HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
January 12, 2023
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 Ingram at 5:03 p.m.

2. **ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant			X
Vacant	Tenant			
J. DEBOER	Tenant Alt.	X		
M. GOOLSBY	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		
Vacant	Landlord			
Vacant	Landlord Alt.			
K. SIMS	Landlord Alt.			X

Staff Present

Braz Shabrell	Deputy City Attorney
Harman Grewal	Business Analyst III (HCD)
Maimoona Ahmad	Acting Senior Hearing Officer (RAP)
Briana Lawrence-McGowan	Administrative Analyst II (RAP)
Mike Munson	KTOP

3. **PUBLIC COMMENT**

   a. Kevin Dawson stated that he has an appeal hearing and wanted to make sure that it was scheduled for tonight's meeting. Staff confirmed that his appeal hearing was scheduled for tonight and that he would have the opportunity to speak once his case was called.

4. **CONSENT ITEMS**

   a. Renewal—Adoption of AB 361 Resolution & Approval of Board Minutes, 10/27/2022: Chair Ingram moved to renew the adoption of AB 361 resolution and to approve the Board Minutes from 10/27/2022. Vice Chair Oshinuga seconded the motion.

   The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, E. Torres, T. Williams, J. deBoer, M. Goolsby
Nay:	None
Abstain:	None

The motion and minutes were approved.

5. **APPEALS***

   a. T22-0111, Williams v. Dawson

Appearances:	Kevin Dawson	Owner
	Robert Williams	Tenant

This case involved an owner appeal of an administrative decision that granted a tenant petition. Administrative Decisions are decisions that are issued without a hearing, and in this case, it's based on a tenant petition that contested three rent increases. The tenant's petition was filed in June 2022 and the tenant submitted evidence of the rent increase notices that they were contesting along with the petition. The owner did not file a response. Since the owner did not file a response, and the Hearing Officer determined that there was enough information to make a decision without a hearing, an Administrative Decision was issued. The decision granted the tenant's petition, and all three rent increases were found to be invalid on various grounds. First, all of the notices failed to comply with noticing requirements imposed by the City's rent increase moratorium. The moratorium requires any rent increase notices served during the local emergency, which is still in effect and was in effect at the time of this decision, to have language in them advising tenants of the moratorium and providing information about the Rent Adjustment Program. This was required for all rent

increase notices, but was not found. The first rent increase from $700 to $770 was also invalid because it exceeded the CPI and because the rent increase notice indicated that the increase was based on capital improvements—despite the owner not having filed a petition with the Rent Adjustment Program. The second rent increase from $770 to $866 was also deemed invalid as an unlawful attempt to pass on utility fees, the notice was served without the required RAP notice, the increase exceeded the CPI and violated the moratorium, and the increase was the second rent increase imposed within a 12-month period. The third rent increase from $847 to $943 was also invalid because it exceeded the CPI and violated the moratorium; therefore, the petition was granted, and all three rent increases were held to be invalid.

The owner filed an appeal of the Administrative Decision on October 1, 2022, alleging that the decision is inconsistent with prior decisions and that the owner was denied a sufficient opportunity to respond to the petitioner's claims. Specifically, the owner is alleging that the Administrative Decision is inconsistent with a prior decision issued by the Rent Adjustment Program in 2021, and the owner also alleges that the decision violates a settlement agreement, which was executed in March 2022. The owner also claims that the third rent increase is valid on the basis of banking. In regard to not filing a response to the petition, the owner alleges that he was recovering from COVID, and house bound for over 30 days, and did not receive the mail until after the response timeframe had passed. There were two issues presented to the Board:

1. Was there good cause for failure to file a response? A party who does not file a response and does not have good cause for failing to file a response is not permitted to present new evidence. Since the owner appeal presents and is largely based on new evidence, the Board must determine if the owner has established good cause for failure to file a response.
2. If there is not good cause for the owner's failure to file a response, the Board can still consider whether the owner has raised any issues with the Administrative Decision as a matter of law—specifically whether there is a legal inconsistency between the prior decision from 2021 and the decision in this case in 2022.

