

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

PANEL MEETING

June 20, 2019

7:00 P.M.

CITY HALL, HEARING ROOM #2

ONE FRANK H. OGAWA PLAZA

OAKLAND, CA

AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. OPEN FORUM

4. NEW BUSINESS

i. Appeal Hearing in Cases:

a. T18-0164, Garcia v. SMC East Bay

5. ADJOURNMENT

Accessibility. This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email sshannon@oaklandnet.com or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandnet.com o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。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 sshannon@oaklandnet.com

或致電 (510) 238-3715 或 711 California relay
service。請避免塗搽香氛產品，參加者可能對化學成分敏感。

Service Animals/Emotional Support Animals: The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use service animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care. Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

CHRONOLOGICAL CASE REPORT

Case No.: T18-0164

Case Name: Garcia v. SMC East Bay

Property Address: 1070 10th Street, Oakland, CA

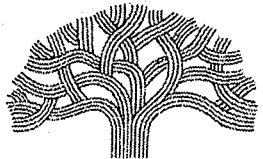
Parties: Alejandro Garcia (Tenant)
Bally Singh (Owner Representative)
David Martin (Attorney for Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 23, 2018
Owner Response filed	May 30, 2018
Hearing Decision issued	January 30, 2019
Owner Appeal filed	February 14, 2019
Owner letter to Board filed	June 3, 2019

T18-0164 MS/BC

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: FEB 23 PM 5:53
	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 ALEJANDRO GARCIA	Rental Address (with zip code) 1070 10th STREET OAKLAND, CA 94607	
Your Representative's Name	Mailing Address (with zip code)	Email:
Property Owner(s) name(s)	Mailing Address (with zip code)	Telephone: Email:
Property Manager or Management Co. (if applicable) BALLY SINGH; RUDDY RODRIGUEZ; SMC EAST BAY;	Mailing Address (with zip code) 1669 12th STREET Unit 0 OAKLAND, CA 94608	Telephone: 510-235-9161 Ext. 1 11-882-0879 Email: rddia@smca-eastbay.com; operations@smceastbay.com

Number of units on the property: two

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input 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).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(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)
X	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(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: May 15th, 2010 Initial Rent: \$ 1250.00 /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.

I challenge all rent increases

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		
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
5/15/2013	8/15/2013	\$1,250.00	\$1,312.50	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
July 26, 2015	9/1/2015	\$1,312.50	\$1,359.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/15/2017	9/07/2017	\$1,359.00	\$1,390.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input 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? [X] Yes [] No
Have you lost services originally provided by the owner or have the conditions changed? [X] Yes [] No
Are you claiming any serious problem(s) with the condition of your rental unit? [X] 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.

[Handwritten signature]

Tenant's Signature

2/23/2018
Date

Please see attachments:
1 On going complaint since 2012 (Maintenance sheet)
2 Discrimination and Harassment (community sheet)
3 see emails for further Harassment
4 Portal Account Disabled (see Request Denied)
5 IMAGES of Request for Service
6 I PAY 3 more than their down side we get same for service

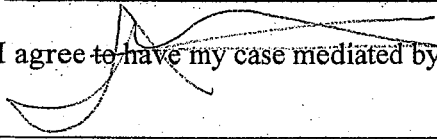
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

2/23/2018
Date

VI. IMPORTANT INFORMATION:

Time to File

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

File Review

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

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): _____

not
25260
02/06/2018

1



Home | Help | Logout

ID# 60948487

My Account

My Rentals

My Payments

Maintenance

Documents

Insurance

Maintenance

New Service Request

My Service Requests

SR #	Date Created	Description	Status	Action
4734	11/01/2012	[PHONE] (- outlets on the right of the stove are not working - doorknob for the front door	Closed	<input type="button" value="-- Choose --"/>
4981	11/28/2012	Washer not working	Closed	<input type="button" value="-- Choose --"/>
8077	10/05/2013	There are many things that need repair. 1. the front steps before you enter the house are very loose (Saul) 2. the steps inside the house the edge of the steps keep coming up this has been a problem before and they repaired them but its happening again I believe its 4 steps missing the edge portion and they just easily become un-nailed. (Saul) 3. the tube in the restroom the tiles are becoming loose when I clean it I can feel there loose like if there is water getting in and its creating mildew. (Saul) 4. The edges of the sink in the restroom has a bit of mildew too sometimes it leaks from the edge I consistently dry and clean it but it is getting worse. (Saul) 5. The front window, room window, and the kitchen window screens are beginning to fall off. (SF Glass) 6. On the side of the house above one of the rooms the wall is falling apart. Slowly pieces are falling I have noticed it more as the nights get windy I can hear pieces falling. (Saul) 7. The front door screen door lock is falling apart too we may need new locks. (Saul) I hope all these maintenance problems can get resolved soon, thank you for your time in advance. 1) Washer not spinning (SCA) 2) Piece of wood on top of step is breaking (Saul) 3) Roofing to the side of the house is falling (Moctezuma) Message For: MAINT. Taken 2-DEC-13 at 1:50PM by AAP [CALLER] JACKLYN [PHONE] [ADDRESS] 1070 10TH STREET [APT#] DUPLEX [REASON FOR CALL] WASHER IS NOT SPINNING OR RINSING OUT THE WATER.	Closed	<input type="button" value="-- Choose --"/>
8682	12/03/2013	REFERRED TO SANTA CLARA APPL. ALSO THE PIECE OF WOOD [IS THIS AN EMER?] LOW [CALLER ID] THAT IS LAYED ON TOP OF THE STEP IS BREAKING. TILES IN THE SHOWER ARE NOT THE SAME COLOR AS THE OTHER ONES. THEY WERE REMOVED BECAUSE OF MOLD. ROOFING TO SIDE OF HOUSE IS FALLING, PLS CL. ===== Message For: OFC Taken 16-DEC-13 at 2:10PM by SMK [CALLER] JACKIE [PHONE] [ADDRESS] 1070 10TH ST [APT#] DUPLEX [REASON FOR CALL] CALLER STATED THAT HER SHOWER KNOB BROKE OFF YESTERDAY AND HER ROOMMATE SCREWED IT BACK ON, BUT NOW HER [IS THIS AN EMER?] HIGH [CALLER ID] 6266278264 NEIGHBOR IS	Closed	<input type="button" value="-- Choose --"/>
8854	12/17/2013	COMPLAINING THAT HER WALLS ARE WARPING AND SHE IS CONCERNED THAT THERE MAY BE A LEAK. SHE WILL NOT BE HOME UNTIL AROUND 6PM TODAY 12/16 PLS CL. AFTER THAT TIME. PT 1: 16-DEC-13 02:11 PM SMK E15 15109102106 CLD KATHERINE & SENT TEXT & EMAIL	Closed	<input type="button" value="-- Choose --"/>

Same Problem

filed w/4 petition

000008 EX2

8958 01/02/2014 Hello I received a notice indicating that all the service request were closed, but the side of the house continues to deteriorate, there are pieces of wood falling from the side of the house in the drive way area. Also I called about my washer and the man came he said that he needed to order a timer for the washer I have not heard from him yet, therefore this service request should not have been closed. I hope to hear from you soon! Please make sure the folks that are coming call first to make sure either my roommate or I are home. Thank you in advance for your time. Closed

9636 03/05/2014 The workers replaced the wood on the top of the house, but they did not frame it. Also the people from the washer still have not come to take care of the timer they called me once on the last request, they said they would take care of it but then never called me back. About two weeks ago I got home and it smelled like gas I called pg&e they came out to check the house they found a leak in two places the first was in the dryer and they took care of that one but the slow leak in the stove was not taken care of and it is beginning to smell like gas again. The service person left a service receipt and the reason for not being able to take care of the stove leak. I hope all these issues get resolved properly and soon. Closed

11253 08/06/2014 Message For: MAINT. Taken 5-AUG-14 at 11:04AM by CLS
 ----- [CALLER] JACQUELINE ESQUIVEL [PH#] [ADDRESS]
 1070 10TH ST [UNIT#] [DESCRIPTION] HAS FOUND A MOUSE NO ANIMALS Closed
 [PRIORITY?] L/M [PERM. ENTER?] NO [CID] PT 1: 05-AUG-14 11:04 AM
 CLS E15 -----

11549 09/03/2014 I have contacted you twice about a mouse issue and you have sent a pest control out, the first time he put up mouse traps and the second time he added peanut butter to the same mouse traps. My roommate Alex has seen the mouse running around again so he went out to buy new mouse traps because the other mouse traps are obvious that they are not working. please contact Alex at / to resolve this issue together. Thanks in Advance. Closed

11719 09/17/2014 There is a board missing under the cabinet by the stove that needs replaced. Closed

12094 10/27/2014 There is a board missing under the cabinet by the stove that needs replaced. Closed

12145 11/03/2014 On Friday 10/31/2014 I let you guys know that there was a broken window and you sent a service man to my knowledge to replace the window. But instead he did not replace the window he added a little fence to cover the section but you can still see the broken window and the frame is now broken because of the little fence that was installed to the broken window. I am afraid that someone will try to break in and steal not only our stuff at 1070 but the renter at 1068. I hope this issue gets resolved with out any short cuts. Thank you in advance! Message For: MAINT. Taken 30-OCT-14 at 4:46PM by SMK Closed

----- [CALLER] JACKIE ESQUIVEL [PH#]
 [ADDRESS] 1070 10TH [UNIT#] [DESCRIPTION] BASEMENT WINDOW IS BROKEN
 OUT & CAN BE SEEN FROM THE STREET. MAY BE FROM AN ATTEMPTED BREAK-
 IN. WLD LIKE TO GET IT FIXED TONIGHT [PRIORITY?] HIGH [PERM. ENTER?] YES
 [CID] PT 1: 30-OCT-14 04:47 PM SMK E15 GLD KATHERINE
 & GV ENTIRE MSG

12393 11/27/2014 Message For: MAINT Taken 22-NOV-14 at 12:50PM by LRM
 ----- [CALLER] ALEX GARCIA [PH#] [ADDRESS] 1070 10TH
 ST [UNIT#] [DESCRIPTION] TOILET IS LEAKING FROM THE BASE & SHOWER IS
 LEAKING FROM THE FAUCET [PRIORITY?] MED [PERM. ENTER?] YES [CID] Closed

12421 11/28/2014 There are two water leaks in restroom. 1) the shower, 2) the bottom of the toilet. The Kitchen "board" issue is still pending, but a also seen mice in the building again. Closed

13001 01/05/2015 A while ago, you sent some one to come and repair the stair cases (back yard and front steps that enter the upstairs apt (1070 address). Nothing was actually repaired, but rather an extra board was added to the weak board and has made the step higher than norma Closed

to walk up. Friends and family, including myself have tripped and stumbled many times. Please send some one to fix this issue. In advanced, thank you for attending to this matter.

13651 03/04/2015 Either the same mouse or another mouse is running around the house. I saw a mouse come through my window. Which tells me they are coming from outside of the house. Closed -- Choose --

14404 06/03/2015 The mouse is back. :(Closed -- Choose --

Message For: MAINT (39) Taken 23-AUG-15 at 5:58PM by AAP -----

15194 08/24/2015 [Caller] ALEJANDRO GARCIA [PH#] [Address] 1070 10TH STREET IN OAKLAND [Unit#] [Request] THE FRIDGE STOPPED WORKING. ANY PETS? YES-NOT THERE RIGHT NOW. [Priority?] HIGH [Perm.Enter?] YES [Follow-up?] NO ~ [Addt'l Info] [CID] Closed -- Choose --

16187 11/04/2015 1) we would like three special lights replaced: - a. staircase lights - b. washing area lights - c. kitchen lights 2) we would like some one to come clear up restroom sink flushed. it gets logged often. 3) wondering if we can have more better sound restricting doors in rooms. we can usually hear each other's noise even if it's low. Closed -- Choose --

From: Alejandro Garcia Address: 1070 10th St Unit #: UPPER Phone:

17207 01/26/2016 Message: RESIDENT IS LOCKED OUT OF UNIT...AND MAILBOX NEEDS A LID AND MAIL GET WET WHEN IT RAINS...NEW FILTER FOR THE HEATING UNIT PLEASE CALL BEFORE COMING Taken By: HXP 01/25/2016 10:42 AM Relayed By: SYS! 01/25/2016 10:48 AM To: Caller ID: Closed -- Choose --

From: Alejandro Garcia Address: 1070 10th St Oakland, Ca Unit #: Phone

17208 01/26/2016 Message: HE HAS BEEN LOCKED OUT SINCE 10AM THIS MORNING.HE WAITED FOR HOURS&HOURS FOR MAINTENANCE.HE WAS COLD&LEFT.HE WILL BE THERE AT 230PM.PLEASE HELP HIM Taken By: KMH 01/25/2016 01:01 PM Relayed By: // To: Caller ID: Closed -- Choose --

From: Alejandro Garcia Address: 1070 10th St Unit #: UPPER Phone:

17208 01/26/2016 Message: MAILBOX NEEDS A LID AND MAIL GET WET WHEN IT RAINS...NEW FILTER FOR THE HEATING UNIT PLEASE CALL BEFORE COMING Taken By: HXP 01/25/2016 10:42 AM Relayed By: SYS! 01/25/2016 10:48 AM To: Caller ID: Closed -- Choose --

Changed Request. 1) I found my keys to mail box. So I do not need help with that. 2) The Central Heating vents still need repair. 3) Central Heating seems to be throwing out

17297 02/02/2016 particles/dust from vents. Stronger that when it was replaced. I can feel them in my nose, mouth, and face. Like some burning sensation. Can you please check if the filter is working properly. Check for air quality if possible, because I can feel the dust in my eyes too. When I do not turn in on, I do not feel the burning sessions. Once I do turn heater on, the sensation return. best, Alejandro Garica Closed -- Choose --

Something is wrong with the staircase lights. They keep going out. Also, my stair case needs some slight repairs. Nails are starting to show, and someone might get hurt. The

20673 12/13/2016 grip tape on stair case outside has also fallen off. In the rain it gets really slippery. Also, I need a towel holder in my restroom. In advanced, thank you for attending to this matter. Best, Alex G. Closed -- Choose --

20920 01/03/2017 Tenant reported lock out. Closed -- Choose --

PRIORITY: MEDIUM Maintenance Issue: *OTHER NOT LISTED From: Alejandro Garcia Address: 1070 10th Oakland Unit #: NA Phone: Message: CENTRAL

21517 02/10/2017 HEAT HAS NOT WORKED FOR 3 DAYS AND ITS COLD. Permission Enter: YES Pets: YES DOG Follow-up?: NO Taken By: KMH 02/09/2017 06:24 PM Closed -- Choose --

To whom it may concern: I called your emergency number so that I can have some one come and fix my central heating system. I received a phone call, and met with a person named Jose. I did get other things fixed in the house but not the central heating system. I

21687 02/22/2017 was called by another person, and he indicated to me that they would come and fix the central heating. I am not sure if they even made it to my apartment but the central heating system has not been working since I first placed the request. I also recently received an Closed -- Choose --

email notification indicating that my request has been closed, including the Central Heating situation, because things had been attended to. The central heating situation, however, was never fixed. Can you please have this fixed ASAP? I already called your emergency line and nothing was resolved. Given the past rainy days, it has been really cold in our apartment to the extent that we can see our breath when we breath. Please attend to this matter soon. Best, Alejandro Garcia

22284 04/14/2017 Also, I didn't like that when you fixed the place you downgraded my thermostat from a schedulable device to a non-schedulable device. Open

23688 09/01/2017 recently our water was turned off, with out notice. We did not appreciate this, by the way. Accruing to Pg&E or whomever came to fix a problem, they left some stench lingering. It has been almost a week and that stench is outside and inside my living space. It smells like rotten eggs. Can you please see that this gets taken care of asap? Closed

23689 09/01/2017 There's an ongoing problem with the stair case inside my apartment, and Restroom. The stair case has some boarding problem that keeps breaking off. I keep stating that the problem will be ongoing because what is being used is not good material. Similar issue is going on in the restroom. Maintenance came to fix towel hangers etc, but the ways in which it was bolted to the wall was not well done because they did it on weak part of wall that eventually the wight of wet towels opened of the wall. If they come fix it, please have them fix both the wall and the towel hanger. Closed

23769 09/08/2017 PRIORITY: HIGH Maintenance Issue: NO HOT WATER From: Alejandro Garcia Address: 1070 10th Street Unit #; N/A Phone: Message: NO HOT WATER FOR 2 DAYS-Permission Enter: YES Pets: NO Follow-up?: NO Closed
Taken By: CD 08/25/2017 04:57 PM

25025 01/12/2018 The Leak has continued. The water is affecting my downstairs neighbor. It needs to be fixed again. We think it's in the pipes. PRIORITY: HIGH Maintenance Issue: WATER LEAK From: Jaljandro Garcia Address: 1070 10th St Unit #: UPSTAIRS Phone: Message: LEAK COMING FROM BATHTUB GOING TO HIS NEIGHBORS BATHROOM. Permission Enter: YES Pets: NO N/A Follow-up?: NO Closed
Taken By: TEO 01/11/2018 09:51 AM

25047 01/15/2018 PRIORITY: HIGH Maintenance Issue: WATER LEAK From: Carla Address: 1068 10th St Unit #: 1068 Phone: Message: WATER LEAK FROM THE UPSTAIRS NIEGHBOR LEAKING DOWN INTO THE SHOWER Permission Enter: Pets: Follow-up?: YES Open
Taken By: LF5 01/16/2018 02:26 PM

25227 02/01/2018 The leak has continued. We think it's probably in the old pipes. Something can be busted. To whom it may concern: I am notifying that for this month I will only pay for a portion of rent at a time until I have my stairway properly fixed (up to code). My visitors, family, including myself, have slipped, fallen, or hurt themselves off of the stairways all over my unit. Front steps outside my entrance door: You never fixed the problem, you only placed a board over the existing board and made the steps higher. People walking up stairs still trip off the hight of stairs. The stairway inside: Also never been fixed. There are nailed clips that cover-up what would have been exposed edges of the stairway's steps. These clips wear and tear quickly that eventually, the exposed areas and exposed nails hurt/cut into people walking up or down the stairway, especially if barefooted. I have drawn attention this problem to your personnel before but they say they do not have the resources to actually fix it, so they only nail a new clip only to have the problem re-occur itself again. The stairway to the backyard: A similar problem to that of the front. Some boards have been replaced with existing boards and other boards are not leveled properly. Walking up or down those steps do not feel safe, as some are higher or unlevelled than other steps. People have also slipped and/or fell. I have paid my monthly rent steadily, but even when either you or I have erred you have always been quick to place an eviction notice on my door. I will not be surprised to see this again, especially because you do not make the effort to communicate well with tenants prior to placing eviction notices. The stairway to my apartment has never been properly fixed. I have placed numerous request regarding this, but you do not provide your maintenance people

