HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
July 13, 2023
5:30 P.M.
CITY HALL
1 FRANK H. OGAWA PLAZA, HEARING ROOM #1
OAKLAND, CA 94612

MINUTES

1. **CALL TO ORDER**

The Board meeting was administered in-person by B. Lawrence-McGowan from the Rent Adjustment Program (RAP), Housing and Community Development Department. B. Lawrence-McGowan explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 5:44 p.m.

2. **ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant			X
D. WILLIAMS	Tenant	X		
J. DEBOER	Tenant Alt.	X		
M. GOOLSBY	Tenant Alt.			X
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated	X		
M. ESCOBAR	Undesignated	X		
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
D. TAYLOR	Landlord	X		
Vacant	Landlord			
Vacant	Landlord Alt.			
Vacant	Landlord Alt.			

Staff Present

Kent Qian	Deputy City Attorney
Marguerita Fa-Kaji	Senior Hearing Officer (RAP)
Briana Lawrence-McGowan	Administrative Analyst II (RAP)

3. **PUBLIC COMMENT**

a. Kim Roehn spoke and stated that she was the owner representative in case T22-0202 on 5/11/2023 and suggested that a motion be made to amend the 5/11/2023 Board minutes to reflect three things:

- A Board member stated on the record with regard to Hearing Officer Lambert, "…and just on the record, I've seen a lot of cases from this particular hearing examiner that concerns me in the past and I want to make sure I put that on the record. I'm not saying this Hearing Officer is biased or anything, I'm just saying that some of those decisions that have come from her have been concerning".
- Language reflecting that the RAP staff present, Hearing Officer Moroz, stated that she would relay the owner's request for reassignment to the Senior Hearing Officer, and
- Language reflecting that Hearing Officer Moroz represented to the Board that at the inception of case T22-0202, the Senior Hearing Officer reached out to the parties and asked if there were any claims of bias as to this Hearing Officer—and that no one responded to her e-mail.

Kim Roehn stated that without mention of these discussions, the minutes are incomplete and that it is important to Ms. Roehn and her client that the record in this case be complete and accurate because the request to reassign the case was denied and on remand, they were again issued the same notice of incomplete owner response.

b. James Vann spoke and mentioned that the start time of the meeting was 5:30 pm; however, the Rent Ordinance states that the Board meets the 2nd and 4th Thursdays at 7:00 pm—and stated that this needs to be addressed in the recommended regulation changes. James Vann also mentioned that the moratorium is ending and that members of the Oakland Tenants Union have received several disturbing calls indicating what might be happening. James Vann stated that regarding the proposed changes to the regulations that are coming from the Board chair, most of them are very good—but there are some that need additional clarification. James Vann also mentioned that there should be copies of the agenda and packet available for members of the public who may not have had time to review or those who may not have computer access.

4. **CONSENT ITEMS**

a. Approval of Board Minutes, 5/11/2023: Member Williams moved to approve the Board Minutes from 5/11/2023. Vice Chair Oshinuga

seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer, D. Williams
Nay:	None
Abstain:	None

The minutes were approved.

5. **APPEALS***

a. T23-0011, Rattanamongkhoun v. Fong

Appearances: Phonethip Hill Tenant Representative

This case involved a tenant appeal of a tenant petition that was dismissed by the Hearing Officer on the basis that the tenant did not serve the proof of service via first class mail. The tenant in the petition attached a certified mail receipt and the Hearing Officer ruled that the ordinance requires proof of service by first class mail. Since the tenant did not attach a proof of service by first class mail, the proof of service was invalid. The tenant appealed this ruling, arguing that the proof of service was emailed to RAP in response to the notice of incomplete petition. The following issue was presented to the Board:

1) Is the Hearing Officer's decision to dismiss the petition on the basis that the petition was served by certified mail correct?

