Buildings Before Demo: 1 Total Floor Area (sq ft): 420

TOTAL FEES TO BE PAID: \$0.00

Plans Checked By _____ Date _____ Permit Issued By _____ Date _____
 Finalized By _____ Date _____

000358



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

**Housing, Residential Rent
and Relocation Board (HRRRB)**

APPEAL DECISION

CASE NUMBER: T20-0093, Bolanos v. Olivieri

APPEAL HEARING: July 8, 2021

PROPERTY ADDRESS: 959 42nd Street, Oakland, CA

APPEARANCES:	Appellant/Owner:	Jack Olivieri
	Property Manager:	Gina Fresquez Tom Fresquez
	Owner Representative:	Jill Broadhurst
	Tenant Representative:	Samantha Beckett
	Respondent/Tenant:	Miriam Bolanos

BACKGROUND

On March 4, 2020, the tenant filed a petition contesting all prior rent increases and alleging decreased housing services. The basis for the tenant’s petition included the following:

- The CPI and/or banked rent increase notices I was given were calculated incorrectly.
- The increases exceed the CPI Adjustment and are unjustified or are greater than 10%.
- I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI and available banked rent increase.
- No written notice of the Rent Program was given to me together with the rent increases I am contesting.
- The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increases.

- The rent increases were not given to me in compliance with State law.
- The increase I am contesting is the second increase in my rent in a 12-month period.
- There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance.
- The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner; and
- The proposed rent increase would exceed an overall increase of 30% in 5 years.

The petition alleged the following decreased housing services (“bad conditions”): issues with heat, windows, mold, wall and ceiling conditions, and infestations of rodents and raccoons.

The owner filed a timely response, alleging that the unit is exempt from the jurisdiction of the Rent Adjustment Program as a single-family dwelling under Costa-Hawkins.

RULING ON THE CASE

The Hearing Officer issued a Hearing Decision on March 17, 2021, granting the tenant’s petition. The Hearing Officer made the following findings:

- **Exemption status:** The subject property is not exempt under Costa-Hawkins as a single-family dwelling because there are two structures on the property that are not separately alienable. Although the rear unit is currently functioning as a storage unit, the evidence shows that the rear unit has the potential to function as a dwelling unit and was used as such in the past. This finding was based on records from the City and County¹ describing the property as a multi-dwelling property, photographs of the property, the fact that the front and rear units have separate mailboxes and separate gas and electrical meters, and the tenant’s testimony that the tenant has resided in both the rear and front units (i.e., the rear unit was previously rented as a separate unit).
- **RAP Notice:** It was undisputed that the tenant never received the RAP Notice.
- **Rent increases:** Since the tenant never received the required RAP Notice, all of the contested rent increases are invalid. Furthermore, the owner had not received approval from the Rent Program for the rent increases above the CPI, nor claimed any legal justification.
- **Decreased housing services:** The claims involving the heater and infestation were denied. The tenant is entitled to a 5% rent reduction for deteriorated

¹ The records relied on included a City of Oakland Planning and Zoning Map, a Property Assessment from the Alameda County Assessor, and a City of Oakland Building Permit.

windows until repairs are made. This finding was based on the tenant's testimony and the photographic evidence submitted by the tenant.

GROUND FOR APPEAL

The owner filed an appeal on the grounds that the decision is inconsistent with the Rent Adjustment Ordinance, Rent Board Regulations, or prior decisions of the Board; the decision is inconsistent with decisions issued by other Hearing Officers; the decision raises a new policy issue that has not been decided by the Board; the decision violates federal, state, or local law; the decision is not supported by substantial evidence; and the decision denies the owner a fair return on their investment.

Specifically, the owner alleges the following:

- The Hearing Officer erred in awarding a 5% rent reduction for decreased housing services because the conditions did not substantially impact habitability and the tenant did not notify the owner of the need for repairs.
- The property is exempt from the Rent Adjustment Ordinance because there is currently only one dwelling unit at the property, and the secondary unit has not been used as a home, residence, or sleeping place during the tenant petitioner's tenancy.

ISSUES

1. Is the 5% rent reduction based on decreased housing services supported by substantial evidence?
2. Is the finding that the property contains two dwelling units supported by substantial evidence?

APPEAL DECISION

After arguments by the parties, questions and Board discussion, Chair S. Devuono-Powell moved to remand the Hearing Decision to the Hearing Officer to consider the new evidence regarding the permit document. K. Friedman seconded.

The Board voted as follows:

Aye: S. Devuono-Powell, K. Friedman, T. Williams, R. Nickens, Jr.
Nay: None
Abstain: None

The motion was adopted.

Chair S. Devuono-Powell moved to postpone consideration of whether the 5% rent reduction was supported by substantial evidence pending the remand decision on the issue of whether the property is a dwelling. R. Nickens, Jr. seconded.

The Board voted as follows:

Aye: S. Devuono-Powell, K. Friedman, T. Williams, R. Nickens, Jr.

Nay: None

Abstain: None

The motion was adopted.

Chanee Franklin Minor
Program Manager
HCD/Rent Adjustment Program

CHANEE FRANKLIN MINOR
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD

8/17/21

DATE

PROOF OF SERVICE
Case Number T20-0093

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Appeal Decision

Owner

Gina Fresquez
25538 South Gold Ridge Drive
Castro Valley, CA 94552

Owner Representative

Jill Broadhurst, Big City Property Group, Inc.
PO Box 13122
Oakland, CA 94661

Tenant

Miriam Bolanos
959 42nd Street
Oakland, CA 94608

Tenant Representative

Samantha Beckett, Centro Legal de la Raza
3022 International Blvd. Suite 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **August 17, 2021** in Oakland, CA.

Brittni Lothlen

Brittni Lothlen
Oakland Rent Adjustment Program

000363

Samantha Beckett
CENTRO LEGAL DE LA RAZA
3022 International Blvd., Suite 410
Oakland, CA 94601
Phone: (510) 806-8605
Email: sbeckett@centrolegal.org
Tenant Representative

Case Number: T20-0093
Case Name: Bolanos v. Olivieri

STATEMENT OF ARGUMENTS IN SUPPORT OF TENANT’S PETITION ON REMAND

I. Introduction

Tenant Petitioner Miriam Bolanos submits this Statement of Arguments in support of her request that the Hearing Officer uphold its prior decision, finding that the unit in question was covered by and subject to the Oakland Rent Adjustment Ordinance at all relevant times in this case. This matter was remanded by the Housing, Residential Rent and Relocation Board (“RAP Board”) based upon assertions by the Owner’s representative that new evidence in the form of a demolition permit would provide dispositive evidence that the rear unit was not a dwelling unit. The evidence that will be presented at the Remand Evidentiary Hearing and the arguments below make clear that the demolition permit does not have any bearing on the question at issue, and that the Hearing Officer’s prior decision should be affirmed.

II. Argument

A. The Demolition Permit Obtained By the Property Owner Should Not Change the Rent Adjustment Program’s Analysis of this Matter Because the City Did Not Make any Dispositive Decision as to the Zoning or Use of the Rear Dwelling Unit.

Despite the Owner Representative’s assertions to the contrary, the records that will be presented at the remand hearing make clear that the City of Oakland never made any dispositive decision as to the zoning or use of the rear dwelling unit. Instead, the City of Oakland eventually issued the demolition permit after granting a design review exemption based upon the fact that the rear dwelling unit was deemed “*unsafe*.”

Documents obtained by Centro Legal de la Raza through a public records request show the following timeline:

- 1) On February 26, 2021, City of Oakland employee Angus Thyme conducted a field check of the premises, and noted, “Inspected rear accessory structure for demolition.” *See* Exhibit T3, pg. 10.
- 2) On March 2, 2021, Noel Munger, paralegal with Centro Legal de la Raza, emailed Tanya Simmons at the City of Oakland regarding concerns about how the rear unit was being characterized as a “storage unit” in the Owner’s demolition permit application. *See* Exhibit T4, pgs. 15-16.
- 3) On March 4, 2021, the City of Oakland’s records state, “Per sanborn, and CO assessor, there is a rear dwelling structure. The permit was applied ‘to demolish rear storage’ Emailed ABR via permitinfo@oaklandca.gov for zoning review.” *See* Exhibit T2, pg. 8. “ABR” refers to Aubrey Rose, Planner III with the City of Oakland. *See* Exhibit T7, pg. 34.
- 4) Two hours later, an additional comment on the same document states, “Per ABR, to demolish the rear structure (dwelling) will require zoning review. ABR to advise applicant for requirement. Hold issuance for zoning approval, J# and demo acknowledgement: Marcos Indalecio was notified regarding zoning hold.” *See* Exhibit T2, pg. 8.
- 5) In an email on March 4, 2021, Aubrey Rose says that the landlord “need(s) a DS-1 (unless ‘unsafe’ by T-Low).” *See* Exhibit T4, pg. 12.
- 6) On March 13, 2021, Thom Fresquez, on behalf of the owner, writes a letter to the City of Oakland Planning and Building Department, asking that the City “reconsider its classification of the structure as a ‘dwelling’ and that the demolition permit be issued under the provisions for demolition of a nonresidential structure...” *See* Exhibit T6, pg. 22.
- 7) On March 24, 2021, Aubrey Rose tells Thom Fresquez via e-mail that his reading of the code is that in order for the demolition to be exempt from design review, it has to be “declared unsafe or a public nuisance by the building office or city council...” but that Aubrey would exempt it from design review if they can determine that the rear unit “is not and was not a dwelling unit and is only an accessory structure such as a shed...” *See* Exhibit T7, pgs. 31-32.
- 8) On March 26, 2021, Aubrey Rose essentially repeats this message in an email to Thom and asks for pictures of the rear unit. *See* Exhibit T7, pg. 30.
- 9) On March 26, 2021, Thom Fresquez emails over pictures of the unit, and Aubrey Rose responds, “*Thanks Thom – looks like a dwelling unit with fixtures removed – please advise*” (emphasis added). *See* Exhibit T7, pg. 29.
- 10) On March 26, 2021, Thom Fresquez responds and says that the unit was used as a dwelling unit in the past, but argued that it does not meet the definition of a “residential structure” or “dwelling unit” today. *See* Exhibit T7, pg. 28-29.

- 11) On March 28, 2021, Thom Fresquez emails Aubrey Rose again, saying, “I maintain that a costly design review seems unnecessary. Therefore, prior to you processing the application, *I will make one final plea for you to grant a Design Review Exemption based upon the fact that the structure is unsafe, in addition to it not be a dwelling unit. I am providing the attached photos which I believe would enable the City office to declare the structure unsafe on the grounds that the structure was constructed in an unsafe manner as there are severe wiring hazards as well as a lack of a suitable foundation, in addition to other hazards.* If you do not agree with issuing a Design Review Exemption, please process the attached application and provide the invoice” (emphasis added). *See Exhibit T7, pg. 28.*
- 12) On March 30, 2021, Jason Madani with the City of Oakland writes to Thom Fresquez, “Hi Thomas, I am processing DRX permit to demolish *unsafe* accessory structure located behind main dwelling unit...You do not need to attend zoom meeting this afternoon” (emphasis added). *See Exhibit T7, pg. 27-28.*
- 13) That same day, it appears that a new record detail was created that says, “DRX to demolish a 365 sf accessory structure *in poor condition* located at the rear portion of an existing single family dwelling parcel” (emphasis added). *See Exhibit T8, pg. 36.*
- 14) On April 22, 2021, Thom Fresquez emails Masoud Hamidi and says that the permit issued describes the structure to be demolished as a residential structure. He writes, “It is important that the structure not be described as a residential structure on the permit (which it is not) due to potential rent control implications that could arise retroactively.” *See Exhibit T10, pg. 46.*
- 15) On April 22, 2021, permit number DRX210264 is approved. *See Exhibit T2, pg. 8.*

This timeline makes it abundantly clear that there was never a determination from the City of Oakland Planning and Building Department as to whether the rear unit was in fact a “dwelling unit.” Instead, permit number DRX210264 was eventually approved based upon the rear unit being labeled as *unsafe*. Aubrey Rose, Planner III with the City of Oakland, reviewed pictures provided by Thom Fresquez and found that the rear unit “looks like a dwelling unit with fixtures removed.” *See Exhibit T7, pg. 29.* It was not until Mr. Fresquez pleaded with him to grant a Design Review Exemption based upon the rear unit being unsafe that the Design Review Exemption was approved, just two days after Mr. Fresquez’s pleading email.

It is also clear that no employee of the City of Oakland ever made a determination as to the use or zoning of the building based upon a site visit of the unit. The original site visit on February 23, 2021 was not dispositive, which is why Aubrey Rose had to do a further inquiry. *Exhibit T2, pg. 8.* There is no evidence that another site visit was conducted.

A unit having unsafe or uninhabitable conditions has no bearing on whether it constitutes a “dwelling unit” for the purposes of considering whether it is exempt under Costa-Hawkins. *See*

Owens v. City of Oakland Housing, Residential Rent and Relocation Board (2020) 49 Cal. App. 5th 739, 743 (adopting the definition of “dwelling unit” located at Cal. Civ. Code § 1940(a)). “Dwelling Unit” means “a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.” Cal. Civ. Code § 1940(a). Whether that unit is currently habitable is irrelevant. There are many instances in which tenants live in dwelling units with uninhabitable conditions, and this does not mean that the unit is not a dwelling unit for purposes of rent control. On the contrary, it often entitles those tenants to a reduction in services claim before the Rent Adjustment Board. *See* O.M.C. § 8.22.070(B)(2)(c), (d).

In the same vein, a vacant dwelling unit does not lose its status as a dwelling unit just because it has habitability conditions that could render it unsafe. In *Martin et al. v. Zalabak*, T18-0414 & T18-0472 and *Zalabak v. Tenants*, L19-0040, the RAP Appeals Board recently overturned a hearing officer’s decision, based upon insubstantial evidence to support a finding that the property is exempt from the Rent Adjustment Ordinance. *See* Exhibit T13. In that case, the Hearing Officer’s decision had held that the unit was exempt as a single-family residence in part because the back unit had been vacated and “could not legally be re-rented.” *Id.* The back unit was unpermitted, and the owner had removed a stove from the rear unit. *See Recording of Martin et al. v. Zalabak*, T18-0414 & T18-0472 and *Zalabak v. Tenants*, L19-0040 on July 22, 2021, <https://www.oaklandca.gov/meetings/housing-residential-rent-and-relocation-board-full-board-meeting-july-22-2021>. The prior decision also emphasized that the rental of the back unit was not re-rented, so the rental of the back unit was discontinued, making the unit a single-family residence at the time the rent increase went into effect. *See* Exhibit T13. On appeal, the Board found these arguments unpersuasive, and insufficient to prove that the back unit was not a dwelling unit. *Id.*

The same reasoning applies here. It is undisputed that the rear unit at issue in this matter was used as a dwelling unit in the past. Additionally, photographs that were submitted with the Owner’s original evidence packet clearly show that there were fixtures in the unit that had been removed. *See* Exhibit T12. Just as the fact that the stove being removed and the unit being unpermitted in *Zalabak* did not disqualify the back cottage from being a dwelling unit, the fact that fixtures were removed from the rear unit by the Owner in this instance, and the fact that the rear unit appeared to have some habitability conditions based upon the photographs provided by Thom Fresquez, does not disqualify the rear unit in this matter from being considered a dwelling unit.

Moreover, even if the City of Oakland did make some kind of dispositive determination about the rear unit, which it did not, that determination would have been made *after* the prior hearing decision in this case dated March 17, 2021, and thus would not affect that decision at all.

For all of these reasons, the demolition permit has absolutely no bearing on the matter at issue – whether the rear unit was a “dwelling unit” during the relevant time period, and thus making Tenant Miriam Bolanos’ unit covered by the Rent Adjustment Ordinance. We respectfully request that the Hearing Officer uphold the prior decision in this case, holding that the owner has not sustained their burden to prove an exemption from the Rent Adjustment Program, that the Tenant Miriam Bolanos’ unit was covered by the Rent Adjustment Ordinance at all relevant times for Tenant’s petition.

B. Regardless of what the City of Oakland called the Rear Dwelling Unit, The Owner Failed to Meet Its Burden to Prove that the Unit Ceased Being A “Dwelling Unit” for Purposes of the Costa-Hawkins Act.

Regardless of how the rear dwelling unit was labeled on the final demolition permit, the rear unit has an undisputed and well-documented history as a dwelling unit. Therefore, the only way that the Owner can satisfy its burden to prove an exemption from the Rent Adjustment Ordinance is if it can prove that the rear unit stopped being a dwelling unit sometime before or during the time period in question. Proving such an exemption is the Owner’s burden in this case. O.M.C. § 8.22.030(B)(1)(b). The Owner failed to meet its burden in this case at all relevant times for Tenant’s petition.

It is undisputed in this matter that the rear unit was used as a dwelling unit in the past. In the prior decision in this matter, the Hearing Officer properly pointed to the fact that the unit had been used as a dwelling unit in the past, and had the potential to be used as a dwelling unit again. *See* Hearing Decision dated March 17, 2021. This potential to be used as a dwelling unit again was informed in part by the City and County records showing it to be a multi-dwelling property, as well as the fact that the two units on the property had separate mailboxes and separate gas and electric meters. *Id.*

Because it is undisputed that the rear unit was used as a dwelling unit in the past, then the analysis must turn to whether and when the unit *ceased* being a “dwelling unit” for purposes of the Costa-Hawkins Rental Housing Act (“Costa-Hawkins”). To date, there is no standard in the law for determining when a unit ceases being a “dwelling unit.” From the Court’s decision in *Owens*, we know that use is central in determining whether a unit is a dwelling unit. *See Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, (2020) 49 Cal. App. 5th 739, 745. However, there has been no decision on what exactly must occur in order for the unit to cease to be considered a “dwelling unit” for purposes of Costa-Hawkins. The RAP Board was presented with this exact question in the recent case of *Martin et al. v. Zalabak*, T-18-0414 & T18-0472 and *Zalabak v. Tenants*, L19-0040, and declined to state what that standard would be. However, it ruled that the fact that the rear unit was vacant, lacked a stove, and was unpermitted when the rent increase was taken was not sufficient to support a finding that the front unit was exempt from the Rent Adjustment Ordinance. *See* Exhibit T13.

The Owner in this matter should not be allowed any ambiguity in their claim to an exemption, especially because exemptions from the Rent Adjustment Ordinance are to be strictly construed. *See DaVinci v. San Francisco Residential Rent Board*, (1992) 5 Cal. App. 4th 24, 28

(“In interpreting exceptions to the general statute, courts include only those circumstances that are within the words and reason of the exception...One seeking to be excluded from the sweep of the general statute must establish that the exception applies” (citing *Barnes v. Chamberlain*, (1983) 147 Cal. App. 3rd 762)). Property owners should be forced to say exactly when the rear unit ceased to be a dwelling unit, just as all other forms of exemption require specificity, such as a condo conversion.

During the appeal hearing in *Martin et. al. v. Zalabak*, members of the Board expressed the need for a precise standard for determining when a unit ceases being a dwelling unit. See *Recording of Martin et. al. v. Zalabak*, T-18-0414 & T18-0472 and *Zalabak v. Tenants*, L19-0040, <https://www.oaklandca.gov/meetings/housing-residential-rent-and-relocation-board-full-board-meeting-july-22-2021>, at approximately 1:30:25 through 1:52:00. If the Rent Adjustment program does not require a bright-line event, then any duplex with bad conditions or a temporary vacancy in one unit could potentially qualify for an exemption based upon the criteria argued by the landlord in this case. It would also mean that units could flip flop from being covered units to being exempt multiple times during one tenant’s tenancy, simply based upon temporary changes to the other unit on the property. The only bright-line rule that is fair, workable, and in alignment with the overall goal of the Rent Adjustment Ordinance is that a dwelling unit ceases to be a dwelling unit upon lawful demolition of the unit. This would ensure that property owners do not try to use loopholes, force tenants out, or simply neglect units in order to obtain an exemption from rent control. It would also ensure that tenants have a reliable way to know if their unit is subject to the Rent Adjustment Ordinance, which is extremely important from a policy perspective, both to ensure compliance with the Rent Adjustment Ordinance and to ensure that tenants can make meaningful choices about whether to rent or continue renting at a particular unit.

To make any other determination as to when the unit ceased being a dwelling unit would be creating a new legal standard. It does not make sense to do so in this case because there was a demolition of the rear dwelling unit on July 10, 2021, and thus an easy, bright-line distinction is feasible. In this matter, demolition of the rear dwelling unit did not occur until after the last appeal, and thus would not affect any prior decision in this case. Under this bright-line rule, Ms. Bolanos’ unit was subject to the Rent Adjustment Ordinance when each challenged increase was implemented, when she filed her Tenant Petition, and at least up until July 10, 2021, when the rear dwelling unit was demolished. If the unit was in fact lawfully demolished, then the Owner can seek a *prospective* exemption. However, Ms. Bolanos’ unit was clearly covered by the Rent Adjustment Ordinance at all relevant times for her tenant petition in this case. Therefore, we respectfully request that the Hearing Officer reaffirm its prior decision by holding that Ms. Bolanos’s unit was subject to the Rent Adjustment Ordinance, and hold that her unit was at least covered through July 10, 2021.

C. Public Policy Supports Affirming the Hearing Officer’s Prior Decision, Holding That Petitioner’s Unit Was Subject to the Oakland Rent Adjustment Ordinance.

This issue is also a matter of public policy and following the spirit of the Rent Adjustment Ordinance. While it has not yet been determined at what point a dwelling unit ceases to be a dwelling unit per se by statute or case law, tenant protections such as Oakland’s Rent

Adjustment Ordinance have been designed by legislators to “encourag[e] [the] rehabilitation of rental units” as an “investment” precisely because of the scarcity of housing. O.M.C. 8.22.010(C). To find that the property is exempt under Costa-Hawkins is to sanction and give rise to abuse by property owners, who need only let their properties fall into disrepair or actively remove appliances to claim similar exemptions. It would be a slippery slope whereby unscrupulous property owners in particular could game the system by choosing to designate properties as a dwelling unit or not based on which label would pose the greatest benefit to them. This would result in displacement and removing more housing from the rental market when it is needed even more today. Furthermore, incentivizing landlords to seek exemption based upon units being unsafe or not having certain services lies in direct contradiction to California and Oakland’s demonstrated commitments to ensuring that “decent, safe, affordable and sanitary residential rental housing continues to exist.” O.M.C. 8.22.010(A).

For the above reasons, we respectfully request that the Board affirm its original finding that the property contained two dwelling units at all relevant times, through the prior hearing decision on March 17, 2021, and up until at least July 10, 2021.

III. CONCLUSION

The only issue before the Hearing Officer on remand is whether the demolition permit changes the analysis of whether Ms. Bolanos’ unit was subject to the Rent Adjustment Ordinance during the relevant time period in this case, or whether it was exempt under Costa Hawkins. It is clear that the demolition permit does not change the analysis because the City of Oakland never made any dispositive decision as to the zoning or use of the rear dwelling unit, and definitely never made any determination as to whether and when the rear unit ceased being a dwelling unit. For all of the reasons stated above, Ms. Bolanos requests that the Hearing Officer reaffirm that her unit was in fact covered by the Rent Adjustment Ordinance, grant her tenant petition, affirm that all contested rent increases were invalid, and order all required restitution.

Respectfully submitted,

Samantha Beckett

Samantha Beckett
Supervising Attorney
Centro legal de la Raza
Tenant Representative



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Tenant's Statement of Argument in Support of Tenant's Petition on Remand
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 7 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Jill Broadhurst, Big City Property Group, Inc., Owner Representative	
Address	PO Box 13122	Email: bigcitypg@gmail.com
City, State, Zip	Oakland, CA 94661	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 09/30/21 (insert date served).

Samantha Beckett
PRINT YOUR NAME

Samantha Beckett
SIGNATURE

09/30/21
DATE

September 30, 2021

Analyst Robert Costa
City of Oakland
Rent Adjustment Program
Department of Housing and Community Development
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Via E-Mail

RE: Supplemental Tenant Evidence Submission for Remand Hearing (Case No. T20-0093)

Dear Analyst Robert Costa:

Please find the supplemental evidence submission in support of Case No. T20-0093 for the remand evidentiary hearing scheduled for October 12, 2021.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns at (510) 806-8605 or sbeckett@centrolegal.org.

Sincerely,

Samantha Beckett

Samantha Beckett
Supervising Attorney
Tenants' Rights Program

000374

Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing

<u>Exhibit</u>	<u>Document Description</u>	<u>Page Numbers</u>
T1	Public Records Requests #21-6508 & #21-6510	3-6
T2	City of Oakland Record Detail with Timeline	8
T3	City of Oakland Inspection Log 2/26/2021	10
T4	Emails March 2, 2021 through March 4, 2021	12-16
T5	Sanborn Map & Legend	18-20
T6	March 13, 2021 Letter from Thomas Fresquez to City of Oakland Planning and Building Department	22-23
T7	Emails between City of Oakland Employees and Thomas Fresquez	25-34
T8	Updated record description on DRX210264 Comment Log	36
T9	Photographs from Public Records Request	38-44
T10	Emails between City of Oakland Employee Masoud Hamidi and Thomas Fresquez	46-47
T11	Permit Issued	49
T12	Photographs from Landlord Evidence Submission July 9, 2020	51-61
T13	HRRRB Appeal Decision in T18-0414 & T18-0472, Matrin et. al. v. Zalabak, & L19-0040, Zalabak v. Tenants	63-66

**Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing**

Exhibit T1

Request #21-6508

CLOSED

As of September 24, 2021, 3:38pm

Details

Any written communications including but not limited to emails, letters, and text messages between any employee of the planning and building department and the property owners of 959 42nd street Oakland, CA or their agents or contractors regarding the demolition, demolition permit, and design review of the project corresponding to the following record numbers:

RB2003483

DRX210264

[+ Read more](#)

Received

July 26, 2021 via web

Due

August 5, 2021

Departments

Planning & Building

Documents

(none)

Staff

Point of Contact

Brian Fujihara

000377

Timeline

Request Closed

Public

duplicate/similar request; we will be responding under #21-6510.

July 26, 2021, 1:50pm

Department Assignment

Public

Planning & Building

July 26, 2021, 1:34pm

Request Opened

Public

Request received via web

July 26, 2021, 1:34pm

Request #21-6510

CLOSED

As of September 24, 2021, 3:39pm

Details

All records created, received or maintained by the planning and building departments including but not limited to applications, approvals, inspection notes, photos, diagrams, and written internal communications between employees of the planning and building departments regarding the following planning and building record numbers:

RB2003483

DRX210264

Thank you.

Received

July 26, 2021 via web

Due

August 5, 2021

Departments

Planning & Building

Documents

(none)

Staff

Point of Contact

Brian Fujihara

000379^{5/18}

Timeline

Request Closed

Public

July 26, 2021, 3:17pm

Department Assignment

Public

Planning & Building

July 26, 2021, 1:45pm

Request Opened

Public

Request received via web

July 26, 2021, 1:45pm

Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing

Exhibit T2



Update Results



CITY OF OAKLAND

Record Detail with Comments

Record ID: [RB2003483](#)**Description: Demolish 420sf detached structure at rear of sfd ./Per DRX210264 okay to demo de attached accessory structure****APN: 012 102003000****Address: 959 42ND ST****Unit #:****Date Opened: 12/5/2020****Record Status: Permit Issued****Record Status Date: 4/22/2021****Job Value: \$0.00****Requestor: OLIVIERI JACK G****:****Business Name:****License #:**

Comment Date	Commenter	Comment
12/5/2020 11:00:35 PM	TSIMMONS	sent fees due, c&d, req for J#, added to processing log.
12/5/2020 11:06:09 PM	TSIMMONS	Plans need title block; no email listed on app
12/5/2020 11:09:24 PM	TSIMMONS	on processing log line #1013.
3/4/2021 9:34:24 AM	ABELLOMO	Per sanborn, and CO assessor, there is a rear dwelling structure. The permit was applied "to demolish rear storage" Emailed to ABR via permitinfo@oaklandca.gov for zoning review.
3/4/2021 11:38:42 AM	ABELLOMO	Per ABR, to demolish the rear structure (dwelling) will require zoning review. ABR to advise applicant for requirement. Hold issuance for zoning approval, J# and demo acknowledgement : Marcos Indalecio was notified regarding zoning hold. o: 510-812-9049 m:510-206-4069 e: Marcos@smidemolitioninc.com w: www.smidemolitioninc.com Lic#1008605
4/22/2021 2:39:25 PM	MHAMIDI	DRX210264 has been approved

**For real-time, direct access to information
via the Internet, 24 hours a day -
<https://aca.accela.com/oakland>**

000382

**Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing**

Exhibit T3



Update Results



CITY OF OAKLAND

Record Detail with Inspection Log

Record ID: [RB2003483](#)**Description: Demolish 420sf detached structure at rear of sfd ./Per DRX210264 okay to demo de attached accessory structure****APN: 012 102003000****Address: 959 42ND ST****Unit #:****Date Opened: 12/5/2020****Record Status: Permit Issued****Record Status Date: 4/22/2021****Job Value: \$0.00****Requestor: OLIVIERI JACK G****:****Business Name:****License #:**

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
2/26/2021	Angus Thynne	Field Check	Posted 30 Day Required	Date: 2/26/2021 Inspected rear accessory structure for demolition. Posted seven postings within 300 feet of property on front and back streets. -30 day waiting period is required.

For real-time, direct access to information
via the Internet, 24 hours a day -
<https://aca.accela.com/oakland>

**Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing**

Exhibit T4

From: [PermitInfo](#)
To: [Bellomo_Ami](#)
Cc: [Simmons_Tanya](#); [Jull_Thomas](#)
Subject: Re: RB2003483 demolition permit - 959 42nd St - rear dwelling, not a storage..?
Date: Thursday, March 4, 2021 11:11:03 AM
Attachments: [image002.png](#)
[image003.png](#)

Hi Ami,

No problem at all -- they need a DS-1 (unless "unsafe" by T-Low)

Technically the need one for a shed too, but I was letting that slide -- while we can't rely on the Sanborn for legality, I'm assuming a unit is legal while a shed is more easily debatable

So they need a DS-1, let me know if I can let them know

Thx...ABR

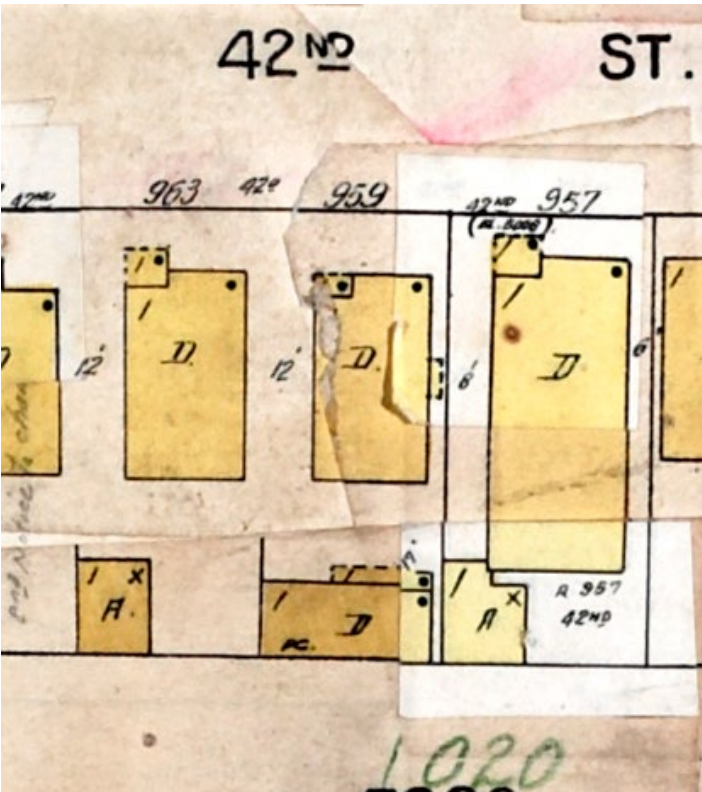
*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Bellomo, Ami <MBellomo@oaklandca.gov>
Sent: Thursday, March 4, 2021 10:10 AM
To: PermitInfo <PermitInfo@oaklandca.gov>
Cc: Simmons, Tanya <TSimmons@oaklandca.gov>; Jull, Thomas <TJull@oaklandca.gov>
Subject: RE: RB2003483 demolition permit - 959 42nd St - rear dwelling, not a storage..?

Hi Aubrey,

Thank you so much for your review, AND I'm sorry I didn't research enough and jumped in too quick.... The structure might have been misrepresented as a storage by the applicant as Mr. Munger stated below. (in yellow) The structure looks like a second dwelling unit per sanborn... So I wanted to double check if zoningapproval is still ok to demo the rear dwelling.

Would you please confirm?



Property Address 959 42ND ST, OAKLAND, 94608	Number of Units 2	Units per Floor 0
Number of Buildings 2	Number of Stories 1.0	Number of Rooms 9
Number of Bedrooms 3	Number of Bathrooms 2	Building Area 1,498 sq. ft.
Additions Area 0 sq. ft.	Miscellaneous Area 0 sq. ft.	Lot Size 3,330 sq. ft.
Rentable Space 1043	Building Effective Year 1923	Year Built 1916

Thank you.