Open

with the proper resources to actually correct the problems. You only provide them with minimum resources that only bandage the problem until the issue repeats itself again. I will provide \$200.00 rent today, and plan to progress my monthly due amount of rent until I am assured that the problem will not only be corrected (not bandaged) but also see work the proper work actually being conducted. I apologize, in advance, for any inconveniences. But these problems too, have been inconvenienced for me too ever since I have lived in this unit. I just can not tolerate them any longer. I can provide pictures/images of these stairways if you prefer I upload them here. Sincerely, Alejandro Garcia

*accept 3
money*

25235 02/02/2018

To whom it may concern: In addition to my complaint made yesterday 2/1//2018, I wanted to add two other situations that have not been addressed. Both my downstairs neighbor and I have notified you in the past about a roof problem, where pieces of black roof covering are chipping off and are landing on our cars. The other issue is that the tile on the restrooms has a tendency to fall off. When I have to clean and scrub bathroom walls and restrooms, I should not have to worry about tile falling off. It falls off because the wall on which the tile rests on is either molded or too old. These problems, too, have persisted for a great deal of time. And again, you should provide your maintenance personnel with the proper resources to fix these ongoing problems instead of having them only bandage the problem. Sincerely, Alejandro Garcia

Open

To Whom it may concern. On Sat, Feb 3, 2018, aproximatly between 11 am and 12 pm, two men parked diagonally (such as how police usually flex power) in front of my apartment doorsteps. There was plenty of parking available around, but they chose to park that way either way. One of the two then bangs hard not once but three other times on my door even though I have a doorbell that they could have easily rung. I come downstairs, and see two intimidating-looking men standing in front of the dark tinted-windowed-black truck that parked diagonally in front of my doorsteps. Apparently one of the men's role was to be a Spanish interpreter. But I did not need an interpreter so I addressed the other person instead. With dark-shaded glasses (which he never took off), he said that he was from the management and rental company that oversees my apartment and that he came to see the complaints I had placed to them, and that he wanted to see all the broken things that I say they never fixed or corrected. So I showed him. I also told him that they need to provide their workers with the adequate resources to fix things, not to bandage things. He told me that they now have legit contractors to do that job. Then I asked him, "so that's not you? Who or what are you then?" At that moment he wanted to leave, but I insisted he look at every broken thing in my apartment that has been neglected. Then I asked him if he was taking notes. He was not. He just wanted to leave. It was at that moment that I realized that they had shown up to my place to intimidate me. I did not receive a call, and if I did they did not leave a message. The way that they parked aggressively in front of my doorsteps, made me ask: If I was white, or if this was a white neighborhood would they have parked that way? Would they have banged on my door so aggressively as they did if I was a white person or lived in a predominately white-neighborhood or white-gentrified neighborhood? Why bring a Spanish interpreter when they know I never needed one? Even if that was needed, why not greet me professionally, thereby removing dark-shaded glasses as well? And converse with me properly? Instead of insulting and forming intimidation tactics at my doorsteps, and in my neighborhood? It was embarrassing to me because a few of my neighbors came out to the scent too. I know how it is to be bullied by police, and believe me if I did not know any better I would have thought the people that came, and the way they came to my apartment was similar to the police-state power tactics. I want to express that I did not appreciate this your representatives' behavior. They were unprofessional, and I did not see any other reason for their behavior aside from attempting to intimidate me. I have been living in this apartment for the past 6 years, and I feel insulted by you. I only asked to have things repaired properly, placed up to code, and this is how your SMC-East Bay responds? In disappointment, Alejandro Garcia

In front of door

25260 02/06/2018

Open



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2



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ID# 60948487

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[Insurance](#)



Welcome Alejandro Garcia!

[Set My Photo](#)

[Make One-Time Payment](#)

[New Service Request](#)

[View Scheduled Payments](#)

Community Message

If you are making a service request, DO NOT post a comment in your tenant portal. Please instead use the maintenance tab to create a service request.

If you have any emergency maintenance issues (leaks, no heat, no hot water), please call our EMERGENCY maintenance line at (510) 225-9161 EXT. 1.

*****DO NOT SUBMIT A REQUEST VIA THE TENANT PORTAL.***** Emergency leak issues will be dispatched at the highest priority. Please do not hesitate to call the emergency maintenance line to request updates and follow ups for your requests. Additionally, because of the current storm, you may receive a longer than normal response time for non-emergency requests. Thank you all for your understanding.

To our residents paying online via EFT: Our portal accepts one pending payment per resident at a time and payments take up to 5 days to post to our system. If you need to make additional payments while an existing payment is still pending, you can drop off a check at our office located at 1669 12th St. Unit O Oakland, CA 94607.

Summary

Address	Unit	Last Payment Date	Deposit Held	Total Unpaid	Balance	Action
1070 10th St	1070	02/02/2018	\$1,250.00	\$1,315.00	-\$1,315.00	Choose

Renter's Insurance Policy

Policy Holder	Policy Number	Provider	Status	Effective Date	Next Renewal	Last Status Update	Policy Docs
No Policies							

My Contact Information

[View Detail](#) [Edit](#) [Change Email/Password](#)

Home Phone (323) 614-2737

Work Phone

Mobile Phone

Email alexg201@yahoo.com

My Open Service Requests

[View All](#)

SR #	Date Created	Action
22284	04/14/2017	Choose
25047	01/15/2018	Choose
25227	02/01/2018	Choose
25235	02/02/2018	Choose
25260	02/06/2018	Choose

Conversations

[New Conversation](#)

Garcia - Esquivel — Alejandro Garcia FYI: I, Alejandro Garica, posted this note Service Request. Beucause I was told these things would get fixed. But they never were, and in fact, I believe the

filed w/ + photo

000014 Ex 3 p1

people that were supposed to work on the broken things were told by your company to halt labor. You are yet to comply with terms of our rental agreement. To Whom it may concern. On Sat, Feb 3, 2018, approximately between 11 am and 12 pm, two men parked diagonally (such as how police usually flex power) in front of my apartment doorsteps. There was plenty of parking available around, but they chose to park that way either way. One of the two then bangs hard not once but three other times on my door even though I have a doorbell that they could have easily rung. I come downstairs, and see two intimidating-looking men standing in front of the dark tinted-windowed-black truck that parked diagonally in front of my doorsteps. Apparently one of the men's role was to be a Spanish interpreter. But I did not need an interpreter so I addressed the other person instead. With dark-shaded glasses (which he never took off), he said that he was from the management and rental company that oversees my apartment and that he came to see the complaints I had placed to them, and that he wanted to see all the broken things that I say they never fixed or corrected. So I showed him. I also told him that they need to provide their workers with the adequate resources to fix things, not to bandage things. He told me that they now have legit contractors to do that job. Then I asked him, "so that's not you? Who or what are you then?" At that moment he wanted to leave, but I insisted he looks at every broken thing in my apartment that has been neglected. Then I asked him if he was taking notes. He was not. He just wanted to leave. It was at that moment that I realized that they had shown up to my place to intimidate me. I did not receive a call, and if I did they did not leave a message. The way that they parked aggressively in front of my doorsteps, made me ask: If I was white, or if this was a white neighborhood would they have parked that way? Would they have banged on my door so aggressively as they did if I was a white person or lived in a predominately white-neighborhood or white-gentrified neighborhood? Why bring a Spanish interpreter when they know I never needed one? Even if that was needed, why not greet me professionally, thereby removing dark-shaded glasses as well? And converse with me properly? Instead of insulting

Today at 3:09 PM— [Comment](#)



Alejandro Garcia This was the number: FYI: 25260, on 02/06/2018

Today at 3:10 PM

Write a comment..

Garcia - Esquivel — Alejandro Garcia our heating stopped working a few days ago. rain situations have made the place cold. Also, I didn't like that when you fixed the place you downgraded my thermostat from a schedulable device to a non schedulable device.

04/11/2017 10:23 PM— [Comment](#)

Garcia - Esquivel — Alejandro Garcia To whom it may concern: I had called regarding Rent payment, and spoke to a person named Francine. I told her that my work went through some changes regarding their direct deposit system and that my check(s) were going to be in late but that payment was going to be made. She told me to stay in contact with her, and to call her Monday, which I did. I thought everything would be fine but today in the morning I was served with a pay or quit notice. I recently made payment, but I think there was some miscommunication because I did not expect to get that type of notice. I've been living in the property for over 5 years, and have never been late on a payment, and I was trying to avoid that type of concern and that's why I called to communicate with you about my jobs direct deposit changes. I thought that by communicating with you you would not have served me with the pay or quit notice. Had I known, I would have payed the rent even if it would have left me with a strenuous budget. On either account, I am certain you will charge me late fee too so please let me know how much that will be so that i can arrange payment. Sincerely, Alejandro Garcia

08/09/2016 2:19 PM— [Comment](#)



FranCine Gadsden Mr Garcia, I am so sorry that you felt misled the standard procedure is that any rents not received after the second business day after the 5th day of the month will automatically generate a three day notice. While I have your attention the epayment you made on the 9th of Aug was returned due to non-sufficient funds. I will contact you regarding rent owed, late fee and nsf fee. Thank you, FranCine

08/10/2016 9:42 AM



Alejandro Garcia Francine, I am uncertain why it's insufficient funds. There is money in the account. I just checked. Do you want me to try and do this again?

08/10/2016 2:03 PM



Alejandro Garcia FranCine, you can call me at 323.614.2737.

08/10/2016 2:05 PM



Alejandro Garcia Also, yes. I guess I did feel misled. I had no idea that I would be get a

notice. When I spoke with you over the phone you told me to stay in contact with you, and to call you Monday and only that way you would be able to "help" me. I am not sure what the help entails. But I guess you only know what that could be. On another note: You want to reactivate this portal and I can send the payment again. I'm not sure why it bounced back. I have money in the account. I just checked again. Unless my bank institution had frozen my account, which could be the case for suspicious activities given that I was away at a conference at another state. Nonetheless, I just paid some bills so if anything it should be fine. Please let me know, because the sooner the better for me that we resolve this issue. In advanced, thank you for your time. Best, Alejandro Garcia

08/10/2016 2:11 PM



Alejandro Garcia Lastly, Your people served our neighbor (your tenant) downstairs with our

"3day notice", and your people served our neighbor with our "3day notice". One, that was strange and we did not like our business being shared like that with other people. Please have your people not do this again. ON that note, I also noticed that our neighbors downstairs pay less than we do. I was wondering why is that the case? When I first moved in (5 years ago) I was offered either the upstairs or downstairs unit for the same price. Then once our neighbor move they paid the same, but it seems as if only our rent went higher than our neighbor downstairs. Do you know why is this the case? best, Alejandro Garcia

Key

08/10/2016 2:18 PM

Write a comment...



Garcia - Esquivel — Alejandro Garcia 1) we would like three special lights replaced: a. staircase lights; b. washing area lights; c. kitchen lights. 2) we would like some one to come clear up restroom sink flushed. it gets logged often. 3) wondering if we can have more better sound restricting doors in rooms. we can usually hear each other's noise even if it's low.

11/04/2015 1:31 PM— [Comment](#)



Katherine Silorio Hello Alejandro - I will create a service request and it'll be sent to our

maintenance team. Please let us know if you do not hear from a maintenance tech within 48 hours. In the future, please feel free to submit your maintenance requests via the maintenance tab in your tenant portal. Thanks!

11/04/2015 1:33 PM



Alejandro Garcia Thank you for the service. best, alexg

12/02/2015 10:23 AM

Write a comment...



Work Order #14404 — Dispatch SMC Hello - your service request has been dispatched to a 3rd party pest control company. If you do not hear from Webbs Pest Control within 24 hours, please let us know by calling (510) 225-9161 ext. 1. Alternatively, you may contact Webbs Pest directly at (510) 451-9064.

06/22/2015 6:30 PM— [Comment](#)



Work Order #13651 — Katherine Silorio Hello - your service request has been dispatched to a 3rd party pest control company. If you do not hear from Webbs Pest Control within 24 hours, please let us know by calling (510) 225-9161 ext. 1. Alternatively, you can contact Webbs Pest Control directly at (510) 451-9064.

03/09/2015 10:14 PM— [Comment](#)

000016 03

Work Order #8077 — Katherine Silorio Hello - your service requests have been dispatched to our maintenance team and a 3rd party window company. If you do not hear from Saul or SF Glass within 24 hours, please let us know by adding a comment to this conversation, emailing maintenance@sullivanmanagement.com, or calling (510) 225-9161 ext. 1.

10/07/2013 4:07 AM— [Comment](#)



Alejandro Garcia Haven't not heard.

11/28/2014 11:03 AM



Katherine Silorio Are you referring to service request #12421 with the following

description?: There are two water leaks in restroom. 1) the shower, 2) the bottom of the toilet. The Kitchen "board" issue is still pending, but a also seen mice in the building again.

11/28/2014 2:37 PM



Alejandro Garcia this things have been handled. Thank you.

01/05/2015 3:10 AM

Write a comment...

Work Order #12145 — Cindy Payopay Hello - your service request has been dispatched to a 3rd party window company. If you do not hear from SF Glass within 24 hours, please let us know by adding a comment to this conversation, emailing maintenance@smceastbay.com, or calling (510) 225-9161 ext. 1.

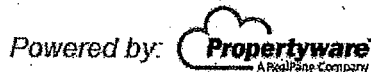
11/04/2014 3:35 AM— [Comment](#)

Work Order #11549 — Katherine Silorio Hello - your service request has been dispatched to a 3rd party pest control company. If you do not hear from ALCO Pest Control within 24 hours, please let us know by adding a comment to this conversation, emailing maintenance@smceastbay.com, or calling (510) 225-9161 ext. 1.

09/06/2014 1:41 AM— [Comment](#)

Work Order #11253 — Katherine Silorio Hello - your service request has been dispatched to a 3rd party pest control company. If you do not hear from ALCO Pest Control within 24 hours, please let us know by adding a comment to this conversation, emailing maintenance@smceastbay.com, or calling (510) 225-9161 ext. 1.

08/06/2014 3:27 AM— [Comment](#)



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NYLET RESPONSE

City of Oakland
Rent Adjustment Program

Case **T18-0164**
Property Address

Owner bally singh
smc eastbay / sullivan management
PO Box 24483
Oakland, CA 94607
(408) 457-4982

Tenant Alejandro Garcia
1070 10th Street
Oakland, CA 94607

RECEIVED
MAY 30 2018
RENT ADJUSTMENT PROGRAM
OAKLAND

Date of which you aquired the building 3-12-2010
Total Number of Units 2
Is there more than one street address on the parcel? No
Type of Unit Apartment,
Room or Live-work
Is the contested increase a capital improvements increase? No

City of Oakland
Rent Adjustment Program

Case T18-0164

Property Address

Rent History

The tenant moved into the rental unit on

Initial monthly rent

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?

I don't know

On what date was the notice first given?

Is the tenant current on the rent?

No

Rent Increase

City of Oakland
Rent Adjustment Program

Case T18-0164

Property Address

Exemption

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: No

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. No

The unit was newly constructed and a certificate of occupancy was issued for it on or after January 1, 1983. No

On the day the petition was filed, the tenant petitioner was a resident of a motel, hotel, or boarding house for less than 30 days. No

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. No

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. No

The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year. No

CITY OF OAKLAND



250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: T18-0164, Garcia v. SMC East Bay

PROPERTY ADDRESS: 1070 10th Street, Oakland, CA

DATES OF HEARING: August 14, 2018; November 15, 2018

DATE OF DECISION: January 29, 2019

APPEARANCES: Alejandro Garcia, Tenant
Bally Singh, Owner Representative
David Martin, Attorney for Owner

SUMMARY OF DECISION

The tenant's petition is granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on February 23, 2018, contesting a series of rent increases on the following grounds:

1. The CPI and/or banked rent increase was calculated incorrectly;
2. The increases exceed the CPI Adjustment and is unjustified or is greater than 10%;
3. The tenant received the rent increase notice before the owner received approval from the Rent Adjustment Program (RAP) for such an increase;
4. No written notice of the Rent Program (*RAP Notice*) was given together with the notice of increase; and,
5. No *RAP Notice* was given at least six months before the effective date of the increase.

000021

The contested rent increases listed by the tenant were an increase from \$1,250 to \$1,312.50, effective August of 2013; an increase from \$1,312.50 to \$1,359, effective September 1, 2015; and an increase from \$1,359 to \$1,390, effective August 7, 2017.

The tenant also alleged that he was experiencing a decrease in housing services and that there is a current health, safety, fire or building code violation in his unit.

The tenant did not file a stand-alone list of decreased services with his petition. Instead he attached 3 documents, a maintenance sheet where his complaints regarding the unit were communicated to the owner (Exhibit 2); a SMC East Bay account document that mentions complaints (Exhibit 3); and a Request for Service with the City of Oakland and attached photographs (Exhibit 9). With respect to claims arising within three years prior to the date the tenant filed his petition these documents raised concerns about roof leaks and problems with the roof; siding loose; a water leak in bathroom causing bath tiles to be missing and causing mold; problems with all three stairways; loss of heat; a problem with the staircase lights; water being turned off; and harassment and discrimination.

The tenant also alleges that his rent was not reduced after a prior capital improvement rent increase had expired.

The tenant alleged in his petition that he never received the *RAP Notice*.

The owner filed a timely response to the tenant petition on May 30, 2018, claiming that the tenant was not current on his rent. The owner did not list any justifications for any rent increases on its response. In response to the question about when the tenant was first given the *RAP Notice*, the owner responded: "I don't know."

THE ISSUES

1. Was the tenant current on his rent or lawfully withholding rent at the time he filed his petition?
2. Does the fact that there was an *Unlawful Detainer* action filed by the owner affect this case?
3. When, if ever, was the tenant first served with the *RAP Notice*?
4. Are the tenant's claims regarding the rent increases timely filed?
5. What is the allowable rent before consideration of decreased services?
6. How long is the tenant entitled to restitution for overpaid rent?
7. Can the tenant bring forth claims not listed on his list of decreased services?
8. Can the tenant raise claims associated with harassment and discrimination?
9. Have the tenant's housing services decreased and if yes, in what amount?
10. What if any restitution is owed between the parties and how does it affect the rent?

///

///

EVIDENCE

Rental History: The tenant testified that he moved into the rental unit, a two bedroom one bath unit, in May of 2010 at an initial rent of \$1,250. The unit is in a duplex. He was not given a RAP Notice when he moved in or at any time.