The tenant representative contended that on the proof of service form, it states that United States mail could be used—but it does not state that certified mail could not be used. The tenant representative argued that they decided to use first class mail to deliver the package and paid for the additional service of certified mail with a return receipt of service. The tenant representative argued that this was done because they only had a PO box address for the landlord and did not have a physical mailing address for him. The tenant representative contended that they're asking the Board to reject the dismissal and to approve the tenant petition.

After parties' arguments, questions to the parties, and Board discussion, Chair Ingram moved to find that the tenant satisfied the proof of service requirement and to remand the case back to the Hearing Officer for a full hearing. Member Escobar seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer, D. Williams
Nay:	None
Abstain:	None

The motion was approved.

b. L23-0001, Ruelas v. Tenants

Appearances:	Kim Roehn	Owner Representative
	Joel Bernhardt	Tenant

This case involved an owner petition for capital improvement rent increases and it affected a number of units on the property. The Hearing Officer held a number of hearings over three days and in the Hearing Decision, the Hearing Officer dismissed the petition on the basis that two of the RAP notices were defective because the owner did not file evidence that they were served in all three languages as required by the ordinance—which includes English, Spanish, and Chinese. The owner filed an appeal of the decision and makes three primary arguments:

1.) The Hearing Officer should not have dismissed the petition as to all units if only two units received defective RAP notices.
2.) Regarding the tenant in unit 2908, the tenant moved in before September 21, 2016—and the ordinance requiring RAP notices in three languages does not apply to pre-existing tenancies, even if the first RAP notice was served after that date.
3.) Regarding the tenant in unit 2900, the owner substantially complied with the ordinance by providing the RAP notice in English and because it did not prejudice that tenant.

The following issues were presented to the Board:

1) Is the Hearing Decision supported by substantial evidence that units 2900 and 2908 did not receive the RAP notice in all three languages?
2) Was the Hearing Officer's decision correct that the owner's failure to prove receipt of the RAP notices in all three languages to units 2900 and 2908 renders the entire petition fatally defective and subject to dismissal?

The owner representative contended that the landlord acquired the property in 2020 and scraped together funds and took out loans to get the capital improvement projects done. The owner representative argued that all the affected tenants resided at the property prior to the owner taking over the property. The owner representative contended that after three days of hearings, which the tenants fully participated in, the Hearing Officer dismissed the entire petition based on OMC section 8.22.060—which states that the RAP notice must be provided at the inception of tenancy in three languages. The owner representative argued that all affected tenants are English speaking, there's no dispute that the owner has regularly served the RAP notice in English to all tenants since 2020, and that the prior owner also provided the RAP notice in English on several occasions.

The owner representative argued that the issue in this case is the three-language requirement that was enacted in 2016, and that the code section itself says under subsection C that the penalty for failure to give this notice is a 6-month forfeiture of the requested increase—not a full dismissal, as long as the RAP notice had been provided before the petition was filed. The owner representative contended that there are four affected units in this case and that in the Hearing Decision, units 2902 and 2910 were not identified as defective regarding the RAP notice—and the Hearing Officer cannot dismiss a petition in full because there may be procedural defects as to some parties, which violates basic California procedural law.

The owner representative contended that the RAP notice requirement went into effect in 2016 and only applies to tenancies after that date—however, the Hearing Officer applied this law in error and the dismissal needs to be reversed. The owner representative argued that the intent of the three language requirement is to ensure that most tenants receive the RAP notice in a language they can understand, that not every Oakland resident speaks English, Spanish, or Chinese—and that in this case, it is undisputed that the tenant received the RAP notice in a language he understood, and there was no detriment to his not receiving the notice in Spanish and Chinese.

The owner representative argued that the applicability of the substantial compliance doctrine favors substance over form and that this kind of issue with broad stroke penalties doesn't achieve the purpose of any laws that are enacted in the code. The owner representative contended that capital improvement petitions are there to encourage owners to make improvements that benefit those who live at the property and that form over substance should be honored in this case. The owner representative argued that if the three-language requirement was not met at the inception of tenancy, the penalty is a 6-month forfeiture or postponement of the sought increase.