Ami Bellomo

Process Coordinator

City of Oakland | Planning and Building Department | Bureau of Building

250 Frank H. Ogawa Plaza Suite 2314 Oakland, CA 94612 | (510) 238-6319

From: PermitInfo <PermitInfo@oaklandca.gov>

Sent: Wednesday, March 3, 2021 8:59 PM

To: Bellomo, Ami <MBellomo@oaklandca.gov>

000387

Cc: Simmons, Tanya <TSimmons@oaklandca.gov>; Jull, Thomas <TJull@oaklandca.gov>

Subject: Re: RB2003483 demolition permit

Hi Ami,

Yes, non historic & at rear so no zoning issue -- thank you

Sincerely,
Aubrey

*****Zoning review: all complete / ready for Building*****

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Bellomo, Ami <MBellomo@oaklandca.gov>

Sent: Wednesday, March 3, 2021 6:42 PM

To: PermitInfo <PermitInfo@oaklandca.gov>

Cc: Simmons, Tanya <TSimmons@oaklandca.gov>; Jull, Thomas <TJull@oaklandca.gov>

Subject: FW: RB2003483 demolition permit

Hi Aubrey

Could this be approved by you or does the applicant needs to reach out to zoning for an approval? Please advise.

RB2003483 959 42nd St – demo 420sf storage shed at rear of SFD.

Thank you.

RB2003483

Menu Reports Help

Go To Summary Record Activities (0) Activity S

Application Type: [Residential Building - Demolition](#)

Application Detail: [Detail](#)

Address: [959 42ND ST](#)

Parcel No: [012 102003000](#)

Description of Work: [Demolish 420sf storage shed at rear of sfd.](#)

File Date: [12/05/2020](#)

Application Status: [On Hold - Field Check Pending](#)

Thank you.

Ami Bellomo

Process Coordinator

City of Oakland | Planning and Building Department | Bureau of Building
250 Frank H. Ogawa Plaza Suite 2314 Oakland, CA 94612 | (510) 238-6319

000388

From: Jull, Thomas <TJull@oaklandca.gov>
Sent: Wednesday, March 3, 2021 8:35 AM
To: Simmons, Tanya <TSimmons@oaklandca.gov>
Cc: [REDACTED] Bellomo, Ami <MBellomo@oaklandca.gov>
Subject: Re: RB2003483 demolition permit

Hi Tanya,

The permit counter doesn't decide if a building can be demolished or not as Planning/Zoning does that. However, code enforcement could delay the process. I don't see that a code enforcement complaint has been filed so there would be no code action preventing it yet. If Planning/Zoning has properly approved of it and it has complied with the posting/issuance procedures then we can't hold up the process unless code enforcement gets involved.

Thomas Jull
Permit Counter
Senior Specialty Combination Inspector
City of Oakland
Planning & Building Department
510-238-6280
tjull@oaklandnet.com

From: Simmons, Tanya <TSimmons@oaklandca.gov>
Sent: Tuesday, March 2, 2021 5:29 PM
To: Jull, Thomas <TJull@oaklandca.gov>
Subject: Fwd: RB2003483 demolition permit

Get [Outlook for iOS](#)

From: Noel Munger [REDACTED]
Sent: Tuesday, March 2, 2021 5:27 PM
To: Simmons, Tanya
Subject: RB2003483 demolition permit

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Ms. Simmons,

Daniel Findley from planning recommended I reach out to you regarding some issues pertaining to a demolition permit you may be processing.

My name is Noel Munger and I am a paralegal at Centro Legal de la Raza. We provide free legal services to tenants in Alameda County.

Our office represents [REDACTED] a tenant in the front unit of 959 42nd St, in matters pertaining to the Oakland Rent Adjustment Program. The owner of 959 42nd St has applied for a demolition permit (RB2003483) to demolish the rear unit on the parcel. In this application it appears that the owner is misrepresenting the structure proposed for demolition as a storage unit, when in fact it is the second dwelling unit on the parcel.

000389

It is our concern that these misrepresentations are intended to fast-track the demolition permit and avoid review by the planning department. The outcome of this demolition would put the use of the property in conflict with the county assessor and the City's description of the property (as multi-family). Additionally, reducing the number of dwelling units on the property would strip away the rent control protections of our client in the front unit. For these reasons we want to ensure that the planning and building departments are not basing approval of the demolition on the misrepresentations that are present in the Accela record for RB2003483.

As I understand there will be a field check prior to approval of the permit. If the inspector looks inside the unit they will find it is not a storage shed, but a dwelling unit with partitions for a kitchen, bathroom, bedroom etc. Other records at your disposal such as the notes for RE1604751 will corroborate that there are two dwelling units on the property. The county assessor will also provide a multi-family description of the property. If these are insufficient I would be happy to provide more evidence that the structure proposed for demolition is in fact the second dwelling unit on the property. We request that you evaluate this information and if the permit application has been submitted with misrepresentations of the proposed project, that you deny the permit.

Because our client is an interested party in this matter I would greatly appreciate it if the planning and building department could keep us updated regarding the status of the demolition permit. It is our hope in this case that the City will ensure that housing stock is not reduced without a thorough and accurate assessment of the project and its impacts.

Thank you for your attention to this matter.

Sincerely,
Noel Munger

--



**Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing**

Exhibit T5

42ND

ST.

42ND

963

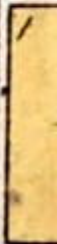
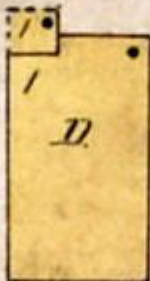
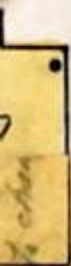
42ND

959

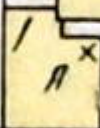
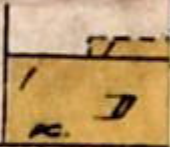
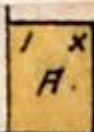
42ND

957

(M. 1000)



and notice to change



R 957
42ND

000392

1000



Sanborn Map Abbreviations

"Linking technology with tradition"®



Abbreviation	Meaning	Abbreviation	Meaning
A	Automobile (usually designates the location of a garage)	HPFS	High pressure fire service
A in B	Automobile located in basement	H'dw	Hardware
A S	Automatic sprinkler	Hack	Hackney or delivery service
Abv	Above	Hardw	Hardware
ACS	Automatic chemical sprinkler	Ho	Hotel or house (as used to designate a warehouse)
AFA	Automatic fire alarm	H tr	Heater
Agr	Agricultural	Hyd	Hydrant
Appts	Apparatus	ICRR	Illinois Central Railroad
Apts	Apartments	Imp	Implements
Asb Cl	Asbestos clad	Ins	Insurance
Att'd	Attended	Insts	Instruments
Aud't'm	Auditorium	Ir Cl	Iron clad
Auto H o	Automobile house, or garage	K of C	Knights of Columbus
B	Basement, boiler or occasionally brick	Lab	Laboratory
B & S	Boots and shoes	Lodg'g	Lodging
BPOE	Benevolent & Protective Order of Elks	Luth	Lutheran
B Sm	Blacksmith	Luth'n	Lutheran
B'd'g	Building	ME	Methodist Episcopal
B'lr.	Boiler	Mach'y	Machinery
B'st	Basement	Mak'r	Maker
Bak'y	Bakery	Man'f'y	Manufacture or factory
Balc	Balcony	Mdse	Merchandise
Bap	Baptist	Mfy	Manufacture or factory
Bbl	Barrel	Mill'y	Millinery
Bbls	Barrels	Mkg	Making
BE	Brick enclosed elevator	Mo	Motor
Bill'ds	Billiards	NS	Not sprinklered
Bl Sm	Blacksmith	OU	Open under
Blk Sm	Blacksmith	Off	Office
Bst	Basement	PO	Post office
C B	Cement brick or concrete block construction	Paint'g	Painting
C Br	Concrete brick or cement block construction	Pat. Med	Patent medicines
Cap'cy	Capacity	Plumb'g	Plumbing
Carptr	Carpenter	Print'g	Printing
CBET	Concrete enclosed elevator with traps	QH	Quadruple (fire) hydrant
Chem	Chemical	RC	Roman Catholic
Chinaw	Chinaware or porcelain	R'f	Roof
Chine	Chinese	R'm	Room
Cl	Clad	Rep	Repair
Clo	Clothing	Rep'g	Repairing
Co	Company	Repos'y	Repository
Comp	Composition construction (i.e. stucco) or compressor	Rest'r	Restaurant
Conc	Concrete	Rf	Roof
Conf'y	Confectionary (candy store)	Rm	Room
Confec'y	Confectionary (candy store)	S	Store
Constr'n	Construction	SA	Spark arrestor
Corp'n	Corporation	S Vac	Store portion of building is vacant
D	Dwelling	Sal	Saloon
DH	Double (fire) hydrant	Sky'ts	Skylights
DG	Dry goods	Sm	Smith, as in gunsmith or blacksmith
Drs	Doctor's office	Sm H o	Smokehouse
Dwg	Dwelling	Spk'rs	Sprinklers
E	Open elevator	St'ge	Storage
E Fl	Each Floor	St'y	Story
EI	Electric	Sta	Station
Elec	Electrician	Stat'y	Stationery
Eng	Engine	TH	Triple (fire) hydrant
Ent	Entertainment	Tel	Telephone
Episc'l	Episcopal	Tenem'ts	Tenements
ESC	Elevator with self-closing traps	TESC	Tile enclosed elevator with self-closing traps
ET	Elevator with traps	Tinw	Tinware
Exch	Telephone exchange	Trim'm'g	Trimming
Expr	Express (as used to designate a delivery service)	U	Upright
F	Flat (as used to designate a delivery service)	Up	Upright
FA	Fire alarm	VP	Vertical pipe
FE	Fire escape	Vac	Vacant
F Pump	Fire pump	Ven'd	Veneered
Fill'g Sta	Filling station, or gas station	Ven'rd	Veneered
Fl	Floor	W	Ware, as in warehouse or wareroom
Fr Attic	Frame constructed attic	WC	Water closet or toilet
Frat	Fraternity	WG	Wire glass skylights
Fur	Furnishings	W H o	Warehouse
Furn'g	Furnishings	WPA	Works Progress Administration
Furne	Furniture	W'ks	Works
GAR	Grand Army of the Republic	Whol	Wholesale
GT	Gasoline tank	Wkg	Working
Gal	Gallery	Woodwkg	Woodworking
Gall	Gallery		
Gall'y	Gallery		
Gen'l	General (as used to designate a general store)		
Gents	Gentlemen's		
Greas'g	Greasing		
Gro	Grocery or groceries		

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000393



Sanborn Map Legend

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TILE 1st BRICK 1st PYROBAR 1st	Fire proof construction (OR FIRE RESISTIVE CONST'N)	C.B. & BR. CONST'N 00	Mixed construction of C.B. and brick with one wall of solid brick.	MANSARD ROOF DOTS REPRESENT OPENINGS, STEMS INDICATE STORIES, COUNTING FROM LEFT TO RIGHT, LOOKING TOWARD BUILDING 	Window opening in first story.
AUOBB	Asbestos building	C.B. & BR. CONST'N (FR. FACED)	Mixed construction of C.B. and brick with one wall faced with 4" brick.		Window openings in second and third stories.
HEIGHT OF BUILDING IN FEET FROM GROUND TO ROOF LINE 10	Stone building	C.B. & BR. CONST'N	Mixed construction of C.B. and brick throughout.		Window openings in second, fourth stories.
(C.B.R.)	Concrete, lime cinder or cement brick				Windows with wired glass.
(C.B.)	Hollow concrete or cement block const'n			Windows with iron or tin clad shutters.	
(CONC.)	Concrete or reinforced concrete const'n			Window openings tenth to twenty-second stories	
(TILE)	Tile building				
NUMBER OF STORIES 4	Brick building with frame cornice	6" W. PIPE	Water pipes and size in inches.	E	Open elevator.
TWO STORIES 2B AND BSMT COM- POSITION ROOF	Brick building with stone front	6" W. PIPE (PRIVATE)	Water pipes of private supply	FE	Frame enclosed elevator.
SHINGLE ROOF (VEND)	Brick building with frame side (DIVIDED BY FRAME PARTITION)	2 D 0	House numbers shown nearest to buildings are official or actually up on buildings.	ET	Frame enclosed elevator with traps.
(VEND)	Brick veneered building	0	Old house numbers shown furthest from buildings.	ESC	Frame enclosed elevator with self closing traps.
BRICK 1st	Brick and frame building			CBET	Concrete block enclosed elevator with traps.
FRAME, BRICK LINED	Frame building, brick lined	FP-1962 (conc.) A-1-b	A fire-resistive building built in 1962 with concrete walls and reinforced concrete frame, floors and roof.	TESC	Tile enclosed elevator with self closing traps.
F = FLAT S = STORE	Frame building, metal clad	FPX-1962 (METAL PANELS) E-2-b NONCOMB. CEIL'S	A fire-resistive building built in 1962 with metal panel walls, indirectly protected steel frame, concrete floors and roof on metal lath, noncombustible ceilings.	BE	Brick enclosed elevator with wired glass door.
D = DWELLING	Frame building				
A in B = AUTO. IN BSMT	Iron building	NC-1962 (C.B.) H-2-d	A noncombustible building built in 1962 with concrete block walls; unprotected steel columns and beams; concrete floors on metal lath and steel deck roof.	5	Block number.
LOFT	Tenant building occupied by various manufacturing or occupancies			Iron chimney IN. CH. I	Iron chimney (WITH SPARK ARRESTORS)
(ASB. CL.)	Frame building covered with asbestos			Brck. chmy.	Brick chimney.
NON COMBUSTIBLE ROOF COVERING OF METAL SLATE, TILE OR ASBESTOS SHINGLES O	Brick building with brick or metal cornice			Ground elevation U.P.A.	Ground elevation
SKYLIGHT LIGHTING TOP STORY ONLY	Fire wall 6 inches above roof			Vertical steam boiler G.T.	Vertical steam boiler
SKYLIGHT LIGHTING THREE STORIES	Fire wall 12 inches above roof			Gasoline tank G.O.	Gasoline tank
SKYLIGHT LIGHTING THREE STORIES	Fire wall 18 inches above roof			Open under O.U.	Open under
W.G. WIRED GLASS SKYLIGHT	Fire wall 36 inches above roof			Automatic sprinklers AS	Automatic sprinklers
FIRE WALL 48 INCHES ABV. RF.	Fire wall 48 inches above roof			Automatic chemical sprinklers ACS	Automatic chemical sprinklers
	Figures 8, 12, 16 indicate thickness of wall in inches			Automatic sprinklers in part of building only. AS 1" ONLY	Automatic sprinklers in part of building only. (NOTE UNDER SYMBOL INDICATES PROTECTED PORTION OF BUILDING)
	Wall without opening and size in inches			Not sprinklered. NS	Not sprinklered.
	Wall with openings on floors as designated			Outside vertical pipe on fire escape	Outside vertical pipe on fire escape
	Opening with single iron or tin clad door			FA	Fire alarm box.
	Opening with double iron or tin clad doors			Single hydrant.	Single hydrant.
	Opening with standard fire doors			D.H.	Double hydrant.
	Openings with wired glass doors			T.H.	Triple hydrant.
W.T. WATER TANK				Q.H.	Quadruple hydrant of the "High Pressure Fire Service".
BRICK 1st	Drive or passage way			H.P.F.S.	High Pressure Fire Service.
				FA	Fire alarm box of the "High Pressure Fire Service".
Stable				H.P.F.S.	High Pressure Fire Service.
A.	Auto. (House or private garage)			20" W. PIPE (H.P.F.S.)	Water pipes of the "High Pressure Fire Service"
(C.B.)	Solid brick with interior walls of C.B. or C.B. and brick mixed			+ + 12" + +	Water pipes and hydrants of the "High Pressure Fire Service" as shown on key map.
(C.B. & BR.)					

CODING OF STRUCTURAL UNITS FOR FIREPROOF AND NON-COMBUSTIBLE BUILDINGS

FRAMING		FLOORS		ROOF	
CODE	STRUCTURAL UNIT	CODE	STRUCTURAL UNIT	CODE	STRUCTURAL UNIT
A.	Reinforced Concrete Frame	1.	Reinforced Concrete	a.	Reinforced Concrete
B.	Reinforced Concrete Joists, Columns, Beams, Trusses, Arches, Masonry Piers.		Reinforced Concrete with Masonry Units.		Reinforced Concrete with Masonry Units.
C.	Protected Steel Frame.		Pre-cast Concrete or Gypsum Slabs or Planks.		Reinforced Gypsum Concrete, Pre-cast Concrete or Gypsum Slabs or Planks.
D.	Individually Protected Steel Joists, Columns, Beams, Trusses, Arches.	2.	Concrete on Metal Lath, Incombustible Form Boards, Paper-backed Wire Fabric, Steel Deck, and Cellular, Ribbed or Corrugated Steel Units.	b.	Concrete or Gypsum on Metal Lath, Incombustible Form Boards, Paper-backed Wire Fabric, Steel Deck, and Cellular, Ribbed or Corrugated Steel Units.
E.	Indirectly Protected Steel Frame.			c.	Incombustible Composition Boards with or without Insulation.
F.	Indirectly Protected Steel Joists, Columns, Beams, Trusses, Arches.				Masonry or Metal Tiles.
G.	Unprotected Steel Frame.			d.	Steel Deck, Corrugated Metal or Asbestos Protected Metal with or without Insulation.
H.	Unprotected Steel Joists, Columns, Beams, Trusses, Arches.				
D.	Masonry Bearing Walls.				

R	RESIDENTIAL	M	MANUFACTURING
RT	RESIDENTIAL-TRANSIENT	P	PUBLIC OR INSTITUTIONAL
C	COMMERCIAL	U	UTILITY
W	WAREHOUSE	T	TRANSPORTATION

NUMERICAL PREFIX INDICATES THE NUMBER OF ESTABLISHMENTS IN EACH CATEGORY

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000394

**Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing**

Exhibit T6

[REDACTED]
[REDACTED]

March 13, 2021

City of Oakland Planning and Building Department
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Reference: Permit No. RB2003483 – Demolition of Storage Unit at 959 42nd Street

To whom it may concern,

I am representing Jack Olivieri, owner of 959 42nd Street in Oakland, CA. It has been brought to my attention that Permit Number RB2003483 for the demolition of a storage unit at 959 42nd Street in Oakland is on hold due to the City of Oakland's classification of the structure as a "dwelling" as opposed to a nonresidential "storage unit" as characterized in the permit application. On behalf of Jack Olivieri, I respectfully request that the City reconsider its classification of the structure as a "dwelling" and that the demolition permit be issued under the provisions for demolition of a nonresidential structure in accordance with Chapter 15.36 of the Oakland Municipal Code based upon the reasoning set forth below.

Based upon the City of Oakland's Municipal Code and the Zoning Regulations, the structure to be demolished does not meet the definition of either a "dwelling unit" or a "residential structure" for the following reasons:

Chapter 15.36.010 (Definitions) of Title 15 of the Oakland Municipal Code defines "residential structures" as follows:

*"Residential structures" means and includes apartment buildings, single-family dwellings, cooperatives, condominiums, and hotels and motels which contain **dwelling units**, as said latter term is defined by the zoning regulations. This term shall not be applied to structures where no more than one dwelling unit exists in a building primarily devoted to a nonresidential use.*

Chapter 17.09.040 (Definitions) of the City of Oakland's Zoning Regulations, promulgated in Chapters 17.07 through 17.158 of the Oakland Planning Code, defines a "dwelling unit" as follows:

*"Dwelling unit" means a room or suite of rooms **including only one kitchen**, except as otherwise provided in Section 17.102.270, and designed or **occupied as separate living quarters** for one person or family; or, where the facility occupied is a One-Family Dwelling, such family and not more than three (3) boarders, roomers, or lodgers where access to all rooms occupied by such boarders, roomers, or lodgers is had through the main entrance of the dwelling unit.*

Based upon the above definition, a structure must have a "kitchen" in order to meet the definition of a "residential unit" or a "dwelling unit."

Chapter 17.09.040 (Definitions) of the Zoning Regulations defines a “kitchen” as follows:

"Kitchen" means any room or portion thereof containing facilities designed or used for the preparation of food, including but not limited to stoves, ranges, or hotplates.

Please note that the unit to be demolished does not have a “kitchen,” as defined by the Zoning Regulations, in that it has no stove, range or hotplates. Furthermore, there is no functioning gas or electrical service to the structure which would permit the use of a stove, range, hotplate or any other appliance that could be used for the preparation of food. Additionally, there are no other facilities or utilities for the preparation of food in that there is no sink, functioning water service or countertop that could be used for the preparation of food. Therefore, the unit to be demolished does not meet the definition of a “dwelling unit” as defined by Zoning Regulations.

As stated above, the structure has no functioning water, electric and gas services. These services have been non-functioning prior to the current owner obtaining the property 15 years ago. The water service has been shut off as the service line is extensively corroded and has underground leaks. The electrical service to the building has been disconnected for safety reasons due to the fact that the electrical wiring within the building is considered to be unsafe and a potential fire hazard as there are no fuses or breakers in the electrical system. The gas service to the structure was removed by PG&E for safety reasons due to leaks from corrosion in the gas line that runs between the street and the structure. Due to the absence of water, electric and gas services to the structure, there are also no provisions for heating of the structure or the heating of water.

The building has not been occupied as separate living quarters at any time during the 15 years the property has been under the possession of the current owner. The structure has been exclusively devoted to nonresidential use by the current owner as it is structurally deficient, not habitable or tenantable, and it is economically infeasible for the owner, a senior citizen of age 85, to rehabilitate or replace it. The structure is in deteriorating condition which necessitates its timely removal prior to it becoming a hazard and a liability for the owner.

Due to the above issues with the building, the owner of the property has used the structure exclusively for storage. It is for this reason and the reasons set forth above that the structure was accurately identified as a nonresidential “storage unit” in the permit application as opposed to a “residential structure.”

Based upon the above, the property owner requests that the demolition permit be issued under the provisions for demolition of a nonresidential unit in accordance with Chapter 15.36 of the Oakland Municipal Code.

Please note also that the square footage of the structure was incorrectly stated in the permit application as 420 square feet. This represents the outside square footage as opposed to the floor square footage. The floor square footage is 385 square feet. Please correct this in the permit information.

Respectfully,

Thomas Fresquez

Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing

Exhibit T7

From: [PermitInfo](#)
To: [Hamidi, Masoud](#)
Subject: ready to issue. #6, 4.22.21 Fw: Demolition Permit No. RB2003483 - Ready to issue
Date: Thursday, April 22, 2021 10:17:21 AM
Attachments: [Permit Addendum and J Number - 959 42nd Street.pdf](#)
[Outlook-4h01jb5g.png](#)
[Outlook-oh04uoej.png](#)
[Outlook-fxbwv3sy.png](#)
[Outlook-0k1tn0s2.png](#)
[Outlook-qtisunwy.png](#)

#6, 4.22.21 - ready to issue

please verify owner information, this is ready to issue. no need to send job card for demolition permit.


Please and thank you!
-Adora

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Bellomo, Ami <MBellomo@oaklandca.gov>
Sent: Tuesday, April 20, 2021 5:24 PM
To: PermitInfo <PermitInfo@oaklandca.gov>
Cc: Silva-Rodriguez, Adoracion <ASilva-Rodriguez@oaklandca.gov>
Subject: FW: Demolition Permit No. RB2003483 - Ready to issue

Deb,
This can go to ready to issue folder.
J# is added to the AIS.

Thank you.

Ami Bellomo
Process Coordinator
City of Oakland | Planning and Building Department | Bureau of Building
250 Frank H. Ogawa Plaza Suite 2314 Oakland, CA 94612 | (510) 238-6319 

From: PermitInfo <PermitInfo@oaklandca.gov>
Sent: Monday, April 19, 2021 4:58 PM
To: Bellomo, Ami <MBellomo@oaklandca.gov>
Subject: FW: Demolition Permit No. RB2003483 - DRX21-0264

Hi Ami.

It looks as if they have received Planning/Zoning approval and Thomas notes that the attached has the J number.

Thank you for advising what else is necessary.

- Deb

From: Thomas Fresquez <[REDACTED]>
Sent: Monday, April 19, 2021 3:21 PM
To: PermitInfo <PermitInfo@oaklandca.gov>
Subject: Fw: Demolition Permit No. RB2003483 - DRX21-0264

Hello,

Please reference my previous message below in which I have provided the permit addendum and J number (attached for reference). Can you please advise on the status of the demolition permit?

Also, per my previous message, the description of the work entered under RB2003483 differs from the information entered into DRX210264. Prior to issuing the permit, please revise the information under RB2003483 to read as follows to match the information in DRX210264.

Demolish 385 SF unsafe accessory structure located at the rear portion of an existing single family dwelling parcel.

Regards,

Thom Fresquez

On Saturday, April 3, 2021, 09:44:26 AM PDT, Thomas Fresquez <[REDACTED]> wrote:

Hello,

I have attached the permit addendum and the J number.

With regard to the information in the City's permit system, the description of the work entered under RB2003483 differs from the information entered into DRX210264. Prior to issuing the permit, please revise the information under RB2003483 to read as follows to match the information in DRX210264:

Demolish 385 SF unsafe accessory structure located at the rear portion of an existing single family dwelling parcel.

Regards,


Thom

On Thursday, April 1, 2021, 04:10:09 PM PDT, PermitInfo <permitinfo@oaklandca.gov> wrote:

Hello.

The Process Coordinator for RB2003483 has noted that this permit is still awaiting a J# and Owner Addendum. (I have attached the Owner Addendum)

I have asked the Planner regarding the DRX – Jason has stated: **There is no set of plan in DRX21-0264 file. I just have pictures and basic application in this file. I stamped the pictures to demolish rear accessory structure in the back yard. I uploaded in the system under RB2003483.**

You can review the see the status of the DRX on the Online system: <https://aca-prod.accela.com/OAKLAND/Default.aspx> Under Planning, put in DRX210264 and the status and an overview should come up. If you need a receipt the Cashier can probably supply a receipt 510-238-4774. 

Thank you.

Deb French, Public Service Representative

PermitInfo

City Of Oakland | Planning & Building Department

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Physical Counters are Currently Closed to the Public

From: Thomas Fresquez [REDACTED] >
Sent: Wednesday, March 31, 2021 10:31 AM
To: PermitInfo <PermitInfo@oaklandca.gov>
Subject: Fw: Demolition Permit No. RB2003483 - DRX21-0264

Hello,

I have made payment for Design Review Exemption DRX21-0264. Jason Madani has advised me in his message below that I need to follow-up with PermitInfo to complete the demolition permit. Please let me know what further action I need to take for the demolition permit to be issued.

Also, can you provide me with a copy of the Design Review Exemption for my records?

Thank you

Thom Fresquez

----- Forwarded Message -----

From: Madani, Jason <jmadani@oaklandca.gov>
To: 'Thomas Fresquez' [REDACTED] >
Sent: Tuesday, March 30, 2021, 10:02:51 AM PDT
Subject: RE: Demolition Permit No. RB2003483 - Justification for Demolition as a Nonresidential Structure

DRX21-0264

Hi Thomas, I am processing DRX permit to demolish unsafe accessory structure located behind main dwelling unit. Please make payment to our cashier by phone 510-238-4774. Your next step to follow up with Permit info to complete your demo permit. Thanks. Jason
You do not need to attend zoom meeting this afternoon.

Invoice Detail

Permit ID #: DRX210264
Invoice #: 4205219
Invoice Date: 03/30/2021 09:56:12

Period	Fee Item	Qty	Fee
FINAL	Design Review Exemption	1	\$256.00
FINAL	Recrd Mangmnt & Tech Enhancement Fee	1	\$37.76
Total Fee:			\$293.76

From: Thomas Fresquez <[REDACTED]>
Sent: Sunday, March 28, 2021 8:35 PM
To: PermitInfo <PermitInfo@oaklandca.gov>
Cc: Bellomo, Ami <MBellomo@oaklandca.gov>
Subject: Re: Demolition Permit No. RB2003483 - Justification for Demolition as a Nonresidential Structure

Aubrey,

I greatly appreciate your patience and your efforts to help. I don't want to take up more of your time, so I have prepared the attached Basic Application for Development Review. I trust this will be sufficient to move the demolition permit forward.

Since most of the submittal requirements in the application do not apply to the work, I maintain that a costly design review seems unnecessary. Therefore, prior to you processing the application, I will make one final plea for you to grant a Design Review Exemption based upon the fact that the structure is unsafe, in addition to it not be a dwelling unit. I am providing the attached photos which I believe would enable the City office to declare the structure unsafe on the grounds that the structure was constructed in an unsafe manner as there are severe wiring hazards as well as a lack of a suitable foundation, in addition to other hazards.

If you do not agree with issuing a Design Review Exemption, please process the attached application and provide the invoice.

Thank you again for your time and your efforts to help.

Thom Fresquez

On Friday, March 26, 2021, 03:44:59 PM PDT, Thomas Fresquez <[REDACTED]> wrote:

Aubrey,

As I indicated in my previous messages, the unit was utilized as a dwelling by the previous owner over 15 years ago. Fixtures were removed by the previous owner and the structure was converted to be utilized solely as a storage unit. There are also no utilities serving the structure and it has no provisions for habitability. Per my previous letter provided in my email dated March 13, the structure does not meet the definition of a "residential structure" or "dwelling unit" as defined by the City of Oakland's Municipal Code and the Zoning Regulations.

I realize we may not agree on the interpretation of the City of Oakland's Municipal Code and the Zoning Regulations as it pertains to whether the unit is considered a dwelling unit or non-residential structure. However, considering that it should be evident that the removal of the structure will have no affect on anyone, and its removal will be an overall benefit to the neighbors and the City, I see no reason to burden the owner with significant increased costs, not to mention use of already stretched City resources, for a formal process to come to the same conclusion. I believe there is sufficient flexibility in the interpretation of the City's regulations in this case to avoid this. Therefore, I kindly ask that the demolition permit be issued.

Regards,

Thom Fresquez

On Friday, March 26, 2021, 02:43:45 PM PDT, PermitInfo <permitinfo@oaklandca.gov> wrote:

Thanks Thom -- looks like a dwelling unit with fixtures removed -- please advise

Sincerely, Aubrey

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Thomas Fresquez [REDACTED]
Sent: Friday, March 26, 2021 11:35 AM
To: PermitInfo <PermitInfo@oaklandca.gov>
Subject: Re: Demolition Permit No. RB2003483 - Justification for Demolition as a Nonresidential Structure
Aubrey,

Thank you so much!

I have attached the photos I have. Let me know if these are sufficient or if you need to visit the site.

Regards,

Thom Fresquez

On Friday, March 26, 2021, 09:13:19 AM PDT, PermitInfo <permitinfo@oaklandca.gov> wrote:

Thomas,

Sure I can try to help -- did you want to provide photographs? or allow me to visit the site? I can do so today -- let me know

I am willing to exempt it from design review if we can determine it is not and was not a dwelling unit and is only an accessory structure such as a shed -- to start that off, can you help me by providing evidence demonstrating the building is an accessory structure such as a shed, such as photographs of the interior and exterior?

Sincerely,
Aubrey

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Thomas Fresquez <[REDACTED]>
Sent: Friday, March 26, 2021 8:50 AM
To: PermitInfo <PermitInfo@oaklandca.gov>
Cc: Marcos Indalecio <[REDACTED]>; Bellomo, Ami <MBellomo@oaklandca.gov>
Subject: Re: Demolition Permit No. RB2003483 - Justification for Demolition as a Nonresidential Structure
Aubrey,

Thank you for your prompt response and your effort to help. You seem very kind, and I really don't want to take up more of your time. However, the owner is asking for your help to avoid the excessive cost of a design review, which appears unnecessary in this situation and which he is concerned may lead to further additional costs as it is unclear what the potential outcomes of a design review may be.

The owner is an elderly man of age 85 years. The owner is required by the insurance company to pay insurance and property tax on the structure, even though it has no value to the owner. The owner desires to reduce his cost of ownership and improve his property value by demolishing the delapidated structure. The structure is estimated to be over 80 years old. It does not have a suitable foundation as it rests upon wood beams placed upon earth at some locations and a thin mortar bed at other locations. It is in poor repair, structurally deficient, economically infeasible to rehabilitate, and it cannot be brought up to code requirements for habitability. It is not visible from the street so its removal would have no visual impact on the public whatsoever. It is unsightly and serves no benefit to the owner, the neighbors or the general public. To my knowledge there has been no public opposition to the demolition of the structure during the 30 day notification period which expired today. For these reasons, aside from upholding a strict interpretation of the Planning Code, I do not see the necessity or benefit of a design review which would be costly to the owner in addition to the hefty permit fees he has already paid for the demolition of such

an incidental structure.