The tenant testified as follows: He was served a rent increase notice in June of 2012, by mail, purporting to increase his rent from \$1,250 to \$1,312.50, effective August 1, 2012.¹ ² No *RAP Notice* was served with the rent increase notice. The tenant paid this rent increase.

He was next served a rent increase notice in July of 2015, by mail, purporting to increase his rent from \$1,312.50 to \$1,359, effective September 1, 2015.³ No *RAP Notice* was served with this increase. The tenant paid the increase.

He was then served with a third rent increase notice in June of 2017, purporting to increase his rent from \$1,359 to \$1,390, effective August 1, 2017. No *RAP Notice* was served with this increase. He has been paying the rent increase until early of 2018 when he started withholding rent for conditions.⁴ During the time he was withholding rent he was paying part rent and communicating with the owner about why he was withholding rent. See Exhibits 2, 6 and 8.

The tenant further testified that there was an *Unlawful Detainer* action filed against him in April of 2018.⁵ This arose after the tenant started withholding rent because of conditions in his unit. The tenant's *Answer* to the complaint raised issues relating to the conditions of the unit.⁶

The owner representative claimed that the *Unlawful Detainer* action was settled and that the tenant's complaint with the RAP should be dismissed. The owner was given an opportunity to produce proof of a settlement agreement between the parties.⁷ The owner produced *Minutes* from the Alameda County Superior Court action between the parties showing that the "Complaint Unlawful Detainer dismissed by Court with Prejudice- Pursuant to oral motion of Plaintiff."⁸ This occurred on May 24, 2018. The owner also sought to admit a letter from his attorney regarding this *Unlawful Detainer* action. The letter from the attorney was not admitted into evidence.⁹ The owner representative

¹ Exhibit 1, page 1. All Exhibits were admitted into evidence without objection.

² All rent increase notices were provided to the RAP by the owner. Only the rent increase notice was provided. No RAP Notices were attached to the evidence produced.

³ Exhibit 1, page 2

⁴ See Tenant's proof of rent payments, Exhibits 6 and 8

⁵ Exhibit 4. Note that the *Unlawful Detainer* contained a copy of the tenant's lease. No RAP Notice was attached and no reference to the RAP Notice appeared in the lease.

⁶ Exhibit 5

⁷ The matter was continued for further Hearing in November of 2018, for the parties to produce evidence of any settlement agreement.

⁸ Exhibit 7. Note that the plaintiff in the *Unlawful Detainer* is the owner.

⁹ This letter was not admitted into evidence because it was hearsay and because it related to settlement discussions that were not reduced to writing. It is State law policy that discussions made in the course of settlement discussions

testified that the conditions of the tenant's unit were discussed at the settlement conference and then the matter was resolved with the tenant paying full rent.

The parties agreed that the matter was resolved with the tenant paying full payment of all back rent. The tenant further testified that he will continue to pay \$1,390 a month until he gets a Hearing Decision in this matter.

The owner testified that it is his company's policy to always serve the *RAP Notice* to every tenant. However, he could not find a copy of the *RAP Notice* in this tenant's file. His office has moved several times and he cannot find the *RAP Notice*.

When asked why he said "I don't know" to the question on the property owner response as to when the *RAP Notice* was served, he testified that "I don't know" meant that he could not find the *RAP Notice*.

The owner representative further testified that while he had copies of the rent increase notices, these copies come from the owner's website. It is not the owner's practice to upload a copy of the *RAP Notice* with the rent increase notice. At the Hearing, the owner produced a copy of the lease in his file, which did not contain the *RAP Notice*.¹⁰

The owner representative testified that the owner of the property, SMC, manages more than 100 rental units in Oakland and that it is the company's practice to always serve a *RAP Notice* with rent increase notices. Mr. Singh did not personally give a *RAP Notice* to the tenant, it is mailed from the office by someone else. The owner's policy is also to send copies of the rent increase notices to the RAP, along with a copy of the *RAP Notice*.¹¹

On cross-examination, Mr. Singh testified that no other claim has been made against the company about failing to serve the *RAP Notice*.

Official Notice is taken of case T17-0382, *Yagle v. SMC East Bay*, where the tenant alleged that no *RAP Notice* had been served with the rent increase. No Owner Response was ever filed in that case. Official Notice is also taken of T17-0318, *Burger v. SMC Rentals*, where the tenant alleged that no *RAP Notice* was ever served on him. No Owner Response was filed in that case either.

The owner agrees that the tenant is now current on his rent as of the date of the Hearing and that the tenant has paid rent of \$1,390 a month for all relevant months since the

are not admissible evidence. See, for example, Evidence Code § 1152, Evidence Code § 703.5, CCP § 1775.10 and Evidence Code § 1119, etc.

¹⁰ This document was not admitted into evidence because it was the same Lease as the one attached to Exhibit 4, which also did not contain a *RAP Notice*.

¹¹ It is not a requirement that owner's submit rent increase notices to the RAP. If they do there is no filing system for keeping these documents as the RAP does not have a mandate to keep these documents.

last rent increase. There was a period of time prior to the *Unlawful Detainer* action where the tenant was not paying full rent.¹²

Decreased Services:

Roof Leak: The tenant testified that there are multiple problems with his roof that have been ongoing for a long time. These problems began the month after he moved in. Pieces of the roof have been falling off and hitting his and his roommate's cars. There are leaks in his window when it rains, that he believes are related. Further there is a crack in the stairway wall, that was not there when he moved in, that he believes is related to the roof leak.¹³ The owner did some repairs to the gutters of the unit in May or June of 2018. The tenant does not know if this has stopped the water entry, as it has not rained since the repair, but the owner has not fixed the wall crack.

The tenant produced a *Maintenance Log* from the property owner on which he would input service requests. On December 3, 2013, the maintenance form states: "Roofing to the side of house is falling."¹⁴ This maintenance request is marked as "closed."

The maintenance form also has an entry on January 2, 2014, which states:

"Hello I received a notice indicating that all the service request were closed, but the side of the house continues to deteriorate, there are pieces of wood falling from the side of the house in the drive way area."

This maintenance request is marked as "closed".

On February 2, 2018, the maintenance form states:

"Both my downstairs neighbor and I have notified you in the past about a roof problem. Where pieces of black roof covering are chipping off and are landing on our cars."¹⁵

This maintenance request is marked as "open."¹⁶

The tenant also sent a letter to the owner on March 9, 2018, regarding a variety of necessary repairs. This letter states: "The unit is not habitable as it lacks the following: Effective waterproofing and weather protection of the roof and exterior walls, including unbroken windows and doors."¹⁷

¹² Note that the *Three Day Notice to Pay Rent or Quit* filed with the *Unlawful Detainer* states that the tenant owed back rent of \$721 for the month of April of 2018.

¹³ Exhibit 13

¹⁴ Exhibit 2, page 1

¹⁵ Exhibit 2, page 5

¹⁶ It is not known the exact date that the *Maintenance Log* was printed, other than that it was filed with the *Tenant Petition* so had to have been printed by February 23, 2018.

¹⁷ Exhibit 21, page 9

The tenant further testified that when he moved into the unit the wall in his staircase was clean and did not have holes or other markings. Over the years water has appeared on the staircase from time to time. The tenant at first thought it was related to the rain, or to the roof leak, but when he learned about the leak in the shower pipes (see below), he believes that it is possible that this water entry could be from the leaking shower or from the roof. There are also cracks from along this left side wall that were not present when he moved in.¹⁸

The tenant testified that he contacted the City of Oakland's Building Permits, Inspections and Code Enforcement Services. A *Notice of Violation* was issued, showing that an inspection was performed on the premises on February 16, 2018. The *Notice of Violation* (which was issued on March 23, 2018) states "Siding repairs separating with gaps and openings, and installed without permits."¹⁹

Mr. Singh, owner representative, testified that there are three ways a tenant can request maintenance-through an online portal, through email, or through a phone call. Anytime the company gets a request, they dispatch a handyman and they do not let problems sit. Any complaints the tenant made have been handled. His company also fixes roof leaks because fixing it sooner costs them less money than waiting to fix it later.

An email from inspector John Fryer from the City of Oakland to Ruddle Rodriguez at SMC East Bay, dated April 30, 2018, which was produced by the owner, states that the siding repairs were not abated.²⁰

Mr. Singh was shown the photograph of the crack in the tenant's stairway wall shown in Exhibit 13. Singh testified that this was caused by a problem with the gutters which caused a leak. The gutters have been repaired. He does not know why the tenant's wall was not fixed but will make arrangements to have it fixed.

Singh further testified that there were problems with gaining access to the tenant's unit and that sometimes he was unavailable. He produced Exhibit 21, a series of communications between the parties in which the tenant declined a particular inspection because he was unavailable and because there was a City of Oakland inspection done, but stated that "if you still feel the need to do your inspection, we can work out a time and day that best works for both our schedules."²¹

The documents in Exhibit 21, appear to show that work was done on the tenant's unit beginning in February through March of 2018.²²

¹⁸ See Exhibit 13

¹⁹ Exhibit 22, page 3

²⁰ Exhibit 22, page 6

²¹ Exhibit 21, page 2

²² It is not clear how the work was done that appears to be directly related to the *Notice of Violation (NOV)* before the *NOV* was issued, especially because some of the work appears to be directly related to the *NOV*. It is possible that since SMC East Bay owns a fair amount of property, that the inspector contacted the property owner after the inspection but before the *NOV* was actually issued.

At the Inspection by this Hearing Officer there is a large crack in the hallway wall on the left side of the hallway. There is also further signs of water damage on the left side of the wall near the stairs. (Inspection Photos 2 and 3).

Water Leak in bathroom and inside unit: The tenant testified that there was a leak in his bathroom that began in 2012. The tenant noticed tiles falling off in his bathroom and noticed that there was mold on the back of the tiles. The tenant also more recently heard complaints from his downstairs neighbor that there was a leak coming from the tenant's unit. The tenant kept complaining about the condition of the bathroom to the owner through the tenant portal.²³ In response to his complaints, the owner would come and do repairs, but would not be thorough, and would install new tiles that did not match. Over time, the tiles would fall off again.²⁴ The tenant complained again in February of 2018 through the portal where he wrote:

“The other issue is that the tile on the restrooms has a tendency to fall off. When I have to clean and scrub bathroom walls and restrooms, I should not have to worry about tile falling off. It falls off because the wall on which the tile rests on it either molded or too old. These problems, too, have persisted for a great deal of time.”²⁵

The *Request for Service* to the City of Oakland, dated February 16, 2018, states “bath tiles missing, others very soft.”²⁶ Additionally, the March 9, 2018, letter from the tenant to the owner refers to the necessity for plumbing repairs.²⁷ The *Notice of Violation* states: “shower tiles missing, worn and loose.”²⁸

The tenant testified that when the workers again attempted a repair after the *Notice of Violation* (in approximately April or May of 2018) they cut a hole in the staircase wall, which is behind the bathroom wall, and discovered that there was a leak in the shower pipes causing the damage to both the tenant's bathroom and the downstairs unit. The owner's workers fixed the bathroom in May or June of 2018, but left the drywall in the stairway unrepaired.²⁹ The tenant did not want them to cover up the drywall in the condition it was in because there was still an area of wet and broken drywall and he was concerned that the condition was not sufficiently repaired.³⁰

The owner representative testified that the description of the work that was done in response to a tenant's complaint is not listed on the portal. He has no personal knowledge of the work that was done in the tenant's unit, but knows that his workers would not mark the tenant's complaints as “closed” unless the problem was repaired.

²³ See Exhibit 2. There are references to the bathroom and leaks in November of 2012, December of 2013, November of 2014, September of 2017 and January of 2018.

²⁴ See Exhibit 9, page 5

²⁵ Exhibit 2 page 5

²⁶ Exhibit 9

²⁷ Exhibit 21, page 9

²⁸ Exhibit 22

²⁹ Exhibit 12

³⁰ The tenant was referring to the uneven loose drywall piece underneath the large horizontal piece of drywall shown in Exhibit 12

According to the owner representative, all of the tenant's complaints on the tenant portal are marked as "closed."³¹

The owner testified that after the *Notice of Violation* was issued he sent maintenance workers to remove the tile and deal with the bathroom leak. He received an email from the inspector in April of 2018 stating that the problem with the shower tiles had been abated.³² The owner representative did not explain why the workers left an unfinished dry wall patch around the tenant's stairway wall.

At the Inspection by this Hearing Officer, the condition of the bathroom was fine other than one area under the mirror that was not painted. There was a hole and damage to the drywall left in the upper level of the stairway (which is behind the shower wall). See Inspection Photo 4, 5 and 6.

Exterior Front Steps: The tenant testified that there is an exterior staircase of about 8 steps that leads to the front entrance of the building. The stairs started to deteriorate in 2012, and he complained about the problem to the owner through the tenant portal.³³ The tenant also complained that the stair treads were too narrow, causing him, and others to fall.

The tenant complained about this in the maintenance request form again on January 15, 2018.³⁴ A *Notice of Violation* was issued on March 23, 2018, in which it was found that the "hand/guardrail loose, not secure."³⁵ This was related to the front stairs.

The tenant testified that the owner has repaired the front stairs in April or May of 2018.

The owner produced a *Permit Record* from the City of Oakland showing that a permit was issued to "repair hand/guardrail at front of duplex"³⁶ and an email from the inspector dated April 30, 2016, showing that the hand guardrail had been abated.³⁷

At the Inspection by this Hearing Officer there was nothing noticeably wrong with the front stairs.

Interior Front Steps: The tenant testified that there is a set of stairs inside his unit that were deteriorating over time. He complained to the owner about this problem multiple times in the maintenance log (see complaints from October 2013, December

³¹ The copy of the maintenance log produced by the owner, (Exhibit 21, pages 15-20) show that some of the maintenance requests are still listed as "open."

³² Exhibit 22, page 6.

³³ See Exhibit 2. On November 28, 2012, the tenant wrote: "The front steps before you enter the house are very loose." There are other references to the front stairs in this Exhibit, including a January 15, 2018, entry that states that there have been problems with all stairways and there are trip and fall hazards. Particularly it states: "Front steps outside entrance door: You never fixed the problem, you only placed a board over the existing board and made the steps higher. People walking up stairs still trip off the high (sp) of the stairs."

³⁴ Exhibit 2, page 4

³⁵ Exhibit 2

³⁶ Exhibit 22, page 5

³⁷ Exhibit 22, page 6

2013, September 1, 2017, January 15, 2018.)³⁸ He produced photographs from February of 2018, showing missing nosing pieces from several of the interior stairs.³⁹ He also complained about this on his *Request for Service* to the City of Oakland in February of 2018.⁴⁰ The *Notice of Violation* states: "Interior stair tread nosings have missing trim pieces, creating a trip and fall concern."⁴¹

The letter the tenant sent to the owner dated March 9, 2018, also refers to all stairways and railings.⁴²

The tenant further testified that after the *Notice of Violation* was issued the owner did work to the staircase and added new wood to certain areas of the staircase but never completed the work. The repair person, Ruben, informed him that he was coming back to do more work, but has not returned. While the tenant no longer thinks the stairs are unsafe, he feels like they were left looking incomplete and that it does not look like it looked when he moved into the unit.

The owner representative testified that the stairs in the tenant's unit are made of laminate. Over time the bullnose on the front of the stairs, which are only connected by finish nails, will fall off. Whenever his company would get a complaint from the tenant about this problem they would send someone to repair it. When they fix the problem, it is possible that it would fall off again some months or a year later, and would need to be repaired again.

The owner produced an email from an employee at SMC East Bay to the tenant dated March 9, 2018, which states that the exterior front door steps were completed on March 8, 2018.⁴³

At the Inspection by this Hearing Officer there were nosings on all the interior stairs. The stairs appear to be similar throughout the interior. (note that this does not refer to the leak problems associated with the leak discussed above.)

Back Steps: The tenant testified that there were ongoing problems with the back staircase, which is also an entrance to his unit, since 2012, about which he notified the owner. There is a complaint on his maintenance log dated January 5, 2015, stating that "A while ago, you sent some one to come and repair the stair cases (back yard and front steps that enter the upstairs apt. Nothing was actually repaired....."⁴⁴ This entry is marked "closed."

³⁸ Exhibit 2

³⁹ Exhibit 9, pages 2, 4 and 6

⁴⁰ Exhibit 9

⁴¹ Exhibit 22

⁴² Exhibit 21, page 9

⁴³ Exhibit 21, page 21

⁴⁴ Exhibit 2

Then on either January 15, 2018, or February 1, 2018⁴⁵, the tenant wrote about the back stairs again saying: "The stairway to the backyard: A similar problem to that of the front. Some boards have been replaced with existing boards and other boards are not leveled properly. Walking up or down those steps do not feel safe, as some are higher or unlevelled than other steps. People have also slipped and/or fell." This log also notes that the tenant has been complaining about this problem in the past.

The tenant further testified that he uses the back stairs to get access to the back yard and to gain access to the basement. He uses the back stairs every day, but not as often as the front stairs. The back stairway handle was loose and there were a few stairs that leaned too far forward and there was visible dry rot.⁴⁶ The *Notice of Violation* states: "Rot and decay affecting structural integrity of stair....concrete pier blocks lack proper footing for support."

The tenant further testified that the owner did begin the work to fix the back stairs but it is not complete. The work began after the *Notice of Violation* in 2018. The owner has left debris throughout the yard while the construction has been ongoing.

The owner representative testified that the *Notice of Violation* referred to rot and decay to the back stair case. They were required to get a structural engineer and to remove the entire back stairs. Because of this, and the fact that it is an old building, they had to go through design review and get permits, which takes time. The email from the inspector, dated April 30, 2018, stated that the rear stairway had not yet been abated. The owner explained that the work was almost complete. Additionally, the owner provided an email from an employee to Mr. Garcia showing that the work on the stairs began in early March of 2018.⁴⁷

Smoke detector: The tenant testified that there is only one smoke detector in the tenant's unit. He does not believe that there is a carbon monoxide detector in his unit. There are no smoke detectors in the bedrooms. He did not complain about the smoke detectors to the owner. The tenant submitted a Housing Habitability Complaint through the City of Oakland's online access regarding this problem. The complaint states (amongst other things): "no smoke detectors."⁴⁸

The owner testified that when the tenant moved in there were the proper number of smoke detectors and that when the law passed to require carbon monoxide detectors that his company provided them to all units. He claimed there was a document related to smoke detectors on the tenant's lease, but no such document was attached to the lease provided with the *Unlawful Detainer* action.

At the Inspection by this Hearing Officer there was no carbon monoxide detector in the unit and there was only one smoke detector in the unit. There were no smoke detectors in either of the bedrooms.

⁴⁵ The maintenance log dates are difficult to discern.