The owner contended that he owns a private investment equity LLC, which owns 546, 548, and 550 37th Street in Oakland. The owner argued that he bought the property in 2019, it was in dilapidated condition, and that he spent over $400,000 during the pandemic to renovate the property. The owner contended that Mr. Williams has occupied the property for 25 years, and that when he raised the rent in 2020, the tenant had an attorney, who received a copy of the RAP notice. The owner argued that the representations that he did not follow the regulations are false and that he honors tenants' rights in the City.

The owner argued that he was sick with COVID and didn't receive the notice in the mail, which was sent to his P.O. box, until after the timeframe for him to file a response had passed. The owner contended that the Hearing Decision rendered on October 5, 2021 was based on the same evidence that Mr. Williams is alleging in this case and that she ruled that the rent was $770. The owner argued that the Hearing Officer also ruled on the water charges and determined there was no pass through of increased expenses. The owner contended that the tenant was paying his own water bill, which was about $240 bi-monthly, and that during the renovations, landscaping contractors tapped into the water from Mr. Williams' unit. The owner argued that rather than have Mr. Williams pay for water he wasn't using, he waved the water cost so that he had no expenses for water at all, and that he passed on the City of Oakland's sewer charge in the amount of $96 per month, which the tenant was paying for anyway. The owner also argued that the tenant filed a suit against him and the previous owner, that the tenant was paid through his insurance company, and that the tenant is violating a general release.

The tenant contended that he has resided at 548 37th Street since 1997 and that he has had to pay the utilities, including water and PG&E, along with the rent. The tenant argued that when Mr. Dawson purchased this property, there were notices of violations from the City of Oakland and repairs needed to be made. The tenant contended that his house had flooded, and that code violations noted all of the damage that was done, which was to be repaired at the owner's expense. The tenant contended that the required action from the City of Oakland was repairs with permits, inspection, and approval, and plans drawn by a qualified architect, engineer, or draftsperson for stairs and guardrail repairs. The tenant argued that he received a copy of a permit with some of Mr. Dawson's documents, and that the permit included the name of the son of the owner of the building, who had passed away in 2012, and that it was signed in 2019. The tenant contended that he has never seen any architectural design prepared by an architect to complete the repairs.

The tenant argued that regarding the water, the owner did a lot of work to replace the pipes—but once the work was done and the water was working again, he was paying the bill. The tenant contended that he received a water bill in the amount of $500 and brought the matter to the attention of an attorney that he had at the time. The tenant contended that he then requested for the attorney to challenge the owner on the water bill, and she did by providing the owner with a copy of the documentation that the tenant provided to her. The tenant argued that as a result, the owner decided to take the water bill, put it in his name, and then began charging the tenant $96 a month. The tenant contended that he has proof that he was paying the water bill and always has. The tenant argued that Mr. Dawson has four electrical meters at the property, although there are only three units, and that the owner sent him bill for electricity, that he doesn't know where this bill came from, and that the owner is in violation for false statements.

After parties' arguments, questions to the parties, and Board discussion, Member T. Williams moved to remand the case back to the Hearing Officer for a full hearing, as the owner has demonstrated good cause for failure to submit a response—and to allow the owner 14 calendar days to submit their response. Member J. deBoer seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, E. Torres, T. Williams, J. deBoer, M. Goolsby
Nay: None
Abstain: None

The motion was approved.

b. L14-0065, 525-655 Hyde Street CNML Properties, LLC v. Tenants

Appearances: Stan Amberg Tenant Representative
Angie Sandoval Montenegro Owner Representative