In response to your questions regarding the status of the structure as a dwelling unit, the structure was utilized as a dwelling for an unknown period of time under the previous owner. When the current owner took possession of the property approximately 15 years ago, the structure was uninhabitable and it has not been occupied at any time under the possession current owner. As stated in the letter previously provided, under the current owner, the structure does not currently meet the definition of a residential structure. I certify under that the information provided in the letter is truthful and accurate. I showed the City inspector, Agnus Thynne, the inside of the structure, and he can verify for you that there is no kitchen or facilities for the preparation of food, nor any sanitary facilities, so it does not meet the City's definition of a residential structure or dwelling unit.

I read the Planning Code to be applicable to how a structure is currently defined. I do not see where it can be interpreted from the Planning Code that if a unit was a dwelling unit at some point in the distant past (over 15 years ago in this case) that it must be considered a dwelling unit in perpetuity, even if it does not currently meet the definition of a residential structure or dwelling unit.

I again respectfully request that the demolition permit be issued without imposing further financial burden upon the owner. Otherwise, before the owner incurs any further costs associated with the demolition of the structure, **can you please tell me why a costly design review is appropriate or necessary in this situation, what factors the design review evaluates, and the potential outcomes of a design review?** If there are potential additional costs resulting from a design review, the owner's least costly option will be to request a refund of the permit fee and leave the structure in place, which will be of no benefit to anyone.

Thank you again for your time.

Regards,

Thom Fresquez

On Wednesday, March 24, 2021, 09:17:21 AM PDT, PermitInfo <permitinfo@oaklandca.gov> wrote:

Thanks Thomas -- my read of the code indicates that in order for the demo to be exempt from design review it must be declared unsafe or a public nuisance by the building office or city council and I don't know that to be the case -- otherwise demo of a non historic structure requires a small project design review

****Having said that, I am willing to exempt it from design review if we can determine it is not and was not a dwelling unit and is only an accessory structure such as a shed -- to start that off, can you help me by providing evidence demonstrating the building is an accessory structure such as a shed, such as photographs of the interior and exterior? there is some unverified information to the contrary (ie Sanborn map; county assessor data; representative's**

testimonial) however I will keep an open mind -- please advise -- thank you

Sincerely,
Aubrey

17.136.025 Exemptions from design review.

B. Definition. The following types of work are exempt from design review, pursuant to all provisions in Section 17.136.025(A):

1. Additions or Alterations.

c. After notice to the Director of City Planning, **demolition** or removal of either:

i) **Structures declared to be unsafe by the Building Official or the City Council.**

"Unsafe structures" means structures found by the Building Official or the City Council, to require immediate issuance of a demolition permit to protect the public health and safety; or

ii) **Structures declared to be a public nuisance by the Building Official or City Council** that are not Designated Historic Properties or Potentially Designated Historic Properties.

17.136.030 Small project design review.

B. Definition of "Small Project". Small Projects are limited to one or more of the following types of work:

1. Additions or Alterations.

b. Except as otherwise specified in Sections 17.136.025, 17.136.038, 17.136.040, and 17.136.075, **demolition** or removal of structures **not involving a Designated Historic Property or Potential Designated Historic Property**, on a site where the zoning regulations require design review to alter the exterior appearance of the applicable building facility, regardless of whether the owner intends to create a surface parking lot or a vacant lot pursuant to Section 15.36.080;

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Thomas Fresquez [redacted] >
Sent: Tuesday, March 23, 2021 2:37 PM
To: PermitInfo <PermitInfo@oaklandca.gov>
Cc: Marcos Indalecio [redacted]; Bellomo, Ami <MBellomo@oaklandca.gov>
Subject: Re: Demolition Permit No. RB2003483 - Justification for Demolition as a Nonresidential Structure
Aubrey,

Thank you for your response. Upon reading the Oakland Planning Code, I do not believe the work of demolishing the small non-historic storage structure falls within the scope of a Small Project based upon the following:

Article C.1 of Chapter 17.101D.060 of the Oakland Planning Code defines "Small Projects" as follows:

Definition of Small Projects. Small Projects are **limited to** one or more of the following types of work:

- a. New or modified signs, excluding advertising signs; signs extending above the roofline; and multi-tenant freestanding signs;
- b. New or modified awnings;
- c. Color changes to buildings, signs, awnings or other facilities;
- d. Changes to storefronts or ground floor facades limited to replacement or construction of doors, windows; bulkheads and nonstructural wall infill; or installation or replacement of security grilles or gates; provided, however, they do not involve properties considered to be Historic Resources as defined by CEQA Guidelines section 15064.5 (14 CFR section 15064.5) and the City's Historic Preservation Element Policy 3.8;

The proposed work does not fall within any of the above criteria.

Furthermore, per the demolition layout provided with the permit application, the structure to be demolished is located approximately 75 feet from the street behind another building, and is not visible from the street or any public areas. This can be easily verified on Google Earth. Therefore, I believe that the proposed work is exempt from Design Review in accordance with Article B.1 of Chapter 17.101D.060 of the Oakland Planning Code which states:

B. Exemptions from Design Review. The following changes to existing nonresidential buildings are exempt from design review:

1. Any alteration or addition of existing floor area or footprint area determined by the Director of City Planning to be not visible from the street or from other public areas. An alteration or addition will normally be considered "not visible from the street or from other public areas" if it does not affect any street face or public face of a building or is **located more than forty (40) feet from any street line, public path, park or other public area;**

Based upon the above, I respectfully request that you reconsider the requirement to submit the Basic Application for Development Review and the additional fee of \$959.31. Since I have paid the required permit fee and I believe I have satisfied all City requirements to lawfully demolish the structure, I request that the demolition permit be issued on March 25 following the expiration of the 30 day waiting period from the date of February 26, 2020, when the required notices were posted by the City.

I can be contacted at [REDACTED]  if you have any questions.

Regards,

Thomas Fresquez

On Tuesday, March 23, 2021, 12:50:07 PM PDT, PermitInfo <permitinfo@oaklandca.gov> wrote:

Thomas,

The planning and building department is not calling the structure a dwelling unit (even though it may be) -- the Oakland planning code requires a small project design review permit to demolish a non historic structure -- does not matter if it is a dwelling unit or an accessory structure -- in order to apply please submit the following application and a fee of \$959.31 will be invoiced -- the demo permit application review can then proceed at the building permit counter

<https://www.oaklandca.gov/documents/basic-application-form>

Aubrey Rose AICP
Planner III

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Thomas Fresquez [REDACTED] >
Sent: Saturday, March 13, 2021 11:57 AM
To: PermitInfo <PermitInfo@oaklandca.gov>
Cc: Marcos Indalecio [REDACTED] >
Subject: Demolition Permit No. RB2003483 - Justification for Demolition as a Nonresidential Structure

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hello,

I am transmitting the attached letter regarding Permit Number RB2003483. This letter provides justification for issuing the demolition permit under the provisions for demolition of a nonresidential unit in accordance with Chapter 15.36 of the Oakland Municipal Code

Based upon the information in the attached letter, I am requesting that the demolition permit be issued promptly upon completion of the 30 day waiting period commencing on February 26 upon placement of the required postings by the City.

I can be contacted at [REDACTED]  if you have any questions.

Regards,

Thomas Fresquez

Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing

Exhibit T8



Update Results



CITY OF OAKLAND

Record Detail with Comments

Record ID: [DRX210264](#)

Description: DRX to demolish a 365 sf accessory structure in poor condition located at the rear portion of an existing single family dwelling parcel.

APN: 012 102003000

Address: 959 42ND ST

Unit #:

Date Opened: 3/30/2021

Record Status: Approved

Record Status Date: 3/30/2021

Job Value: \$0.00

Requestor:

: Thomas Fresquez

Business Name:

License #:

Comment Date

Commenter

Comment

For real-time, direct access to information
via the Internet, 24 hours a day -
<https://aca.accela.com/oakland>

**Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing**

Exhibit T9



Twisted and taped wire junction made behind door frame

APPROVED
By Jason Madani at 3:32 pm, Apr 01, 2021

3' section of wire spliced at both ends behind door frame

Twisted and taped wire splice made behind door frame

Electrical Safety Issues



Twisted and taped wire splice
made behind door frame.
No junction box

Electrical Safety Issues

Page 2 of 6

000413



APPROVED

By Jason Madani at 3:33 pm, Apr 01, 2021

Twisted and taped wire splice made inside wall without junction box

Electrical Safety Issues

Page 3 of 6

000414

40 of 66

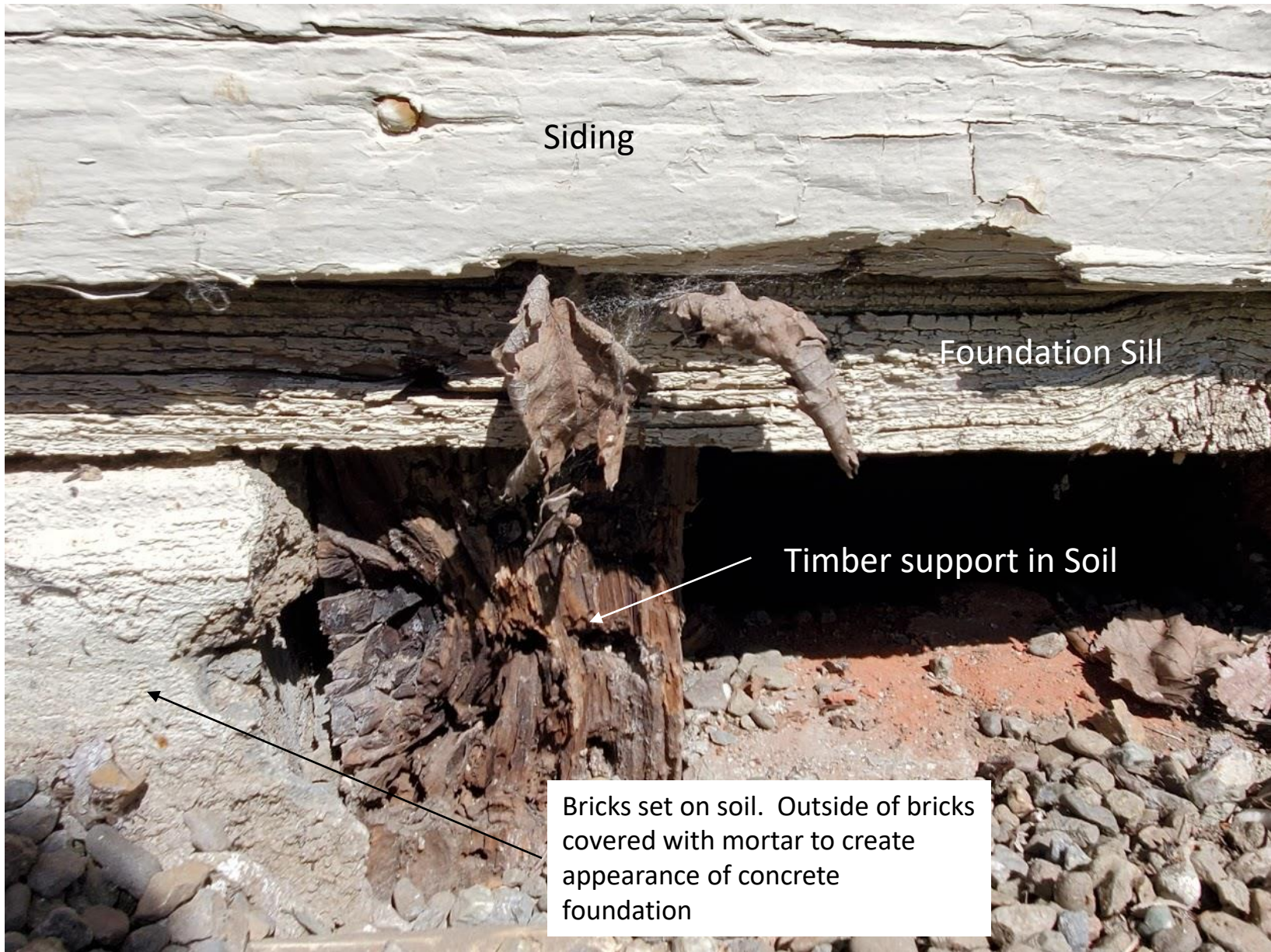


Electrical Safety Issues



Nail driven through wire

Electrical Safety Issues



APPROVED

By Jason Madani at 3:33 pm, Apr 01, 2021

Page 6 of 6

Foundation Issues

000417

48 of 66



Lot from Rear Looking to Side Towards 957 42nd St.

**Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing**

Exhibit T10

From: [Hamidi, Masoud](#)
To: [Bellomo, Ami](#)
Subject: Fwd: 959 42nd St- Permit
Date: Thursday, April 22, 2021 6:25:14 PM

Hi Ami

Please review the response from the client for 959 42nd st and let me know how you want to proceed. Thank you

Get [Outlook for iOS](#)

From: Thomas Fresquez [REDACTED]
Sent: Thursday, April 22, 2021 4:47:39 PM
To: Hamidi, Masoud <MHamidi@oaklandca.gov>
Subject: Re: 959 42nd St- Permit

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hamid,

The permit issued describes the structure to be demolished as a residential structure. However, the permit application was submitted as demolition of a non-residential accessory structure, and the Design Review Exemption (Ref. DRX210264) describes the structure as an **accessory structure** accordingly. It is important that the structure not be described as a residential structure on the permit (which it is not) due to potential rent control implications that could arise retroactively.

Therefore, per my previous request, can you please re-issue the permit as **demolition of an accessory structure** consistent with DRX210264?

Thank you.

Thom Fresquez

On Thursday, April 22, 2021, 02:56:33 PM PDT, Hamidi, Masoud <mhamidi@oaklandca.gov> wrote:

Hello Thomas

I hope you are well. I have attached the permit for the property on 959 42nd St. If you have any other questions please feel free to reach out to me. Thank you and be well.

Best regards,

000420 ^{46 of 66}

Masoud Hamidi

Permit Counter

250 Frank H. Ogawa Plz 2nd Flr.

Oakland Ca 94612

City of Oakland

Planning & Building Department

Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing

Exhibit T11

Permits for which no major inspection has been approved within 180 days shall expire by limitation. No refund more than 180 days after expiration or final.



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA ▪ 2ND FLOOR ▪ OAKLAND, CA 94612

Planning and Building Department
www.oaklandnet.com

PH: 510-238-3891
FAX: 510-238-2263
TDD: 510-238-3254

959 42ND ST

959 42ND ST

Permit No: RB2003483 Residential Building - Demolition Permit Issued: 4/22/2021
Job Site: 959 42ND ST Schedule Inspection by calling: 510-238-3444
Parcel No: 012 102003000
District:
Project Description: Demolish 420sf 2nd detached structure at rear of sfd .
Related Permits: DRX210264

	<u>Name</u>	<u>Applicant</u>	<u>Address</u>	<u>Phone</u>	<u>License #</u>
Owner-Builder:	OLIVIERI JACK G TR	X	[REDACTED]	[REDACTED]	
Owner:	OLIVIERI JACK G TR		[REDACTED]		

PERMIT DETAILS: Residential/Building/Demolition

General Info

J Number: 119098 Detached Garage <400 sq ft: No Report - Soil/Geotech:

Building Information

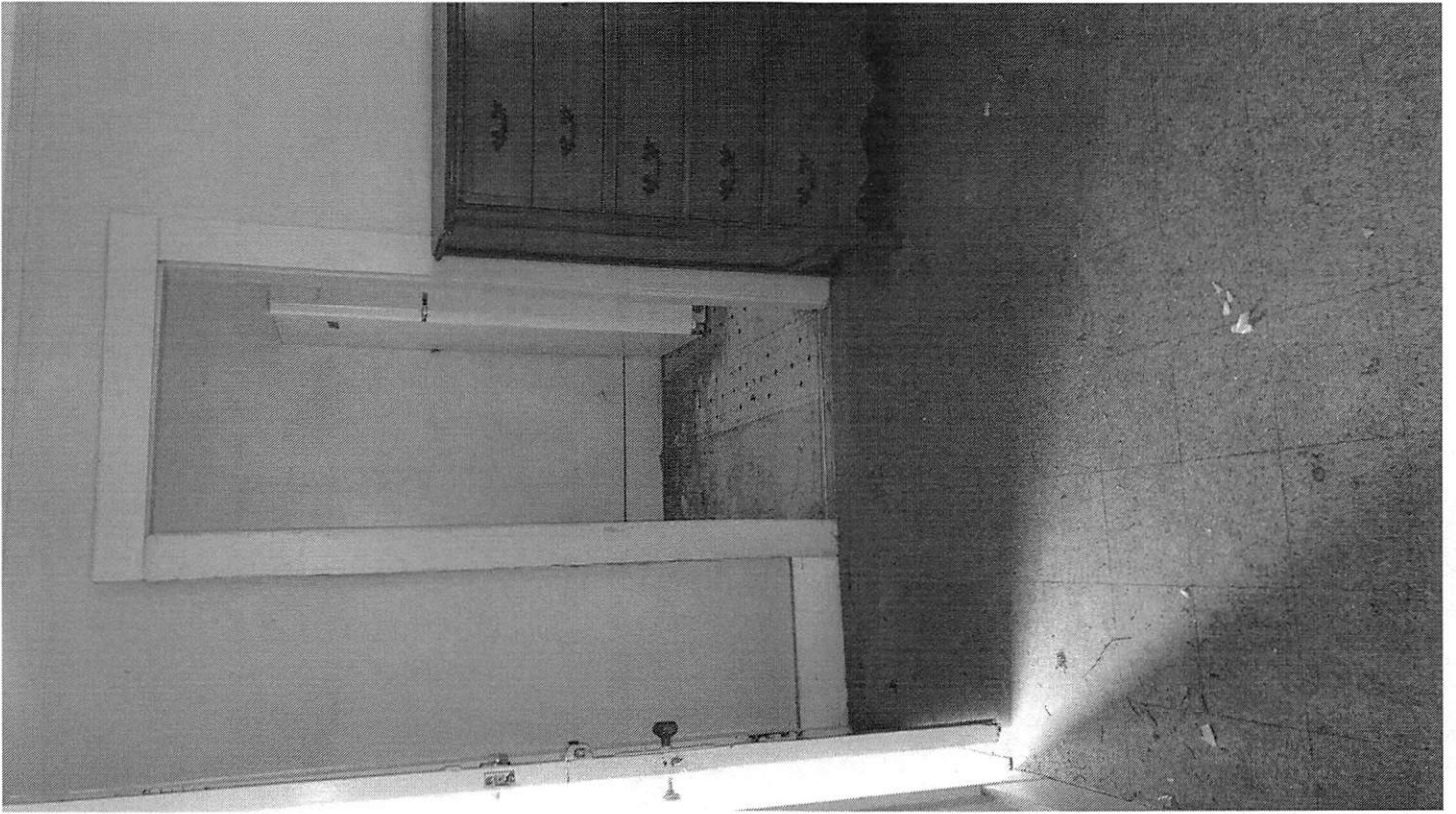
Demo Type: Entire Demo	# Of Stories: 1	Permitted Building Use: Miscellaneous Structure
Construction Type: VB - Combustible Construction; No Fire Rating	# Of Dwelling Unit: 0	Permitted Occupancy Group: U Utility / Miscellaneous Structure
	# of Buildings Before Demo: 1	Total Floor Area (sq ft): 420

TOTAL FEES TO BE PAID: \$0.00

Plans Checked By _____ Date _____ Permit Issued By _____ Date _____
Finalized By _____ Date _____

**Miriam Bolanos
Supplemental Tenant Evidence Submission for Remand Hearing**

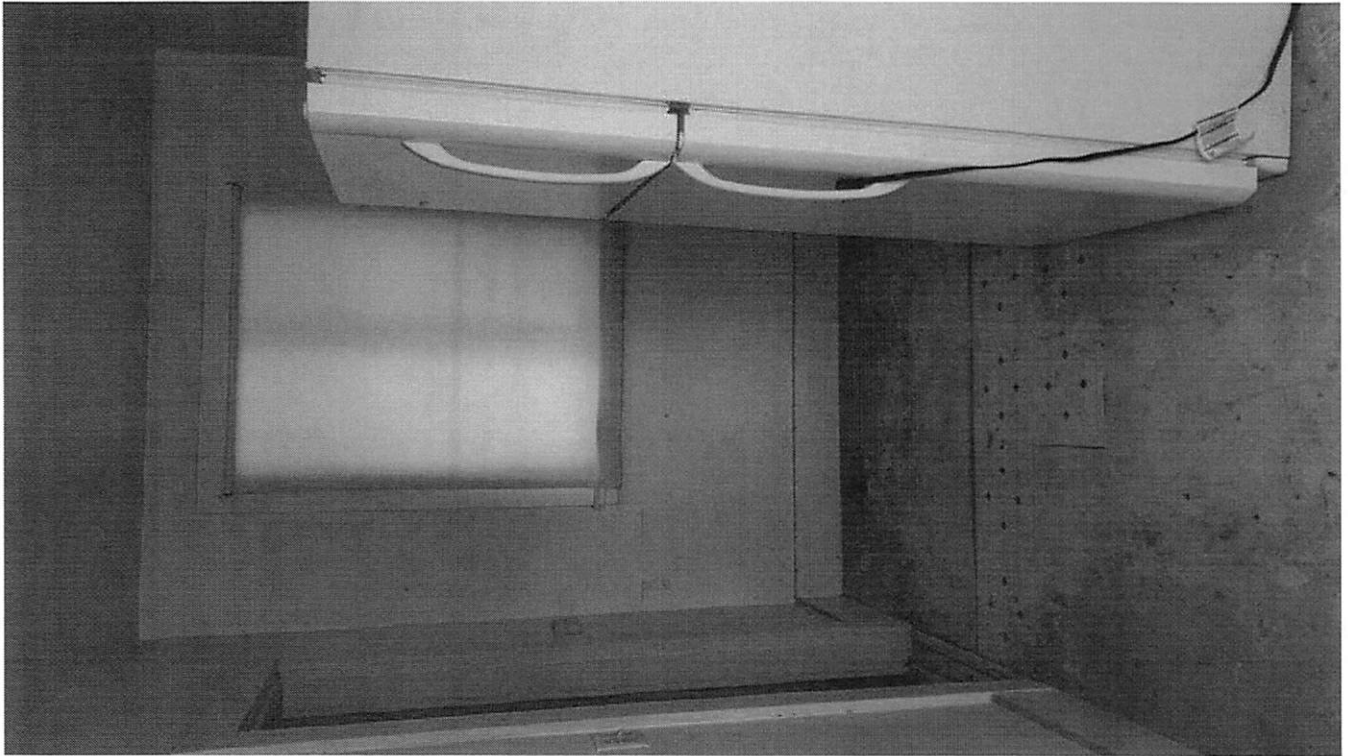
Exhibit T12

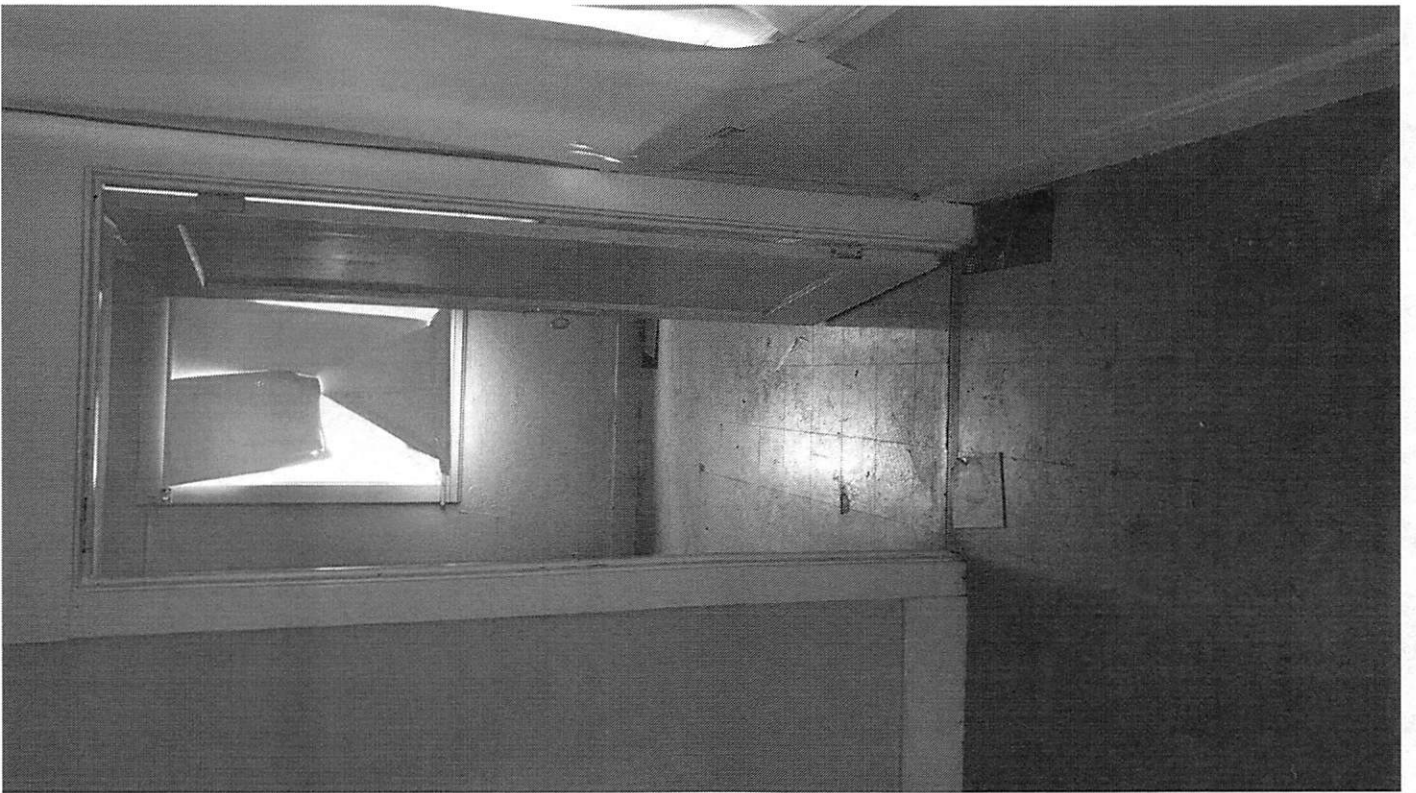


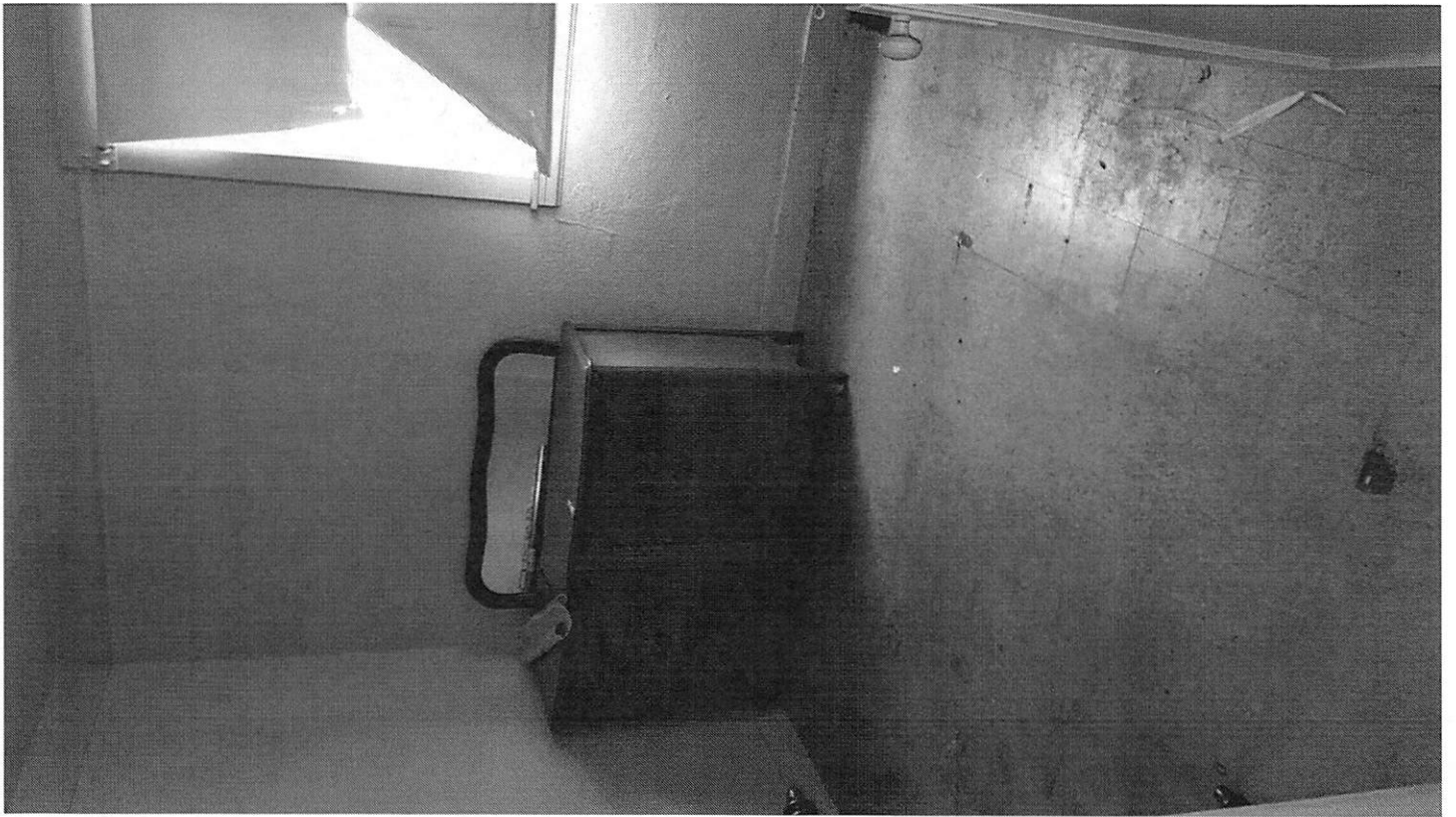




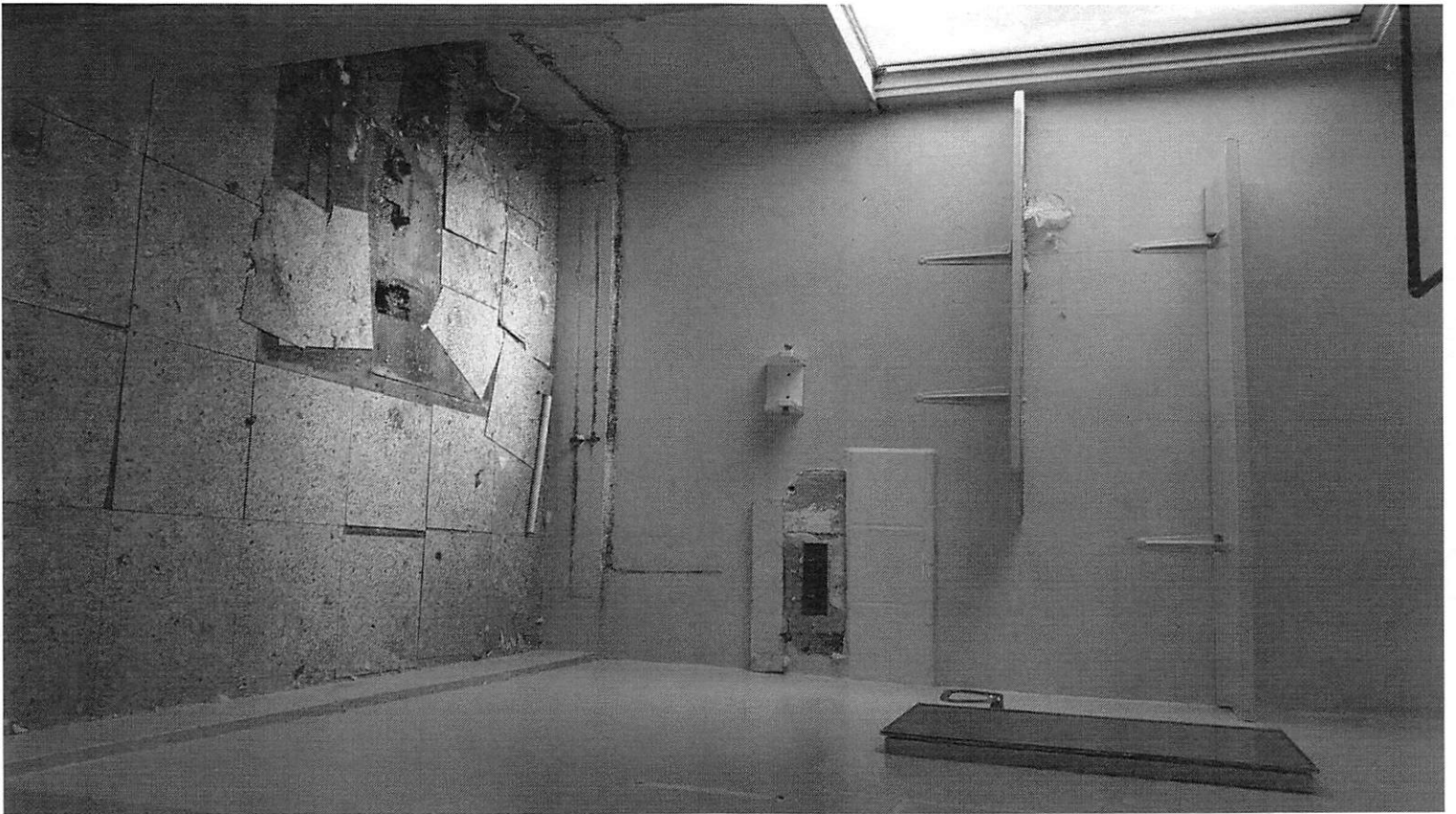










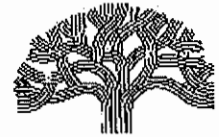






**Miriam Bolanos
Tenant Evidence Submission for Remand Hearing**

Exhibit T13



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

Housing, Residential Rent and Relocation Board (HRRRB)

APPEAL DECISION

CASE NUMBER: T18-0414 & T18-0472, Martin et al. v. Zalabak, & L19-0040, Zalabak v. Tenants
APPEAL HEARING: July 22, 2021
PROPERTY ADDRESS: 5553 Kale Avenue, Oakland, CA
APPEARANCES: Lisa Giampaoli Tenant Representative
Alana Grice Conner Owner Representative

PROCEDURAL BACKGROUND

On August 3, 2018, tenants Kristen Ponger and Chester Martin filed a petition, contesting a monthly rent increase from \$2,652.00 to \$4,500.00, effective August 1, 2018, on multiple grounds, including that the premises were rented as more than one unit. The owner filed a timely response to the tenant petition, claiming the subject property was exempt from the Rent Adjustment Program as a single-family residence, based on the Costa-Hawkins Act. Following the owner's superseding notice issued in October 2018 of a monthly rent increase from \$2,652.00 to \$4,500, effective December 18, 2018, the tenant filed a second petition on November 9, 2018, contesting the increase on the same grounds with the exception of the claim of no concurrent RAP notice with notice of the rent increase. The owner filed a response to the tenant petition on February 15, 2019, again claiming an exemption from the Rent Adjustment Program, as a single-family residence based on the Costa-Hawkins Act.