⁴⁶ See Photograph at Exhibit 11, page 3

⁴⁷ Exhibit 21, page 7

⁴⁸ Exhibit 17

Heater Broken: The tenant withdrew his complaints regarding this problem.

No Hot Water: The tenant withdrew his complaints regarding this problem.

Staircase Lights: The tenant withdrew his complaints regarding this problem.

Harassment and Discrimination: The tenant was not permitted to testify about this problem. See below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was the tenant current on his rent or lawfully withholding rent at the time he filed his petition?

The owner claimed on its response that the tenant was not current on his rent. In order to file a petition, a tenant must be current on his or her rent or lawfully withholding rent.⁴⁹ The owner has the burden of proof to establish that the tenant was not current on his rent. The tenant filed his Petition on February 23, 2018.

The tenant testified that he only began withholding rent because the owner would not repair his apartment after regular complaints. A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.⁵⁰ The statutory authority for rent withholding is Code of Civil Procedure § 1174.2. It provides that a substantial breach of the implied warranty of habitability may be raised as a defense to an unlawful detainer action. To confer standing to file a Rent Adjustment petition, a tenant must show that he or she might prevail in court in a claim for a habitability breach, that is, the tenant must present a prima facie case that he or she is withholding the rent legally.

Mr. Garcia did not claim that he was "lawfully withholding rent" on his petition. Instead, he left blank the question as to whether or not he was "current on his rent." Nonetheless, the tenant has established that there were conditions in his unit that if true, rise to the level of habitability problems. The leak in the bathroom, the condition of all three sets of stairs, and the fact that a *Notice of Violation* was issued, are all evidence of habitability problems.

Due to these circumstances, Mr. Garcia was lawfully withholding rent at the time his petition was filed. Therefore, his petition was lawfully filed.

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⁴⁹ O.M.C § 8.22.090 (A)(4)(b)

⁵⁰ O.M.C. & Regulations, § 8.22.090

Does the fact that there was an *Unlawful Detainer* action filed by the owner affect this case?

The owner sought to have the tenant's petition dismissed because there had been a "settlement" of the *Unlawful Detainer* action. However, the evidence establishes that while an *Unlawful Detainer* action was filed for nonpayment of rent, and the tenant claimed habitability problems in his *Answer* to the complaint, ultimately the case was resolved by a dismissal of the action when the tenant paid rent in full.

There was no settlement agreement that prevented the tenant from going forward with his claims. The Superior Court made no findings associated with any claim. Therefore, the RAP has jurisdiction of this matter.

When, if ever, was the tenant first served with the RAP Notice?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy⁵¹ and together with any notice of rent increase or change in the terms of a tenancy.⁵² An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.⁵³

The owner has the burden of proof to establish that *RAP Notices* have been served.

The tenant credibly testified that he never received the *RAP Notice*. The owner representative testified that it is his company policy to always serve the *RAP Notice* with every lease and with every rent increase notice. However, on the *Owner's Response* form he wrote "I don't know" to the question as to when the *RAP Notice* was first served. The owner representative explained that he wrote "I don't know" because he could not find a copy of the *RAP Notice* in the tenant's file, but that he believed a *RAP Notice* was served.

The owner was on notice that the tenant alleged that he had never received the *RAP Notice* when it received the *Tenant Petition*. No *RAP Notice* was attached to the lease submitted to the Court with the *Unlawful Detainer* action. At the Hearing, the owner reviewed the lease in his file, and no *RAP Notice* was attached. And no *RAP Notices* were attached to any of the rent increase notices provided by the owner. Nor was there any reference to a *RAP Notice* being served on any of the rent increase notices.

The testimony of the owner representative and tenant with regard to service of the *RAP Notice* is clearly in direct conflict. Since it is impossible to prove a negative, the tenant could do no more than deny receiving the notice. By contrast, the owner representative could have presented more convincing evidence by producing a copy of the notice that the owner claims to have served upon the tenant. The owner representative failed to do so. It makes no sense that the owner would not have any of the four different *RAP*

⁵¹ O.M.C. § 8.22.060(A)

⁵² O.M.C. § 8.22.070(H)(1)(A)

⁵³ O.M.C. § 8.22.060 (C)

Notices it claims were served on the tenant (the one with the Lease, and the one served with each rent increase notice.)

For all these reasons, the owner has not sustained its burden of proof that the *RAP Notice* was served. It is found that the tenant has never received the *RAP Notice*.

Are the tenant's claims regarding the rent increases timely filed?

If a tenant has been served a *RAP Notice* with a rent increase notice, a tenant has 90 days to contest a rent increase. O.M.C. § 8.22.090(A)(2)(a). However, a tenant can contest all rent increases when no *RAP Notice* has been served.

Since the owner has not met its burden of proof that a *RAP Notice* has been served in this case, all rent increases can be contested.

What is the allowable rent, before consideration of decreased services?

Based on the foregoing rules about the owner's failure to provide the *RAP Notice*, the tenant's rent, before consideration of decreased services and any restitution owed, reverts to the rent when he moved in. The tenant's base rent is therefore \$1,250 a month.

How long is the tenant entitled to restitution for overpaid rent?

The tenant filed his petition on February 23, 2018. This matter was first scheduled for Hearing on August 15, 2018. The matter was continued to November 15, 2018, to allow the parties the opportunity to prove whether or not there had been a settlement of underlying claims in Superior Court. A Hearing Decision is being issued in this case at the end of January of 2019, more than 11 months after the tenant first filed his petition.

In this case, the tenant contested three rent increases. All three were invalid. The first contested rent increase was effective August 1, 2012, more than three years prior to the tenant's petition filing. The question then, is how long can the tenant be granted restitution?

There is no indication in the Rent Adjustment Ordinance as to how far back a tenant can seek reimbursement for claims related to rent overpayments. The Code of Civil Procedure states that the statute of limitations for "actions upon a liability created by statute, other than a penalty or forfeiture" is three years. A statute of limitations looks backward from the date a cause of action is filed, but does not limit the amount of restitution a person may receive based on the length of time a matter takes to get resolved. Tying a tenant's recovery to the date a decision is ultimately reached, deprives the tenant of reimbursement for actionable wrongs doing during the period of processing.

There have been a variety of RAP Hearing Decisions and Appeals Decisions that have referred to a Rent Board policy to limit restitution to three years. (See *Huante v.*

Peinado, T14-0232, in which the HRRRB stated that “The Hearing Decision granted restitution for decreased housing services for up to three years because the tenant did not receive the notice.” The case was affirmed by the Board, but the issue of whether restitution was granted for the correct amount of time was not discussed.) See also *Barajas v. Chu*, T06-0051.

The HRRRB also referred to this matter in *Sherman v Michelson*, T12-0332. In that case the Board stated that the Hearing Officer had granted restitution “for a period of three years prior to the filing of the petition.” Furthermore, again without discussing the substance of the matter, the HRRRB upheld a finding of more than 36 months of restitution in the case of *Titcomb v Vinyard-Ide*, T17-0575.

It is held that it is proper to limit the recovery of restitution to 36 months (three years) prior to the filing of a tenant petition. This may mean that a tenant is entitled to more than 36 months of total recovery because of the amount of time a case takes to be processed through the RAP. Nonetheless, the statute of limitations is still being followed, as a statute simply sets how far back a recovery can begin, but does not limit the total amount of recovery awarded.

The chart below begins the discussion of restitution starting on March 1, 2015, three years prior the filing of the tenant’s case.

Can the tenant bring forth claims not listed on his list of decreased services?

The tenant attached several documents with his petition discussing decreased services. These documents were admitted into evidence as Exhibits 2, 3 and 9 and consist of his maintenance log, other communication with the owner and a *Request for Service* filed with the City of Oakland’s Building Permits, Inspections and Code Enforcement Services division. Only those claims raised in these documents (that relate to problems within three years prior to the tenant filing his petition) can be considered here.

Can the tenant raise claims associated with harassment and discrimination?

The tenant sought to testify about the harassment and discrimination he has suffered as a tenant in this unit. However, the authority of the RAP is limited to adjusting rents. The RAP has no authority to compensate a tenant for damages, even if they were caused by harassment or discrimination by the landlord.⁵⁴ Should the tenant wish to pursue a claim for damages based on the owner’s harassment or discrimination, he needs to file a claim in a Court of competent jurisdiction.

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⁵⁴ See *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 336 (“The Board’s legitimate regulatory authority, and hence its incidental remedial authority, is circumscribed. It may not, and does not, hear and adjudicate all manner of disputes between landlords and tenants. Its authority is derived from the local police powers and extends only so far as necessary to set and regulate rents.”)

Have the tenant's housing services decreased and if yes, in what amount?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁵⁵ and may be corrected by a rent adjustment.⁵⁶ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased housing services case a tenant must establish that he has given the owner notice of the problems and the opportunity to fix the problems before he is entitled to relief, unless the owner has actual knowledge of the problem.

Roof Leak: The tenant has established that there was a leak in his unit that caused damage to his inner stairway wall. Whether this was from the roof, from the siding, or from a problem with the gutters, the *Notice of Violation* established that siding repairs were necessary and that prior repairs had been done without the necessary permits.

The tenant claimed that this problem was ongoing from back in 2013. However, the owner representative was credible that prior complaints by the tenant, that were marked as "closed" meant that the work had been done and the repair was fixed. Had there not been a repair back in 2013 and 2014, it would not make sense that the maintenance log would not show another reference to this problem between 2014 and 2018.

Therefore, it is much more likely that some work was done in 2013 and 2014 that solved the problem for some time period. On the other hand, it appears that there were ongoing leaks into the tenant's unit from the condition on the roof or to the siding or gutters, that was causing an ongoing problem in the tenant's unit, about which the tenant complained in February of 2018, that was not repaired in a timely manner. While the tenant testified that gutter work was done in May or June of 2018, the owner has still not provided evidence that the *Notice of Violation* related to the siding has been abated, and the internal wall crack is still present.

The tenant is entitled to an ongoing rent decrease of 2% for the continued presence of this wall crack and other water damage evident on the side wall of the tenant's stairway, until it is repaired and for the failure to abate the condition of the siding. Additionally, the tenant is entitled to restitution of overpaid rent for the leak and the problem with the gutters and siding, beginning February 15, 2018, (giving the owner two weeks to have repaired this problem from the February 2, 2018, complaint.) The amount of restitution is noted on the chart below.

Water Leak in bathroom and inside unit: While this was originally complained about in 2012, the owner established that the company repaired the problem episodically, as the tenant complained about it. However, once the tenant complained

⁵⁵ O.M.C. § 8.22.070(F)

⁵⁶ O.M.C. § 8.22.110(E)

about this problem in February of 2018, this matter should have been resolved by March of 2018. While the owner did the bathroom repairs in March of 2018, the work was not completed. Instead, the tenant has been left with a massive hole around his stairway wall because the maintenance workers have not returned to repair the wall. The tenant is entitled to an ongoing 2% rent decrease for this condition, until the wall is repaired. Additionally, as noted on the below chart, the tenant is entitled to restitution of overpaid rent.

The owner's claim that the tenant has not allowed access to his unit for repairs is not convincing. While at one point the tenant did not let an inspection go forward, his letter to the owner specifies that he is willing to allow an inspection on another date. Additionally, the evidence establishes that the tenant has allowed the owner in to make multiple repairs over the years.

Exterior Front Steps: While this was also originally complained about in 2012, it appears to have been corrected at that time. The tenant complained again about these stairs in January of 2018. No action was taken until the owner was informed of the *Notice of Violation*.

A handrail that is not secure on a set of entry stairs is a habitability violation. There is evidence that the repair to the front stairs was completed by March 7, 2018. Therefore, the tenant is entitled to restitution of overpaid rent, of 1% of the rent, for this condition between February 1, 2018, and March 7, 2018, as noted on the chart below.

Interior Front Steps: The owner was convincing that the bullnose on the stairs would be replaced regularly at the tenant's request, when he made complaints in the past. However, it appears that no reasonable action was taken after the early 2018 complaint until early March of 2018. The email from the inspector and the Inspection by this Hearing Officer shows that this repair was completed.

The owner should have repaired this matter within a week of being notified. The tenant is entitled to restitution of overpaid rent of 1% of the rent for this condition from January 22, 2018 through March 7, 2018, as noted on the chart below.

Back Steps: The tenant has established that there was an ongoing condition with the back stairs since at least as early as January of 2018. There were ongoing complaints about these stairs earlier, that the owner attempted repair, but rot and decay of the back stairs, causing structural problems with the stairs are a habitability problem for which the owner should have inspecting on a regular basis. The tenant is entitled to an ongoing rent decrease of 5% of the rent for this condition until the stairs are completed and the *Notice of Violation* is abated. Additionally, the tenant is entitled to restitution of overpaid rent beginning in February of 2018 for these conditions, as noted on the chart below.

Smoke detector: While smoke detectors and carbon monoxide detectors are required safety devices, the tenant did not list this problem on any of the documents

filed with his petition. Therefore, this matter cannot be heard at this time. The owner is now on notice of this problem. The tenant's claim as to this issue is denied.

What if any restitution is owed between the parties and how does it affect the rent?

Before consideration of decreased services and rent overpayments, the tenant's base rent is \$1,250 a month. As noted above, the tenant is entitled to an ongoing rent decrease of 2% (\$25) for the ongoing wall damage in the hallway related to the roof leak; 2% (\$25) for the ongoing wall damage in the stairway related to the bathroom leak; and 5% (\$62.50) for the damage to the back stairs; for a total rent decrease of 9% (\$112.50). Therefore, the tenant's current legal rent, before consideration of restitution is \$1,137.50 a month, effective February 1, 2019.

VALUE OF LOST SERVICES							
Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Roof Leak and wall damage	15-Feb-18	31-Jan-19	\$1,250	2%	\$ 25.00	11.5	\$ 287.50
Water Leak in bathroom and wall damage	15-Feb-18	31-Jan-19	\$1,250	2%	\$ 25.00	11.5	\$ 287.50
Exterior Front Stairs	1-Feb-18	7-Mar-18	\$1,250	1%	\$ 12.50	1.3	\$ 15.63
Interior Front Stairs	22-Jan-18	7-Mar-18	\$1,250	1%	\$ 12.50	1.5	\$ 18.75
Back Stairs	1-Feb-18	31-Jan-19	\$1,250	5%	\$ 62.50	12.0	\$ 750.00
					\$ -		-
TOTAL LOST SERVICES							\$ 1,359.38
OVERPAID RENT							
	From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
	1-Mar-15	31-Aug-15	\$1,312.50	\$1,250	\$ 62.50	6	\$ 375.00
	1-Sep-15	31-Jul-17	\$1,359	\$1,250	\$ 109.00	23	\$ 2,507.00
	1-Aug-17	31-Jan-19	\$1,390	\$1,250	\$ 140.00	18	\$ 2,520.00
					\$ -		-
TOTAL OVERPAID RENT							\$ 5,402.00
RESTITUTION							
MONTHLY RENT							\$1,250
TOTAL TO BE REPAID TO TENANT							\$ 6,761.38
TOTAL AS PERCENT OF MONTHLY RENT							541%
AMORTIZED OVER				12	MO. BY REG. IS		\$ 563.45

Additionally, as noted on the chart above, the tenant is entitled to restitution of \$6,761.38 for these conditions and for overpayment of rent (through January 31, 2019). An overpayment of this size is normally adjusted over a period of 12 months.⁵⁷ The restitution deduction is \$563.45 a month.

The tenant is entitled to begin to deduct the restitution owed from his rent, after this Hearing Decision becomes final. The decision is final if no party has filed an Appeal within 20 days of the date the Hearing Decision is mailed to the parties.

However, should the owner repair the crack on the left side of the tenant's stairway and the other water damage to the stairway, it can increase the rent by 2% (\$25 a month); if the owner repairs the dry wall damage to the top of the tenant's stairway caused by the bathroom leak repair, it can increase the rent by 2% (\$25 a month); and if it completes the back stairs and cleans up the debris in the yard (and has proof of abatement of the problems with the stairs), it can increase the rent by 5% (\$62.50 a month). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**

Additionally, if the owner wishes to pay the tenant the restitution in one lump sum, it has the authority to do so. If the owner pays the tenant restitution, the tenant must stop deducting the restitution.

ORDER

1. Petition T18-0164 is granted.
2. The tenant's rent, before consideration of ongoing decreased services and restitution is \$1,250 a month.
3. Due to ongoing conditions, the tenant is entitled to a 9% rent decrease. The tenant's current legal rent, effective February 1, 2019, before consideration of restitution, is \$1,137.50 a month.
4. Due to past decreased services and overpayment of rent, the tenant is owed restitution of \$6,761.38. This overpayment is adjusted by a rent decrease for 12 months in the amount of \$563.45 a month.
5. The tenant is entitled to reduce the rent per the restitution order after the Hearing Decision becomes final.
6. If the owner wishes to, it can repay the restitution owed to the tenant at any time. If it does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.

⁵⁷ Regulations, Section 8.22.110(F)

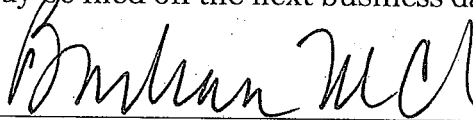
7. If the owner repairs the crack on the left side of the tenant's stairway and the other water damage to the stairway, it can increase the rent by 2% (\$25 a month); if the owner repairs the dry wall damage to the top of the tenant's stairway caused by the bathroom leak repair, it can increase the rent by 2% (\$25 a month); and if it fixes the back stairs and cleans up the debris in the yard, it can increase the rent by 5% (\$62.50 a month).

In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.

8. The owner may otherwise be entitled to increase the rent. However, no rent increase notice can be effective any earlier than 6 months after the tenant has been served with the *RAP Notice*.

9. 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: January 29, 2019



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T18-0164

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

Manager

Bally Singh, SMC East Bay
1669 12th Street #0
Oakland, CA 94608

Owner Representative

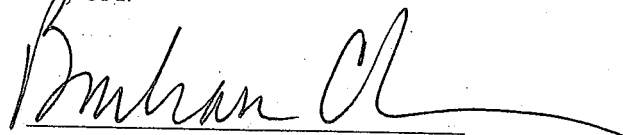
David Martin
5350 James Avenue
Oakland, CA 94618

Tenant

Alejandro Garcia
1070 10th Street
Oakland, CA 94607

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.