This case involved a tenant appeal of an owner petition for exemption based on substantial rehabilitation. Substantial rehabilitation of a property was previously grounds for exemption from the Rent Adjustment Program. If a property owner spent a certain threshold of money rehabilitating the property, they could petition the Rent Adjustment Program for exemption—and if the threshold was met, then they were exempt. The dollar amount that needed to be spent on the rehabilitation project needed to equal at least 50% of what the costs are for new construction—therefore, there is a detailed formula as to how to calculate this number. If an owner spends a certain amount of money on a project, then they were allowed to be granted exemption, and in this case, there was a petition for exemption filed in 2014. The initial hearing was held back in 2015, and at the hearing, the Hearing Officer found that the dollar threshold amount had not been met and denied the owner's petition. The owner appealed the decision and the Board affirmed that decision. The owner then filed a writ in Superior Court challenging the Hearing Officer's decision and the Board's decision, and the court agreed with the owner and determined that the Hearing Officer had errored in their calculation of costs. The court directed for the costs to be recalculated. The tenant then moved for reconsideration of this decision, which was denied. The tenant then appealed, and the California Court of Appeals affirmed the Superior Court decision, agreeing with the property owner, and denied the tenant's appeal. Pursuant to the court's order, the matter was then remanded back to the Hearing Officer, which was a different Hearing Officer. The Hearing Officer issued a Reconsideration Decision in 2021 based on the court's order. In the Reconsideration Decision, the Hearing Officer found that the threshold had

been met and the owner's petition was granted. This Reconsideration Decision was issued without a new hearing. The tenant then appealed that Reconsideration Decision and requested that the matter be scheduled for another hearing to allow for evidence and argument, specifically regarding the costs of the balcony space in the building.

The appeal went before the Board in March 2022 and the Board voted to allow the tenant's request for a hearing on the very limited issue of whether the balcony space was properly calculated. The matter went to another remand hearing in July 2022 on the limited issue of the balconies and the Hearing Officer came to the same conclusion and found that the square footage of the balcony area properly was categorized under elevated decks and balconies, as opposed to falling under the category of apartment space. The decision that granted the owner's petition is now being appealed. The tenants are arguing again that there is an error as a matter of law in the interpretation of what constitutes an apartment versus balcony space. The following issue was presented to the Board:

1. Is the Hearing Officer's finding that the balcony area falls under the elevated decks and balconies category of calculation construction costs, rather than the apartment category supported by substantial evidence?

The tenant representative contended that he is representing tenants Amberg, McMahon, and Oda, and stated that as the board deliberates, it should keep in mind that there is much more at stake here than the apartments occupied by those three tenants. The tenant representative argued that this case is about removing all tenants' apartments from the rent protections of a Rent Adjustment Program, as the owner is asking to have the entire building exempted. The tenant representative contended that there are 16 apartments in the building and every tenant in those 16 apartments is at risk of being stripped of the rent protections of the Rent Adjustment Program. The tenant representative argued that the balconies are fenced in and that the common meaning of the word unenclosed is "not fenced in". The tenant representative contended that the common meaning of unenclosed is relevant to the Oakland planning code definition of floor area, which states, "the floor area of balconies is included unless the balcony is unenclosed" and the ordinary meaning of unenclosed is "not fenced in". The tenant representative argued that each of the 15 balconies is fenced in, is included in the planning code definition of floor area, and therefore is within the apartment category of Table A and should be posted at $127 per square foot.

The tenant representative argued that it was the owner who first injected the planning code definition of floor area into this case, but by doing so, the owner led the Hearing Officer into an error as a matter of law. The tenant representative

contended that the owner invited the Hearing Officer to rewrite the planning code definition of floor area and that the Hearing Officer did so, which changed the definition so that a balcony would not be included unless the balcony was "entirely closed to the elements". The tenant representative argued that the planning code, as written by the Oakland City Council, states that a balcony is included if the balcony is fenced in. The tenant representative contended that in the planning code as altered by the Hearing Decision, a balcony is included only if it is entirely closed to the elements. The tenant representative contended that there is a major difference between not fenced in and entirely closed to the elements, and that a Hearing Officer has no authority to rewrite, amend, or change a section of the planning code. The tenant representative argued that preparing, amending, or changing the planning code is exclusively a legislative function and that legislative functions are performed by the Oakland City Council. The tenant representative contended that the Superior Court said that it is permissible for the Board, when exercising its discretion, to consider the actual cost of rehabilitating the balconies, and that with the discretion granted by the Superior Court, the Board can cost the balconies at $127 without committing legal error. The tenant representative argued that the owner failed to satisfy its burden to prove that the building is exempt .