The petitions were consolidated, and the Hearing Officer conducted hearings for the case on March 5, 2019, and April 22, 2019. The Hearing Officer issued a Hearing Decision on April 30, 2019, served on the parties on June 7, 2019, finding that the subject unit was exempt as a single family residence and therefore no other issues in the tenant petitions could be addressed. The Decision noted that other tenants in the back unit had moved out in 2018, the back unit could not be legally re-rented, and the premises were restored to a single-family residence.

The tenants appealed and an Appeal Hearing before the Housing, Residential Rent, and Relocation Board was conducted on September 10, 2020. The Appeal Decision of the Board remanded the case with direction to re-issue the hearing decision considering two Court of Appeals decisions, Da Vinci Group v. San Francisco Residential Rent Stabilization and Arbitration Board (1992) 5 Cal. App.4th 24 and Owens v. City of Oakland (2020) 49 Cal.App.5th 739, and the testimony of the property as a multi-unit dwelling.

Following the Appeal Decision, the remanded case regarding petitions T18-0414 and T18-0472 was consolidated with a new petition requesting a Certificate of Exemption, L19-0040, due to the same issues raised, and assigned to a new Hearing Officer.

RULING ON THE CASE AFTER REMAND

The Hearing Officer issued a "Hearing Decision After Remand" on March 4, 2021, denying the tenant petitions and granting the owner petition. The Decision was issued without conducting a new hearing. The Decision distinguished this case from the Da Vinci Court of Appeals decision on the basis that subject premises were never made legal and were instead not re-rented. The Decision distinguished this case from the Owens Court of Appeals decision on the basis that the rental of the back unit was discontinued, and the premises were a single-family residence at the time the rent increase went into effect.

The Decision was served on the parties on March 9, 2021.

GROUND FOR APPEAL

On March 26, 2021, the tenant filed a timely appeal on the following grounds:

- The decision is inconsistent with O.M.C. Chapter 8.22, Rent Board Regulations, or prior decisions of the Board.
- The decision raises a new policy issue that has not been decided by the Board.
- The decision violates federal, state or local law.
- The decision is not supported by substantial evidence.
- Other.

The tenants' memorandum filed in support of the appeal contends that the Decision After Remand fails to consider the legal principles in Da Vinci or Owens, instead simply distinguishing their facts, the rear cottages are dwelling unit that are not separately alienable from the title of any other dwelling unit on the premises, and temporary vacancy of an illegal unit does not carve out an exemption. The tenants also proffered additional evidence indicating the rear unit is still a dwelling unit. The owner's response memorandum contends that RAP lacks jurisdiction because the tenant petitions are moot based on proffering that the tenants vacated the subject premises and that cessation of renting a single family home as multiple units reverts it to a single family home.

APPEAL DECISION

After arguments and rebuttal made by both parties, Board questions to the parties and Board discussion, Member Flanery moved to overturn the hearing decision to issue the certificate of exemption in L19-0040 for failure to establish a permanent exemption, and moved to overturn the hearing decision in T18-0414 and T18-0472 based on insubstantial evidence to support a finding that the property is exempt from the Rent Ordinance. Chair Graham seconded.

The Board voted as follows:

Aye: H. Flanery, A. Graham, K. Friedman, T. Williams
Nay: 0
Abstain: 0

The motion was adopted.

NOTICE TO PARTIES

Pursuant to Ordinance No(s). 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Code of Civil Procedure, Section 1094.6.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE NINETY (90) DAYS FROM THE DATE OF MAILING OF THIS DECISION WITHIN WHICH TO SEEK JUDICIAL REVIEW OF THE DECISION OF THIS BOARD IN YOUR CASE.

Chanee Franklin Minor
Program Manager
HCD/Rent Adjustment Program

6/20/21

CHANEE FRANKLIN MINOR
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD

DATE

PROOF OF SERVICE
Case Number(s) T18-0414, T18-0472

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Appeal Decision

Owner

Sherry Zalabak
402 Vermont Avenue
Berkeley, CA 94707

Owner Representative

Alana Grice Conner, Fried & Williams LLP
1901 Harrison Street 14th Floor
Oakland, CA 94612

Tenant

Chester Martin
44 Belle Avenue
San Rafael, CA 94901

Tenant

Kristen Ponger
44 Belle Avenue
San Rafael, CA 94901

Tenant Representative

Lisa Giampaoli, Giampaoli Law
100 Pine Street Suite 1250
San Francisco, CA 94111

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **August 20, 2021** in Oakland, CA.

Brittni Lothlen

Brittni Lothlen
Oakland Rent Adjustment Program



**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Tenant's Supplemental Evidence Packet - T20-0093
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 67 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Jill Broadhurst, Big City Property Group, Inc., Owner Representative	
Address	PO Box 13122	Email: bigcitypg@gmail.com
City, State, Zip	Oakland, CA 94661	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 09/30/21 (insert date served).

Samantha Beckett
PRINT YOUR NAME

Samantha Beckett
SIGNATURE

09/30/21
DATE

Case Number: T20-0093
Case Name: Bolanos v. Olivieri

Property Owner's Rebuttal
to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

The Petitioner, Miriam Bolanos, submitted a Statement of Arguments in support of her request that the Hearing Officer uphold its prior decision. The Property Owner, Jack Olivieri, submits the following rebuttal to the arguments presented by Petitioner.

Rebuttal to Argument 1:

Petitioner makes the argument:

The Demolition Permit obtained by the property owner should not change the Rent Adjustment Program's Analysis of this matter because the City Did Not Make any Dispositive Decision as to the Zoning or use of the Rear Dwelling Unit.

The property owner's rebuttal to this position is as follows:

Petitioner entered into evidence an inspection log from a City of Oakland building inspector. In this log the inspector noted the property as a duplex. Petitioner relied upon this log to establish that the City of Oakland permit records refer to the property as a multi-dwelling property to support their position that the property was not exempt from the Oakland Rent Control Ordinance under the Costa Hawkins Rental Housing Act ("Costa-Hawkins"). The Hearing Officer's decision affirmed this by stating: "*The City of Oakland and Alameda County Records submitted by the tenant support the conclusion that the two structures are both dwelling units that are not separately alienable.*" Therefore, the City of Oakland record submitted by Petitioner was established as a material piece of evidence that was relied upon in arriving at a decision in favor of Petitioner.

It should be noted that the City inspector who prepared the inspection log at no time entered the rear unit as there was no one on site at the time to unlock the rear unit to allow entry. Therefore, the City inspector's classification of the property as a duplex was based upon an assumption by the inspector arrived at solely from the outward appearance of the rear unit. A City building inspector does not have the established authority to determine the classification of a structure or property that would be legally binding upon the Property Owner. Therefore, it is inappropriate to rely upon the inspection log as a material piece of evidence upon which to arrive at the outcome of this case.

Subsequent to the hearing, the City of Oakland has made a formal determination based upon factual evidence that the rear unit is not a dwelling unit, but is an accessory non-residential structure with a designated permitted occupancy group indicated as "Utility/Miscellaneous Structure." This determination was established in a permit issued to demolish the rear unit.

000444

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

This permit is included as Attachment A. This determination was arrived at by the City of Oakland Planning Department and contradicts the inspection log previously relied upon by the Hearing Officer.

It is interesting to note that although Petitioner relied upon one City of Oakland record to materially support its position, they now take the position that another City of Oakland record, which is based upon more complete information and should thereby carry more weight, "*should not change the Rent Adjustment Program's Analysis of this matter.*"

Petitioner claims that the demolition permit does not change the analysis of whether Ms. Bolanos' unit was subject to the Rent Adjustment Ordinance during the time period in this case, or whether it was exempt under Costa-Hawkins. Petitioner makes this claim on the basis that the City of Oakland never made any dispositive decision as to the zoning or use of the rear unit. However, the inspection log, which was also not dispositive regarding zoning or use of the rear unit, was relied upon by the Hearing Officer as material to the case. Therefore, if the City of Oakland inspection log was relied upon in the hearing decision to support the use of the property as multi-unit dwelling, it is equally justified to consider the City of Oakland demolition permit to support the Property Owner's position that the rear unit is not a dwelling unit.

Petitioner also claims that the City of Oakland never made any determination as to whether and when the rear unit ceased being a dwelling unit. However, Petitioner at the same time acknowledges there is no current case law that would enable any one to make such a determination. The property owner did not request a dispositive decision as to the zoning or use of the rear storage unit, nor is a dispositive decision by the City of Oakland a requirement to resolve this case. Therefore, the fact that the City of Oakland never made any determination as to whether and when the rear unit ceased being a dwelling unit has no bearing on the case.

The evidence provided by Petitioner attempts to show that the Property Owner misrepresented the rear unit as a "storage unit" in the application for the demolition permit. However, representing the rear unit as a "storage unit" was a factual representation of the use of the structure by the Property Owner. Petitioner has not made any claim that the rear unit has been used for any purpose other than storage, so the actual use of the unit during the time of the Petitioner's tenancy is not in question.

The Property Owner provided evidence and testimony establishing that Petitioner used the rear unit as storage. This information is material to the case in that it establishes that the rear unit was in fact used solely as a storage unit and that Petitioner, by using the rear unit for storage, had use of all structures on the property. Therefore, Petitioner benefited from use of the rear unit as storage, yet claims that the rear unit was a dwelling unit. However, the evidence and testimony provided by the Property Owner supporting the Petitioner's use of the

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

rear unit as storage was not addressed in the Hearing Officer's decision. No reasoning was provided by the Hearing Officer to establish the basis for the Hearing Officer's reliance solely upon the testimony of Petitioner over the sworn evidence and testimony provided by the Property Owner in this regard. The preponderance of the evidence supports the Property Owner's position that Petitioner used the rear unit as storage. The Hearing Officer relied upon the sworn testimony of Petitioner, despite numerous instances of unreliable testimony both in Petitioner's written petition and her verbal testimony during the hearing. Examples of unreliable testimony of Petitioner are included in Attachment B. The examples provided demonstrate that the unreliable testimony of Petitioner was willful and presented with the intent to mislead the Hearing Officer so as to affect the outcome of the case in her favor.

It is also important to note that the Hearing Officer's written decision, which was based substantially on the credibility of the Petitioner, does not comply with the requirements of the Administrative Procedures Act, Division 3, Part 1, Chapter 4, Article 6 § 11425.50. (b) which states:

11425.50. (b) The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. **If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination**, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

Considering the demonstrable unreliable testimony of Petitioner, as exemplified by the information included in Attachment A, failure to include the above required information and to establish the basis for relying upon the testimony of Petitioner over that of the Property Owner exhibits potential bias on the part of the Hearing Officer and calls into question the fairness and impartiality of the hearing. Therefore, prior to issuing the Remand decision, the Hearing Officer must re-evaluate their decisions regarding all material matters in the case taking into account the demonstrated unreliable testimony of Petitioner in order to assure the fairness and impartiality of the hearing. If the hearing officer is in agreement that Petitioner's testimony was unreliable, weight must be placed upon factual evidence and the sworn unimpeached testimony and evidence provided by the Property Owner in re-evaluating the hearing decisions.

Furthermore, documentation obtained by Petitioner of the communications between the City of Oakland (City), the applicant of the demolition permit (Thomas Fresquez), and Centro

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

Legal, which has been provided as evidence by Petitioner, shows that Centro Legal contacted the City claiming that the Property Owner misrepresented the rear unit as a storage unit when it was the opinion of Centro Legal that the unit was a dwelling unit. The documentation submitted by Petitioner shows that the City initially agreed with Centro Legal and informed the permit applicant that the rear unit was considered a dwelling unit and that a Design Review would be required prior to issuing a demolition permit.

The permit applicant ultimately provided evidence to the City that the structure was **initially constructed in an unsafe manner** which resulted in severe safety issues that were infeasible to remedy. Included in these issues were unsafe wiring and lack of a suitable foundation. Highly unsafe electrical connections hidden inside of the walls were identified, and photos of these were provided to the City. The foundation consisted of timber supports bearing directly on soil. The timber in the foundation was severely rotted leaving unsuitable support for the structure. The permit applicant also provided photos of this condition. Due to the extent of these issues, it was infeasible to remedy these issues without demolishing and reconstructing the structure. The Property Owner does not dispute that the unit was also in poor condition due to issues unrelated to the initial construction. However, the documentation provided by Petitioner clearly shows that the City's determination was based primarily upon unsafe initial construction. It is important to note that these initial construction issues were not in any way a result of neglect by the current Property Owner.

Based upon arguments and evidence provided by the permit applicant, the City modified their initial position that the rear unit was a dwelling unit and issued the demolition permit classifying the unit as an **"accessory non-residential structure"** with a designated permitted occupancy group indicated as **"Utility/Miscellaneous Structure."** The issued permit also specifically notes that the unit is not a dwelling unit.

Therefore, based upon the evidence provided by the permit applicant, and despite the opposition expressed by Centro Legal, the City formally affirmed that the rear unit was not a dwelling unit. The fact that the City performed no subsequent site visits after the initial site visit on February 23, 2021, does not discredit the determination by the City, but affirms that the evidence provided by the permit applicant was sufficiently compelling for the City to classify the unit as a non-residential "Utility/Miscellaneous Structure" without any further site visit. The fact that the City's classification of the rear unit was not dispositive is irrelevant to this case as no dispositive determination was required for the purpose of obtaining a demolition permit. In any case, the level of scrutiny by the City of the rear unit during the review of the application for the demolition permit far exceeded the level of scrutiny of the building inspector who prepared the inspection log that Petitioner has relied upon to support their position. Therefore, classification of the rear unit by the City as an "accessory non-residential structure" with a designated permitted occupancy group indicated

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

as "Utility/Miscellaneous Structure" should carry significantly more weight than that of the inspection log which was based solely upon presumptive information.

Rebuttal to Argument 2:

Petitioner argues that there are many instances in which tenants live in dwelling units with uninhabitable conditions, and this does not mean that the unit is not a dwelling unit for the purposes of rent control. Therefore, Petitioner claims that whether the unit is currently habitable is irrelevant.

The Property Owner's rebuttal to this argument is as follows:

It is uncontested that there are many instances in which owners rent units which are in uninhabitable condition. The Property Owner agrees that it would be improper for an owner to establish an unpermitted or uninhabitable unit as a dwelling unit for financial gain and then claim at a later date that the unit is an exempt unit. However, this is clearly not the issue in this case as the current Property Owner at no time established the rear unit as a dwelling unit.

Based upon Petitioner's arguments, if a prior property owner acts in an irresponsible manner by renting a potentially unsafe structure to an occupant, all future property owners would be legally bound by the irresponsible actions of prior property owner. In this case, the Property Owner admirably acted in a responsible manner by not renting the rear unit as it would not have been safe to do so and would have also exposed him to potential liability issues.

It is also important to note that the Property Owner had no interest in renting the rear unit as a dwelling unit. Even if he had such an interest, the extent of the work that would have been required to bring the unit to a habitable condition would have been considered by the City to be a major renovation. This would have required the structure to be brought to current building codes and a certificate of occupancy issued, which would have been financially infeasible for the Property Owner. Therefore, it is not reasonable for Petitioner to take the position that the property would be considered a multiple unit dwelling when the property owner never used it as such, and it would have been unsafe and illegal for the property owner to utilize the rear unit as a dwelling unit in the condition in which he obtained it.

Petitioner also bases their argument on the improper application of case law to this case. Petitioner bases their position on *Martin et al. v. Zalabak*. In this case, the property owner actually rented out an unpermitted unit. Upon the tenant vacating the unit, the property owner removed the stove from the kitchen and placed it at another location inside the unit. The property owner subsequently rented the unit as an office. The property owner claimed that based upon the unit not being permitted, and by removing the stove, the unit could not

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

legally be re-rented as a dwelling unit. The owner also claimed that renting the unit as an office removed its classification as a dwelling unit.

The issues in the appeal hearing of *Martin et al. v. Zalabak* are complex, and Petitioner's summary of the findings in said case as being applicable to this case is highly misleading. It is imperative to note that in the case of *Martin et al. v. Zalabak*, the property owner actually rented the secondary structure as a dwelling unit during the tenancy of the petitioner. This was material to the case. However, this circumstance does not exist in the case of Olivieri v. Bolanos in that the Property Owner never utilized the secondary structure as a dwelling unit, and the secondary structure had not been utilized as a dwelling unit during the occupancy of Petitioner, including eight year prior to the occupancy of Petitioner. Therefore, it is imperative that the Hearing Officer listen to the entire recording of the appeal hearing of *Martin et al. v. Zalabak*, and decide for themselves, in an unbiased manner, whether the finding of the Board applies to this case in the manner in which Petitioner claims it does.

The Board in the appeal hearing of *Martin et al. v. Zalabak* found the arguments presented by the owner unpersuasive, and insufficient to prove that the back unit was not a dwelling unit as the removal of the stove from the kitchen and placement in a separate room in the same structure created the appearance that the owner intentionally did so with the intent of subverting the tenant's previous rights under rent control. The Board also expressed concern that the short period the unit was not used as a dwelling unit was not reasonably sufficient to demonstrate that the owner did not have the intent of utilizing the unit as a dwelling unit in the future. Therefore, the Board based its decision primarily on their concern that the owner could easily flip flop the unit between a covered and non-covered unit as suited his interests at any given time. This concern clearly does not apply in this case as the rear unit was uninhabitable to such a degree that far exceeded relocating a stove within the unit.

The facts in the case of Bolanos v. Olivieri differ significantly from *Martin et al. v. Zalabak* in that:

1. The property owner never rented the rear unit as a dwelling unit. This was the case over the entire 15 year period he has owned the property.
2. The property owner never rented the rear unit as a dwelling unit during the entire tenancy of Petitioner.
3. The rear unit was used exclusively as storage by both the Property Owner and Petitioner during the entire period of ownership of the property owner, and the status of the rear unit as a storage unit did not change during this time.
4. Due to the extensive safety issues associated with the property and the financial infeasibility of correcting the safety issues, the property owner never intended to rent the rear unit as a dwelling unit. This is supported by the fact that the Property Owner never actually rented the rear unit as a dwelling unit, never performed any improvements to the

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

unit to enable it be utilized as a dwelling unit, and the unit was eventually demolished by the current owner.

5. The property was solely used as a single family residence by the current owner and was, therefore, exempt from the Rent Control Ordinance under Costa-Hawkins.
6. The property was permanently removed from the rental market at the time the previous tenant voluntarily vacated the rear unit in 2006. At this time it no longer met the definition of a "dwelling unit" per Cal. Civ. Code § 1940(a) since it was permanently no longer used as a home, residence, or sleeping place by one person who maintained a household or by two or more persons who maintained a common household.

Based upon the above, it is inappropriate and misleading for Petitioner to claim that the circumstances upon which the findings in the appeal hearing of *Martin et al. v. Zalabak* were based are in any way applicable to this case.

Rebuttal to Argument 3:

Petitioner states:

Regardless of what the City of Oakland called the Rear Dwelling Unit, the Owner Failed to Meet its burden to prove that the unit ceased being a dwelling unit for purposes of the Costa-Hawkins Act.

The Property Owner's rebuttal to this argument is as follows:

It is undisputed that the rear unit had been used as a dwelling unit by the previous owner. It is also undisputed that the rear unit has not been utilized as a dwelling unit for 15 years since it was voluntarily vacated in 2006 prior to the current owner taking possession of the property. Petitioner claims that there is no standard in the Costa-Hawkins Rental Housing Act ("Costa Hawkins") for determining when a unit ceases being a "dwelling unit." Based upon the clear and unambiguous language in Costa Hawkins, this claim is untrue.

Owens v. City of Oakland Housing, Residential Rent and Relocation Board adopted the definition of "dwelling unit" located at Cal. Civ. Code § 1940(a). "Dwelling Unit" means "a structure or part of a structure that **is used** as a home, residence, or sleeping place by one person who **maintains** a household or by two or more persons who **maintain** a common household." Cal. Civ. Code § 1940(a).

It is imperative to note the use of the word "is" in "is used" in this definition. The addition of the present tense verb "is" prior to "used" clearly establishes that the definition is based upon the **current use** of a structure, not its past use or its potential future use. The implication of a structure's current use is further supported in the definition by the use of the word "maintains," which is also current tense and not past or future tense.

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

Legal definitions are carefully worded and must be strictly construed utilizing their linguistic interpretation. Had the authors of the definition intended their definition of "dwelling unit" to apply as Petitioner claims, the authors would have simply used the word "used" by itself without adding the present tense "is" before it. This would have avoided excluding prior or future use when applying the definition.

Petitioner's interpretation of the definition of "dwelling unit" is unreasonable in that based upon such definition, the existence of any secondary structure on a property with a single family dwelling, despite its age or the length of time that the secondary structure may have been unoccupied as a dwelling unit, would exempt the property from Costa-Hawkins. In the extreme case, consider a hypothetical single family dwelling constructed prior to the Civil War with a barn. If the barn had been occupied by someone as a residence prior to the Civil War and not occupied at any time since, the single family dwelling would be subject to rent control provisions by all future property owners in perpetuity.

Additionally, we recall Petitioner's stated position that a unit having an unsafe or uninhabitable condition has no bearing on whether it constitutes a "dwelling unit" for the purpose of considering it exempt under Costa-Hawkins. Based upon this position, the condition of the barn in the above hypothetical, no matter how dilapidated or uninhabitable it may have become over a period of approximately 160 years, would not exempt the owner from the Rent Control Ordinance.

Based upon the above examples, it should be evident that Petitioner's interpretation of the definition of "dwelling unit" Cal. Civ. Code § 1940(a) is clearly not in alignment with the intended application of this definition to Costa-Hawkins.

Furthermore, Petitioner takes the position that "*The only bright-line rule that is fair, workable, and in alignment with the overall goal of the Rent Adjustment Ordinance is that a dwelling unit ceases to be a dwelling unit upon lawful demolition of the unit.*" Based upon this position, if any secondary structure to a single family dwelling is occupied as a dwelling unit for any period of time at any time in the past (which could even be a single day occurring over 100 years ago based upon Petitioner's interpretation of the definition of "dwelling unit."), the only way the unit could "fairly" be removed as a dwelling unit would be to demolish it. This example illustrates Petitioner's unreasonable interpretation of the definition of "dwelling unit" located at Cal. Civ. Code § 1940(a).

The linguistically correct and strict interpretation of the definition of "dwelling unit" located at Cal. Civ. Code § 1940(a) would be that a structure ceases to be a dwelling unit at such time it is not used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. This strict interpretation is inconvenient to the goal of the Rent Adjustment Ordinance, and it could be justifiably argued that such interpretation would enable owners to flip flop units from being

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

covered units to being exempt multiple times during one tenant's tenancy, simply based upon temporary changes to the other unit on the property. This was the concern expressed by the members of the Board in the appeal hearing in *Martin et al. v. Zalbak*.

The Property Owner agrees that it is not in the spirit of Costa-Hawkins to enable owners to flip flop units from being covered units to being exempt during a tenant's occupancy, simply based upon temporary changes to other units on the property, such as a short term or temporary vacancy. In this case, the rear unit was permanently vacated during the entire duration of Petitioner's tenancy. Therefore, any concerns related to the Property Owner changing the status of the property during the occupancy of Petitioner do not apply.

Based upon the above, the Property Owner's rights in this case are clearly protected under Costa-Hawkins. The issued decision of the Rent Adjustment Program in this case undeniably violates the Property Owner's rights based upon a reasonable interpretation of the applicable laws.

Rebuttal to Argument 4:

Petitioner makes the argument:

Public policy supports affirming the hearing officer's prior decision, holding that Petitioner's unit was subject to the Oakland Rent Adjustment Ordinance.

The Property Owner's rebuttal to this argument is as follows:

Petitioner acknowledges in their arguments that it has not been determined at what point a dwelling unit ceases to be a dwelling unit per se by statute or case law. As stated previously, based upon a strict linguistic interpretation of the definition of "dwelling unit" in Cal. Civ. Code § 1940(a), a dwelling unit ceases to become a dwelling unit when it is no longer used as such. Acknowledging the public policy issues associated with applying this strict interpretation in all cases, it is incumbent upon all parties involved in this case to arrive at a fair interpretation of the law as it reasonably applies to this case. The Property Owner firmly believes that public policy should affirm that the fact that the rear unit had never been utilized as a dwelling unit under his ownership, and his ownership was prior to the occupancy of Petitioner, is sufficient justification to satisfy the Property Owner's burden of proof that the rear unit was not a dwelling unit in the spirit of Costa-Hawkins during the tenancy of Petitioner.

If the aforementioned justification is not considered sufficient to meet the Property Owner's burden of proof, the fact that the rear unit had not been occupied at any time for a period of over 15 years and has been demolished establishes that the rear unit ceased becoming a dwelling unit over 15 years ago, which is also 8-years prior to the occupancy of Petitioner. It should be noted that under the Ellis Act, a unit is considered to be permanently removed

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

from the rental market if it is occupied by an owner for more than three-years. Applying this three-year period as a reasonable time frame for a unit to be considered permanently removed from the rental market, it would stand to reason that considering the rear unit had been vacant eight years prior to the occupancy of Petitioner in the front unit, this 8-year period would be well beyond a reasonable time frame to consider the rear unit as having ceased being a dwelling unit.

Based upon the above, if the current decision of the Hearing Officer in this case is not reversed, this would establish a significant new legal standard. The legal standard derived from this decision would be that the use of any structure as a dwelling unit by a previous property owner, no matter how far removed, would establish the structure as a dwelling unit in perpetuity for all subsequent property owners. Based upon the interpretation of the definition of a "dwelling unit" by the Petitioner, which is supported by the Hearing Officer in its decision, the law would apply to any "structure" as the definition does not define what is and is not considered a structure. Therefore, any type of secondary structure could be considered a dwelling unit including a shed, garage, barn or even a tree house. Also, based upon the Hearing Officer's strictly construed interpretation of the definition of a "dwelling unit," if a single family residence has a detached garage and the garage were to be occupied by a squatter, the garage would become a dwelling unit which would subject the single family dwelling to rent control provisions in perpetuity. The Hearing Officer's strictly construed interpretation of the definition of "dwelling unit" in Cal. Civ. Code § 1940(a) also does not establish a minimum time period in which a structure must be occupied in order to be considered dwelling unit. Therefore, any type of structure could be considered to be a dwelling unit in perpetuity if it is occupied for even one day. This would require the establishment of new law that would require property owners of single family dwellings to disclose to future property owners (and perhaps even the government in jurisdictions with rent control) if any secondary structure on their property has been used as a dwelling unit for any period of time, or if they have knowledge of any previous owners who may have used any secondary structure as a dwelling unit for any period of time. This information would be required as the basis for determining **in perpetuity** if a secondary structure of any construction type would be considered a dwelling unit if the single family dwelling were to EVER be rented in the future. If a secondary structure were to have been occupied at any time in the past, the only way for the structure to not be legally considered a dwelling unit would be to demolish it.

The above clearly would not be in the spirit of Costa-Hawkins, and it is doubtful that the Rent Adjustment Program would want to establish such a new far reaching legal standard when a reasonable application of the law in this case would avoid this.

Property Owner's Rebuttal to Petitioner's Statement of Arguments in Support of Tenant's Petition on Remand

Conclusion:

The Hearing Officer previously concluded in the hearing decision that the rear unit was a dwelling unit based upon arbitrary criteria presented by Petitioner and an unreasonable interpretation of the law.

The Property Owner has provided documentation from the City of Oakland which has established based upon a thorough review that the rear unit is an accessory non-residential structure with a designated permitted occupancy group indicated as "Utility/Miscellaneous Structure," - not a dwelling unit. This determination was established in the permit issued by the City of Oakland to demolish the rear unit. The evidence provided by the Petitioner which they obtained from the City of Oakland shows the degree of consideration given by the City to their decision to classify the rear unit as a non-residential unit. This determination contradicts the evidence from the City of Oakland previously presented by Petitioner.

Petitioner claims that the demolition permit does not change the analysis of whether Ms. Bolanos' unit was subject to the Rent Adjustment Ordinance during the time period in this case, or whether it was exempt under Costa-Hawkins. Petitioner makes this claim on the basis that the City of Oakland never made any dispositive decision as to the zoning or use of the rear unit. However, the arbitrary criteria from the City of Oakland and Alameda County previously presented by Petitioner as material to the case was also not dispositive.

Petitioner also claims that the City of Oakland never made any determination as to whether and when the rear unit ceased being a dwelling unit. However, Petitioner at the same time acknowledges there is no current case law that would enable any one to make such determination. Despite the lack of case law, it would stand to reason that if a property owner had never used a structure as a dwelling unit, especially one that was unsafe to use as a dwelling unit and which the property owner never intended to be used as a dwelling unit, the property owner should not be bound by the irresponsible action of a previous owner who exposed others to unsafe conditions by using the same structure as a dwelling unit. Denying the Property Owner and all subsequent property owners of their rights under Costa-Hawkins based solely upon irresponsible actions taken by a previous owner, is unjust, capricious, and not in the spirit of the law.

The determination by the City of Oakland in the demolition permit issued for the demolition of the rear unit that the rear unit is an accessory non-residential structure with a designated permitted occupancy group indicated as "Utility/Miscellaneous Structure" is the most reliable information to resolve the issue of whether the rear unit was a dwelling unit as it was made by the same City jurisdiction as the Rent Adjustment Program, and the determination was made based upon factual evidence in an unbiased manner by participants with no interest in

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the outcome of the case. Therefore, it is fair to both parties to rely upon this determination in resolving this case.

ATTACHMENT A

Permits for which no major inspection has been approved within 180 days shall expire by limitation. No refund more than 180 days after expiration or final.