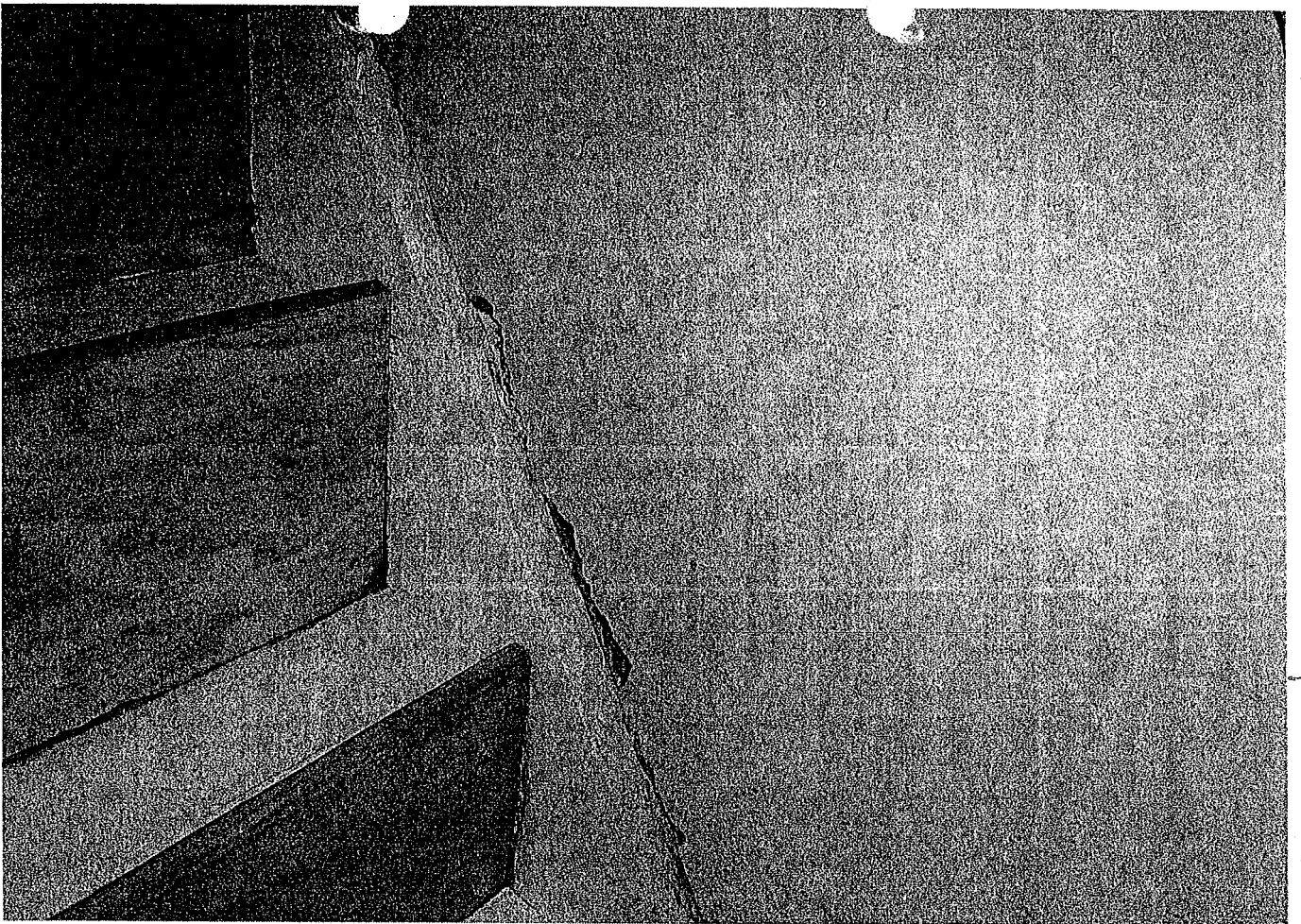
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 30, 2019** in Oakland, CA.



Barbara Cohen
Oakland Rent Adjustment Program

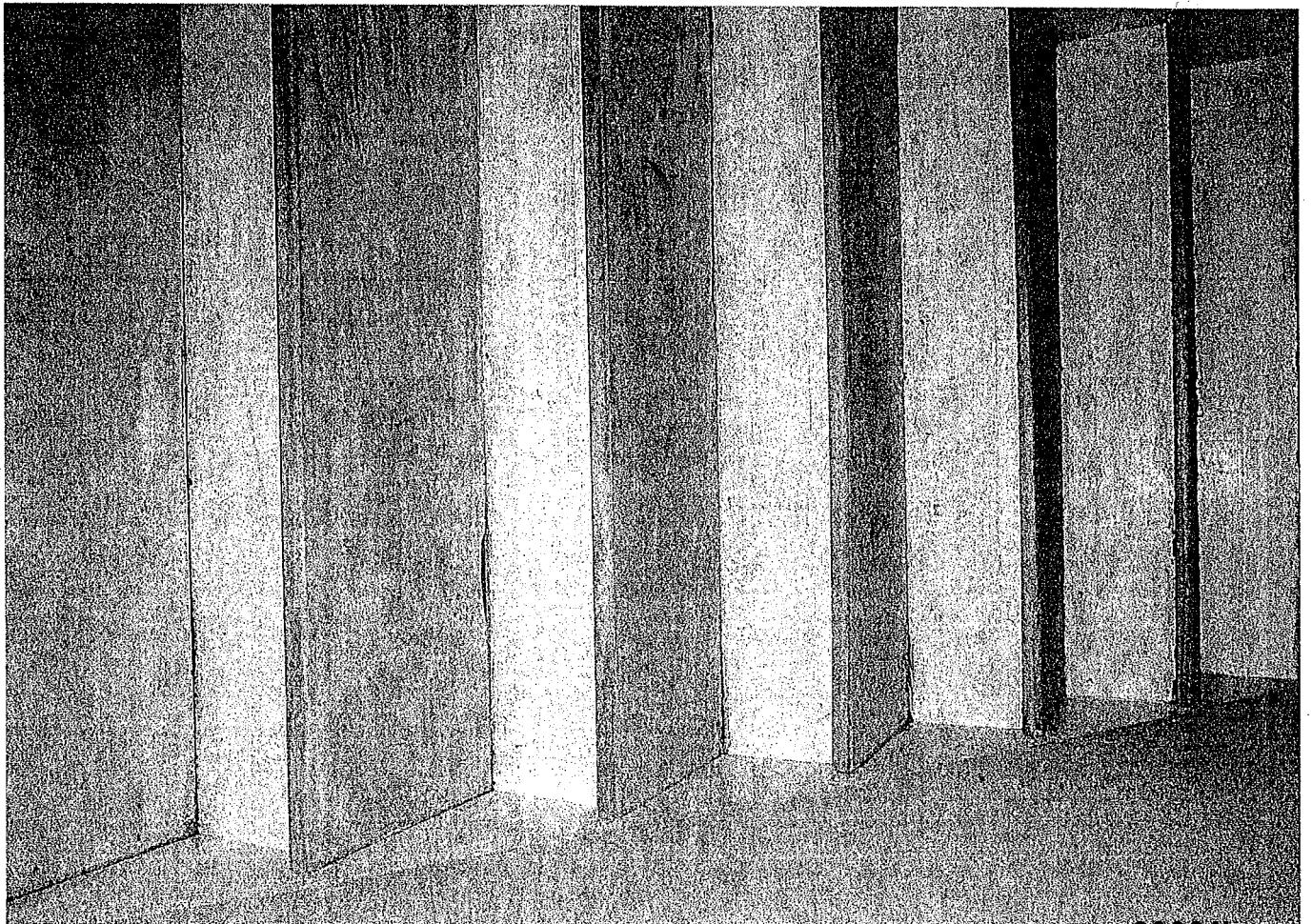
000040

photo 2



Inspection

photo 1



Photos

000041

photo 4

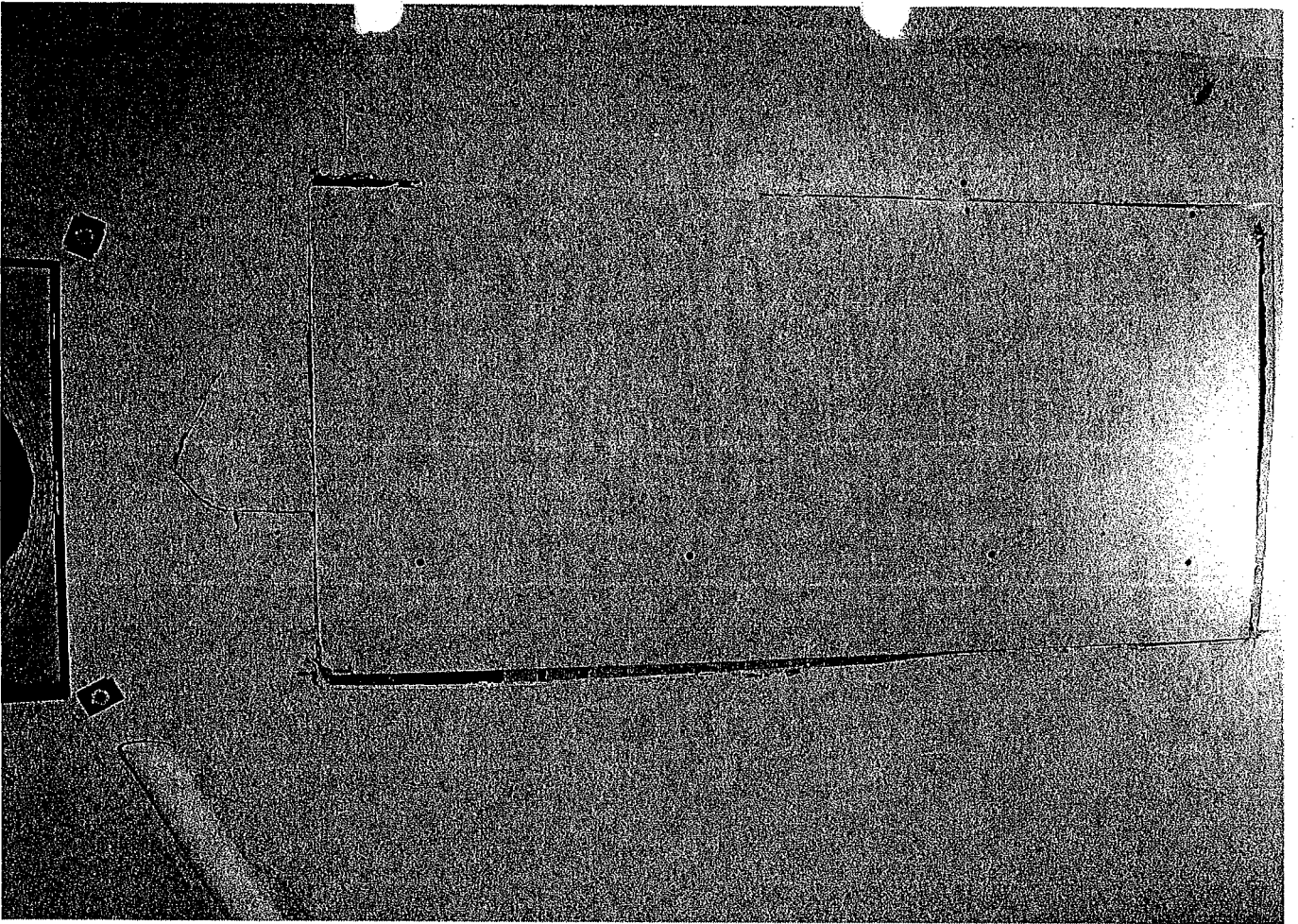
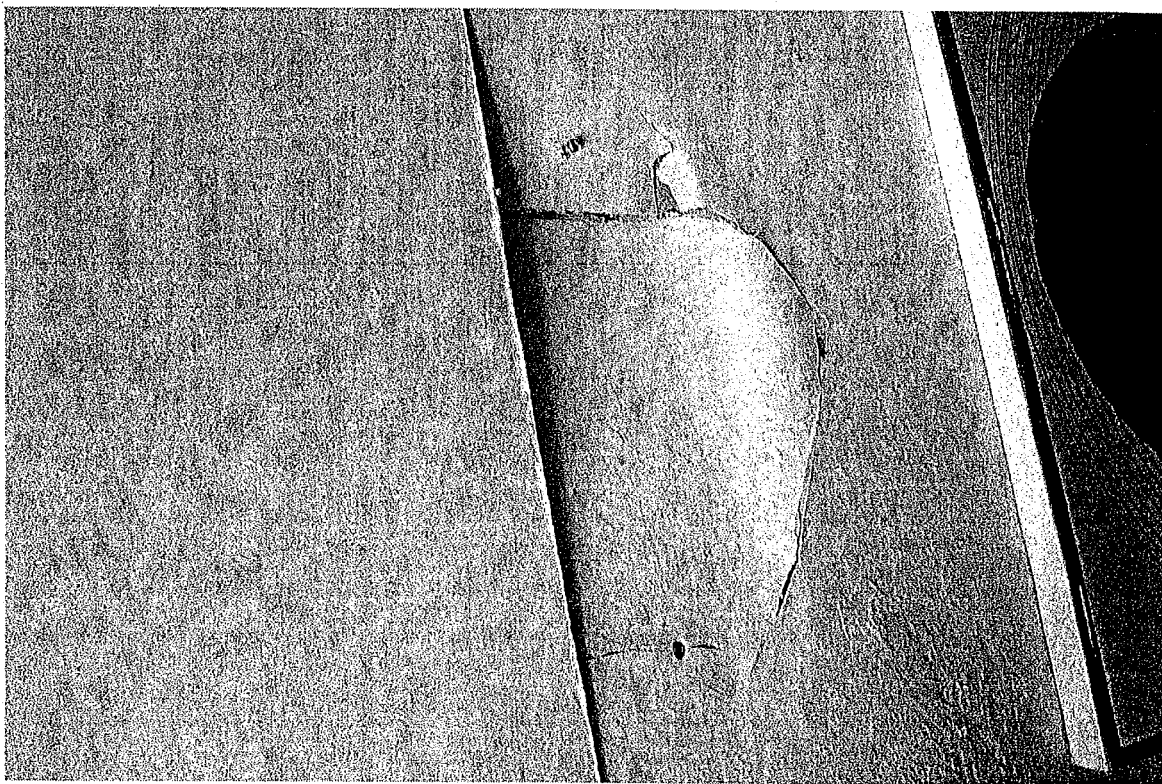