The owner representative contended that they are asking for the Board to affirm the Remand Hearing Decision. The owner representative argued the petitioners' strategy is to delay this process for however long the Rent Board will allow and that the arguments that the petitioners are making are similar to the arguments they made back in 2014. The owner representative contended that the petitioners continue to make the same arguments by trying to redefine how substantial rehabilitation exclusions should be calculated. The owner representative argued that the Superior Court, as well as the Hearing Officer, have held that there is substantial evidence to support the finding that the property includes both an apartment space and deck and balcony spaces, and that Table A sets out the specific descriptions that apply to projects or parts of projects. The owner representative contended that Table A provides a matrix of variables to determine the appropriate cost based on the description of the construction, and that Table A states that $127 per square foot is the appropriate multiplier for the costs associated with apartment space and $41.16 per square fee is the appropriate multiplier for determining cost for the elevated decks and balcony space. The owner representative argued that the Hearing Officer heard the testimony of witnesses and reviewed all the evidence that has been filed over the years. The owner representative contended that this testimony included testimony of the building inspector and testimony of tenant Julie Amberg—and after hearing all the evidence, the Hearing Officer found that the appropriate multiplier for the deck space is $41.16.

The owner representative argued that the Board and the Hearing Officer do not have the discretion over how to treat each space, and that they must apply the

specific category listed in Table A, which determines the cost of new construction per square foot to the corresponding project or part of project. The owner representative contended that Table A clearly distinguishes apartment and balcony space, and that the Hearing Officer, after hearing all the evidence, found that the balcony area is an outdoor space and is different from apartment space since it's open to the outside elements and cannot be entirely enclosed. The owner representative argued that based on the evidence that the Rent Adjustment Program has on record, there's sufficient evidence to reaffirm the Remand Hearing Decision.

After parties' arguments, questions to the parties, and Board discussion, Member T. Williams moved to affirm the Hearing Officer's decision based on substantial evidence. Vice Chair Oshinuga seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, E. Torres, T. Williams, J. deBoer, M. Goolsby
Nay:	None
Abstain:	None

The motion was approved.

c. T22-0078, Bolanos v. Wu

Chair Ingram announced that this appeal hearing has been postponed.

6. **INFORMATION AND ANNOUNCEMENTS**

a. Briana Lawrence-McGowan announced that RAP is offering a Spanish Rent Registry workshop on January 25, 2023 at 5:30 pm via Zoom.

b. Deputy City Attorney Braz Shabrell reminded the Board that their annual election of officers will take place during the second meeting in February. The Board will have the opportunity to elect a new chair and vice chair or to re-elect the current chair and vice chair.

c. Member Williams asked if the Rent Registry had been passed by City Council. Deputy City Attorney Braz Shabrell informed Member Williams that the Rent Registry was passed, and staff informed the Board that a follow-up presentation on the Rent Registry would be requested by RAP staff.

d. Member Torres asked if the Board would be returning to in-person meetings in March. Chair Ingram and staff informed Member Torres that this is possible, if there are no additional changes made to the law that allows the Board to continue to meet virtually.

7. **SCHEDULING AND REPORTS**

   a. None

8. **OPEN FORUM**

   a. James Vann from the Oakland Tenant's Union spoke and reminded the Board that next month they will be having their election of officers. Mr. Vann mentioned that the governor has lifted the state of emergency that permits meetings to be held virtually and stated that the City Attorneys have informed City Council that as of March 2023, they will have to start meeting in person. Mr. Vann informed the Board that RAP staff went to City Council and requested that the start date for the Rent Registry be pushed back because of delays. Mr. Vann also stated that in 2019 and 2020, the Board and City Council passed an Efficiency Ordinance, and that this ordinance changed the times related to appellant and respondent testimony in appeal hearings. Mr. Vann mentioned that the ordinance is not being followed and stated that he is wondering if there is a reason why the Efficiency Ordinance is not being applied.

   b. Briana Lawrence-McGowan informed the Board that the Rent Registry reporting date has been pushed back to July 1, 2023.

9. **ADJOURMENT**

   a. The meeting was adjourned at 7:36 p.m.