CITY OF OAKLAND

CASE T20-0093

959 42ND ST

959 42ND ST

250 FRANK H. OGAWA PLAZA ▪ 2ND FLOOR ▪ OAKLAND, CA 94612

Planning and Building Department
www.oaklandnet.com

PH: 510-238-3891
FAX: 510-238-2263
TDD: 510-238-3254

Permit No: RB2003483 Residential Building - Demolition **Permit Issued:** 4/22/2021

Job Site: 959 42ND ST **Schedule Inspection by calling:** 510-238-3444

Parcel No: 012 102003000

District:

Project Description: Demolish 420sf detached structure at rear of sfd ./Per DRX210264 okay to demo de attached accessory structure

Related Permits: DRX210264

	<u>Name</u>	<u>Applicant</u>	<u>Address</u>	<u>Phone</u>	<u>License #</u>
Owner-Builder:	OLIVIERI JACK G	X	4734 SHETLAND AVE OAKLAND, CA	510-537-5226	
Owner:	OLIVIERI JACK G TR		4734 SHETLAND AVE OAKLAND, CA		

PERMIT DETAILS: Residential/Building/Demolition					
General Info					
J Number:	119098	Detached Garage <400 sq ft:	No	Report - Soil/Geotech:	
Building Information					
Demo Type:	Entire Demo	# Of Stories:	1	Permitted Building Use:	Miscellaneous Structure
Construction Type:	VB - Combustible Construction, No Fire Rating	# Of Dwelling Unit:	0	Permitted Occupancy Group:	U Utility / Miscellaneous Structure
		# of Buildings Before Demo:	1	Total Floor Area (sq ft):	420

TOTAL FEES TO BE PAID: \$0.00

Plans Checked By _____ Date _____

Permit Issued By _____ Date _____

Finalized By _____ Date _____

000457

ATTACHMENT B

ATTACHMENT B

Examples of Unreliable Testimony by Petitioner – Miriam Bolanos

1. In Petitioner's sworn declaration dated July 12, 2020, Petitioner states: "*During my time as a tenant in the front unit, I have not had access to the rear unit or used it for any purpose.*" This statement is refuted by sworn declarations submitted as evidence from multiple parties who were witnesses to the rear unit being used as storage by Petitioner and her boyfriend. Testimony that Petitioner used the rear unit as storage is corroborated in a text exchange between Mr. Fresquez and Petitioner on May 2 and May 3, 2020, which was submitted into evidence prior to the hearing, in which Petitioner acknowledges that her refrigerator was being stored in the rear unit and accepted Mr. Fresquez' offer to sell it on her behalf. This text exchange is included as an attachment (Exhibit A) for reference. Therefore, Petitioner's testimony in her sworn declaration is refuted by evidence, is factually untrue, was known by Petitioner to be untrue, and was presented with the intent to mislead the hearing officer into believing that Petitioner did not have use of all structures on the property, which is a material issue to the case.
2. Petitioner claims in petition that she moved into the unit on October 1, 2013. This was refuted by text messages between Petitioner and the property manager (Owner Exhibit 3) in which Petitioner requested to move into the subject property on September 23, 2014, nearly one year later. Therefore, Petitioner's testimony in this regard is refuted by evidence and is factually untrue. Petitioner was presented with this evidence during the hearing and was provided an opportunity to amend her testimony, which she did not.
3. Petitioner claims in her petition that there were six issues with the unit when she moved in affecting her health and safety and her ability to live comfortably in the premises. Petitioner claims she first notified the Landlord of these decreased services in January-February 2014. However, per Example 2 above, this notification would have been 7-8 months prior to Petitioner's request to move into the unit on September 23, 2014. Petitioner's testimony is factually untrue as the Landlord would not have been aware that Petitioner was living in the unit at the time she claims she notified the Landlord of the health and safety issues.
4. Petitioner claims in her petition that there were several problems with the unit when she moved in affecting her health, safety, and her ability to live comfortably in the premises. Petitioner was asked by her attorney during the hearing if Petitioner had the opportunity to inspect the property before she moved in. Petitioner testified that she did not. The Landlord representative asked Petitioner if she knew who lived in the unit prior to her tenancy. Petitioner responded that her mother and brother lived in the unit. Petitioner was asked by Landlord representative if she visited her mother. Petitioner responded, "*of course I did.*" Petitioner further stated, "*but I never looked in the closets.*" (see Example 9 for the relevance of this statement regarding Petitioner looking in the closets)

Petitioner's mother lived in the unit from 2008 to 2014. In routine visits to her mother, Petitioner had six years of opportunity to inspect the property during visits with her mother and brother. Therefore, Petitioner's verbal testimony that she did not have an opportunity to inspect the property before she moved in is factually untrue, was known to Petitioner to be untrue, and was presented with the intent to mislead the hearing officer into believing that Petitioner was not aware of the claimed issues with the unit prior to her moving into the unit.

5. Petitioner claims in petition that the heater "*has not turned on consistently and emits bad odors when turned on.*" Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014.

Per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014. Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the heater was tested and was documented to be in proper working order at the time of the home inspection, which occurred two years after Petitioner occupied the unit.

On January 25, 2020, prior to tenant providing any notification of any issues with the unit, an inspection of Petitioner's unit was conducted by the Landlord's son-in-law, Thomas Fresquez. At the time of the inspection, Mr. Fresquez asked Petitioner if there were any issues that needed to be addressed. Petitioner did not make any mention of the heater not working properly, despite the inspection being performed during winter. During same inspection, Mr. Fresquez brought a vacuum and offered to vacuum the heater, as the Landlord had regularly done as a courtesy to Ms. Bolanos due to fur from Petitioner's cat collecting in the furnace causing bad odors. Petitioner declined the offer by Mr. Fresquez to vacuum the heater stating she regularly vacuumed the heater to remove cat hair and other debris to prevent the odor from occurring. A letter dated February 4, 2020, was sent by the property manager to Petitioner to document the findings and the discussions that occurred during the inspection (tenant Exhibit G). Per the discussions documented, the tenant made no mention of any issues related to proper functioning of the heater.

Said letter also documents that Petitioner was aware of the cause of the odors from the heater, and that the cause was fur from her cat (at one time multiple cats), not the condition of the heater itself. Therefore, petitioner knowingly claimed decreased service for an issue which she acknowledged was not the responsibility of the Landlord.

6. Petitioner claims in her petition that there was a "*rodent and raccoon infestation.*" Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. However, Per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014.

Based upon Petitioner's claims in her petition, the infestation was of such extent that she assigned an estimated value to loss of service of 15% of the rent. Based upon this assigned value, this issue was the most significant of all of the issues listed in the petition.

However, Petitioner clarified during her verbal testimony at the hearing that there were no mice or rats during the time of her occupancy, but there were occasions where she heard raccoons beneath the house. Therefore, Petitioner's claim, submitted under penalty of perjury, that a "rodent infestation," which was present from the time she moved in and was of such extent that it affected her health and safety and her ability to live comfortably in the premises, is factually untrue.

7. Petitioner claims that walls and ceilings throughout the house are cracked and peeling. Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. However, per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014. Petitioner claims in her petition that that extent of the cracks in the walls and ceilings was of such extent that she assigned an estimated value to loss of service of 12% of the rent. Based upon this assigned value, this issue was the second most significant of the issues listed in the petition.

Based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the inspector stated that finished walls were in "good condition" and that there were "blemishes and/or minor cracks in the walls which were cosmetic in nature. Therefore, based upon impartial evidence by a home inspection professional, Petitioner's claim that cracked walls and ceilings existed throughout the house at the time she moved in which were of such extent that they affected her health and safety and her ability to live comfortably in the premises is factually untrue.

8. Petitioner claims in petition that windows are "*deteriorated, do not seal properly and lack proper insulation.*" Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in "January-February 2014." However, Per Item 1, petitioner did not request to move into the subject property until September 23, 2014. Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the windows were inspected and were reported to be "properly installed and generally in serviceable condition."
9. Petitioner claims in petition that there is "*mold throughout the house stemming from improper insulation and deteriorated windows, walls and ceilings.*" Petitioner claims these issues began when she occupied the premises in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. During the hearing, Petitioner stated that the mold was mainly in the closets. Petitioner implied that this is why she was not aware of the presence of mold prior to moving in as she did not look in her mother's closets during the times she visited her (reference Example 4 above). Therefore, Petitioner's own testimony contradicts her claim that "*mold throughout the house*" existed at the time she moved in.

Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the inspector did not make any mention of mold, which would have been identified in a home inspection had it existed to the extent claimed by Petitioner. Therefore, based upon impartial evidence from a professional trained to identify such issues, Petitioner's claim that mold existed throughout the house from the time she moved in, which was of such extent that it affected her health and safety and her ability to live comfortably in the premises, is refuted

by evidence. This evidence demonstrates that the testimony of Petitioner was known by Petitioner to be untrue and was presented with the intent to mislead the hearing officer into believing that there was mold throughout the unit at the time she moved into the unit.

10. Petitioner significantly misstates in petition the amount of rent payments made during her tenancy.
11. Petitioner was asked by her attorney during the hearing if Petitioner was provided with 24-hour notice prior to a visit by a contractor in March of 2020 to inspect the heater. Petitioner stated that she was no provided with 24-hour notice. Mr. Fresquez responded that he did provide 24-hour notice to Petitioner via text. Mr. Fresquez offered to provide the hearing officer with a copy of the text exchange with Petitioner as evidence to refute Petitioner's testimony. The hearing officer refused to accept the evidence offered by Mr. Fresquez. However, considering that the Hearing Officer has relied solely upon the sworn testimony of Petitioner in deciding matters material to this case, it is imperative that the Hearing Officer be aware of any potential credibility issues in the sworn testimony of Petitioner so that this can be considered in its decision. Therefore, the text exchange between Mr. Fresquez and Ms. Bolanos that refutes Ms. Bolanos' sworn testimony is included in Exhibit B. This establishes that the testimony of Petitioner in this regard is factually untrue and was known by Petitioner to be untrue.

EXHIBIT A

Saturday, May 2, 2020

Me

I know someone who may want to buy your refrigerator that you have stored in the back unit. Would you like to sell it or do you want to keep it?

5:11 PM



Nena

Yes I want to sell it

8:06 PM

Sunday, May 3, 2020

Me

Do you know how much you want for it?

11:40 AM



Nena

Idk \$100

12:34 PM

Me

I think you can get more. Let me see if he will pay \$150. I think that would be a fair price.

12:40 PM



Nena

Awww Tom thanks for helping me

1:02 PM

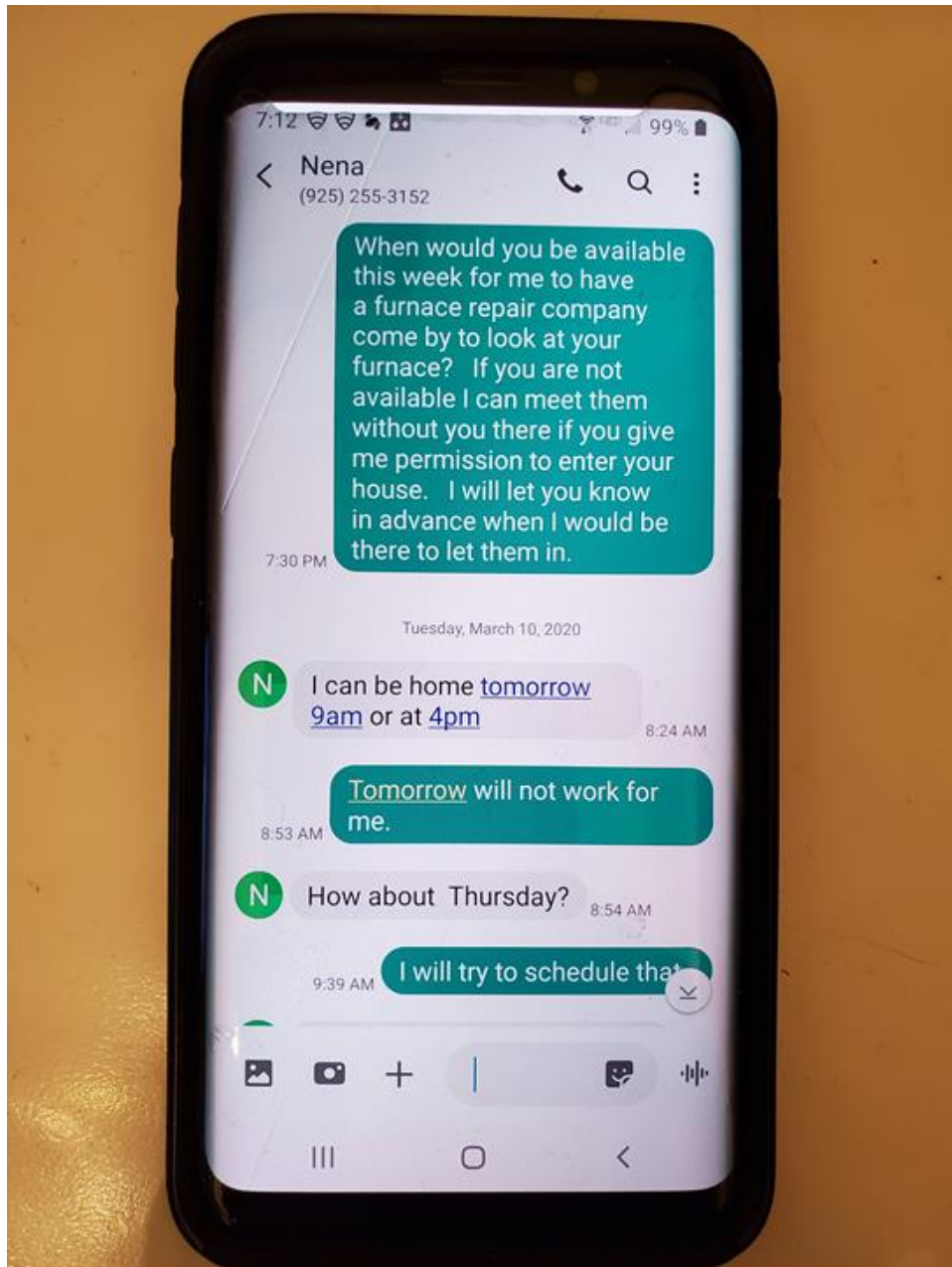


Nena

God bless you

1:02 PM

EXHIBIT B



Statement of Arguments in Support of Property Owner's Petition on Remand

Property Owner refutes the Hearing Officer's decision and believes the decision was inconsistent with controlling law and facts presented. The Property Owner is requesting the Hearing Officer to re-evaluate the decision based upon the following arguments:

- a.) The decision is inconsistent with OMC 8.22, Rent Board Regulations and prior decisions. OMC 8.22.030(a)(7) exempts from its jurisdiction dwelling units, pursuant to Costa-Hawkins (California Civil Code § 1954.52). Dwelling units exempt under Costa-Hawkins include those in which "it is alienable separate from the title to any other dwelling unit." It is uncontested that during the current occupancy of Petitioner, the second structure had not been used as a dwelling unit, and only as a storage unit. At issue is whether the second structure "is" a dwelling unit. It is not, so the property is a single family residence (dwelling unit) with other structures (not dwelling unit(s)). Therefore, the title to the dwelling unit is alienable from any other "dwelling unit" and the property is exempt from the Oakland Rent Control Ordinance.

The Hearing Officer determined that the second structure was a dwelling unit based upon Owens v. City of Oakland Housing, Residential Rent and Relocation Board which adopted the definition of "dwelling unit" located at Cal. Civ. Code § 1940(a). "Dwelling Unit" means "a structure or part of a structure that **is used** as a home, residence, or sleeping place by one person who **maintains** a household or by two or more persons who **maintain** a common household." Cal. Civ. Code § 1940(a).

It is imperative to note the use of the word "is" in "is used" in this definition. The addition of the present tense verb "is" prior to "used" clearly establishes that the definition is based upon the current use of a structure, not its past use or its potential future use. The implication of a structure's **current** use is further supported in the definition by the use of the word "maintains," which is also current tense and not past or future tense.

Legal definitions are carefully worded and must be strictly construed utilizing their linguistic meaning. Had the authors of the definition intended their definition of "dwelling unit" to apply as Petitioner claims, the authors would have simply used the word "used" by itself without adding the present tense "is" before it. This would have avoided excluding prior or future use when applying the definition.

Petitioner's interpretation of the definition of "dwelling unit" is unreasonable in that based upon such definition, the existence of any secondary structure on a property with a single family dwelling, despite its age or the length of time that the secondary structure may have

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been unoccupied as a dwelling unit, would exempt the property from Costa-Hawkins. In the extreme case, consider a hypothetical single family dwelling constructed prior to the Civil War with a barn. If the barn had been occupied by someone as a residence prior to the Civil War and not occupied at any time since, the single family dwelling would be subject to rent control provisions in perpetuity.

Petitioner's interpretation of the definition of "dwelling unit" is unreasonable in that based upon such definition, the existence of any secondary structure on a property with a single family dwelling, despite its age or the length of time that the secondary structure may have been unoccupied as a dwelling unit, would exempt the property from Costa-Hawkins. In the extreme case, consider a hypothetical single family dwelling constructed prior to the Civil War with a barn. If the barn had been occupied by someone as a residence prior to the Civil War and not occupied at any time since, the single family dwelling would be subject to rent control provisions in perpetuity.

Additionally, Petitioner and Hearing Officer appear to be in agreement that the habitability of a unit has no bearing on whether it constitutes a "dwelling unit" for the purpose of considering it exempt under Costa-Hawkins. Based upon this position, the condition of the barn in the above hypothetical example, no matter how dilapidated it may have become over a period of approximately 160 years under previous owners would not exempt the owner from the Rent Control Ordinance. This is clearly not the intended interpretation of Costa-Hawkins. It is understood that it would not be in the spirit of the law for a property owner to neglect a structure for the purpose of rendering it uninhabitable so as to claim an exemption to the Rent Control Ordinance. However, this concern does not apply in this case due to the following: 1.) The rear unit was uninhabitable at the time the current property owner took possession of the property, 2.) The rear unit was originally constructed in an unsafe manner in that the electrical wiring was not installed in a manner which satisfied safety requirements at the time of construction and the structure was not constructed on a suitable foundation, 3.) The condition of the rear unit at the time the owner took possession of the property would have required removal and reconstruction of the rear unit to bring it to a habitable condition. This was financially infeasible, and the property owner had not legal obligation or interest in investing any funds to maintain or upgrade the structure, 4.) The Property Owner demonstrated no intent to ever rent the unit as a dwelling unit.

The above illustrates the significant flaws in the Hearing Officer's and Petitioner's unreasonable interpretation of the definition of "dwelling unit" located at Cal. Civ. Code § 1940(a).

The linguistically correct and strict interpretation of the definition of "dwelling unit" per Cal. Civ. Code § 1940(a) would be that a structure ceases to be a dwelling unit at such time it is not used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. This strict

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interpretation is inconvenient to the goal of the Rent Adjustment Ordinance, and it could be justifiably argued that such interpretation would enable owners to flip flop units from being covered units to being exempt multiple times during one tenant's tenancy, simply based upon temporary changes to the other unit on the property. However, the Property Owner had not taken any action prior to or during the tenancy of Petitioner to change the status of the rear unit.

The Property Owner agrees that it is not in the spirit of Costa-Hawkins to enable owners to flip flop units from being covered units to being exempt during one tenant's tenancy, simply based upon temporary changes to the other unit on the property. The Property Owner in this case clearly showed no intent to do so and has not acted in any manner that is outside of his rights or in violation of the rights of Petitioner. Therefore, it is unclear why the Rent Adjustment Program would hold the Property Owner to unreasonable interpretations of Costa-Hawkins and unreasonable application of prior case law that clearly violate the Property Owner's rights under the law.

There is no current statute or case law that establishes at what point a dwelling unit ceases to be a dwelling unit per se and there is no current case law that can be directly applied to this case. The Hearing Officer's decision directly contradicts the Owens case on which the hearing decision relies. In Owens, the owner of a single-family residence rented out rooms with separate lease agreements for occupants, and the occupants could use those rooms to live, at the exclusion of others. The Court found that just because the property was originally a single-family residence did not mean that it was being used as a single family residence. The subject property in the Owen's case focused on the **current use** of the property, which was a multiple dwelling, by renting to several different occupants, and therefore, subject to rent control. The rationale is that the property is to be judged by its current use. The same holds true here in that the use of the property during Petitioner's occupancy has been as a single-family residence with a storage structure in back. The back structure has not been used, nor is it available to be used, as a separate living unit. Accordingly, use of the property during this tenancy has been as a single-family residence with alienable title separate from any other dwelling unit and is, therefore exempt from Oakland Rent Control.

As stated previously, based upon the a strict linguistic interpretation of the definition of "dwelling unit" in Cal. Civ. Code § 1940(a), a dwelling unit ceases to become a dwelling unit when it is no longer used as such. Acknowledging the public policy issues associated with applying this strict interpretation in all cases, it is incumbent upon all parties involved in this case to arrive at a fair interpretation of the law as it reasonably applies to this case. The Property Owner firmly believes that public policy should affirm that the fact that the rear unit had never been utilized as a dwelling unit under his ownership, and his ownership was prior to the occupancy of Petitioner, is sufficient justification to satisfy the Property

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Owner's burden of proof that the rear unit was not a dwelling unit in the spirit of Costa-Hawkins during the tenancy of Petitioner.

The City of Oakland has corroborated that the rear unit is not a dwelling unit. The City of Oakland issued a permit to demolish the rear unit. This permit is included as an attachment. The permit details indicate the Permitted Occupancy Group of the structure as a "Utility/Miscellaneous Structure," and also specifically indicates that the structure is not a "Dwelling Unit." Furthermore, the permit indicates that the structure is at the rear of a "sfd" (single family dwelling). This determination was made based upon a Design Review performed by the City of Oakland that was required prior to issuing the demolition permit. Therefore, the City of Oakland has officially determined that the second structure is not a dwelling unit.

Based upon this, it is incumbent upon all parties involved to agree upon a fair interpretation of the law. The Property Owner firmly believes that public policy should affirm that the fact that the rear unit had never been utilized as a dwelling unit under his ownership, and his ownership was prior to the occupancy of Petitioner, is sufficient justification to satisfy the Property Owner's burden of proof that the rear unit was not a dwelling unit in the spirit of Costa-Hawkins.

If the above justification is not considered sufficient to meet the Property Owner's burden of proof, the fact that the rear unit had not been occupied at any time for a period of over 15 years and has been demolished establishes that the rear unit ceased becoming a dwelling unit over 15 years ago, which is also 8 years prior to the occupancy of Petitioner. It should be noted that under the Ellis Act, a unit is considered to be permanently removed from the rental market if it is occupied by an owner for more than three-years. Applying this three-year period as a reasonable time frame for a unit to be permanently removed from the rental market, it would stand to reason that considering the rear unit had been vacant eight years prior to the occupancy of Petitioner in the front unit, this 8-year period would be well beyond a reasonable time frame to consider the rear unit as having ceased being a dwelling unit.

Based upon the above, if the current decision of the Hearing Officer in this case is not reversed, this would establish a significant new legal standard. The legal standard derived from this decision would be that the use of any structure as a dwelling unit by a previous property owner, no matter how far removed, would establish the structure as a dwelling unit in perpetuity for all subsequent property owners. Based upon the interpretation of the definition of a "dwelling unit" by the Petitioner, which is supported by the Hearing Officer in its decision, the law would apply to any "structure" as the definition does not define what is and is not considered a structure. Therefore, any type of secondary structure could be considered a dwelling unit including a shed, garage, barn or even a tree house. Also, based

Statement of Arguments in Support of Property Owner's Petition on Remand

upon the Hearing Officer's strictly construed interpretation of the definition of a "dwelling unit," if a single family residence has a detached garage and the garage were to be occupied by a squatter, the garage would become a dwelling unit which would subject the single family dwelling to rent control provisions in perpetuity. The Hearing Officer's strictly construed interpretation of the definition of "dwelling unit" in Cal. Civ. Code § 1940(a) also does not establish a minimum time period in which a structure must be occupied in order to be considered dwelling unit. Therefore, any type of structure could be considered to be a dwelling unit in perpetuity if it is occupied for even one day. This would require the establishment of new law that would require property owners of single family dwellings to disclose to future property owners (and perhaps even the government in jurisdictions with rent control) if any secondary structure on their property has been used as a dwelling unit for any period of time, or if they have knowledge of any previous owners who may have used any secondary structure as a dwelling unit for any period of time. This information would be required as the basis for determining **in perpetuity** if a secondary structure of any construction type would be considered a dwelling unit if the single family dwelling were to EVER be rented in the future. If a secondary structure were to have been occupied at any time in the past, the only way for the structure to not be legally considered a dwelling unit would be to demolish it.

The above clearly would not be in the spirit of Costa-Hawkins, and it is doubtful that the Rent Adjustment Program would want to establish such a new far reaching legal standard when a reasonable application of the law in this case would avoid this.

Based upon the above, the Property Owner has satisfied its burden of proof that under under OMC 8.22.030(a)(7), the property is exempt from Oakland Rent Control pursuant to Costa-Hawkins.

- b.) Hearing Officer in Owen's Case found use in a Single-Family Dwelling as a predicate for the decision. This case challenges use and therefore, following the same line of thought, the use of one structure on this parcel is different than the next, which would mean it does NOT meet the burden of reason. There is only ONE dwelling on the parcel. The rear unit DOES NOT HAVE A KITCHEN, DO NOT HAVE A BATHROOM, HAS ONLY BEEN USED AS STORAGE BY THE PROPERTY OWNER AND PETITIONER, WAS NEVER UTILIZED AS A DWELLING BY THE PROPERTY OWNER, AND WAS NEVER INTENDED BY THE PROPERTY OWNER TO BE USED AS A DWELLING. To interpret the logic as a "potential to function", per the Hearing Officers decision, is not a determination and further violates the rationale of the Owen's decision.
- c.) This property has not been used as a multi-dwelling unit during this tenancy, or with the Property Owner. The Alameda County Tax documentation states **there is only one single-dwelling structure** on site, which the Hearing Officer completely omits from her decision. The "2 or more structures" category provided by **the City of Oakland records refer to**

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category of parcel but not ITS USE. Furthermore, use of information from the Alameda County Assessor's Office by Petitioner to establish use is incorrect. Per the Alameda County Assessor's Office, assessment information is only intended to be used for the purpose of appraising properties for assessment purposes only, and the Assessor's Office does NOT recommend use of assessment information for any other purpose. Therefore, the Hearing Officer's decision on this interpretation is misdirected.

Further, Petitioner had use of ALL structures (home, garage, and storage) while living on site. At no time has anyone else occupied other structures on the property, nor has there ever been another tenancy of the other structures during Petitioner's term. Evidence to the electric utility of other structures being in the Property Owner's name further demonstrates no other use or tenancy aside for storage was possible.

- d.) This decision overrides county and state code determinations. It further ignores Property Owner's testimony and the legal proof from state and county agencies submitted by Property Owner.

The Hearing Officer relied upon the Use Code for the property from the Alameda County Assessor's Office to support the decision that the property is a multiple-dwelling structure. However, the Alameda County Assessor's website (<https://www.acgov.org/MS/prop/useCodeList.aspx>) specifically states that the use codes are to be used solely for the purpose of appraising properties for assessment purposes only and that the use codes are not to be used for any other purpose. This information from the Alameda County Assessor's Office is shown below.

Use Codes

The Assessor's Use Code has been designed for use by this department for the purpose of appraising properties for assessment purposes only.

The Assessor's Office does NOT recommend other agencies (Cities, School, Districts, Special Districts, etc.) use these Use Codes for any other purpose and is not responsible for any inaccurate determinations on their part when using these Use Codes.

Revenue and Tax Code Sec. 408.3(d) - The Legislature finds and declares that information concerning property characteristics is maintained solely for assessment purposes and is not continuously updated by the assessor. Therefore, neither the county nor the assessor shall incur any liability for errors, omissions, or approximations with respect to property characteristics information provided by the assessor to any party pursuant to this section. Further, this subdivision shall not be construed to imply liability on the part of the county or the assessor for errors, omissions, or other defects in any other information or records provided by the assessor pursuant to the provisions of this part.

Based upon this, the information relied upon from the Alameda County Assessor's Office is not valid for use in determining the actual use of a property for the purpose of tenant law. Therefore, the Property Owner protests the use of the Assessor's Use Code to establish the use of the rear unit as a dwelling unit.

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- e.) It is NOT the intent of the rent board to find **ANY** other structure on a parcel and claim it is habitable and/or a dwelling unit for the purpose of having it fall under the Oakland Rent Ordinance.
- f.) The decision demonstrates a strong bias towards the tenant lawyer's testimony, and completely discounts the validity of the sworn, notarized statements and evidence and statute provided by the Property Owner.

The Hearing Officer's written hearing decision incorporates identically worded language from Petitioner's written arguments which draw upon case law and reasoning that is not applicable to the matters presented in the petition, as well as arguments which are arbitrary and not supported by law. The Hearing Officer's affirmation and use of Petitioner's written arguments and hypothetical logic, which have no basis in established law, to support the Hearing Officer's decisions in favor of Petitioner constitutes an abuse of discretion which demonstrates an outward bias toward Petitioner and violates the Property Owner's rights to be heard by a competent, independent and impartial tribunal.

Furthermore, despite the extensive testimony of the Property Manager, sworn affidavits from witnesses and evidence, the Hearing Officer determined that the Property Owner failed to sustain their burden to prove an exemption from the Rent Adjustment Program. However, when determining the merits of the habitability issues claimed by Petitioner, the Hearing Officer did not hold petitioner to her burden of proof and relied solely upon Petitioner's testimony. The Hearing Officer relied on this testimony without any evidence from Petitioner that Petitioner verbally notified the Property Owner of the claimed issues with the house shortly after moving into the unit. The Hearing Officer, by holding the Property Owner to their burden of proof but not requiring any proof from Petitioner to meet her burden of proof of her habitability claims, further demonstrates an outward bias toward Petitioner and further violates the Property Owner's rights to be heard by a competent, independent and impartial tribunal.

- g.) In the Hearing Officer's decision, it is evident the Hearing Officer relied upon Petitioner's testimony as credible. In the decision pertaining to the habitability issues, the Hearing Officer based its decision solely upon Petitioner's sworn testimony as meeting Petitioner's burden of proof that the Property Owner had constructive knowledge of the alleged habitability issues in 2013, without requiring any evidence at all from Petitioner to support this. However, the Hearing Officer disregarded numerous instances of unreliable testimony both in Petitioner's written petition and her verbal testimony during the hearing. Examples of these are included in Attachment B. Petitioner submitted their petition and provided sworn verbal testimony under the penalty of perjury. Evidence was provided by the Property Owner which refuted both the sworn written and verbal testimony of Petitioner demonstrating that the falsehoods presented by Petitioner were willful and presented with the intent to mislead the Hearing Officer. Due to the demonstrable unreliable testimony of

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Petitioner which raise concerns as to the credibility of Petitioner, the Property Owner requests that the Hearing Officer reconsider their decisions regarding material matters in the petition with weight placed upon factual evidence, the sworn unimpeached testimony provided by the Property Owner, and evidence provided by the Property Owner.

- h.) The Hearing Officer's written decision, was based substantially on the credibility of the Petitioner. The Hearing Officer's written decision did not comply with the requirements of the Administrative Procedures Act, Division 3, Part 1, Chapter 4, Article 6 § 11425.50. (b) which states:

11425.50. (b) The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. **If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination**, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

Considering the demonstrable unreliable testimony of Petitioner, as exemplified by the information included in Attachment B, failure to include the above required information and to establish the basis for relying upon the testimony of Petitioner over that of the Property Owner exhibits potential bias on the part of the Hearing Officer and calls into question the fairness and impartiality of the hearing.

- i.) Petitioner entered into evidence correspondence between the Property Owner and Petitioner which were marked as "without prejudice." Such correspondence is not admissible in subsequent court, arbitration, or adjudication proceedings. However, the Property Owner's correspondence marked as "without prejudice" was admitted as evidence by the Hearing Officer without providing a legal basis to support doing so. Admission of this correspondence is improper, has prejudiced the Property Owner in the hearing process and violates the Property Owner's right to an independent and impartial tribunal.
- j.) To deny the Property Owner a single-family dwelling determination, as stated in county documents, and as supported by subsequent hearing decisions, denies a fair rate of return. To roll back rent and invalidate subsequent increases to the inception date, that were valid based on Costa Hawkins, denies the Property Owner a fair rate of return. The Property Owner has also incurred significant costs debating issues that are supported by law and testament.
- k.) The hearing decision incorrectly cites testimony. Examples of this are as follows:

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- On Page 6 of the hearing decision, it is stated:

“The owner representative testified that the owner did not receive notice of these issues until the tenant’s attorney notified the owner in writing in late 2019. Additionally, the tenant did not complain about these issues during the inspection on January 25, 2020. The tenant testified that she did not complain about these issues during the inspection because she was afraid of her rent being increased again.”

The above is incorrect in that the underlined statement above was not made by tenant.

The statement misstates testimony and is incorrect in that the tenant’s attorney notified the owner of issues with the unit is incorrect as the tenant’s representative provided the first notice of issues with the unit in an email dated March 5, 2020

- On Page 6 of the hearing decision, it is stated:

“After the owner received notice of this issue from the tenant’s attorney in Late 2019, an inspection of the unit was conducted by Tom Fresquez on January 25, 2020.”

This statement misstates testimony and is incorrect. The first notice the owner received from the tenant’s representative regarding issues with the unit was on March 5, 2020, not late 2019. The inspection which was performed on January 25, 2020, occurred prior to the owner receiving any notice by the tenant or the tenant’s representative regarding any claimed issues with the unit.

- 1.) Property Owner disagrees with the determination of the ongoing decreases in housing services and a subsequent credit. Hearing Officer awards the tenant a 5% credit for windows. Property Owner rejects this determination as it is not in accordance with law.

To be deemed untenable (uninhabitable) under 1941.1 of the California Civil Code, the building must “substantially” lack one of the issues listed in the Code. The condition of weatherstripping of windows is not included in the listed issues and does not constitute a lack of weatherproofing as weatherstripping and weatherproofing are not one and the same. The single pane windows function as designed. This was identified in the report from the property inspection performed in 2016 which was entered as evidence by the Property Owner. Lack of weatherstripping in good condition, which is not required by code, does not render the building as “substantially lacking” effective weatherproofing.