photo 3



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pinholes



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plus 6

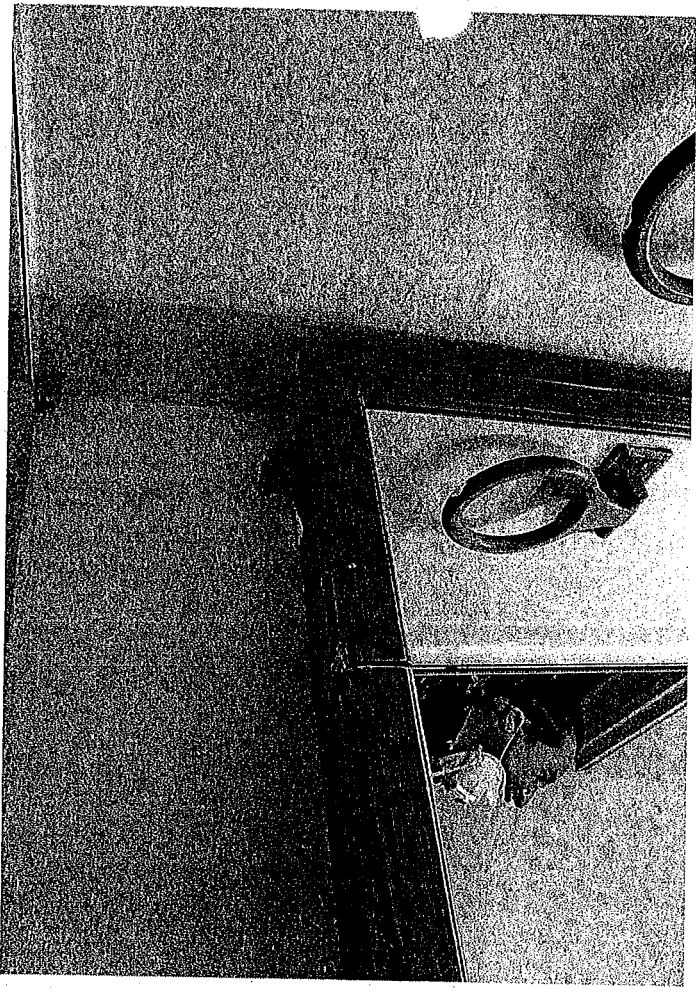


photo 10

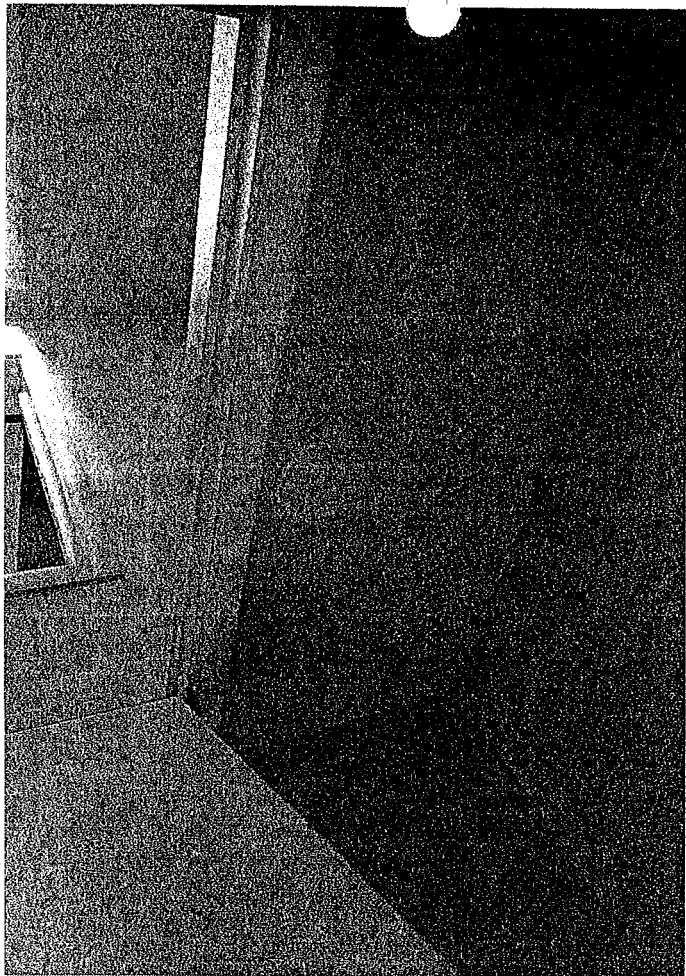


photo 7

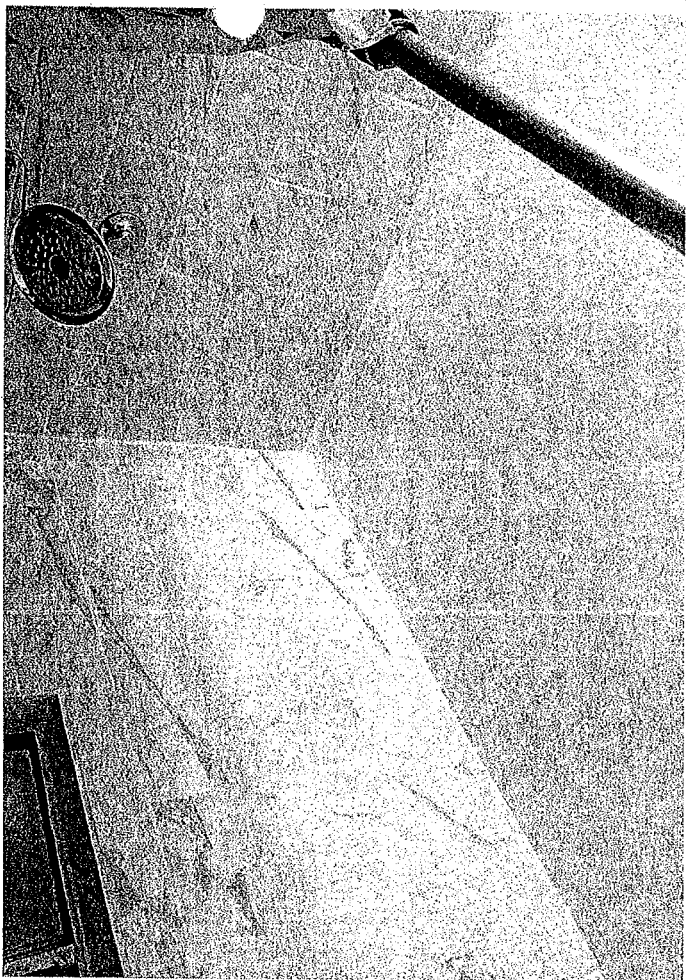


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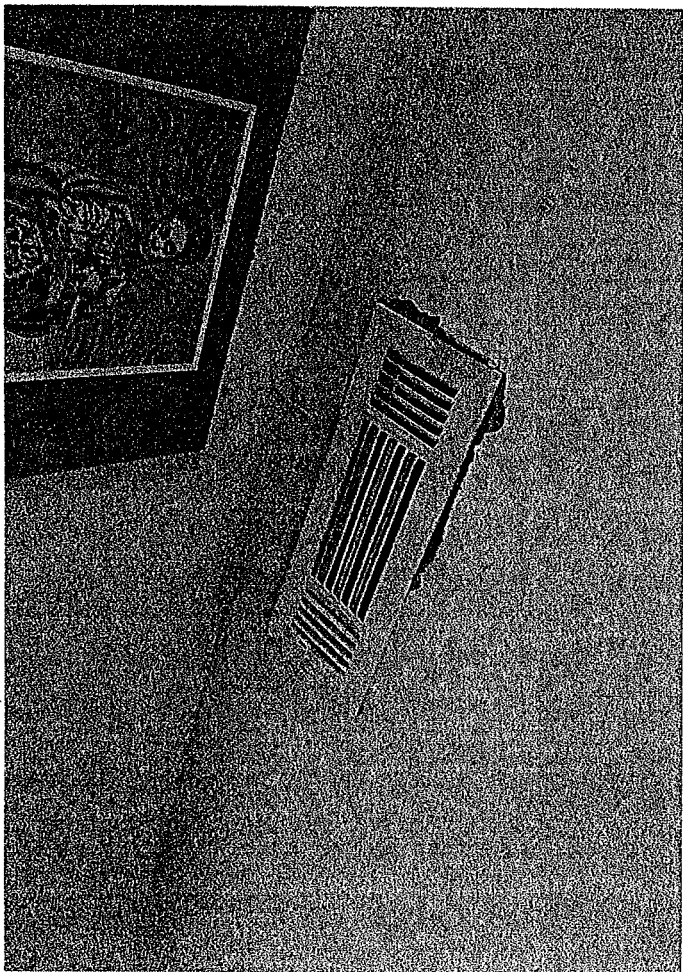
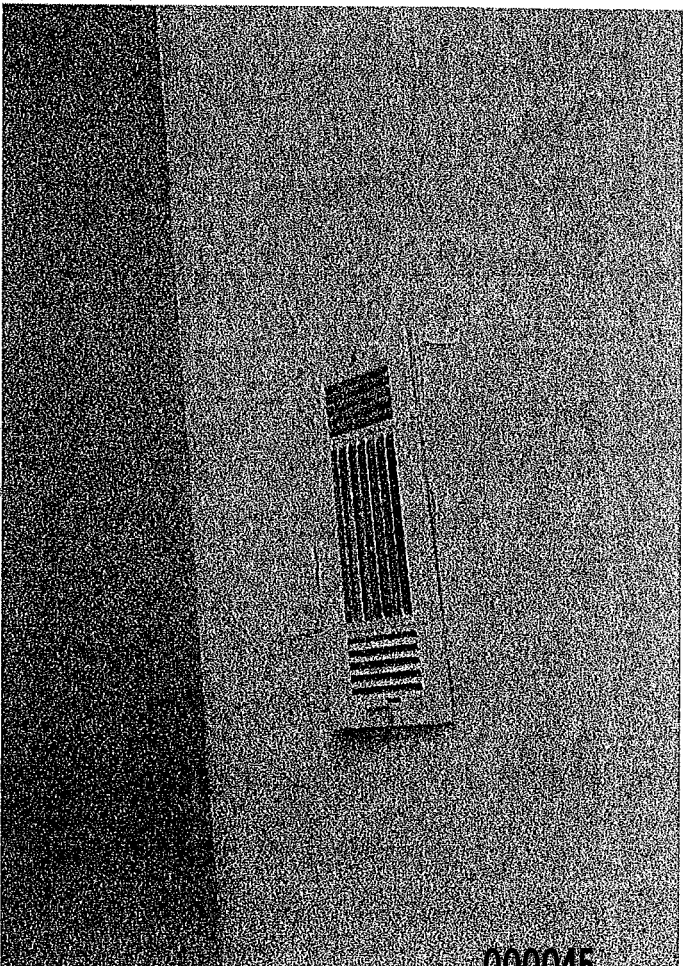


photo 9



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photo 14

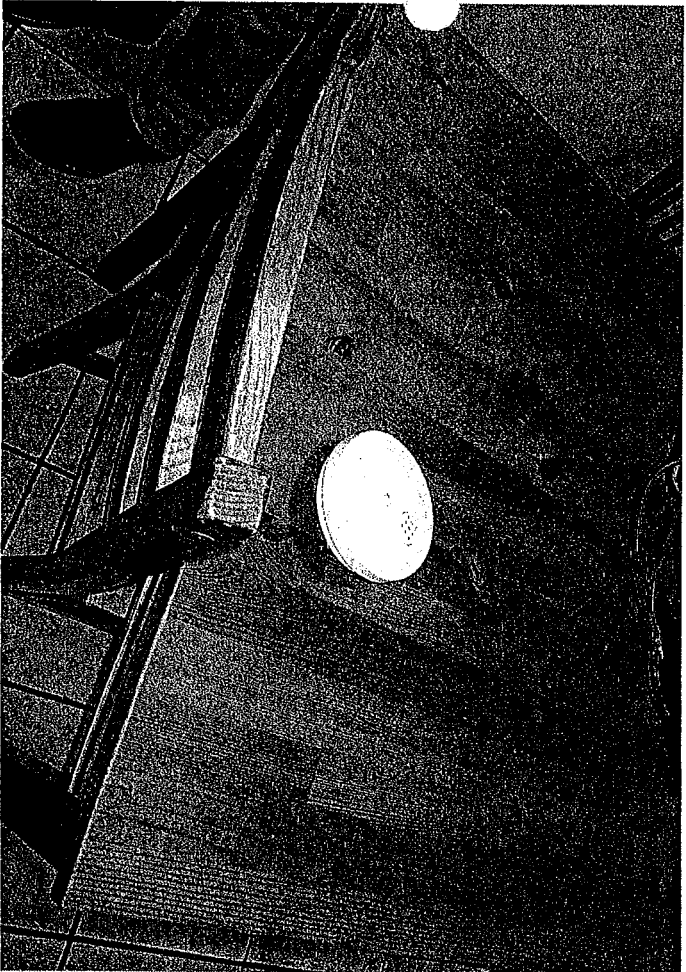


photo 11

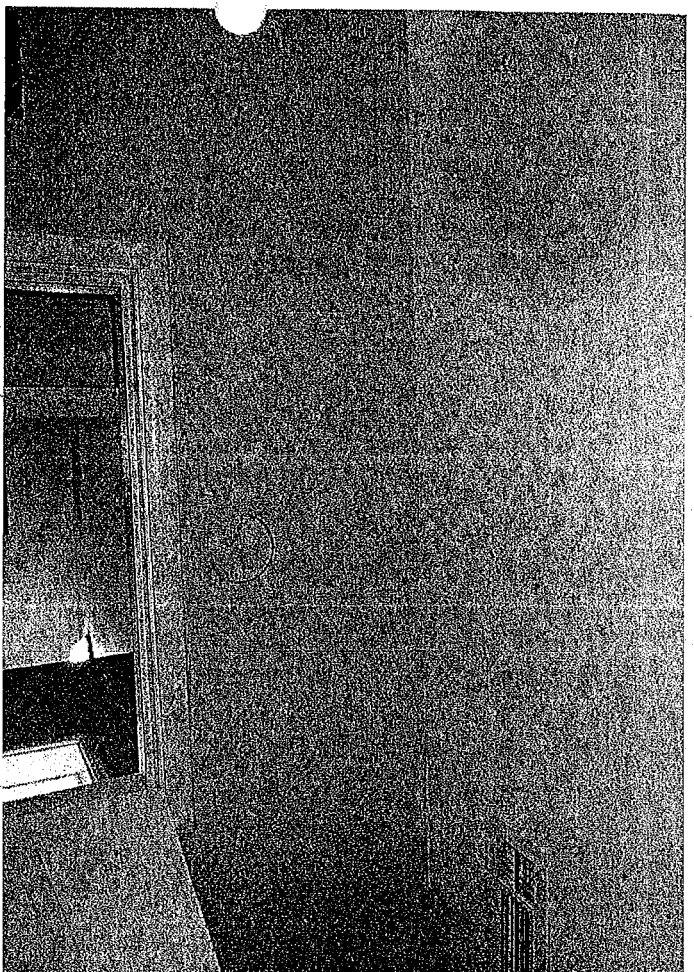


photo 12

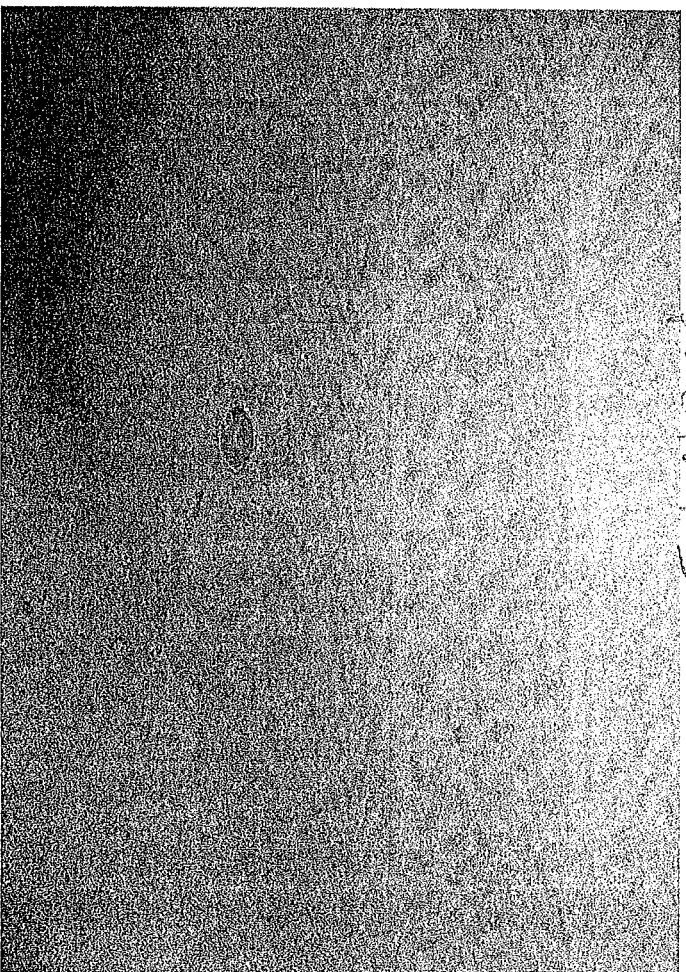
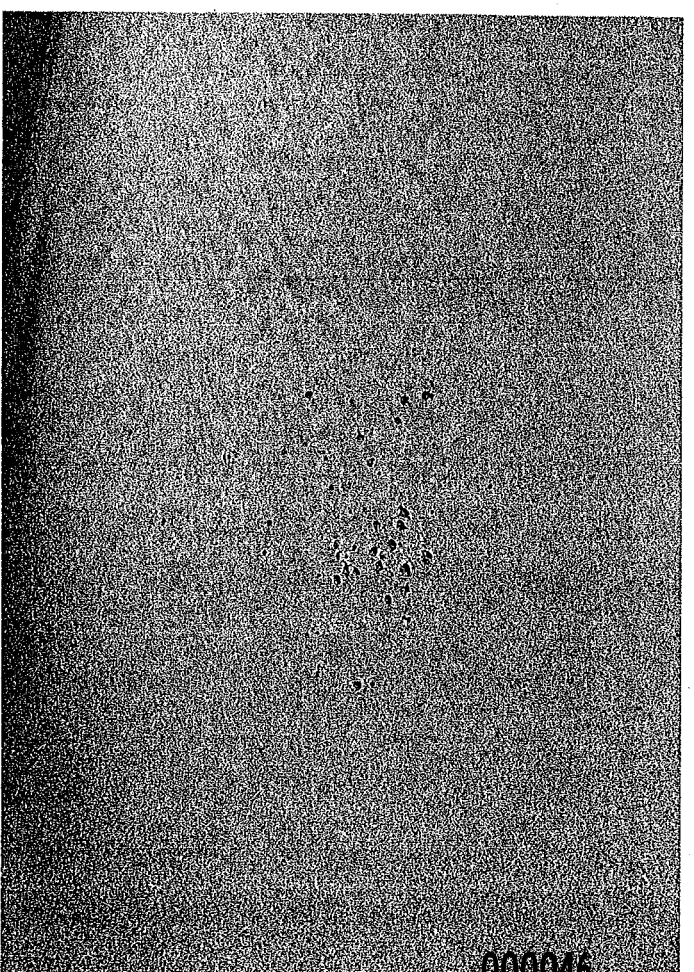
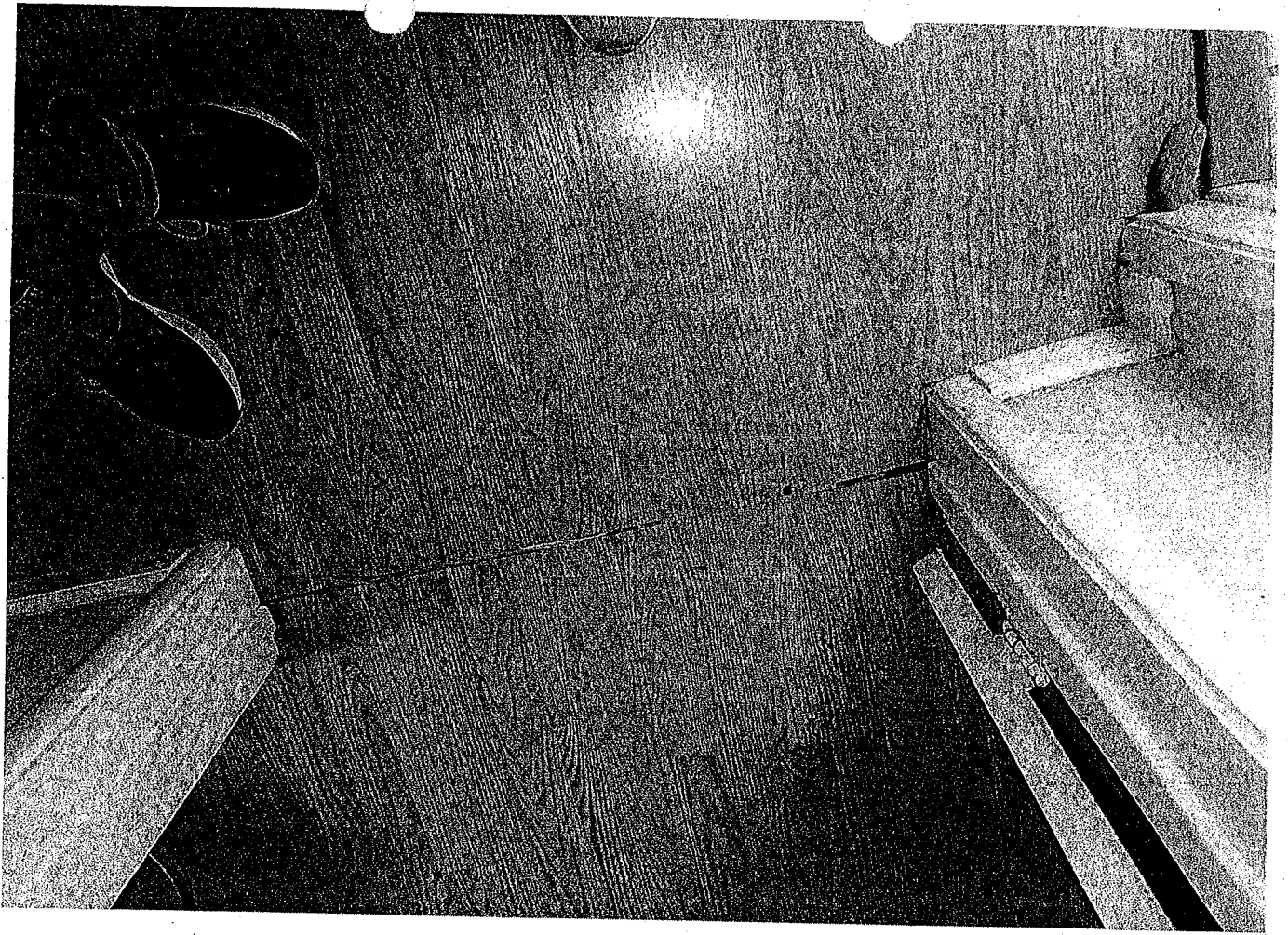