The tenant contended that he resides at 2902 Birdsall Avenue, that he doesn't believe that the petition was correct, and that it should be rejected because it doesn't meet the capital improvement requirements of Oakland. The tenant argued that capital improvements are improvements to covered units or common areas that materially add to the value of the property and appreciably prolong its useful life, adapt it to new building codes, and must primarily benefit the tenant—rather than the owner. The tenant contended that the owner petitioner failed on all the requirements and that the work done in his unit was because of deferred maintenance. The tenant argued that none of the improvements done did anything to improve or prolong the life of the building—and in some cases, the improvements made things worse. The tenant contended that none of the improvements did anything to benefit the tenants.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to reverse the Hearing Officer's decision to dismiss the petition on the grounds that OMC section 8.22.060B applies only to the filing requirement of the RAP notice; and whereas OMC section 8.22.060C applies to the sufficiency of the RAP notice. Here, there is substantial evidence that the owner filed evidence consistent with OMC section 8.22.060B of providing a RAP notice to each tenant. Any penalties as a result of a deficient notice are to be considered under OMC section 8.22.060C. Additionally, the case is to be remanded to the Hearing Officer to render a new decision applicable to all units. The Hearing Officer may consider the deficiencies of any RAP notices and apply any penalties under OMC section 8.22.060C. Member Williams seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer, D. Williams
Nay:	None
Abstain:	None

The motion was approved.

c. T22-0124, Benafield v. Equity Avg. LLC

Appearances:	Andrew Catterall	Owner Representative
	Kevin Benafield	Tenant

This case involved a tenant petition for decrease housing services and this case has been heard by the Board before. Previously, the Hearing Officer decided that the waste management was a split utility—therefore, the

increase was an illegal rent increase because the owner passed on the utility costs to the tenants. The Board previously remanded the case for the Hearing Officer to precisely state the reasons why, from the record, the determination was made that the waste management bill was a split utility. In the remand decision, the Hearing Officer provided reasoning as to why such a finding was made in the first decision. The owner appealed the remand decision, arguing that there still isn't any substantial evidence in the record to prove that the waste management was in fact a split utility bill—and attached new evidence of the waste management bills. The owner also argued on appeal that he wasn't really put on notice of the split bill issue because the tenant petition only identified back billing, and the split bill issue never came up at the hearing.

The owner representative contended that the tenant filed the petition in this case alleging an unlawful rent increase and challenged the owner's right to charge for waste management fees on the grounds that at some point the landlord had stopped charging them those fees—therefore barring the owner from charging them in the future. The owner representative argued that in the first Hearing Decision, the Hearing Officer did not state that the landlord was barred from collecting these fees because he delayed in collecting them at some point—but stated that the back billing violated a RAP rule that prohibits splitting utilities.

The owner representative argued that this was not a part of the tenant’s petition and was not addressed in the original hearing. The owner representative contended that in the landlord’s first appeal, the landlord appealed the utility splitting aspect of the decision on the grounds that the waste management bills were in fact charged separately for each unit. The owner representative contended that during the first appeal, the owner attached the waste management bills that showed that each of the units were separately billed for the waste management fees—and therefore, it wasn't subject to RAP regulations. The owner representative argued that the second basis for the first appeal is that there was insufficient evidence showing anything to the contrary of the fact that these were independent bills to the separate units. The owner representative argued that the third ground for the initial appeal was that the landlord had no notice that the split bill issue was even an issue—therefore, he didn't have the opportunity to provide the supporting documentation.

The owner representative contended that during the first appeal hearing, the Board, on remand, requested for the Hearing Officer to identify what evidence in the record was relied on to support the finding that the waste management was a split utility—and in the Remand Decision, the Hearing Officer didn't provide any direct evidence showing what he relied on or anything that was part of a record showing that there were actually a shared

utility bill. The owner representative argued that the Hearing Officer instead provided a numbered list of things, that amounted to speculation on his part –and included things such as the fact that no documentation of the bills was provided at the hearing, and the fact that there was some testimony that the bills were all in the landlord's name. The owner representative contended that the Hearing Officer didn't provide any evidence that this issue was ever brought up in the hearing—and requested for the case to be remanded back to the Hearing Officer so that the owner is given the opportunity to provide the records of the separate billing.