To be deemed a substandard building under Health & Safety Code 17920.3, and therefore constitute a breach of the implied warranty of habitability, the listed condition must be one that exists to the extent it “endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof.” No evidence was provided by Petitioner showing that lack of weatherstripping on single pane windows endangered the life, limb, health, safety or welfare of the occupant. Similarly, no evidenced was provided by Petitioner showing that

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cracked paint or plaster, or even the presence of minor amounts of mold, endangered the life, limb, health or safety of the tenant.

As to the presence of mold, it is important to note as well that it was "minor" and as single pane windows sweat, the accumulation of moisture on the surface of the single pane windows occurs when the window is properly functioning. Without routine cleaning of the windows, which is the responsibility of the tenant, it would not be unexpected that accumulation of moisture on the windows due to condensation would lead to mold growth.

The windows are single-paned, all lock, had existing weatherstripping, and are not cracked or damaged. Prior to Petitioner's submittal of her petition, Petitioner never mentioned any issue with maintenance needed on the windows and did not provide evidence that she had. Further, in the aforementioned property inspection report, windows were not highlighted by the licensed INSPECTOR as an issue requiring any maintenance or repairs.

Petitioner also did not provide ANY evidence that the Property Owner had constructive knowledge of any of the decreased housing service issues claimed in the petition. Therefore, Petitioner did not meet their burden of proof to establish when the Property Owner knew or should have known about the claimed decreased housing services. The Property Owner submitted evidence to establish that the claimed decreased housing services did not exist at the time Petitioner claimed she initially informed the Property Owner, which was prior to the occupancy of the Petitioner. Although the Hearing Officer noted conflicting testimony of the Petitioner in other matters, which would establish Petitioner's testimony as unreliable, and despite a preponderance of evidence presented by the Property Owner refuting the testimony of Petitioner, the Hearing Officer relied solely upon Petitioner's testimony without any supporting evidence and without verification of the conditions via a site visit. The Hearing Officer's determination in favor of Petitioner without support of the determination by law and despite Petitioner's failure to provide evidence to meet their legal burden of proof constitutes an abuse of discretion which demonstrates an outward bias toward Petitioner and violates the Property Owner's right to be heard by a competent, independent and impartial tribunal.

Property Owner seeks this credit be rejected and removed from the decision.

ATTACHMENT A

Permits for which no major inspection has been approved within 180 days shall expire by limitation. No refund more than 180 days after expiration or final.



CITY OF OAKLAND

CASE T20-0093

959 42ND ST

959 42ND ST

250 FRANK H. OGAWA PLAZA ▪ 2ND FLOOR ▪ OAKLAND, CA 94612

Planning and Building Department
www.oaklandnet.com

PH: 510-238-3891
FAX: 510-238-2263
TDD: 510-238-3254

Permit No: RB2003483 Residential Building - Demolition **Permit Issued:** 4/22/2021
Job Site: 959 42ND ST **Schedule Inspection by calling:** 510-238-3444
Parcel No: 012 102003000
District:
Project Description: Demolish 420sf detached structure at rear of sfd ./Per DRX210264 okay to demo de attached accessory structure
Related Permits: DRX210264

	<u>Name</u>	<u>Applicant</u>	<u>Address</u>	<u>Phone</u>	<u>License #</u>
Owner-Builder:	OLIVIERI JACK G	X	4734 SHETLAND AVE OAKLAND, CA	510-537-5226	
Owner:	OLIVIERI JACK G TR		4734 SHETLAND AVE OAKLAND, CA		

PERMIT DETAILS: Residential/Building/Demolition

General Info
 J Number: 119098 Detached Garage <400 sq ft: No Report - Soil/Geotech:

Building Information
 Demo Type: Entire Demo # Of Stories: 1 Permitted Building Use: Miscellaneous Structure
 Construction Type: VB - Combustible Construction, No Fire Rating # Of Dwelling Unit: 0 Permitted Occupancy Group: U Utility / Miscellaneous Structure
 # of Buildings Before Demo: 1 Total Floor Area (sq ft): 420

TOTAL FEES TO BE PAID: \$0.00

Plans Checked By _____ Date _____ Permit Issued By _____ Date _____
 Finalized By _____ Date _____

000476

ATTACHMENT B

ATTACHMENT B

Examples of Unreliable Testimony by Petitioner – Miriam Bolanos

1. In Petitioner's sworn declaration dated July 12, 2020, Petitioner states: "*During my time as a tenant in the front unit, I have not had access to the rear unit or used it for any purpose.*" This statement is refuted by sworn declarations submitted as evidence from multiple parties who were witnesses to the rear unit being used as storage by Petitioner and her boyfriend. Testimony that Petitioner used the rear unit as storage is corroborated in a text exchange between Mr. Fresquez and Petitioner on May 2 and May 3, 2020, which was submitted into evidence prior to the hearing, in which Petitioner acknowledges that her refrigerator was being stored in the rear unit and accepted Mr. Fresquez' offer to sell it on her behalf. This text exchange is included as an attachment (Exhibit A) for reference. Therefore, Petitioner's testimony in her sworn declaration is refuted by evidence, is factually untrue, was known by Petitioner to be untrue, and was presented with the intent to mislead the hearing officer into believing that Petitioner did not have use of all structures on the property, which is a material issue to the case.
2. Petitioner claims in petition that she moved into the unit on October 1, 2013. This was refuted by text messages between Petitioner and the property manager (Owner Exhibit 3) in which Petitioner requested to move into the subject property on September 23, 2014, nearly one year later. Therefore, Petitioner's testimony in this regard is refuted by evidence and is factually untrue. Petitioner was presented with this evidence during the hearing and was provided an opportunity to amend her testimony, which she did not.
3. Petitioner claims in her petition that there were six issues with the unit when she moved in affecting her health and safety and her ability to live comfortably in the premises. Petitioner claims she first notified the Landlord of these decreased services in January-February 2014. However, per Example 2 above, this notification would have been 7-8 months prior to Petitioner's request to move into the unit on September 23, 2014. Petitioner's testimony is factually untrue as the Landlord would not have been aware that Petitioner was living in the unit at the time she claims she notified the Landlord of the health and safety issues.
4. Petitioner claims in her petition that there were several problems with the unit when she moved in affecting her health, safety and her ability to live comfortably in the premises. Petitioner was asked by her attorney during the hearing if Petitioner had the opportunity to inspect the property before she moved in. Petitioner testified that she did not. The Landlord representative asked Petitioner if she knew who lived in the unit prior to her tenancy. Petitioner responded that her mother and brother lived in the unit. Petitioner was asked by Landlord representative if she visited her mother. Petitioner responded, "*of course I did.*" Petitioner further stated, "*but I never looked in the closets.*" (see Example 9 for the relevance of this statement regarding Petitioner looking in the closets)

Petitioner's mother lived in the unit from 2008 to 2014. In routine visits to her mother, Petitioner had six years of opportunity to inspect the property during visits with her mother and brother. Therefore, Petitioner's verbal testimony that she did not have an opportunity to inspect the property before she

moved in is factually untrue, was known to Petitioner to be untrue, and was presented with the intent to mislead the hearing officer into believing that Petitioner was not aware of the claimed issues with the unit prior to her moving into the unit.

5. Petitioner claims in petition that the heater “*has not turned on consistently and emits bad odors when turned on.*” Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014.

Per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014. Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the heater was tested and was documented to be in proper working order at the time of the home inspection, which occurred two years after Petitioner occupied the unit.

On January 25, 2020, prior to tenant providing any notification of any issues with the unit, an inspection of Petitioner’s unit was conducted by the Landlord’s son-in-law, Thomas Fresquez. At the time of the inspection, Mr. Fresquez asked Petitioner if there were any issues that needed to be addressed. Petitioner did not make any mention of the heater not working properly, despite the inspection being performed during winter. During same inspection, Mr. Fresquez brought a vacuum and offered to vacuum the heater, as the Landlord had regularly done as a courtesy to Ms. Bolanos due to fur from Petitioner’s cat collecting in the furnace causing bad odors. Petitioner declined the offer by Mr. Fresquez to vacuum the heater stating she regularly vacuumed the heater to remove cat hair and other debris to prevent the odor from occurring. A letter dated February 4, 2020, was sent by the property manager to Petitioner to document the findings and the discussions that occurred during the inspection (tenant Exhibit G). Per the discussions documented, the tenant made no mention of any issues related to proper functioning of the heater.

Said letter also documents that Petitioner was aware of the cause of the odors from the heater, and that the cause was fur from her cat (at one time multiple cats), not the condition of the heater itself. Therefore, petitioner knowingly claimed decreased service for an issue which she acknowledged was not the responsibility of the Landlord.

6. Petitioner claims in her petition that there was a “*rodent and raccoon infestation.*” Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. However, Per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014.

Based upon Petitioner’s claims in her petition, the infestation was of such extent that she assigned an estimated value to loss of service of 15% of the rent. Based upon this assigned value, this issue was the most significant of all of the issues listed in the petition.

However, Petitioner clarified during her verbal testimony at the hearing that there were no mice or rats during the time of her occupancy, but there were occasions where she heard raccoons beneath the house. Therefore, Petitioner’s claim, submitted under penalty of perjury, that a “rodent infestation,” which was present from the time she moved in and was of such extent that it affected her health and safety and her ability to live comfortably in the premises, is factually untrue.

7. Petitioner claims that walls and ceilings throughout the house are cracked and peeling. Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. However, per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014. Petitioner claims in her petition that that extent of the cracks in the walls and ceilings was of such extent that she assigned an estimated value to loss of service of 12% of the rent. Based upon this assigned value, this issue was the second most significant of the issues listed in the petition.

Based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the inspector stated that finished walls were in “good condition” and that there were “blemishes and/or minor cracks in the walls which were cosmetic in nature. Therefore, based upon impartial evidence by a home inspection professional, Petitioner’s claim that cracked walls and ceilings existed throughout the house at the time she moved in which were of such extent that they affected her health and safety and her ability to live comfortably in the premises is factually untrue.

8. Petitioner claims in petition that windows are “*deteriorated, do not seal properly and lack proper insulation.*” Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in “January-February 2014.” However, Per Item 1, petitioner did not request to move into the subject property until September 23, 2014. Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the windows were inspected and were reported to be “properly installed and generally in serviceable condition.”
9. Petitioner claims in petition that there is “*mold throughout the house stemming from improper insulation and deteriorated windows, walls and ceilings.*” Petitioner claims these issues began when she occupied the premises in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. During the hearing, Petitioner stated that the mold was mainly in the closets. Petitioner implied that this is why she was not aware of the presence of mold prior to moving in as she did not look in her mother’s closets during the times she visited her (reference Example 4 above). Therefore, Petitioner’s own testimony contradicts her claim that “*mold throughout the house*” existed at the time she moved in.

Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the inspector did not make any mention of mold, which would have been identified in a home inspection had it existed to the extent claimed by Petitioner. Therefore, based upon impartial evidence from a professional trained to identify such issues, Petitioner’s claim that mold existed throughout the house from the time she moved in, which was of such extent that it affected her health and safety and her ability to live comfortably in the premises, is refuted by evidence. This evidence demonstrates that the testimony of Petitioner was known by Petitioner to be untrue, and was presented with the intent to mislead the hearing officer into believing that there was mold throughout the unit at the time she moved into the unit.

10. Petitioner significantly misstates in petition the amount of rent payments made during her tenancy.
11. Petitioner was asked by her attorney during the hearing if Petitioner was provided with 24-hour notice prior to a visit by a contractor in March of 2020 to inspect the heater. Petitioner stated that she was not provided with 24-hour notice. Mr. Fresquez responded that he did provide 24-hour notice to

Petitioner via text. Mr. Fresquez offered to provide the hearing officer with a copy of the text exchange with Petitioner as evidence to refute Petitioner's testimony. The hearing officer refused to accept the evidence offered by Mr. Fresquez. However, considering that the Hearing Officer has relied solely upon the sworn testimony of Petitioner in deciding matters material to this case, it is imperative that the Hearing Officer be aware of any potential credibility issues in the sworn testimony of Petitioner so that this can be taken into account in its decision. Therefore, the text exchange between Mr. Fresquez and Ms. Bolanos that refutes Ms. Bolanos' sworn testimony is included in Exhibit B. This establishes that the testimony of Petitioner in this regard is factually untrue and was known by Petitioner to be untrue.

EXHIBIT A

Saturday, May 2, 2020

Me

I know someone who may want to buy your refrigerator that you have stored in the back unit. Would you like to sell it or do you want to keep it?

5:11 PM

Nena

Yes I want to sell it

8:06 PM

Sunday, May 3, 2020

Me

Do you know how much you want for it?

11:40 AM

Nena

Idk \$100

12:34 PM

Me

I think you can get more. Let me see if he will pay \$150. I think that would be a fair price.

12:40 PM

Nena

Awww Tom thanks for helping me

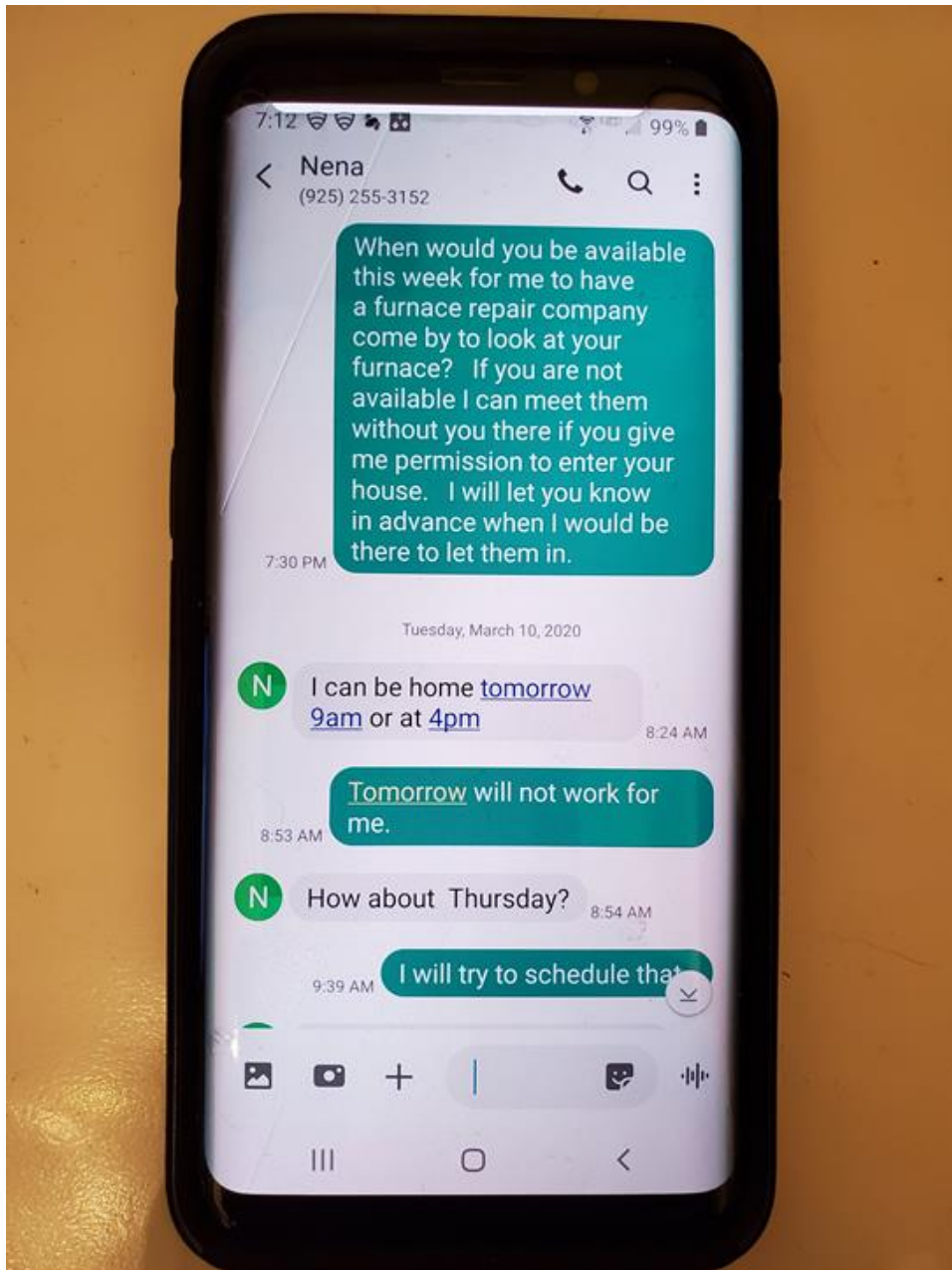
1:02 PM

Nena

God bless you

1:02 PM

EXHIBIT B

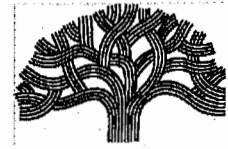


Rent Adjustment Program
List of Hearing Exhibits

Case Number/File Name: T20-0093 Bolanos v. Olivieri Remand Hearing Date: 10/12/21

Exhibit #	Date	Description	From Page#	To Page#	ADMITTED INTO EVIDENCE?		Objection?
					YES	NO	
1	4/22/21	Owner Exhibit 1 - Demolition Permit			yes		
T1		Public Records Requests #21-6508 & #21-6510			yes		
T2		City of Oakland Record Detail with Timeline			yes		
T3		City of Oakland Inspection Log 2/26/21			yes		
T4		Emails March 2, 2021 through March 4, 2021			yes		
T5		Sanborn Map & Legend			yes		
T6		March 13, 2021 Letter from Thomas Fresquez to City of Oakland			yes		
T7		Emails between City of Oakland and Thomas Fresquez			yes		
T8		Updated Record Description on DRX210264 Comment Log			yes		
T9		Photographs from Public Records Request			yes		
T10		Emails between City of Oakland Employee Masoud Hamidi and Thomas Fresquez			yes		
T11		Permit			yes		

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA
94612-3004

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

REMAND HEARING DECISION

CASE NUMBER: T20-0093 Bolanos v. Olivieri
PROPERTY ADDRESS: 959 42nd Street, Oakland, CA
DATE OF REMAND HEARING: October 12, 2021
DATE OF DECISION: January 12, 2022
APPEARANCES: Miriam Bolanos, Tenant
Samantha Beckett, Tenant Representative
Noel Munger, Witness/Tenant Representative
Emily Bao, Observer
Clara Garzon, Interpreter
Jill Broadhurst, Owner Representative
Gina Fresquez, Owner's Daughter/Owner Rep
Tom Fresquez, Owner's Son-in-Law/Owner Rep

BACKGROUND AND SUMMARY OF APPEAL DECISION

A Hearing Decision in this case was issued on March 17, 2021, which granted the Tenant Petition. The Hearing Decision determined that the subject property is not exempt under Costa-Hawkins as a single-family dwelling because there are two dwelling structures on the property that are not separately alienable. Additionally, the Hearing Decision invalidated all contested rent increases for failure to serve the RAP Notice and granted a 5% rent reduction for deteriorated windows until repairs are made.

The owner appealed, claiming that the property is exempt from the Rent Adjustment Ordinance because there is currently only one dwelling unit on the property, and the secondary unit has not been used as a home, residence, or sleeping place during the petitioner's tenancy. The owner also challenged the 5% rent reduction for deteriorated windows, arguing that the condition did not substantially impact habitability and the tenant did not notify the owner of the need for repairs.

000485

An Appeal hearing was held on July 8, 2021, and an Appeal Decision was issued on August 17, 2021. The Board remanded the Hearing Decision back to the Hearing Officer for the limited purpose of considering new evidence regarding a demolition permit that was presented for the first time on appeal. Additionally, the Board moved to postpone consideration of whether the 5% rent reduction was supported by substantial evidence pending the remand decision on the issue of whether the secondary structure is a dwelling unit.

EVIDENCE

At the Remand Hearing, held on October 12, 2021, the owner representative submitted a demolition permit issued by the City of Oakland on April 22, 2021.¹ Under the project description, the permit states "demolish 420sf detached structure at rear of sfd./Per DRX210264 okay to demo detached accessory structure". Additionally, under building information, the permit states "# of dwelling units: 0", "permitted building use: miscellaneous structure", and "permitted occupancy group: utility/miscellaneous structure". Pursuant to the demolition permit, the rear structure was demolished on July 9, 2021, and demolition was completed on July 10, 2021.

The owner representative argued that the demolition permit clearly shows that the rear structure was not a dwelling unit, but rather a miscellaneous utility structure. Therefore, the subject property never consisted of two dwelling units, but rather, a single-family dwelling, and a miscellaneous structure used as a storage space. Additionally, the owner representative stated that a City of Oakland Building Inspector inspected the interior of the rear structure prior to issuing the demolition permit, and determined that it was not a dwelling unit. The owner representative argued that the demolition permit establishes that the subject property is exempt from the Rent Adjustment Program as a single-family dwelling.

The tenant representative disagreed, and submitted a series of communications between Thomas Fresquez, owner representative, and the City of Oakland, which show that the City of Oakland never made an official determination that the rear structure was not a dwelling unit.² In fact, a City of Oakland Record Detail with Comments notes on March 4, 2021, that "Per sanborn, and CO assessor, there is a rear dwelling structure. The permit was applied to demolish rear storage. Emailed to ABR...for zoning review."³ An additional note states "Per ABR, to demolish rear structure (dwelling) will require zoning review. ABR to advise application for requirement. Hold issuance for zoning approval."⁴ Further, an inspection of the rear unit was conducted by City of Oakland Inspector Angus Thynne on February 26, 2021, and the inspection log describes the rear structure simply as a rear accessory structure, without making a determination as to whether it was a dwelling unit.⁵ Finally, the tenant representative submitted

¹ Exhibit 1

² Exhibits T1 through T11

³ Exhibit T2

⁴ Exhibit T2

⁵ Exhibit T3

documentation showing that the demolition permit application was referred for a project design review by the zoning department but Mr. Fresquez obtained an exemption from the design review process by claiming that the rear structure was unsafe due to faulty wiring and a poor foundation.⁶ The tenant representative argues that since the demolition permit application never went through the design review process because of the exemption, the City of Oakland never made an official determination as to whether the rear structure was a dwelling unit.

Additionally, a review of the record in this case shows that the tenant representative submitted multiple documents at the underlying hearing which indicate that the property was a duplex. A City of Oakland Planning and Zoning Map which describes the subject property as a multi-dwelling property and shows two structures on one parcel.⁷ A document from the County of Alameda, Office of the Assessor, entitled Property Assessment Information.⁸ This document lists the property as a multi-dwelling property and describes it as consisting of "2, 3, or 4, single family houses". He submitted a City of Oakland Building Permit RE1604751 Record Detail with Inspection Log for an electrical panel installation in 2017 which approves the release of two separate electrical lines and refers to the property as a duplex.⁹ Finally, he submitted photographs taken on March 2, 2020, which show the exterior of the rear structure on the parcel, separate mailboxes, separate gas meters, and the new separate electrical meters with labeling for front and rear unit.¹⁰

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Costa-Hawkins Exemption for a Single-Family Dwelling

The Costa-Hawkins Rental Housing Act¹¹ provides that a dwelling or unit which is separately alienable from the title to any other dwelling or unit is exempt from local rent control, except under certain circumstances. The Oakland Rent Adjustment Program specifically states that if a unit is covered under Costa-Hawkins it is exempt from the Ordinance¹².

Based on the evidence and testimony submitted at the remand hearing, as well as a review of the underlying record and Hearing Decision in this case, it is clear the parties have submitted conflicting evidence regarding the function of the rear structure on the property. Although the demolition permit describes the rear unit as a miscellaneous utility structure, that document alone is insufficient to prove the structure was non-residential, considering all the evidence presented by the tenant representative to the contrary at the underlying hearing. Since an owner has the burden of proof

⁶ Exhibit T7

⁷ Tenant Exhibit A

⁸ Tenant Exhibit B

⁹ Tenant Exhibit C

¹⁰ Tenant Exhibit D

¹¹ Civil Code Section 1954.52(a)(3)

¹² O.M.C. §8.22.030(A)(7)

regarding a claim of exemption, the Hearing Officer finds that the owner has failed to sustain his burden of proof in showing that the rear structure was not a dwelling unit.

However, it is undisputed that the rear structure was demolished as of July 10, 2021. Therefore, effective July 10, 2021, the subject property consisted of a single-family dwelling. At that time, the subject property became exempt from the Rent Adjustment Program as a single-family dwelling that can be sold separately under the Costa-Hawkins Rental Housing Act. This determination was made under the facts of this case. A change in circumstances can mean that this property would no longer qualify as exempt from the Rent Adjustment Ordinance, either because of a change in the law or a material change of facts.

Since the tenant filed her petition on March 4, 2020, prior to the property becoming exempt, the underlying Hearing Decision is hereby affirmed with respect to the tenant's rent increase claims and decreased housing service claims.

ORDER

1. The subject property is exempt from the City of Oakland Rent Adjustment Program effective July 10, 2021, on the grounds that it is a single-family dwelling that can be sold separately. This exemption is conditional upon the factual determinations that were made under the facts of this case. A change in circumstances can mean that this property would no longer qualify as exempt from the Rent Adjustment Ordinance, either because of a change in the law or a material change of facts.

2. Since the tenant filed her petition prior to the property becoming exempt, the underlying Hearing Decision is affirmed with respect to the tenant's claims.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: January 12, 2022

Maimoona Ahmad

Maimoona S. Ahmad, Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number: T20-0093

Case Name: Bolanos v. Olivieri

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:

Documents Included

Remand Hearing Decision

Owner

Gina Fresquez
25538 South Gold Ridge Drive
Castro Valley, CA 94552

Owner Representative

Jill Broadhurst, Big City Property Group, Inc.
PO Box 13122
Oakland, CA 94661

Tenant

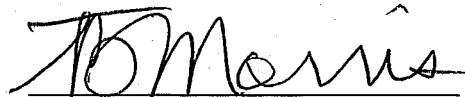
Miriam Bolanos
959 42nd Street
Oakland, CA 94608

Tenant Representative

Samantha Beckett, Centro Legal de la Raza
3022 International Blvd. Suite 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 13, 2022** in Oakland, California.



Teresa Brown-Morris
Oakland Rent Adjustment Program

000489



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
 250 Frank Ogawa Plaza, Suite 5313
 Oakland, CA 94612
 (510) 238-3721

For date stamp.

APPEAL

Appellant's Name Gina Fresquez		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 959 42nd Street, Oakland, CA 94608			
Appellant's Mailing Address (For receipt of notices) 25538 Gold Ridge Dr. Castro Valley, CA 94552		Case Number T20-0093	
		Date of Decision appealed March 17, 2021, January 12, 2022	
Name of Representative (if any) Jill Broadhurst, Big City Property Group Thomas Fresquez		Representative's Mailing Address (For notices) PO Box 13122, Oakland, CA 94661	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) **There are math/clerical errors that require the Hearing Decision to be updated.** *(Please clearly explain the math/clerical errors.)*
- 2) **Appealing the decision for one of the grounds below (required):**
 - a) **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) **The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) **The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) **The decision violates federal, state or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) **The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

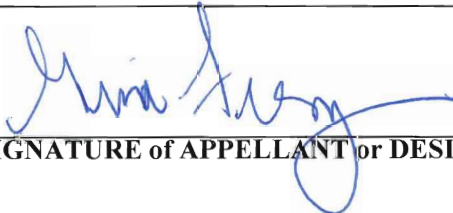
For more information phone (510) 238-3721.

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 25.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. • I declare under penalty of perjury under the laws of the State of California that on February 1, 2022, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Miriam Bolanos
<u>Address</u>	959 42nd Street
<u>City, State Zip</u>	Oakland, CA 94608
<u>Name</u>	Samantha Beckett, Centro Legal de la Raza
<u>Address</u>	3022 International Blvd. Suite 410
<u>City, State Zip</u>	Oakland, CA 94601

	2-1-2022
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

Case Number T20-0093
Case Name: Bolanos v. Olivieri

OWNER APPEAL

Issue 1 – Decreased Housing Services

To be heard prior to Issue 2

This appeal to the hearing decision issued in Case No. T20-0093, Bolanos V. Olivieri is filed on behalf of Mr. Jack Olivieri who is the property owner named in this case.

This appeal pertains specifically to the following decreased housing services alleged in the Tenant's petition.

1. Deteriorated windows with inadequate weatherproofing
2. Mold
3. Cracking paint on the walls and ceiling.

The Owner is appealing the hearing decision based upon the following:

1. Failure of the Tenant to satisfy their burden of proof
2. Unreliable testimony by the Tenant
3. Violation of judicial ethics, abuse of discretion and bias on the part of the hearing officer.
4. Violation of the Owner's due process rights under Article 6 of the Human Rights Act and the 14th Amendment of the Constitution of the United States.

The hearing in the above referenced case was held in response to a petition filed with the Oakland Rent Adjustment Program by the petitioner, Miriam Bolanos, against Jack Olivieri. Miriam Bolanos is the tenant (Tenant) of a single-family house which is owned by Jack Olivieri (Owner). Ms. Bolanos has been a tenant of said property since 2014, at which time she moved into the unit with her mother who had lived in the unit since 2008. Ms. Bolanos moved into the unit after her brother, who also occupied the unit, moved out.

The Tenant submitted a petition to the Oakland Rent Adjustment Program after a rent increase was served by the Owner. The issues raised by the Tenant in her petition included a protest of all rent increases and claims of decreased housing services related to multiple alleged habitability issues with the unit rented by the Tenant.

The decision of the hearing officer with respect to the decreased housing services is included on Page 9 of the hearing decision which states:

Decreased Housing Services

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent and may be corrected by a rent adjustment. However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy, or one that is required to be provided in a contract between the parties, or a violation of the housing or building code which seriously affects the habitability or the tenant's unit. Further, an owner must be given notice of a problem, and a reasonable opportunity to make repairs before a claim of decreased housing services will be granted.

Additionally, the tenants have the burden of proof with respect to each claim.

Windows, Mold, Walls, Ceiling: The tenant testified credibly that the windows are deteriorated and lack inadequate (sic) weatherproofing, resulting in mold and cracking paint on the walls and ceiling. The photographs submitted by the tenant's testimony corroborate the tenant's testimony. Additionally, the hearing officer credits the tenant's testimony that she verbally notified the owner of this issue shortly after moving into the unit. This claim affects the habitability of the unit and the tenant is entitled to a 5% rent reduction until the windows are repaired. The tenant is also entitled to restitution for past decreased housing services, but restitution is limited to three (3) years prior to the hearing.

This appeal requests that the portion of the hearing decision issued in favor of the Tenant pertaining to the decreased housing services mentioned above be overturned in favor of the Owner based upon the following:

1. Misrepresentation of Testimony by Hearing Officer

The hearing decision issued by the hearing officer includes multiple instances of misrepresented testimony. All instances of misrepresented testimony by the hearing officer were to the benefit of the Tenant. These misrepresentations constitute abuse of discretion and clear bias on the part of the hearing officer.

Examples of misrepresented testimony in the hearing decision issued by the hearing officer are as follows:

- A. The Tenant's petition alleged that “*the windows are deteriorated, don't seal properly and lack proper insulation.*” The tenant also alleged in her petition that “*due to the inadequate weatherproofing of the windows, there is mold in the unit and cracking paint on the walls and ceiling.*” The tenant submitted photo evidence of mold on the windows and cracking paint on the walls and ceiling.

On Page 9 of the hearing decision, the hearing officer states:

The tenant testified credibly that the windows are deteriorated and lack inadequate (sic) weatherproofing, resulting in mold and cracking paint on the wall and ceiling.

However, other than the above referenced statements of the Tenant in her petition, there was no testimony provided by the Tenant supporting the allegation that the alleged mold and cracking paint on walls and ceiling was a result of deteriorated windows and a lack of inadequate (sic) weatherproofing on the windows. It should be noted that the unit is nearly 100 years old and has single pane aluminum and wood windows. Single pane windows typically produce condensation which leads to mold growth on and around the windows if the windows are not cleaned as part of routine cleaning, which is the responsibility of the Tenant.

The hearing officer in her issued decision simply repeated the tenants written claim verbatim and misrepresented that the Tenant "credibly" testified to something which she did not. Therefore, the hearing officer found in favor of the Tenant based upon testimony which did not even exist but which the hearing officer deemed as "credible."

The hearing officer's finding in favor of the Tenant based upon testimony which did not exist constitutes abuse of discretion and clear bias on the part of the hearing officer which has violated the Owner's constitutional and civil rights to a hearing by a fair and impartial tribunal.

B. On Page 9 of the hearing decision, the hearing officer states:

"The hearing officer credits the tenant's testimony that she verbally notified the owner of this issue shortly after moving into the unit."

It should be noted that the Tenant's testimony regarding the year the Tenant claims she moved into the unit was impeached by evidence presented by the Owner. The tenant testified in her petition and affirmed in her verbal testimony that she moved into the unit on October 1 of 2013. She also testified in her petition that the alleged habitability issues existed at the time she moved into the unit and that she verbally notified the property owner of these issues a few months later - sometime between January-February of 2014.