photo 13



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photo 15



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photo 19

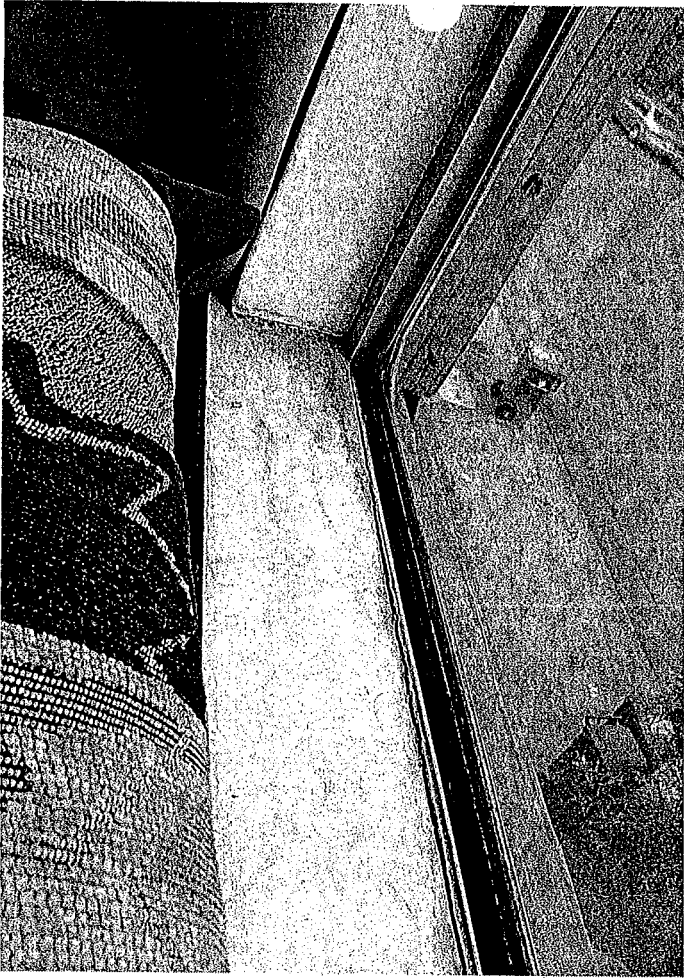


photo 16

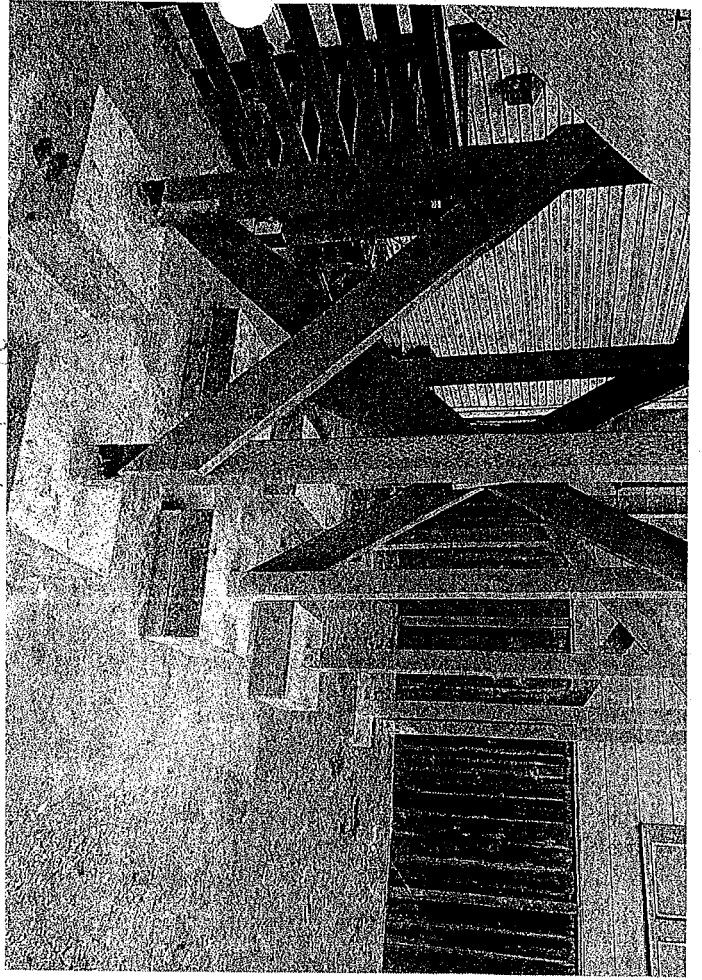


photo 17

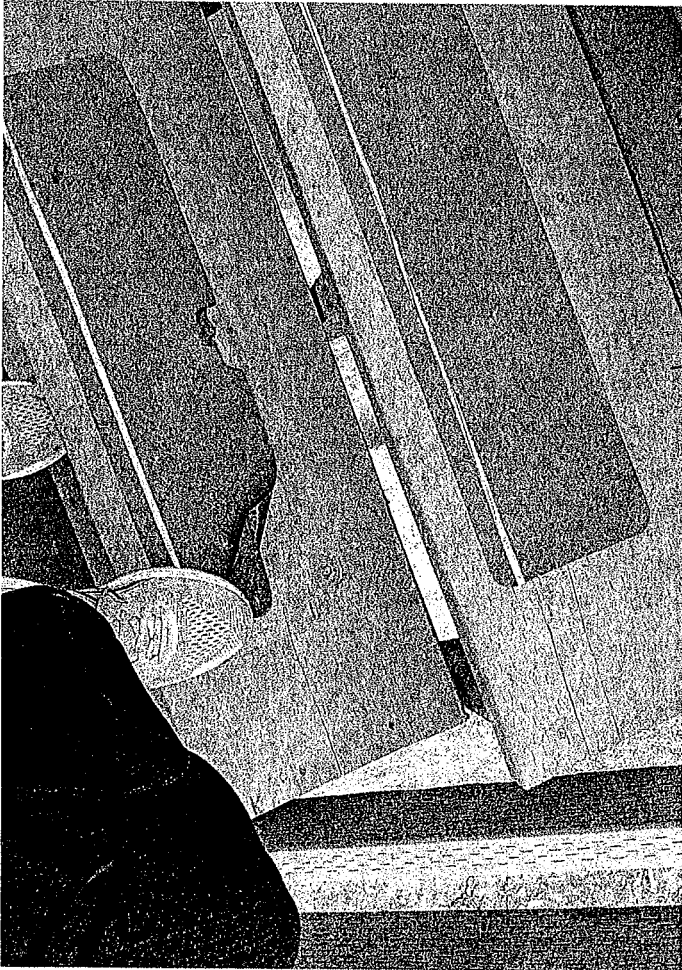
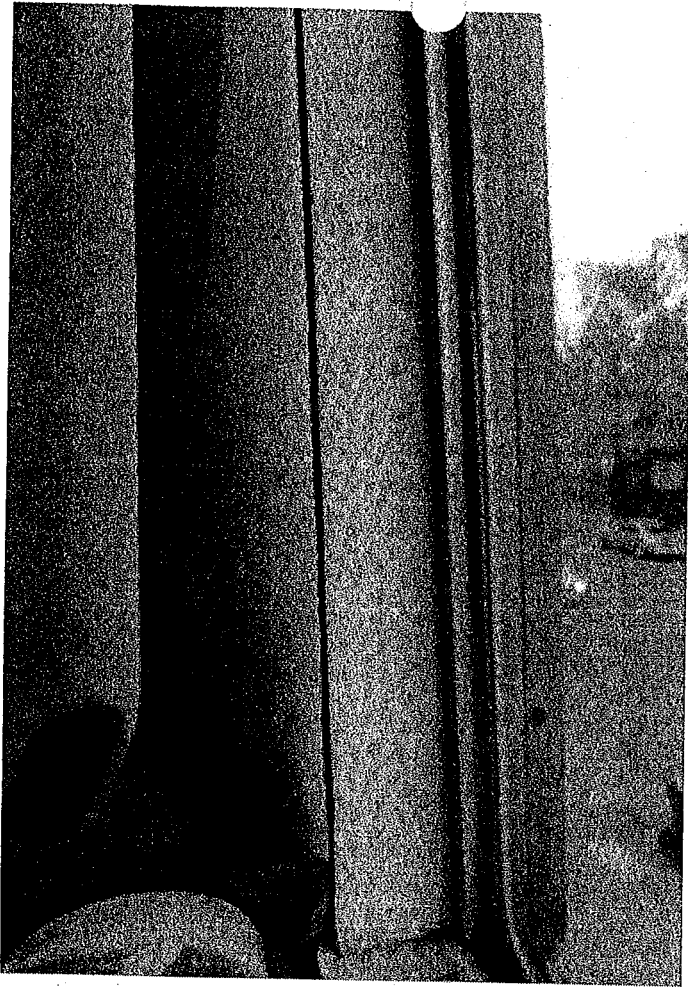
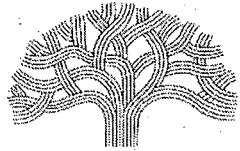


photo 18



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CITY OF OAKLAND

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

For date stamp.

RECEIVED

FEB 14 2019

RENT ADJUSTMENT PROGRAM
CITY OF OAKLAND
APPEAL

Appellant's Name SMC EAST BAY LLC		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1070 10TH ST, OAKLAND, CA 94607			
Appellant's Mailing Address (For receipt of notices) 1669 12th St, Ste O, Oakland, CA 94607		Case Number T 18-0164	
		Date of Decision appealed 02/13/2019	
Name of Representative (if any) Bally Singh- Owner Rep David Martin, Attorney for Owner		Representative's Mailing Address (For notices) 5350 JAMES AVE, OAKLAND, CA 94618	

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.

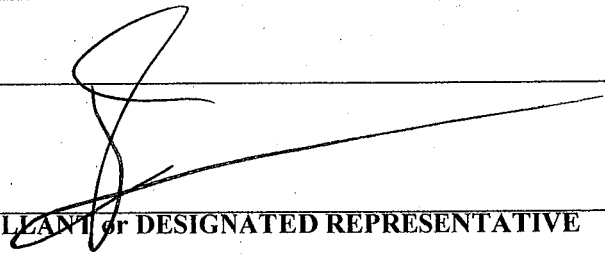
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 21.

• 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 02/13/19, 2019, 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	ALEJANDRO GARCIA
Address	1070 10TH ST,
City, State Zip	OAKLAND, CA 94607
Name	
Address	
City, State Zip	

	02/13/2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

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.

Grounds for Appeal (T18-0164, Garcia v. SMC East Bay)

SMC East Bay disputes the January 29, 2019 decision of the hearing officer based upon the excessive nature of the award in light of the fact that the hearing officer did not account for evidence that the tenant refused to allow repairs to be made.

The tenant filed a claim in February, 2018 complaining that he had not been served a proper RAP notice and CPI notice and alleged a decrease in housing services.

SMC does not contest the findings with respect to the RAP Notice issues, but does contest the findings with respect to the decrease in services and restitution portions of the Order.

The decision failed to consider evidence that the tenant refused to allow SMC East Bay to make repairs in the unit. Nowhere in the decision is this fact reflected, although SMC presented evidence that the tenant refused to allow SMC East Bay's staff and contractors access to the unit to make repairs.

In addition, items such as the lack of smoke and carbon monoxide detectors were improperly decided. SMC East Bay had not been in the unit and the smoke and carbon monoxide detectors had been removed and placed on the refrigerator. SMC East Bay cannot be held responsible when the tenant himself removed the detectors then refused access to the unit.

The decision awarded 9% rent decrease in total. For each of those items, SMC East Bay had attempted to make repairs (SMC Assigned the jobs to a class A Contractor) but the tenant refused to allow the contractor adequate access to make the repairs.

EXAMPLES:

Crack on Left Side of Stairway and Water Damage (2% - \$25): Tenant refused access on multiple occasions after SMC East Bay served proper notice to enter/repair.

Dry wall damage to top of tenant's stairway (2% - \$25): Tenant refused access on multiple occasions after SMC East Bay served proper notice to enter/repair.

Back Stairs and Debris in Yard (5% - \$62.50): There is no basis for this deduction. SMC East Bay admits that the stairs were worn from years of use and repaired them after city inspection and proper plans and permits. There is no evidence whatsoever that the condition of the stairs adversely affected the tenant's use of the property and a 5% decrease in rent for the condition cannot be justified.

With respect to the debris, there is no evidence of an ongoing debris problem and the 5% award over a long-term is likewise not justified.

There had been no prior maintenance requests for the stairs or the debris, and SMC East Bay keeps a full-time maintenance and trash removal persons on staff as well as a regular landscaper for the property. There is simply no evidence that this condition existed for any significant length of time.

Even after the hearing and inspection, SMC East Bay notified the hearing officer that the tenant refused to allow SMC East Bay access to the unit to make repairs.

In sum, SMC East Bay contends that the award for decreased services is unsubstantiated, excessive and/or unfair.

1070 10th St - Email Logs for tenant denied entry for repairs

Date:	Notes:
9/13/17	Emailed tenant requesting date/ time for Bally to inspect the stairs
9/20/17	Ruddie: Spoke with tenant, Bally scheduled to inspect stairs and bathroom tomorrow, 09/21, at 1pm
9/21/17	Bally assigned WCB to replaced threshold and install towel rod. Repairs scheduled directly with tenant
2/1/18	Received maintenance request #25227 (4:59pm) - interior stairs and exterior front and back stairs
2/2/18	Emailed tenant- advised interior stairs were completed on 09/22/17 and no additional maintenance requests were submitted since then. Asked if Bally could enter to inspect stairs today, 02/02
2/3/18	Bally inspected stairs and assigned WCB to replace interior and exterior stairs
2/7/18	Emailed tenant - advised stair repairs require two days to complete. Requested date/ time for repairs
2/8/18	Followed up with tenant via email- office not contacted to schedule repairs
2/16/18	Notice to Enter served for 2/19- inspect interior stairs and exterior front and back stairs
2/18/18	tenant emailed and called Answer Network to deny entry on 02/19
2/20/18	Notice to Enter served for 2/26- to perform repairs
2/24/18	Tenant emailed to deny entry on 02/26
2/26/18	Ruddie: called tenant to schedule repairs- no answer. Left voicemail (10:27am)
2/26/18	Emailed tenant requesting date/ time for WCB to enter and perform repairs
2/26/18	Tenant emailed and stated he will call tomorrow, 02/27, to make arrangements
2/27/18	Ruddie: Spoke with tenant, partial WCB repairs scheduled for 03/05 and 03/08. Pending tenant for interior stairs
3/13/18	Emailed tenant requesting date/ time for Bally & WCB to inspect completed and pending repairs
3/14/18	Followed up with tenant via email- office not contacted to schedule inspection
3/15/18	Ruddie: Spoke with tenant, Bally and WCB scheduled to inspect on 03/19 at 1pm
3/16/18	Appointment rescheduled per tenants request to 03/19 at 2:45pm
11/17/18	Appointment scheduled per hearing to complete drywall repair- Tenant denied entry. Reported to hearing officer on the same day at 3:32pm



Ruddie Rodriguez <rুদ্ধie@smceastbay.com>

1070 10th St. II 3 Day Notice

Sun, Feb 18, 2018 at 11:53 PM

alex garcia
To: Ruddie Rodriguez <rুদ্ধie@smceastbay.com>, Operations dept <operations@smceastbay.com>
Cc: jesquive@mail.sfsu.edu

To whom it may concern:

In response to your "Notice Of Intent to Enter Rental Premises," I am writing you to inform you what I have already informed your contact person Tiffany reached at 510-225-9161 ext 1. Basically, I decline and do not consent to you entering my residence on said date (Feb. 19th, 2018) on your 'Notice Of Intent to Enter Rental Premises.' Said date does not work for me, given I have plans and it is also a Federal Holiday. Please call () or email () to reschedule. I, however, have already done a 'Property Inspection--interior and exterior' with City of Oakland (See Attachment). I hope this saves you time, and therefore you no longer need to do 'Property Inspection--interior and exterior.' Please contact me, nonetheless, if you still feel the need to do your 'inspection.' We can work-out a time and day that best works for both of our schedules.

In addition, I have posted on the door of my place of residence a similar note for SMC Inspectors which I believe conveys the purpose of this email and also the message I also delivered to Tiffany to provide to you. Since I did not hear from you, and since it seems you will be working on "Presidents Day," I decided to also email you so that you get this message in advanced as well.

Lastly, please find the attachment of the "Property Inspection--interior and exterior" I have done with the City of Oakland document named "Request for Service: Tenant Compliant."

Occupant & Tenant at 1070 10th Street, Oakland Ca 94607,

Alejandro Garcia

FYI: The following message is the note I placed on my door for you.

"Feb. 18 2018

Dear SMC People Inspectors:

I decline and do not consent to you entering my residence on said date (Feb. 19th, 2018) on your 'Notice Of Intent to Enter Rental Premises.' Said date does not work for me, given I have plans and it is also a Federal Holiday. Please call or email () to reschedule. I, however, have already done a 'Property Inspection--interior and exterior' with City of Oakland (See Attachment). I hope this saves you time, and therefore you no longer need to do 'Property Inspection--interior and exterior.' Please contact me, nonetheless, if you still feel the need to do your 'inspection.' We can work-out a time and day that best works for both of our schedules.

Occupant & Tenant,

Alejandro Garcia
[signed]

FYI: Also, I noted this with Tiffany at your SMC 510.225.9161 ext 1."
[Quoted text hidden]

Code Violation, And Notice to Enter.pdf
127K



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St. II 3 Day Notice

Sat, Feb 24, 2018 at 6:21 PM

alex.garcia

To: Ruddie Rodriguez <ruddie@smceastbay.com>, Operations dept <operations@smceastbay.com>

Cc: Jesquive@mail.sfsu.edu

To SMC East Bay people of Concern:

You have not contacted me to make arrangements nor have I agreed upon your dates to do maintenance and repair. I prefer for you to contact me (a 37; or a m) and arrange dates and times when you can come and do your said "maintenances and repairs". Therefore, please do not enter my place of residence without my consent, especially without me being present on Monday, Feb 26, 2018. I will not be available during certain hours of those days, so please contact me to arrange times and days.

I am aware of your "Notice of Intent to Enter Premises" of my place of residence for Monday, Feb 26, 2018, for your approximated times of "9am-5pm" to supposedly "make or arrange for the following necessary or agreed upon repairs, decorations, alterations or improvements; maintenance repairs-repair interior and exterior stairs, etc."; and "To supply the following necessary or agreed upon services" ___[empty]___." I, however (as stated above), have never made these arrangements with you yet. Contact me to make such arrangements that best work best for both yours and my schedule.