The tenant contended that the Hearing Officer has reviewed this case and has ruled in favor of the tenants twice. The tenant argued that the owner said he didn't have the records, but the previous owner and the property manager provided him with all the records that he needed. The tenant contended that the owner still has not reimbursed them whatsoever, and that in May, the owner contacted waste management to start accounts in the tenants' names so that they would have to pay the bill.

The tenant argued that the owner wasn't prepared to be an owner or to pay for repairs and upkeep when he purchased the property. The tenant contended that the owner has had two years to get all his evidence together and to present it to the Hearing Officer and that he hasn't. The tenant argued that just because they had been paying the garbage bill since the inception doesn't make it right and that they didn't know the law about utility splitting until they filed the petition.

After parties' arguments, questions to the parties, and Board discussion, Member deBoer moved to affirm the Hearing Officer's remand decision. Vice Chair Oshinuga seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer, D. Williams
Nay:	None
Abstain:	None

The motion was approved.

6. **RESOLUTION TO RECOMMEND AMENDMENTS TO THE RENT ADJUSTMENT REGULATIONS**

   a. Chair Ingram presented and discussed with the Board a proposed resolution to recommend amendments to the Rent Adjustment Regulations. Revisions

are being made and the proposed resolution will be brought back to the Board at the next meeting.

7. **AUTHORIZATION FOR CHAIR INGRAM & MEMBER DEBOER TO PRESENT TENANT FILING REQUIREMENT RESOLUTION TO CITY COUNCIL**

   a. Chair Ingram requested authorization from the Board for Chair Ingram and Member deBoer to present the Tenant Filing Requirement Resolution to City Council on behalf of the Board.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer, D. Williams
Nay:	None
Abstain:	None

The motion was approved.

8. **INFORMATION AND ANNOUNCEMENTS**

   a. Board Training Session—*Robert's Rules of Order*: The Board training session was postponed to a future meeting.
   b. Chair Ingram announced that he will be sending quarterly check-in emails to fellow Board members regarding attendance.
   c. Chair Ingram announced that there's an appreciation mixer that the City Administrator's office is putting on for Board and Commission members on July 31, 2023, and reminded Board members to RSVP if they're going to attend.
   d. Chair Ingram provided a brief update on RAP's Rent Registry implementation.
   e. Deputy City Attorney Kent Qian informed the Board that there are two landlord representative appointments for the Board being forwarded to City Council for approval on Tuesday, July 18, 2023.
   f. Chair Ingram informed the Board that they will not be taking a recess in August to avoid having a backlog of appeal cases.

9. **SCHEDULING AND REPORTS**

   a. None

10. **OPEN FORUM**

a. James Vann spoke and stated that a lot of things have been happening regarding the phase-out of the eviction moratorium and informed the Board about calls with disturbing reports from tenants and stated that he will follow-up with RAP's manager regarding this. James Vann mentioned that in the past, whenever the Board was proposing major changes to the RAP ordinance or regulations, there would be a public comment period, but that he does not know if this has happened already because he missed some meetings. James Vann stated that the Board overworked the first-class mail issue, stating that first class mail is typical for government operations, and that people often use certified mail because they want receipts for themselves, and that this should be an additional option. James Vann mentioned that initial base rent is only the initial period of renting up and that it changes—particularly every 12 months when the CPI is added; and that capital improvements come off after their amortization periods. James Vann also stated that the Board wastes time by having good cause hearings, that these hearings should be delegated to RAP staff, and that there should be an administrative determination when people don't show up for hearings.

11. **ADJOURMENT**

a. The meeting was adjourned at 9:40 p.m.