The Owner entered into evidence a text from the Tenant to the Owner's daughter dated September 23 of 2014 (see Attachment A in Exhibit 1A) in which the Tenant, a friend of the family, asked if she could move into the unit with her mother. The Tenant's mother and brother were tenants of the unit at that time, and the mother had lived in the unit for 6 years prior. The evidence presented on the part of the Owner impeached the testimony of the Tenant as it proved that the Tenant did not occupy the unit until approximately one year after the date she testified in her petition that she occupied the unit. Therefore, the Tenant's testimony that she verbally notified the property owner of the alleged habitability issues in January-February of 2014 was also impeached by this evidence as this was nine-months prior to the date the Tenant requested to move into the unit.

It should be noted that after the above referenced text was discussed during the hearing, The hearing officer specifically asked the Tenant if, in light of the evidence presented by the Owner, she still maintained that it was her testimony that she occupied the unit in October of 2013. The Tenant positively affirmed that her testimony was correct (Ref. Audio Recording of Hearing - Part 1 from 1 hour 7 minutes to 1 hour 11 minutes.)

The hearing officer did not find the Tenant’s testimony to be credible and concluded, based upon the evidence presented by the Owner, that the Tenant occupied the unit in September of 2014. However, despite the lack of credibility of the Tenant in this regard, the hearing officer still found in favor of the Tenant and stated in her decision: *“The hearing officer credits the tenant’s testimony that she verbally notified the owner of the issue shortly after moving into the unit.”*

The hearing officer provided no basis for this determination, which was clearly contrary to the sworn and affirmed testimony of the Tenant that she verbally notified the owner in January-February of 2014. Therefore, it is evident that the hearing officer inappropriately misrepresented the sworn and affirmed testimony of the Tenant, to benefit the Tenant, and ruled in favor of the Tenant based upon her "credibility," despite the Tenant’s clear lack of credibility and impeached testimony.

- C. On Page 6 of the hearing decision, the hearing officer states in the last sentence under the paragraph beginning with “Windows, Mold, Walls and Ceiling:”

“The tenant testified that she did not complain about these issues during the inspection because she was afraid of her rent being increased again.”

A review of the audio recording of the hearing will confirm that there was no such testimony given by the Tenant.

The above examples of misrepresented testimony on the part of the hearing officer demonstrate abuse of discretion and clear bias on the part of the hearing officer which has violated the Owner’s constitutional and civil rights to a hearing by a fair and impartial tribunal.

2. Failure of Tenant to Satisfy their Burden of Proof

As stated previously, the hearing officer established on Page 9 of the hearing decision that *the tenants have the burden of proof with respect to each claim for decreased housing services*. However, the hearing officer ruled in favor of the Tenant without requiring the Tenant to provide any proof to support the hearing officer’s finding that the Tenant notified the Owner of the alleged habitability *“shortly after she occupied the unit.”*

Page 7 of the Rent Adjustment Program’s Hearing Procedures Manual for Hearing Officers states that hearing decisions must be supported by substantial evidence. The definition of “substantial evidence” provided in said manual is as follows:

- *California-Substantial evidence rule is a principle that a reviewing court should uphold an administrative body’s ruling if it supported by evidence on which the administrative body could reasonably base its decision. Substantial, within the meaning of the substantial evidence rule, means that the evidence must be of ponderable legal significance. It does not mean simply any evidence. It must be reasonable in nature, credible, and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case. [In re Alcala, 222 Cal. App. 3d 345]*

- U.S. Supreme Court-Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Consolidated Edison Co. v. NLRB(1938) 305 U.S> 197 at 229

Other specific examples of the hearing officer not holding the Tenant to her burden of proof are as follows:

- A. On Page 9 of the hearing decision, the hearing officer states: *"The tenant testified credibly that the windows are deteriorated and lack inadequate (sic) weatherproofing, resulting in mold and cracking paint on the wall and ceiling."* However, as stated previously, there was no testimony or evidence provided by the Tenant in support of the allegation that deteriorated windows resulted in mold and cracking paint on the wall and ceiling that would satisfy RAP's established definition of "substantial evidence." Despite the absence of any substantial evidence to support the Tenant's claim, the hearing officer determined that testimony of the Tenant which did not even exist was "credible" and awarded the Tenant a rent reduction and restitution for past decreased housing services based upon this non-existent testimony.
- B. On Page 9 of the hearing decision, the hearing officer states that with regard to the Tenant's claims of decreased housing services, *"the owner must be given notice of a violation of the housing or building code which seriously affects the habitability of the tenant's unit, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted."*

With regard to the required notice of a violation of the housing or building code, the Tenant produced no evidence that she provided any such notice to the Owner during the time frame she testified to have provided verbal notice (January – February of 2014) or during the time frame the hearing officer concluded that such notice was provided (shortly after September of 2014). The Tenant also did not provide any testimony regarding the nature or manner of the alleged communication(s) she claimed to have had with the Owner with regard to the habitability issues that would have constituted the notice of violation the hearing officer affirmed was required. For example, the Tenant did not mention when or under what circumstances the communication(s) occurred; who she informed (i.e., the Owner or the property manager); if the communications were in person, by phone, text, etc; and did not provide any information as to what she specifically told the Owner. Therefore, the Tenant did not meet her burden of proof with regard to establishing when she initially provided the notification to the Owner of the alleged habitability issues in that she did not provide any evidence to support her claim that would satisfy RAP's established definition of "substantial evidence." Furthermore, the Tenant did not provide any substantial evidence, or any evidence at all, that the alleged habitability issues were a violation of the housing or building code which seriously affected the habitability of the Tenant's unit.

In the hearing, the Owner entered into evidence applicable portions of a report from a home inspection of the property performed in 2016 (Ref. Exhibit B in Attachment 1A). It is important to note that this home inspection was performed three years after the Tenant alleges she initially occupied the unit. In this report there was no mention of deteriorated windows, mold or cracked paint which would have significantly affected the habitability of

the unit. This evidence directly refuted the Tenant's testimony that she notified the Owner of the alleged habitability issues at the time she occupied the unit in that it affirmed that the alleged habitability issues did not exist at the time the Tenant claimed she notified the Owner. Furthermore, this evidence refuted any contention that the Owner should have had constructive knowledge of the alleged habitability issues shortly after the Tenant occupied the unit in that if the alleged habitability issues were of such extent at that time that they were a violation of the housing and building code and seriously affected the habitability of the Tenant's unit, these would have certainly been readily identified and noted by the licensed professional home inspector in the inspection report.

The above examples affirm that the hearing officer did not hold the Tenant to her burden of proof in that she ruled in favor of the Tenant solely upon hearsay consisting of the written and verbal testimony of the Tenant without any substantial evidence in support of the Tenant's testimony.

Page 5 of the Rent Adjustment Program's *Hearing Procedures Manual for Hearing Officers* states:

"Hearsay-Admissible to supplement and explain-need corroborating evidence-Definition-An out of court statement offered for the truth of the matter asserted"

Page 5 of the Rent Adjustment Program's *Hearing Procedures Manual for Hearing Officers* also establishes that the "*Degree of Proof*" is "*General preponderance of the evidence.*"

Therefore, the hearing officer's ruling in favor of the Tenant based solely upon hearsay, without any corroborating evidence to support the Tenant's allegations, is not in accordance with the Rent Adjustment Program's own established criteria.

Furthermore, the hearing officer made no mention in her decision of the testimony and substantial evidence provided by the Owner which directly refuted the Tenant's testimony. The hearing officer also did not provide any basis for relying upon solely upon the hearsay evidence provided by the Tenant over the actual substantial evidence provided by the Owner.

The above demonstrates that the Tenant did not satisfy their burden of proof and that the preponderance of the evidence supported the Owner.

The above examples also demonstrate abuse of discretion and clear bias on the part of the hearing officer which has denied the Owner of his constitutional and civil rights to a hearing by a fair and impartial tribunal.

3. Failure of Hearing Officer to Provide Legal Basis for Decision:

As stated in the hearing decision issued by the hearing officer, "the owner must be given notice of a violation of the housing or building code which seriously affects the habitability of the tenant's unit." However, the hearing officer issued her decision in favor of the Tenant without referencing any specific violations of the housing or building code. Based upon a review of the housing and building code, none of the alleged violations would be considered violations of said

code. Also, there was no testimony or evidence provided by the Tenant to support how any of the alleged habitability issues seriously affected the habitability of the unit. Additionally, as stated previously, the Owner provided evidence consisting of a home inspection report from 2016 which did not identify any code violations or serious habitability issues alleged by the Tenant in her petition.

Therefore, although the hearing officer clearly established in her hearing decision the legal standard that applied to the matters at hand, she issued her decision in favor of the Tenant without establishing in her decision which housing or building codes the alleged habitability issues violated. The hearing officer also further failed to establish in any manner how the alleged habitability issues seriously affected the habitability of the Tenant's unit. Furthermore, the hearing officer did not even acknowledge the evidence presented by the Owner which refuted the Tenant's testimony.

This shows that the hearing officer failed to support her decision with sound legal basis based upon a preponderance of the evidence. This also further demonstrates the hearing officer's clear bias toward the Tenant. Failure to provide the required legal basis to support the hearing decision constitutes an abuse of discretion and bias on the part of the hearing office toward the Tenant. Such action on the part of the hearing officer has denied the Owner of his human right to be heard by a competent, independent, and impartial tribunal.

4. Failure to Adhere to Rules of Evidence Contained in California Administrative Procedures Act

Section 8.11.110.E.4 of the City of Oakland Rent Adjustment Program Regulations states:

Unless otherwise specified in these Regulations or OMC (Oakland Municipal Code) Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

Government Code Section 11513(d) referenced in the above states:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

As presented above, the hearing officer violated her responsibility to uphold Section 11513 of the California Government Code in that she supported her findings in favor of the Tenant solely upon the hearsay evidence of the Tenant as opposed to requiring other evidence and using the hearsay evidence for the purpose of supplementing or explaining other evidence.

The above constitutes an abuse of discretion on the part of the hearing officer which demonstrates an outward bias toward the Tenant which has violated the Owner's right to be heard by a competent, fair, and impartial tribunal.

5. Failure to Adhere to California Administrative Procedures Act, Division 3, Part 1, Chapter 4, Article 6 § 11425.50(b)

The hearing officer's written decision in favor of the Tenant was based solely on the credibility of the Petitioner. With regard to decisions based substantially on the credibility of a witness, the California Administrative Procedures Act, Division 3, Part 1, Chapter 4, Article 6 § 11425.50(b) states in part:

The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

As presented above, the hearing officer based her decision that the Tenant notified the Owner of the alleged habitability issues shortly after she moved into the unit solely upon the credibility of the witness and without consideration of the evidence presented by the Owner which refuted the Tenant's testimony. However, the hearing officer did not provide any statement in her decision identifying any specific evidence, observed demeanor, manner, or attitude of the witness, which prevailed over the testimony and evidence provided by the Owner, to support her determination. It should be noted that due to Covid-19 protocols, the hearing was conducted via a ZOOM meeting in which the Tenant did not appear on video and spoke through an interpreter. This would have made it difficult for the hearing officer to observe any demeanor, manner, or attitude of the tenant during the hearing which would have been so compelling that it would have prevailed over the testimony and evidence presented by the Owner.

With regard to the credibility of the witness, there are numerous statements in both the sworn written and verbal testimony of the Tenant which should have clearly called into question the overall credibility of the Tenant by the hearing officer. A partial list and description of these are included in Exhibit 1A. During the remand hearing following the initial hearing, the Owner provided the hearing officer with the information included in Exhibit 1A to demonstrate the overall unreliable and intentionally misleading testimony of the Tenant. Although this information was based upon the record, the hearing officer refused to allow this information into the record in the remand hearing. This raises questions as to whether the hearing officer was attempting to shield the Tenant from her lack of credibility. This also calls into question whether the hearing officer was attempting to conceal her own disregard for the Tenant's lack of credibility.

Considering the demonstrable unreliable testimony of the Tenant, as exemplified by the information included in Exhibit 1A, failure to include the information required by the California Administrative Procedures Act, Division 3, Part 1, Chapter 4, Article 6 § 11425.50(b) pertaining *to the observed demeanor, manner, or attitude of the witness that supports the determination*

exhibits potential bias and abuse of discretion on the part of the hearing officer and calls into question the overall fairness and impartiality of the hearing.

6. Refusal of the hearing officer to Consider Information Provided by Owner Disproving the Credibility of the Tenant

A remand hearing was held on October 12, 2021, to allow new evidence provided by the Owner to be considered. Prior to the hearing the Owner submitted information documenting extensive instances of unreliable and intentionally misleading testimony of the Tenant both in the Tenant's petition and the Tenant's verbal testimony during the hearing (see Exhibit 1A). During the remand hearing, the hearing officer refused to allow this information to be included in the record and refused to take this information into consideration (Ref. Remand Hearing Audio Recording from 12 minutes 30 seconds - 16 minutes 45 seconds). During the hearing, the Owner's representative objected to this action on the basis that the hearing officer relied primarily upon the testimony of the Tenant in her hearing decision. Therefore, the credibility of the Tenant was a material matter in the hearing officer's decisions in favor of the Tenant and in the hearing officer's decisions related to the case moving forward. Accordingly, the Owner's representative asked that the hearing officer take into consideration the concerns raised by the Owner regarding the credibility of the Tenant to preserve the Owner's due process rights.

The hearing officer refused to allow the documented instances of the unreliable and intentionally misleading testimony of the Tenant to be entered into the record and refused to consider this information. Considering that this information was not new evidence and was intended to point out potential oversight on the part of the hearing officer in evaluating the credibility of the Tenant, who was under oath at the time, it would have been appropriate for the hearing officer to at least entertain in forming her decision that her assessment of the tenant's credibility may not have been correct. The refusal of the hearing officer to permit information unfavorable to the Tenant to be entered into the record and to refuse to even take this information into consideration raises further concerns regarding bias on the part of the hearing officer toward the Tenant.

Conclusion:

It is evident from the above information that in the case of Bolanos v. Olivieri, Case Number T20-0093, the Tenant did not satisfy their burden of proof with regard to the claimed decreased housing services. It is also evident from the above that the hearing officer did not properly support her decision with valid legal basis and findings of fact. Furthermore, the hearing officer, through her actions as a lawyer serving as a third-party neutral representative for the Oakland Rent Adjustment Program, has demonstrated violations of judicial ethics, abuse of discretion, and clear bias. The examples provided herein have subjected the Owner to the arbitrary exercise of government power and are in violation of the laws that govern attorney conduct. Such actions are also in violation of the Owner's rights under Article 6 of the Human Rights Act and the 14th Amendment of the Constitution of the United States.

Owner is demanding the appeal be granted. A decision based on ALL the evidence and sworn testimony, following State law, should be awarded to the Owner in this matter.

EXHIBIT 1A

Examples of Unreliable Testimony by Petitioner – Miriam Bolanos

1. In Petitioner's sworn declaration dated July 12, 2020, Petitioner states: "*During my time as a tenant in the front unit, I have not had access to the rear unit or used it for any purpose.*" This statement is refuted by testimony, sworn declarations submitted from multiple parties who were witnesses to the rear unit being used as storage by Petitioner and her boyfriend, and evidence. Testimony that Petitioner used the rear unit as storage is corroborated by evidence consisting of a text exchange between Mr. Fresquez and Petitioner on May 2 and May 3, 2020, which was submitted into evidence, in which Petitioner acknowledges that her refrigerator was being stored in the rear unit and accepted Mr. Fresquez' offer to sell it on her behalf. This text exchange is included as an attachment (Attachment A) for reference. Therefore, Petitioner's testimony in her sworn declaration is refuted by evidence, is factually untrue, was known by Petitioner to be untrue, and was presented with the intent to mislead the hearing officer into believing that Petitioner did not have use of all structures on the property, which is a material issue in this case.
2. Petitioner claims in petition that she moved into the unit on October 1, 2013. This was refuted by text messages between Petitioner and the property manager (Owner Exhibit 3) in which Petitioner requested to move into the subject property on September 23, 2014, nearly one year later. Therefore, Petitioner's testimony in this regard is refuted by evidence and is factually untrue. Petitioner was presented with this evidence during the hearing and was provided an opportunity to amend her testimony, which she did not. (Ref. Audio Recording of Hearing - Part 1 from 1 hour 7 minutes to 1 hour 11 minutes.)
3. Petitioner claims in her petition that there were six issues with the unit when she moved in affecting her health and safety and her ability to live comfortably in the premises. Petitioner claims she first notified the Landlord of these decreased services in January-February 2014. However, per Example 2 above, this notification would have been 7-8 months prior to Petitioner's request to move into the unit on September 23, 2014. Petitioner's testimony is factually untrue as the Landlord would not have been aware that Petitioner was living in the unit at the time she claims she notified the Landlord of the health and safety issues.
4. Petitioner claims in her petition that there were several problems with the unit when she moved in affecting her health, safety, and her ability to live comfortably in the premises. Petitioner was asked by her attorney during the hearing if Petitioner had the opportunity to inspect the property before she moved in. Petitioner testified that she did not (Ref Audio Recording of Hearing – Part 1 from 1 hour 34 minutes to 1 hour 36 minutes). The Landlord representative asked Petitioner if she knew who lived in the unit prior to her tenancy. Petitioner responded that her mother and brother lived in the unit. Petitioner was asked by Landlord representative if she visited her mother. Petitioner responded, "*of course I did.*"

The Petitioner further testified:

“So I would just like to repeat myself about how they never complained, my mother and my brother, never complained about the unit because Mr. Fresquez would tell them that their rent was low for their specific area, the zone where they lived, so my mother and brother would fix things with their own money, and I would never look inside the closets.” (Ref. audio Recording of Hearing – Part 1 from 1 hour 45 minutes to 1 hour 48 minutes.

This testimony validates that Petitioner’s mother and brother never complained about the unit to the Owner. Petitioner’s mother lived in the unit from 2008 to sometime after Petitioner moved into the unit in 2014. In routine visits to her mother, Petitioner had six years of opportunity to inspect the property during visits with her mother and brother. Therefore, Petitioner’s verbal testimony that she did not have an opportunity to inspect the property before she moved in is factually untrue, was known to Petitioner to be untrue, and was presented with the intent to mislead the hearing officer into believing that Petitioner was not aware of the claimed issues with the unit prior to her moving into the unit

The above testimony also established that Petitioner was aware of the condition of the unit prior to the time she moved in. Had there been issues with the unit prior to the time she moved in which would have affected her health, safety, and her ability to live comfortably in the premises, it would have been her prerogative to not occupy the unit.

5. Petitioner claims in petition that the heater *“has not turned on consistently and emits bad odors when turned on.”* Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014.

Per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014. Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the heater was tested and was documented to be in proper working order at the time of the home inspection, which occurred two years after Petitioner occupied the unit.

On January 25, 2020, prior to tenant providing any notification of any issues with the unit, an inspection of Petitioner’s unit was conducted by the Landlord’s son-in-law, Thomas Fresquez. At the time of the inspection, Mr. Fresquez asked Petitioner if there were any issues that needed to be addressed. Petitioner did not make any mention of the heater not working properly, despite the inspection being performed during winter. During same inspection, Mr. Fresquez brought a vacuum and offered to vacuum the heater, as the Landlord had regularly done as a courtesy to Ms. Bolanos due to fur from Petitioner’s cat collecting in the furnace causing bad odors. Petitioner declined the offer by Mr. Fresquez to vacuum the heater stating she regularly vacuumed the heater to remove cat hair and other debris to prevent the odor from occurring. A letter dated February 4, 2020, was sent by the property manager to Petitioner to document the findings and the discussions that occurred during the inspection (tenant Exhibit G). Per the discussions documented, the tenant made no mention of any issues related to proper functioning of the heater.

Said letter also documents that Petitioner was aware of the cause of the odors from the heater, and that the cause was fur from her cat (at one time multiple cats), not the condition of the heater itself. Therefore, petitioner knowingly claimed decreased service for an issue which she acknowledged was not the responsibility of the Landlord.

6. Petitioner claims in her petition that there was a “*rodent and raccoon infestation.*” Petitioner claims these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. However, Per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014.

Based upon Petitioner’s claims in her petition, the infestation was of such extent that she assigned an estimated value to loss of service of 15% of the rent. Based upon this assigned value, this issue was the most significant of all of the issues listed in the petition.

However, Petitioner clarified during her verbal testimony at the hearing that there were no mice or rats during the time of her occupancy, but there were occasions where she heard raccoons beneath the house. Therefore, Petitioner’s claim, submitted under penalty of perjury, that a “rodent infestation,” which was present from the time she moved in and was of such extent that it affected her health and safety and her ability to live comfortably in the premises, is factually untrue.

7. Petitioner claims that walls and ceilings throughout the house are cracked and peeling. Petitioner claims in her petition these issues began in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. However, per Example 2 above, Petitioner did not request to move into the subject property until September 23, 2014. Petitioner claims in her petition that that extent of the cracks in the walls and ceilings was of such extent that she assigned an estimated value to loss of service of 12% of the rent. Based upon this assigned value, this issue was the second most significant of the issues listed in the petition.

Based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the inspector stated that finished walls were in “good condition” and that there were “blemishes and/or minor cracks in the walls which were cosmetic in nature. Therefore, based upon impartial evidence by a home inspection professional, Petitioner’s claim that cracked walls and ceilings existed throughout the house at the time she moved in which were of such extent that they affected her health and safety and her ability to live comfortably in the premises is factually untrue.

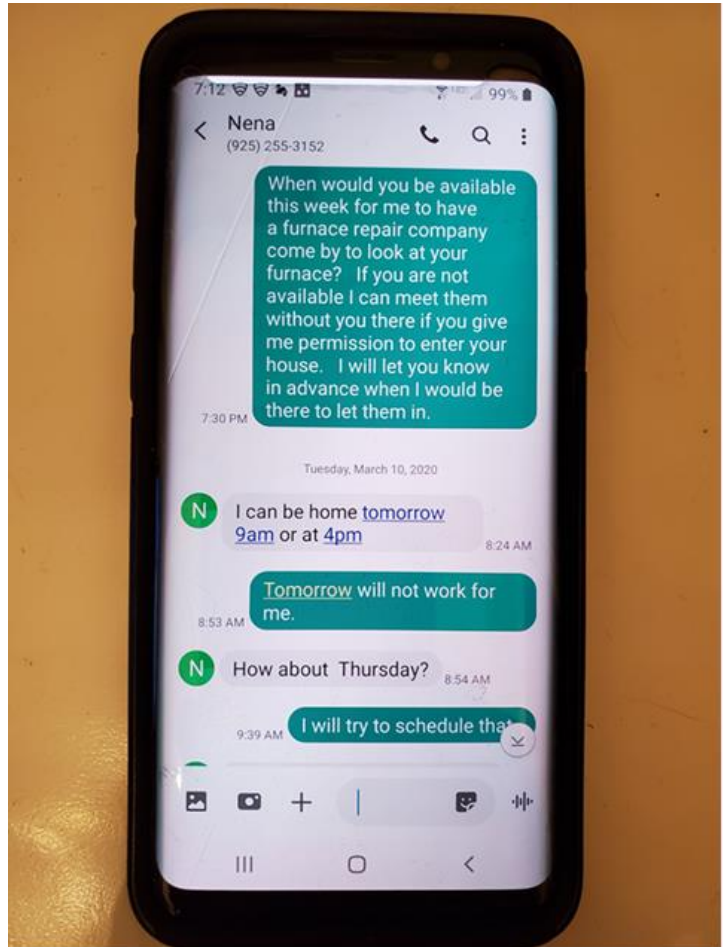
8. Petitioner claims in petition that windows are “*deteriorated, do not seal properly and lack proper insulation.*” Petitioner claims in her petition that these issues began in October 2013, and she notified the Landlord verbally of these issues in “January-February 2014.” However, Per Item 1, Petitioner did not request to move into the subject property until September 23, 2014. Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the windows were inspected and were reported to be “properly installed and generally in serviceable condition.”

9. Petitioner claims in petition that there is *“mold throughout the house stemming from improper insulation and deteriorated windows, walls and ceilings.”* Petitioner claims in her petition that these issues began when she occupied the premises in October 2013, and she notified the Landlord verbally of these issues in January-February 2014. During the hearing, Petitioner stated that the mold was mainly in the closets. Petitioner implied that this is why she was not aware of the presence of mold prior to moving in as she did not look in her mother’s closets during the times she visited her (reference the testimony in Example 4 above). Therefore, Petitioner’s own testimony contradicts her claim that *“mold throughout the house”* existed at the time she moved in.

Additionally, based upon a home inspection performed in August of 2016 (Owner Exhibit 5), the inspector did not make any mention of mold, which would have been identified in a home inspection had it existed to the extent claimed by Petitioner. Therefore, based upon impartial evidence from a professional trained to identify such issues, Petitioner’s claim that mold existed throughout the house from the time she moved in, which was of such extent that it affected her health and safety and her ability to live comfortably in the premises, is refuted by evidence. This evidence demonstrates that the testimony of Petitioner was known by Petitioner to be untrue, and was presented with the intent to mislead the hearing officer into believing that there was mold throughout the unit at the time she moved into the unit.

10. Petitioner significantly misstates in petition the amount of rent payments made during her tenancy.
11. Petitioner was asked by her attorney during the hearing if Petitioner was provided with 24-hour notice prior to a visit by a contractor in March of 2020 to inspect the heater. Petitioner stated that she was not provided with 24-hour notice (Ref. Audio Recording of Hearing – Part 1 from 2 hours and 4 minutes to 2 hours and 6 minutes). Mr. Fresquez responded that he did provide 24-hour notice to Petitioner via text. Mr. Fresquez offered to provide the hearing officer with a copy of the text exchange with Petitioner as evidence to refute Petitioner’s testimony. The hearing officer refused to accept the evidence offered by Mr. Fresquez. However, considering that the Hearing Officer has relied solely upon the sworn testimony of Petitioner in deciding matters material to this case, it is imperative that the Hearing Officer be aware of any potential credibility issues in the sworn testimony of Petitioner so that this can be taken into account in its decision. Therefore, the text exchange between Mr. Fresquez and Ms. Bolanos that refutes Ms. Bolanos’ sworn testimony is included in Attachment A. This establishes that the testimony of Petitioner in this regard is factually untrue and was known by Petitioner to be untrue.

ATTACHMENT A



Text exchange between Tenant and Gina Fresquez in which Tenant acknowledges her refrigerator is stored in the secondary unit

Text exchange between Tenant and Thomas Fresquez in which Thomas Fresquez provides 2 days notice to Tenant prior to entering unit and reschedules to accommodate Tenant

EXHIBIT B

Excerpts from Home Inspection Report dated August 17, 2016

959 42nd St.

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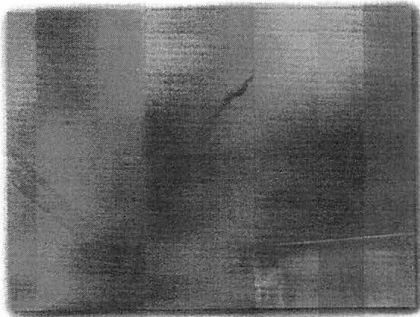
serviceable condition, except as noted below or elsewhere in the report.

Ceiling

The ceiling was in serviceable condition, except as noted elsewhere in this report.

The ceiling was in serviceable condition, except as noted elsewhere in this report.

Repair: The ceiling is damaged in the dining room. We recommend repair or refinishing.



Floor

The floors have a good appearance and are in serviceable condition, with exceptions noted below, or elsewhere in this report.

The interior floors showed typical wear and tear, but were in generally serviceable condition.

Smoke Detectors

Buildings built since about 1990 have required smoke detectors on each floor (including basements), in the corridors leading to all sleeping areas, and in all bedrooms. Pressing the test button on smoke detectors only verified battery and/or horn function, but does not test the sensor(s) in the unit(s). California law requires the seller to transfer a home with proper working smoke detectors. The seller and buyer are required to sign the Smoke Detector Statement of Compliance prior to the close of escrow. Smoke detectors should be checked periodically in accordance with the manufacturer's recommendations to ensure they remain fully operational. We recommend that smoke detector batteries be changed with any change in occupancy and twice a year thereafter. A convenient time to change batteries is the changing of your clocks in Spring and Fall.

Health & Safety: There were no smoke detectors in the building. Whether or not installation is required prior to the sale of this building, we recommend installing detectors where currently required by the state.

Health & Safety: No CO detectors were installed in the building. We recommend the installation of a Carbon Monoxide detectors where currently required by the state.

Walls

The finished walls were in good condition, except as noted elsewhere in this report.

Maintenance: There are blemishes and/or minor cracks in the walls. These blemishes and/or cracks

appear to be cosmetic in nature, and can be repaired in the course of routine maintenance to restore their cosmetic appearance.

Heat Source

Note: The building uses a gravity furnace heater as the only source of heat. There were no heat ducts installed in the bedrooms.

General Comment

Investigate Further: Due to the heavier presence of personal belongings, access to the components of home was limited. Conditions in need of repair may be discovered once the building is cleared of storage.

Maintenance: The interior of the building shows normal wear and tear. We make no attempt to list all conditions we deem cosmetic in nature. The affected surfaces can be repaired in the course of routine maintenance and upgrading.

Investigate Further: For attention to the conditions observed we recommend you retain the services of the appropriate trades person.

WINDOWS/DOORS

Description

- **Window type:** Horizontal sliding units, Casement units
- **Window Material:** Wood, Metal
- **Glazing:** Single pane
- **Door Types:** Wood swinging
- **Door glazing:** Single Pane

Observations and Recommendations

Overview

The windows and doors are visually examined for signs of excessive or unusual wear and general state of repair. The condition, extent and/or presence of flashing that may have been installed beneath the finished exterior and the finished surfaces cannot be determined without destructive testing. Unless we observe signs of leakage or other conditions to warrant it, we do not recommend further inspection of these inaccessible areas. During extreme weather conditions, it is not unusual for some leakage to occur around doors and windows. This leakage can be reduced by annually inspecting these areas for gaps and cracks around the finished exterior surfaces and trim. All gaps should be caulked, sealed, and maintained to help reduce water entry. Window channels and weep holes should be routinely cleaned to allow for proper drainage. The owner or occupant should be consulted regarding the maintenance and repair history of the doors and windows to determine the nature, extent and frequency of maintenance and repair that has been necessary and performed to date.

For buildings with dual pane windows, failed seals (condensation) on insulated glass units are very often difficult to identify and sometimes can only be seen when the sun is shining through and the windows are clean. We make every effort to identify failed seals, however; we can make no guarantee that all windows with failed seals have been identified. Once you move in, you may notice failed seals that we were unable to identify at the time of inspection. Failed seals lose some of their insulating value but are primarily a cosmetic deficiency. If the possibility of failed seals is unacceptable after you take possession, we recommend you have all windows further evaluated by a glass contractor prior to the expiration of your contingency period.

The windows and doors appear properly installed and in serviceable condition, except as noted below or elsewhere in the report.

Windows

★ The windows tested appear to be properly installed and generally in serviceable condition, with exceptions noted below or elsewhere in this report.

Upgrade: The building has metal frame single pane windows throughout. Several windows were weathered and are older. These type of windows are not energy efficient with low insulation properties. In order for the building to be energy efficient dual-pane windows should be installed. Upgrading and replacing the windows may be necessary over time.

Health & Safety: Some of the windows are not safety glass and could be hazardous if broken. Because it is harder to break and less likely to cause injury if broken, tempered glass is now required in specified locations. These locations include, but are not limited to, all door glass, most large windows which have their bottom edge less than 18 inches above the floor or ground, windows near doors and floors, and windows in showers and bathtubs. The building has been remodeled over the years and the newer installations have this feature, but the older locations do not have tempered glass. There is no requirement to retrofit these locations, but a greater margin of safety would be achieved by upgrading and installing safety glazing in these areas as well.

Maintenance: A number of old wooden windows were weathered. We recommend they are sealed and protected before they deteriorate and require replacement.

Note: The wooden windows in the front room appeared original and were not tested to prevent damage.

Doors

The interior and exterior doors appear to be properly installed and in serviceable condition.

OWNER APPEAL

Issue 2 – Contested Rent Increases

This appeal to the hearing decision issued in Case No. T20-0093, Bolanos V. Olivieri is filed on behalf of Mr. Jack Olivieri who is the Property Owner (Owner) named in said case.

The hearings in the above referenced case were held in response to a petition filed with the Oakland Rent Adjustment Program by the petitioner, Miriam Bolanos, against Jack Olivieri. Miriam Bolanos is the tenant (Tenant) of a single-family house which is owned by Jack Olivieri (Owner). Ms. Bolanos has been a tenant of said property since 2014, at which time she moved into the unit with her mother who had lived in the unit since 2008. Ms. Bolanos moved into the unit after her brother, who also occupied the unit, moved out.

The Tenant submitted a petition to the Oakland Rent Adjustment Program after a rent increase was served by the Owner. The issues raised by the Tenant in her petition included a protest of all rent increases and claims of decreased housing services related to multiple alleged habitability issues with the unit rented by the Tenant.

This appeal pertains specifically to the Hearing Decisions issued on March 17, 2021, and January 12, 2022, related to the Tenant Petition contesting all rent increases issued to the current tenant of the subject property. A separate appeal package has been submitted pertaining to the Tenant's claims of decreased housing services.

The Hearing Decisions determined that the subject property is not exempt under Costa-Hawkins as a single-family dwelling because there were two dwelling structures on the property that were not separately alienable. The Hearing Decisions have determined that all rent increases since the beginning of the term of the Tenant are invalid.

The Owner is appealing the hearing decision based upon the following:

1. The Owner fulfilled his burden of proof that the secondary unit was not a dwelling unit and is exempt from the Rent Control Ordinance pursuant to Costa-Hawkins.
2. The Hearing Decision was based upon arbitrary criteria that is not supported with valid legal basis.
3. The Hearing Decision was based upon unreliable and intentionally misleading testimony by the Tenant.
4. Findings of the hearing officer demonstrate violation of judicial ethics, abuse of discretion and bias toward the Tenant.
5. The Owner's due process rights under Article 6 of the Human Rights Act and the 14th Amendment of the Constitution of the United States have been violated.

Arguments in Support of Property Owner’s Appeal

The Owner refutes the hearing officer’s decision and believes the decision was inconsistent with controlling law and facts presented. The Owner is requesting the hearing decision in favor of the Tenant be overturned in favor of the Owner based upon the following arguments:

A. Use of Property by Tenant as Single-Family Dwelling

The Owner maintains that the Tenant used the secondary structure on the property as storage throughout her tenancy. This fact was strongly supported by testimony from two witnesses, sworn declarations by other witnesses, and evidence.

The Tenant refuted the Owner’s claim that she utilized the rear unit for any purpose at any time during her tenancy. However, the Owner has established through information available in the records for this case numerous instances in which the testimony of the Tenant was unreliable, intentionally misleading, and conflicting with other testimony by the Tenant which calls into question the overall credibility of the Tenant. Examples of unreliable and intentionally misleading testimony of the Tenant is included an Exhibit 1A under Issue 1.

There are no instances in the records for this case in which the credibility of the Owner, his representatives, his witnesses, or the evidence he has provided has been called into question or otherwise impeached. The Hearing Decision included no statement disputing the Owner’s claim that the Tenant used the secondary structure as storage or any findings questioning the credibility of the testimony and evidence presented by the Owner in this regard. Therefore, although the Tenant denies she used the secondary structure for any purpose, a preponderance of the evidence shows that the Tenant used the secondary structure as storage.

It is undisputed that the secondary structure, although it had been utilized as a dwelling over 16 years ago under the previous owner, it had not been utilized as a dwelling at any time by the current owner, and it had not been utilized as a dwelling at any time during the occupancy of the current tenant.

The Owner argues that just as it would be unfair for a property owner to utilize a secondary structure as a dwelling unit for their benefit and then flip flop the structure to a non-dwelling unit when it suited them to exempt the property from rent control, it would logically follow that a tenant should not be able to use a separate structure as storage for their benefit and then claim that the same structure is a dwelling unit to invoke rent control protections. This is exactly what the Tenant has done in this case.

It should also stand to reason that use of a secondary structure by a Tenant as storage should establish its use as such for the purpose of landlord-tenant law until such time as its use is changed by the Owner. Accordingly, it also stands to reason that a secondary structure would cease to be a dwelling if a tenant were to use it for another purpose for their benefit.

In the appeal hearing of *Martin et al. v. Zalabak*, the Board based its decision to not allow an exemption for the back unit as a non-dwelling unit primarily upon the concern that the owner could flip-flop the unit between an office unit and a dwelling unit as the only change made to unit to convert it from a dwelling to an office was to move the stove to a separate room in the unit. It

should be noted that the Board’s concern in the case of *Martin et al. v. Zalabak* does not apply in this case as the secondary structure had no stove, no fixtures, no heater, no sanitary facilities, and no serviceable utilities. Therefore, the unit could not have been flip-flopped between a storage unit and a dwelling unit at the whim of the Owner.

The Tenant had use of ALL structures (home, garage, and storage) while living on site. At no time has anyone else occupied other structures on the property during the Tenant’s term. Based upon the above logic, the Owner maintains that by use of the secondary structure and all structures on the property by the Tenant, the Tenant utilized the property as a single-family dwelling. Therefore, by the Tenant’s use of the secondary structure to their benefit as storage, the secondary structure was not considered a separate dwelling structure in the spirit of Costa-Hawkins.

B. The decision is inconsistent with OMC 8.22, Rent Board Regulations and prior decisions

OMC 8.22.030(a)(7) exempts from its jurisdiction dwelling units, pursuant to Costa-Hawkins (California Civil Code § 1954.52). Dwelling units exempt under Costa-Hawkins include those in which “it is alienable separate from the title to any other dwelling unit.” It is uncontested that during the current occupancy of the Tenant the second structure had not been used as a dwelling unit, and only as a storage unit. At issue is whether the second structure “is” a dwelling unit. It is not, so the property is a single-family residence (dwelling unit) with other structures (not dwelling unit(s)). Therefore, the title to the dwelling unit is alienable from any other “dwelling unit” and the property is exempt from the Oakland Rent Control Ordinance.

The hearing officer determined that the second structure was a dwelling unit based upon *Owens v. City of Oakland Housing, Residential Rent and Relocation Board* which adopted the definition of “dwelling unit” located at Cal. Civ. Code § 1940(a). “Dwelling Unit” means “*a structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.*” Cal. Civ. Code § 1940(a).

It is imperative to note the use of the word “is” in “is used” in this definition. The addition of the present tense verb “is” prior to “used” clearly establishes that the definition is based upon the current use of a structure, not its past use or its potential future use. The implication of a structure’s **current** use is further supported in the definition by the use of the word “maintains,” which is also current tense and not past or future tense.

Legal definitions are carefully worded and must be strictly construed utilizing their linguistic meaning. Had the authors of the definition intended their definition of “dwelling unit” to apply as the Tenant claims, the authors would have simply used the word “used” by itself without adding the present tense “is” before it. This would have avoided excluding prior or future use when applying the definition.

The Tenant’s interpretation of the definition of “dwelling unit” is unreasonable in that based upon such definition, the existence of any secondary structure on a property with a single-family dwelling, despite its age or the length of time that the secondary structure may have been unoccupied as a dwelling unit, would exempt the property from Costa-Hawkins. In the extreme

case, consider a hypothetical single-family dwelling constructed prior to the Civil War with a barn. If the barn had been occupied by someone as a residence prior to the Civil War and not occupied at any time since, the single-family dwelling would be subject to rent control provisions in perpetuity.

Additionally, the Tenant and Hearing Officer appear to be in agreement that the habitability of a unit has no bearing on whether it constitutes a “dwelling unit” for the purpose of considering it exempt under Costa-Hawkins. Based upon this position, the condition of the barn in the above hypothetical example, no matter how dilapidated it may have become over a period of approximately 160 years under previous owners would not exempt the owner from the Rent Control Ordinance. This is clearly not the intended interpretation of Costa-Hawkins. It is understood that it would not be in the spirit of the law for a property owner to neglect a structure for the purpose of rendering it uninhabitable so as to claim an exemption to the Rent Control Ordinance. However, this concern clearly does not apply in this case:

The linguistically correct and strict interpretation of the definition of “dwelling unit” per Cal. Civ. Code § 1940(a) would be that a structure ceases to be a dwelling unit at such time it is not used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. This strict interpretation is inconvenient to the goal of the Rent Adjustment Ordinance, and it could be justifiably argued that such interpretation would enable owners to flip flop units from being covered units to being exempt multiple times during one tenant’s tenancy, simply based upon temporary changes to the other unit on the property. However, the Owner had not taken any action prior to or during the tenancy of the Tenant to change the status of the rear unit.

The Owner agrees that it is not in the spirit of Costa-Hawkins to enable owners to flip flop units from being covered units to being exempt during one tenant’s tenancy, simply based upon temporary changes to the other unit on the property. The Owner in this case clearly showed no intent to do so and has not acted in any manner that is outside of his rights or in violation of the rights of the Tenant. Therefore, it is unclear why the Rent Adjustment Program would hold the Owner to unreasonable interpretations of Costa-Hawkins and unreasonable application of prior case law that clearly violate the Owner’s rights under the law.

There is no current statute or case law that establishes at what point a dwelling unit ceases to be a dwelling unit per se and there is no current case law that can be directly applied to this case. The hearing officer’s decision directly contradicts the Owens case on which the hearing decision relies. In Owens, the owner of a single-family residence rented out rooms with separate lease agreements for occupants, and the occupants could use those rooms to live, at the exclusion of others. The Court found that just because the property was originally a single-family residence did not mean that it was being used as a single-family residence. The subject property in the Owen’s case focused on the **current use** of the property, which was a multiple dwelling, by renting to several different occupants, and therefore, subject to rent control. The rationale is that the property is to be judged by its current use. The same holds true here in that the use of the property during Petitioner’s occupancy has been used as a single-family residence with a storage structure in back. The storage structure has not been used, nor is it available to be used, as a

separate living unit. Accordingly, use of the property during this tenancy has been as a single-family residence with alienable title separate from any other dwelling unit and is, therefore exempt from the Rent Control Ordinance.

As stated previously, based upon a strict linguistic interpretation of the definition of “dwelling unit” in Cal. Civ. Code § 1940(a), a dwelling unit ceases to become a dwelling unit when it is no longer used as such, regardless of what tax assessment records, zoning records, permit inspection records may show. Acknowledging the public policy issues associated with applying this strict interpretation in all cases, it is incumbent upon all parties involved in this case to arrive at a fair interpretation of the law as it reasonably applies to this case. The Owner firmly believes that public policy should affirm that the fact that the secondary structure had never been utilized as a dwelling unit under his ownership nor during the occupancy of the Tenant, and that the Tenant used the secondary structure for her benefit as storage, is sufficient justification to satisfy the Owner’s burden of proof that the rear unit was not a dwelling unit in the spirit of Costa-Hawkins during the tenancy of Petitioner.

If the above justification is not considered sufficient to meet the Owner’s burden of proof, the fact that the rear unit had not been occupied at any time for a period of over 15 years and has been demolished establishes that the rear unit ceased becoming a dwelling unit over 15 years ago, which is also 8 years prior to the occupancy of Petitioner. It should be noted that under the Ellis Act, a unit is considered to be permanently removed from the rental market if it is occupied by an owner for more than three-years. Applying this three-year period as a reasonable time frame for a unit to be permanently removed from the rental market, it would stand to reason that considering the rear unit had been vacant eight years prior to the occupancy of the Tenant in the front unit, this 8-year period would be well beyond a reasonable time frame to consider the rear unit as having ceased being a dwelling unit.

Based upon the above, if the current decision of the hearing officer in this case is not overturned, this would establish a significant new legal standard. The legal standard derived from this decision would be that the use of any structure as a dwelling unit by a previous property owner, no matter how far removed, would establish the structure as a dwelling unit in perpetuity for all subsequent property owners. Based upon the interpretation of the definition of a “dwelling unit” by the Tenant, which is supported by the hearing officer’s decision, the law would apply to any “structure” as the definition does not define what is and is not considered a structure. Therefore, any type of secondary structure could be considered a dwelling unit including a shed, garage, barn or even a tree house. Also, based upon the hearing officer’s strictly construed interpretation of the definition of a “dwelling unit,” if a single-family residence has a detached garage and the garage were to be occupied by a squatter, the garage would become a dwelling unit which would subject the single-family dwelling to rent control provisions in perpetuity. The hearing officer’s strictly construed interpretation of the definition of “dwelling unit” in Cal. Civ. Code § 1940(a) also does not establish a minimum time period in which a structure must be occupied in order to be considered dwelling unit. Therefore, any type of structure could be considered to be a dwelling unit in perpetuity if it is occupied for even one day. This would require the establishment of new law that would require property owners of single family dwellings to disclose to future property owners (and perhaps even the government in jurisdictions with rent

control) if any secondary structure on their property has been used as a dwelling unit for any period of time, or if they have knowledge of any previous owners who may have used any secondary structure as a dwelling unit for any period of time. This information would be required as the basis for determining **in perpetuity** if a secondary structure of any construction type would be considered a dwelling unit if the single-family dwelling were to EVER be rented in the future. If a secondary structure were to have been occupied at any time in the past, the only way for the structure to not be legally considered a dwelling unit would be to demolish it.

The above clearly would not be in the spirit of Costa-Hawkins, and it is doubtful that the Rent Adjustment Program would want to establish such a new far reaching legal standard when a reasonable application of the law in this case would avoid this.

Based upon the above, the Owner has satisfied its burden of proof that under under OMC 8.22.030(a)(7), the property is exempt from Oakland Rent Control pursuant to Costa-Hawkins.

C. Arbitrary Criteria Used by Hearing Officer

The hearing officer relied upon documents submitted by the tenant representative to support her determination that the property was a duplex. These documents included the following:

1. A City of Oakland Planning and Zoning Map which describes the property as a multi-dwelling property and shows two structures on one parcel.
2. A document from the Count of Alameda, Office of the Assessor entitled Property Assessment Information. This document lists the property as a multi-dwelling property and describes it as consisting of “2, 3 or 4 single family houses.”
3. A City of Oakland Building Permit RE 1604751 Record Detail with Inspection Log for an Electrical Panel Installation in 2017 which refers to the property as a duplex.
4. Photos which show the exterior of the secondary structure with separate mailboxes, separate gas meters and separate electrical meters.

It is imperative to note that there is no legal or logical basis to use any of the above information to establish the **actual use** of the secondary structure during the term of the Tenant.

Additionally, none of this information represents the **actual use** of the secondary structure by the Tenant as storage. Therefore, reliance upon this information to support how the rear structure may have been used as a dwelling over 16 years ago has no bearing upon determining use of the structure pursuant to the definition of a “dwelling unit” located at Cal. Civ. Code § 1940(a).

In the remand hearing the Owner submitted a demolition permit for the secondary structure that describes the secondary structure as a “Miscellaneous Utility Structure” and specifically states the structure is not a dwelling unit (Reference Exhibit 1 in the Remand Hearing held on October 12, 2021). Despite this evidence, the hearing officer states in her decision:

“Although the demolition permit describes the rear unit as a miscellaneous utility structure, that document alone is insufficient to prove the structure was non-residential, considering all the evidence presented by the tenant representative to the contrary at the underlying hearing.”

The hearing officer based her decision in favor of the Tenant upon arbitrary documentation from the tenant's representative with no legal basis to support its use. However, the hearing officer discounted similar and more relevant documentation from the City of Oakland submitted into evidence by the Owner which validated the Owner's claim that the secondary structure was not suitable as a dwelling and was not a dwelling. This combined with the findings of the hearing officer in the matter of the loss of use claims further demonstrates the strong bias of the hearing officer toward the tenant.

D. The Hearing Decision Overrides County and State Code Determinations

The Hearing Officer relied upon the Use Code for the property from the Alameda County Assessor's Office to support the decision that the property is a multiple-dwelling structure. However, the Alameda County Assessor's website (<https://www.acgov.org/MS/prop/useCodeList.aspx>) specifically states that the use codes are to be used solely for the purpose of appraising properties for assessment purposes only and that the use codes are not to be used for any other purpose. This information from the Alameda County Assessor's Office is shown below.

Use Codes

The Assessor's Use Code has been designed for use by this department for the purpose of appraising properties for assessment purposes only.

The Assessor's Office does NOT recommend other agencies (Cities, School, Districts, Special Districts, etc.) use these Use Codes for any other purpose and is not responsible for any inaccurate determinations on their part when using these Use Codes.

Based upon this, the information relied upon from the Alameda County Assessor's Office is not valid for use in determining the **actual use** of a property for the purpose of tenant law. Therefore, the Owner protests the use of the Assessor's Use Code as substantial evidence to establish the use of the secondary structure as a dwelling unit.

E. Unreliable and Intentionally Misleading Testimony by Tenant

In the hearing officer's decision, it is evident the hearing officer relied upon the Tenant's testimony as credible. The hearing officer based most of her decisions on material matters upon the assumed credibility of the Tenant. However, the hearing officer disregarded numerous instances of unreliable testimony both in the Tenant's written petition and her verbal testimony during the hearing. Examples of these are included in Exhibit 1A in Issue 1. The Tenant submitted her petition and provided sworn verbal testimony under the penalty of perjury. Evidence was provided by the Owner which refuted both the sworn written and verbal testimony of the Tenant demonstrating that the falsehoods presented by the Tenant were willful and presented with the intent to mislead the hearing officer. Due to the demonstrable unreliable testimony of the Tenant which raises concerns as to the credibility of the Tenant, the Owner requests that the Board reconsider the decisions of the hearing officer regarding material matters with weight placed upon factual evidence, the sworn unimpeached testimony provided by the Owner, his representatives and witnesses, and the evidence provided.

F. Hearing Officer Bias

The decision demonstrates a strong bias by the hearing officer towards the tenant lawyer's testimony, and discounts the validity of the sworn, notarized statements, evidence and statute provided by the Owner.

The hearing officer's written hearing decision incorporates identically worded language from the tenant's representative's written arguments (Ref. first paragraph on Page 8 of the Hearing Decision dated March 17, 2021, beginning with "Affirming"). These arguments draw upon case law and reasoning that is not even applicable to the matters presented in the petition, as well as arguments which are arbitrary and not supported by law. The hearing officer's affirmation and verbatim use of the tenant representative's written arguments and unapplicable hypothetical logic, which have no basis in established law, to support the hearing officer's decisions in favor of the Tenant demonstrates an abuse of discretion and an outward bias toward the Tenant. This constitutes a violation of the Owner's constitutional and civil right to be heard by a competent, independent, and impartial tribunal.

Furthermore, in the hearing officer's decision regarding the loss of use issues claimed by the Tenant in this case, the hearing officer relied primarily upon the testimony of the Tenant, without any substantial evidence to support her claims, despite the clear lack of credibility of the Tenant. In the hearing officer's decision regarding the contested rent increases, the hearing officer also relied upon the uncorroborated testimony of the tenant and provided no basis for not crediting the extensive testimony provided by Owner that the Tenant used the secondary structure as storage. The hearing officer, by holding the Owner to an unreasonable standard of proof but not requiring any proof from the Tenant to meet her burden of proof further demonstrates an outward bias toward the Tenant which violates the Owner's rights to be heard by a competent, independent, and impartial tribunal.

H. Admission of Evidence Prejudicial to the Owner

The Tenant entered into evidence correspondence between the Owner and the Tenant which were marked by the Owner as "without prejudice." Correspondence marked as "without prejudice" is not admissible in subsequent court, arbitration, or adjudication proceedings. However, the Owner's correspondence marked as "without prejudice" was admitted as evidence by the hearing officer without providing a legal basis to support doing so. Admission of this correspondence is improper, has prejudiced the Owner in the hearing process and violates the Owner's right to an independent and impartial tribunal.

Owner is demanding the appeal be granted. A decision based on ALL the evidence and sworn testimony, following State law, should be awarded to the Owner in this matter.



MEMORANDUM

Date: April 25, 2022
To: Members of the Housing, Residential & Relocation Board (HRRRB)
From: Braz Shabrell, Deputy City Attorney
Re: Appeal Summary in L20-0089, Haig Mardikian Telegraph & 23rd v. Tenants

Appeal Hearing Date: April 28, 2022

Property Address: 2308 Telegraph Ave., Oakland, CA
Appellant/Tenants: Judah Lakin and Ambri Pukhraj
Respondent/Owner: Haig Mardikian

BACKGROUND

On October 1, 2020, the property owner filed a Petition for Approval of Rent Increase based on “increased housing service costs.” The subject property is a building containing nine residential units and one commercial unit.

Tenants from six of the units filed responses.

RULING ON THE CASE

A hearing on the petition took place over two days, on June 14 and August 31, 2021. A Hearing Decision was issued on December 14, 2021, granting the owner’s petition. The Hearing Officer found that gross operating expenses between 2018 and 2019 had increased by \$12,174.87, and total operating expenses increased by \$14,050.27. The increase was primarily due to an increase in property taxes. The owner testified that he went from owning 50% of the property to 100% of the property, and this change in ownership caused the property taxes to increase.

The Hearing Officer found that the owner was entitled to an 8.8% increase for each of the units, which is the maximum approved amount per month for a rent increase based on increased housing service costs.

GROUNDINGS FOR APPEAL

On December 30, 2021, tenants Judah Lakin and Ambri Pukhraj filed an appeal of the Hearing Decision on the following grounds: the decision is inconsistent with the Rent Adjustment Ordinance, regulations, or prior decisions; the decision is inconsistent with decisions issued by other Hearing Officers, the decision raises a new policy issue that has not been decided by the Board; the decision violates federal, state, or local law; the decision is not supported by substantial evidence; the tenants were denied a sufficient opportunity to present their claims; and “other.”

Specifically, the tenants allege that it was an error to grant a housing services increase based on an increase in property taxes. The tenants contend that property taxes are not related to the “use or occupancy” of a rental unit as required by the Rent Regulations, and the landlord did not present any evidence demonstrating how the payment of taxes pertains to the tenants’ use and occupancy. The tenants also contend that the hearing officer’s analysis on this point is lacking.

The tenants also raise several policy-related issues. They argue that the reason for the tax increase was due to a change in ownership of the property—specifically, through an intra-family transfer—wherein the landlord went from owning 50% of the property to 100% of the property, and the landlord should not be able to pass off the cost of doubling their investment to the tenants when the tenants are not being provided with any increase in services. Allowing the landlord a permanent 8.8% rent increase based almost exclusively on property taxes is unjust and contravenes the purposes behind rent control laws. The tenants also allege that several tenants in the building moved out, and the owner was able to increase rents on those units.

ISSUES

1. Does the increase in property taxes based on the transfer of ownership constitute an “increased housing service cost” for purposes of a rent increase pass-through?
2. Is the finding that there was an increase in housing services costs supported by substantial evidence?

APPLICABLE LAW AND PAST BOARD DECISIONS

I. INCREASED HOUSING SERVICE COSTS

An owner may file a petition with RAP seeking a rent increase above CPI based on “increased housing service costs.” O.M.C. 8.22.070C1c.

A. Rent Adjustment Ordinance Regulations, Appendix A

10.1 Increased Housing Service Costs: Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services. Any repair cost that is the result of deferred maintenance, as defined in Appendix A, Section 10.2.2, cannot be considered a repair for calculation of Increased Housing Service Costs.

10.1.1 In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in 1993, the difference in housing service costs between 1991 and 1992 will be considered.) The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council. The total determined percentage amount is the actual percentage amount allowed for a rental increase.

10.1.2 Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to Appendix A, Section 10.2.2, may not be considered a repair for purposes of calculating Increased Housing Service Costs.

10.1.3 Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i.e., maintenance and repair).

10.1.4 Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

10.1.5 Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

10.1.6 Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

10.1.7 If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

10.1.8 A decrease in housing service costs (i.e., any items originally included as housing service costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.



MEMORANDUM

Date: April 25, 2022
To: Members of the Housing, Rent Residential & Relocation Board (HRRRB)
From: Braz Shabrell, Deputy City Attorney
Re: Appeal Summary in T20-0093, Bolanos v. Olivieri
Appeal Hearing Date: April 28, 2022

Property Address: 959 42nd Street, Oakland, CA
Appellant/Owner: Gina Fresquez (Property Manager/Owner's Daughter)
Jack Olivieri (Owner)
Respondent/Tenant: Miriam Bolanos

BACKGROUND

INITIAL HEARING (2020)

On March 4, 2020, the tenant filed a petition contesting prior rent increases and alleging decreased housing services, including: issues with heat, windows, mold, wall and ceiling conditions, and infestations of rodents and raccoons. In response, the owner alleged that the unit was exempt from the Rent Adjustment Ordinance as a single family home pursuant to Costa-Hawkins.

A hearing on the petition took place on November 18, 2020, and a Hearing Decision was issued on March 17, 2021, granting the tenant's petition. The Hearing Officer found that the property was not exempt under Costa-Hawkins because there were two structures on the property that were not separately alienable. Although the rear unit was functioning as a storage unit at the time, the structure had been used as a dwelling in the past, and had the potential to function as a dwelling. This finding was

based on records from the City and County¹ describing the property as a multi-dwelling property, photographs of the property, the fact that the front and rear units have separate mailboxes and separate gas and electrical meters, and the tenant's testimony that the tenant has resided in both the rear and front units (i.e., the rear unit was previously rented as a separate unit).

The Hearing Decision invalidated all prior rent increases based on the owner's failure to serve the RAP Notice. The Decision also granted a 5% rent reduction for deteriorated windows until the windows were repaired. This finding was based on photographs and testimony submitted by the tenant.

FIRST APPEAL (2021)

The owner appealed the Hearing Decision on two grounds. First, the owner disputed the 5% rent reduction because the conditions did not substantially impact habitability, and because the tenant did not notify the owner of the need for repairs. Second, the owner argued that the property was exempt from the Rent Adjustment Ordinance because there was currently only one dwelling unit at the property—the secondary unit had not been used as a home, residence, or sleeping place during the petitioner's tenancy.

The case came before the Board on July 8, 2021. The Board remanded the case back to the Hearing Officer for the limited purpose of considered new evidence presented by the owner on appeal. The new evidence was a demolition permit issued by the City of Oakland on April 22, 2021, for demolition of the rear structure. The Board postponed consideration of the 5% rent reduction pending the remand determination regarding exemption.

RULING ON THE CASE

REMAND DECISION (2022)

A Remand Hearing took place on October 12, 2021. The Remand Decision held that the property was exempt, but that the exemption did not go into place until July 10, 2021, when the rear structure was demolished. Since the tenant petition was filed prior to the property becoming exempt, the underlying Hearing Decision was affirmed as to the tenant's claims.

In the Remand Decision, the Hearing Officer noted that there was clearly conflicting evidence regarding the function of the rear structure prior to its demolition. The owner submitted into evidence the demolition permit, which referred to the structure as a "miscellaneous structure" as opposed to a dwelling. The owner's representative

¹ The records relied on included a City of Oakland Planning and Zoning Map, a Property Assessment from the Alameda County Assessor, and a City of Oakland Building Permit.

argued that the structure had been inspected by the City of Oakland prior to issuance of the demolition permit, and had determined that it was not a dwelling.

On the other hand, the tenant submitted into evidence a series of communications showing that the City had not in fact made an official determination that the structure was not a dwelling unit, and submitted various notes from the Building Department that referred to the structure as a dwelling. The tenant also submitted documentation showing that the demolition permit application had been referred for a project design review by the Planning Department, but the owner obtained an exemption from the design review process by claiming that the structure was unsafe due to faulty wiring and poor foundation. Since the demolition permit application never went through the design review process, the City never made an official determination as to whether the rear structure was a dwelling unit. The tenant previously submitted several other documents supporting their position that the property was a duplex, including a City of Oakland Planning and Zoning Map, Property Assessment Information from the County of Alameda Assessor's Office, a building permit application from 2017, and photographs showing that the structure had a separate mailbox, separate gas meter, and separate electrical meters with labeling for the front and rear units.

Based on the totality of evidence submitted, the Hearing Officer held that the demolition permit alone was insufficient to establish that the structure was non-residential. Since the owner had the burden of proof regarding the exemption claim, and due to the conflicting nature of the evidence, the owner failed to meet the burden of establishing that the rear unit was not a dwelling unit.

CURRENT APPEAL

The owner filed an appeal of the Remand Decision on several grounds. Regarding the issue of exemption, the owner argues that what matters is *current* use of a structure, not past use, and since the rear structure had not been used as a dwelling during the tenant's tenancy, it was an error to consider it a dwelling in this case. Furthermore, the evidence relied on by the Hearing Officer was arbitrary, in that what mattered was *actual* use, and the documents submitted by the tenant had no bearing on actual use. The owner also claims that the tenant's testimony was unreliable, and that the Hearing Officer was biased.

On the issue of the 5% rent reduction for decreased housing services, the owner argues that the Hearing Officer should not have credited the tenant's testimony, which the owner claims is hearsay, and the tenant did not satisfy their burden of proof. The owner also argues that it was an error for the Hearing Officer to not allow in additional evidence that had not previously been submitted which tended to disprove the tenant's credibility.

ISSUES

1. Is the Hearing Officer's finding that the property is not exempt supported by substantial evidence?
2. Is the 5% rent reduction based on decreased housing services supported by substantial evidence?

APPLICABLE LAW AND PAST BOARD DECISIONS

I. STANDARD OF REVIEW

The standard on review is whether there was substantial evidence that reasonably supported the Hearing Officer's decision. When evaluating witness credibility, deference should be given to the Hearing Officer.

A. Substantial Evidence

Generally, "substantial evidence" means there is enough relevant information and reasonable inferences from the information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.

B. Consideration of Evidence

The strict rules of evidence (such as those pertaining to hearsay, admissibility, etc.) do not apply.

C. Burden of Proof

An owner claiming an exemption from the Rent Adjustment Ordinance bears the burden of providing and producing evidence to establish the exemption. (O.M.C. 8.22.030B1b). A tenant claiming decreased housing services bears the burden of establishing the decrease in services.

D. Past Board Decisions

- T00-0340, T00-0367, T00-0368, *Knox v. Progeny Properties*: Board will not overturn factual findings by hearing officer if there is substantial evidence to support the hearing decision.
- T03-0198, *Diamond v. Rose Ventures*: Hearing decision will not be overturned when based on witness credibility and supported by substantial evidence.

II. DECREASED HOUSING SERVICES

A. Rent Adjustment Ordinance and Regulations

A decrease in housing services is considered to be an increase in rent and may be corrected by a rent adjustment. In order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy, or one that is required to be provided in a contract between the parties, or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. An owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted. The tenant has the burden of proof. (O.M.C. 8.22.070F).

B. Past Rent Board Decisions

- T13-0288, *Milosaljevic v. Dang*: Board affirmed hearing decision which granted a 5% rent reduction for an uneven carpet.
- T13-0001, *Baragano v. Discovery Inv.*: Board affirmed hearing decision which granted 3% rent reduction for deteriorated carpet that presents tripping hazard.
- T11-0101, *Howard v. Smith*: Hearing decision that granted reduction of rent for loss of use of garage was supported by substantial evidence.
- T06-0031, *Barrios v. Goldstein & Gambarin*: Mold resulting from a roof leak constituted decreased housing services.
- T12-0348, *Smith v. Lapham Company*: Board affirmed hearing decision which granted 5% rent reduction for a broken kitchen faucet and broken shower door.
- T13-0093, *Mackey v. Ahmetspahic*: Board affirmed hearing decision which granted restitution of 4% for rodents and .5% for a broken electrical outlet.
- T18-0238, *Didrickson v. Commonwealth Inc.*: Board affirmed a 1% rent reduction for a window that was temporarily blocked with a tarp.

III. COSTA-HAWKINS SINGLE-FAMILY HOME EXEMPTION

A. Rent Adjustment Ordinance and Regulations

Dwelling units exempt pursuant to Costa-Hawkins (Cal. Civil Code 1954.52) are not covered units for purposes of the Rent Adjustment Ordinance. O.M.C. 8.22.030(A)(7).

B. Costa-Hawkins Rental Housing Act (Cal. Civil Code 1954.52)

“(a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

...

(3)(A) It is alienable separate from the title to any other dwelling unit...”

C. *Owens v. City of Oakland* (2020) 49 Cal.App.5th 739

The California Court of Appeals upheld the Board’s determination that an individually rented and occupied bedroom in a single-family home constituted a separate dwelling unit for the purpose of Costa-Hawkins, despite lack of separate cooking facilities. Therefore, a room in a single-family home may be covered under the Rent Adjustment Ordinance.

D. Definition of Dwelling Unit

Owens v. City of Oakland (2020) 49 Cal.App.5th 739: In analyzing whether the subject unit was exempt under Costa-Hawkins as a single-family dwelling, the Court relied on the definition of “dwelling” found in Cal. Civil Code 1940(a), which defines “dwelling unit” for purposes of landlord-tenant law as “a structure or the part of a structure that is used as a home, residence, or sleeping place...”

“The meaning of a ‘dwelling unit’ under building and planning codes is not in pari materia with the meaning under rent control ordinances. For purposes of landlord-tenant law, ‘a dwelling or a unit’ or a ‘dwelling unit’ is not the entire property to which an owner holds title; rather, it is any area understood to be committed ... to the habitation of a given tenant or tenants to the exclusion of others. (See, e.g., Civ. Code § 1940(a) [defining ‘dwelling unit’ as ‘a structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains ... a household or by two or more persons who maintain a common household’ for purposes of a landlord-tenant statute]; see also, e.g., Oakland Mun. Code § 8.22.020 [defining ‘Covered Unit’ as including ‘all [non-exempt] housing services located in Oakland and used or occupied in consideration of payment of rent’].)”

Neither the Rent Adjustment Ordinance nor the Costa-Hawkins Rental Housing Act define “dwelling” for purposes of the exemption.