Tenant and Occupant of 1070 10th Street, Oakland Ca 94607,

Alejandro Garcia

[Quoted text hidden]



Ruddie Rodriguez <rুদ্ধie@smceastbay.com>

1070 10th St. II 3 Day Notice

Operations dept <[redacted]@smceastbay.com>

Sat, Feb 24, 2018 at 6:48 PM

To: [redacted]
Cc: Ruddie Rodriguez <rুদ্ধie@smceastbay.com>, Jesquive@mail.sfsu.edu

We have tried multiple times
This is 3rd time you are denying to enter for repairs.

My office will try again to contact you, please make sure your respond to emails or calls in regards to Maint repairs appointments.

Ruddie
Please reach out to Alex.

Thanks

On Feb 25, 2018, at 10:21 AM, alex garcia

To SMC East Bay people of Concern:

You have not contacted me to make arrangements nor have I agreed upon your dates to do maintenance and repair. I prefer for you to contact me (at [redacted]; or at [redacted]@smceastbay.com) and arrange dates and times when you can come and do your said "maintenances and repairs". Therefore, please do not enter my place of residence without my consent, especially without me being present on Monday, Feb 26, 2018. I will not be available during certain hours of those days, so please contact me to arrange times and days.

I am aware of your "Notice of Intent to Enter Premises" of my place of residence for Monday, Feb 26, 2018, for your approximated times of "9am-5pm" to supposedly "make or arrange for the following necessary or agreed upon repairs, decorations, alterations or improvements: maintenance repairs-repair interior and exterior stairs, etc."; and "To supply the following necessary or agreed upon services" "[redacted]". I, however (as stated above), have never made these arrangements with you yet. Contact me to make such arrangements that best work best for both yours and my schedule.

Tenant and Occupant of 1070 10th Street, Oakland Ca 94607,

Alejandro Garcia

On Sunday, February 18, 2018, 11:53:23 PM PST, alex garcia

rate:

To whom it may concern:

In response to your "Notice Of Intent to Enter Rental Premises," I am writing you to inform you what I have already informed your contact person Tiffany reached at 510-225-9161 ext 1. Basically, I decline and do not consent to you entering my residence on said date (Feb. 19th, 2018) on your 'Notice Of Intent to Enter Rental Premises.' Said date does not work for me, given I have plans and it is also a Federal Holiday. Please call (510) 371-3737 or email (tiffany@smceastbay.com) to reschedule. I, however, have already done a 'Property Inspection--interior and exterior' with City of Oakland (See Attachment). I hope this saves you time, and therefore you no longer need to do 'Property Inspection--interior and exterior.' Please contact me, nonetheless, if you still feel the need to do your 'inspection.' We can work-out a time and day that best works for both of our schedules.

In addition, I have posted on the door of my place of residence a similar note for SMC Inspectors which I believe conveys the purpose of this email and also the message I also delivered to Tiffany to provide to you. Since I did not hear from you, and since it seems you will be working on "Presidents Day," I decided to also email you so that you get this message in advanced as well.

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Occupant & Tenant at 1070 10th Street, Oakland Ca 94607,

Alejandro Garcia

FYI: The following message is the note I placed on my door for you.

"Feb. 18 2018

Dear SMC People Inspectors:

I decline and do not consent to you entering my residence on said date (Feb. 19th, 2018) on your 'Notice Of Intent to Enter Rental Premises.' Said date does not work for me, given I have plans and it is also a Federal Holiday. Please call (510) 533-3333 or email (510) 533-3333 to reschedule. I, however, have already done a 'Property Inspection--interior and exterior' with City of Oakland (See Attachment). I hope this saves you time, and therefore you no longer need to do 'Property Inspection--interior and exterior.' Please contact me, nonetheless, if you still feel the need to do your 'inspection.' We can work-out a time and day that best works for both of our schedules.

Occupant & Tenant,

Alejandro Garcia
(signed)

FYI: Also, I noted this with Tiffany at your SMC 510.225.9161 ext 1."



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St. II 3 Day Notice

Sun, Feb 25, 2018 at 5:54 PM

alex.garcia

To: <[redacted]@yahoo.com>, Operations dept <operations@smceastbay.com>
Cc: Ruddie Rodriguez <ruddie@smceastbay.com>, jesquive@mail.sfsu.edu

SMC Operations Dept, Bally Singh, and Ruddie Rodriguez:

I will correct you in your last email. I have never denied you to enter my place of residence to repair or conduct maintenance. I have only asked for you to coordinate times with me that best work for your time and mine. Given the circumstance of how you have conducted yourself with me, I do not want you or your crew in my place of residence without my presence.

I prefer to be present while agreed upon maintenance and repairs are conducted in my place of residence. This place is my home, I am sure you have a home, and thus you can at least try and relate to the idea of how a person finds their home a sacred place.

Call or email me regarding a possible time to discuss agreed upon arrangements for maintenance and/or repairs.

Alejandro Garcia

[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St. II 3 Day Notice

Operations dep* <[redacted]@smceastbay.com>

Sun, Feb 25, 2018 at 8:50 PM

To: alex.garcia <[redacted]@smceastbay.com>

Cc: [redacted]@smceastbay.com, Ruddie Rodriguez <ruddie@smceastbay.com>

We tried multiple times to contact you as i and my office have stated in past.

Hey Ruddie
Please contact alex and update us ASAP with schedule.

Thanks
Bally
[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St- Maintenance Repairs

Mon, Feb 26, 2018 at 8:08 PM

alex garcia

To: Ruddie Rodriguez <ruddie@smceastbay.com>

Ruddie Rodriguez,

I was unavailable to talk to you today when you called because of work. I will contact you between 1pm-2pm tomorrow (Tues 27) so that we can proceed with arrangements. I would like to discuss the scope of work further too but I will call you first.

Also, I was going to address your comments where you state "repairs on 02/02/18 and followed up on 02/07 and 02/08/18." Given how ill-informed they come off about our current circumstance regarding my place of residence, however, I will not address your comments instead.

I will call you tomorrow to arrange dates and times for said "repairs."

Alejandro Garcia

[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St. II 3 Day Notice

Mon, Feb 26, 2018 at 7:18 PM

alex garcia

To: Operations dept <operations@smceastbay.com>

Cc: i.com, Ruddie Rodriguez <ruddie@smceastbay.com>

SMC Operations; Bally Singh; Ruddie Rodriguez:

I did receive Ruddie Rodriguez's message today, but I was unavailable and could not return the call before 5 pm. I will contact Ruddie tomorrow (Tues) between 1 pm-2pm.

By the way, I am certain that you, as well as I, have record of who has contacted who to make repairs to my place of residence. I am certain your effort and your office's effort has not been of "multiple times." I will remind you, nonetheless, that it was I who contacted your office "multiple times" for you to come and make these repairs. In other words, if it was not for me contacting you and drawing attention to the necessary repairs, how else would you know of the necessary repairs in the first place?

Thanks,

Alejandro Garcia

[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St- Maintenance Repairs

Mon, Feb 26, 2018 at 11:02 AM

Ruddie Rodriguez <ruddie@smceastbay.com>

To: _____, _____, _____

lu

Bcc: Operations SMC <operations@smceastbay.com>, Neill Sullivan <neill@sullivanmanagement.com>

Good Morning Alejandro,

Please reply and confirm with your preferred date and time within 48-72 hours from this email for our contractor White Construction Builders Inc. (WCB) to enter the property to make the necessary repairs listed on your City of Oakland Tenant Complaint inspection form.

In addition to this email, I have left a voicemail for you at _____ at 10:27am today, Monday, February 26th. I also emailed you requesting a date and time for the repairs on 02/02/18 and followed up on 02/07 and 02/08/18 and received no response. We are attempting to make all the requested repairs in a timely manner, but are unable to complete them without your cooperation.

You may reach me directly at (510) 882-0879 if you would like to discuss the scope of work assigned to WCB further or if you have any questions.

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smcereits.com



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St- Maintenance Repairs

Tue, Feb 27, 2018 at 1:54 PM

Ruddie Rodriguez <ruddie@smceastbay.com>

To:

Bcc: Neill Sullivan <neill@sullivanmanagement.com>, Operations SMC <operations@smceastbay.com>

Hi Alejandro,

To recap our call from today, Tuesday, February 27th, the following maintenance repairs will be performed by WCB:

1) On Monday, March 5th, the exterior back stairs and window trim will be repaired between the hours of 9am-4:30pm. If time permits, WCB can repair the exterior front stairs as well.

2) On Thursday, March 8th- The bathroom will be repaired- new bathtub wall tiles will be installed. As discussed and agreed, a full day is needed to complete this task. WCB will be onsite between the hours of 9am-4:30pm. Per Ruben from WCB, it is best if the tub is not used for at least 24hrs after the work is complete to ensure that the grout is dry. The loose electrical outlets issue will be repaired this day as well.

The final item pending an appointment date is the interior stairs. Unfortunately, WCB is not available on the weekends at this time. They are available Monday- Friday between the hours of 8am-4:30pm I will schedule an appointment with WCB once you are able to confirm the best date for the repairs. Similar to the bathroom, a full day is needed to complete this task. WCB requires a full day appointment from 8am or 9am to 4:30pm

Lastly, In regards to the broken window in the basement, we will dispatch our vendor SF Glass to measure and install a replacement window. He will contact you directly to schedule a time for the measurements and installation.

Please let me know if you have any questions. I am available via email and phone.

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smerents.com

[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St- Maintenance Repairs

Tue, Mar 13, 2018 at 4:35 PM

Ruddie Rodriguez <ruddie@smceastbay.com>

To: alex.garcia

Cc: Bally Singh <bally@smceastbay.com>, Operations SMC <operations@smceastbay.com>, "

om"

Hi Alejandro,

We would like to set up a date and time for Bally to come to the property with Ruben to inspect the completed and pending repairs. This way everyone is on the same page of what repairs are to be completed by WCB. At that time you may also advise Bally of any additional maintenance repairs and/or requests that were not included on the City of Oakland Tenant Complaint inspection form you provided to our office.

Please email the best date and time for Bally to stop by the property, he is available as early as tomorrow. In addition to this email, I left a voicemail for you today, Tuesday March 13th at 3:02pm

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smcents.com

[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St- Maintenance Repairs

Ruddie Rodriguez <ruddie@smceastbay.com>

Wed, Mar 14, 2018 at 3:49 PM

To: >
Cc: Bally Singh <bally@smceastbay.com>, Operations SMC <operations@smceastbay.com>

Hi Alejandro,

Following up. Please provide the best date and time for Bally to inspect the repairs completed by WCB along with the pending repairs.

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smcrents.com

[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St- Maintenance Repairs

Thu, Mar 15, 2018 at 4:48 PM

Ruddie Rodriguez <ruddie@smceastbay.com>

To:

Cc: Bally Singh <bally@smceastbay.com>, Operations SMC <operations@smceastbay.com>

Hi Alejandro,

Per our phone call today, Thursday, March 15th, Bally and Ruben will meet you at the property on Monday, March 19th at 1pm to inspect the completed and remaining repairs.

The debris in the backyard will be removed tomorrow, Friday March 16th.

Please contact our office if you have any questions.

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smcrents.com

[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

Service Request Created on 02/01/2018 (# 25227)

5 messages

No Reply <noreply@propertyware.com>
Reply-To: maintenance@smceastbay.com
To:
Cc: feedback@smceastbay.com

Thu, Feb 1, 2018 at 4:59 PM

Sullivan Management

Tenant Notification

Re: Service Request Created on 02/01/2018

Dear Alejandro Garcia,

This notification is to provide confirmation that we have received your service request. If this is a request that requires immediate attention (i.e. flooding, leaks, mold, plumbing issues, etc.), call the emergency maintenance line at (510) 225-9161 ext. 1. Otherwise, someone will be contacting you to schedule an appointment for an inspection and/or repairs. If you would like to follow up on this request, reply to this email or call (510) 225-9161 ext. 1.

Please confirm the details below to ensure you are contacted promptly:

Lease: Garcia - Esquivel

Tenant Contact: Alejandro Garcia

Service Request Number: 25227

Specific Location: all stairways

Preferred Time to Enter:

Description: To whom it may concern: I am notifying that for this month I will only pay for a portion of rent at a time until I have my stairway properly fixed (up to code). My visitors, family, including myself, have slipped, fallen, or hurt themselves off of the stairways all over my unit. Front steps outside my entrance door: You never fixed the problem, you only placed a board over the existing board and made the steps higher. People walking up stairs still trip off the height of stairs. The stairway inside: Also never been fixed. There are nailed clips that cover-up what would have been exposed edges of the stairway's steps. These clips wear and tear quickly that eventually, the exposed areas and exposed nails hurt/cut into people walking up or down the stairway, especially if barefooted. I have drawn attention this problem to your personnel before but they say they do not have the resources to actually fix it, so they only nail a new clip only to have the problem re-occur itself again. The stairway to the backyard: A similar problem to that of the front. Some boards have been replaced with existing boards and other boards are not leveled properly. Walking up or down those steps do not feel safe, as some are higher or unlevelled than other steps. People have also slipped and/or fell. I have paid my monthly rent steadily, but even when either you or I have erred you have always been quick to place an eviction notice on my door. I will not be surprised to see this again, especially because you do not make the effort to communicate well with tenants prior to placing eviction notices. The stairway to my apartment has never been properly fixed. I have placed numerous request regarding this, but you do not provide your maintenance people with the proper resources to actually correct the problems. You only provide them with minimum resources that only bandage the problem until the issue repeats itself again. I will provide \$200.00 rent today, and plan to progress my monthly due amount of rent until I am assured that the problem will not only be corrected (not bandaged) but also see work the proper work actually being conducted. I apologize, in advance, for any inconveniences. But these problems too, have been inconvenienced for me too ever since I have lived in this unit. I just can not tolerate them any longer. I can provide pictures/images of these stairways if you prefer I upload them here. Sincerely, Alejandro Garcia

If corrections to any of the information above are needed, please log onto your tenant portal: Portal Login

Thank you.



Ruddie Rodriguez <rুদ্ধie@smceastbay.com>
To:
Cc: Operations SMC <operations@smceastbay.com>

Fri, Feb 2, 2018 at 1:58 PM

Good Afternoon Alejandro,

The interior stairs were inspected on 09/21/18 by Bally, our operations manager, who assigned our contractor White Construction Builder's Inc. to make the necessary repairs. The repairs were completed by our contractor on 09/22/17 and a notification of the service request being closed upon completion was sent to you via email (wo #23689) Our office has not received any maintenance requests regarding the the interior stairs in the property since then. Additionally, our office was not informed of any concerns regarding the exterior front steps or the exterior back steps.

Please note that unreported maintenance repairs cannot be used as a means to withhold rent. If you have any maintenance requests, please make sure you submit them via the tenant portal or by calling the maintenance line so we may address them.

If you like, you may grant Bally permission to enter today, February 2nd so he may inspect and assess your maintenance concerns. We can also have the necessary repairs scheduled and completed tomorrow. Please let me know if you have a different date in mind for the inspection/ repairs.

Please contact our office if you have any questions or would like to further discuss.

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smcrents.com

[Quoted text hidden]

Ruddie Rodriguez <rুদ্ধie@smceastbay.com>
To:
Cc: Operations SMC <operations@smceastbay.com>

Wed, Feb 7, 2018 at 4:26 PM

Good Afternoon Alejandro,

Following Bally's inspection on Saturday, February 3rd, we have assigned our contractor White Construction Builders (WCB) to replace the interior and exterior stairs. The scope of work requires two days for the repairs to be complete. Please reply and confirm the best date and time for the repairs to begin so we may schedule an appointment with Ruben from WCB.

Please email or call if you have any questions.

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smcrents.com

[Quoted text hidden]

Ruddie Rodriguez <rুদ্ধie@smceastbay.com>
To: om
Cc: Operations SMC <operations@smceastbay.com>

Thu, Feb 8, 2018 at 5:33 PM

Hi Alejandro,

Following up on your request. Our office has not been contacted or advised of a date and time for the repairs to be made. Please email or call me directly at (510) 882-087 to schedule a time.

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smcrents.com

[Quoted text hidden]

Ruddie Rodriguez <rduddie@smceastbay.com>
To: .
Cc: Operations SMC <operations@smceastbay.com>

Thu, Feb 8, 2018 at 5:34 PM

Apologies for the error- my phone # is (510) 882-0879

Thank you,
Ruddie Rodriguez
Property Manager
Ph: (510) 882-0879
www.smcrents.com

[Quoted text hidden]



Ruddie Rodriguez <ruddie@smceastbay.com>

1070 10th St- WO# 23689

2 messages

Ruddie Rodriguez <ruddie@smceastbay.com>

Wed, Sep 13, 2017 at 12:35 PM

To: u

Hi Alejandro,

Can you please provide a date and time for our operations manager, Bally, to go and inspect the stairs.

Feel free to email or call me directly at (510) 682-0879

I've tried calling you a few time but the call doesn't go through

Thank you,
Ruddie Rodriguez
Property Manager
www.smcrents.com

Ruddie Rodriguez <ruddie@smceastbay.com>

Wed, Sep 20, 2017 at 4:10 PM

To:

Cc: Maintenance SMC <maintenance@smceastbay.com>

Hi Alejandro,

Per our phone conversation today, Bally will go inspect the stairs and bathroom tomorrow, September 21st at 1pm.

Thank you,
Ruddie Rodriguez
Property Manager
www.smcrents.com

[Quoted text hidden]

1068-70 10 th st Oakland

6 messages

'Ruben Cedano' via Maintenance Group <maintenancegroup@smceastbay.com>
Reply-To: Ruben Cedano <ruben.cedano@yahoo.com>
To: Maintenance SMC <maintenance@smceastbay.com>

Fri, Nov 16, 2018 at 4:42 PM

Appointment tomorrow 11/17/2018 Saturday

We need Remove drywall damage and install new,tape,texture and paint.

10:00 am
White construction builders inc.

Alex tenant

Sent from Yahoo Mail for iPhone

'Ruben Cedano' via Maintenance Group <maintenancegroup@smceastbay.com>
Reply-To: Ruben Cedano <ruben.cedano@yahoo.com>
To: Maintenance SMC <maintenance@smceastbay.com>

Sat, Nov 17, 2018 at 10:54 AM

Alex cancel my appointment. Today 10 am. He said have family visit and we can do the job.
Bally,we loose the time I need pay ,usually we don't work Saturday. Now I need pay me guys.
That the problem we never finish inside the house.

Sent from Yahoo Mail for iPhone

[Quoted text hidden]

Bally Singh <bally@smceastbay.com>
To:

Sat, Nov 17, 2018 at 10:56 AM

FYI

Begin forwarded message:

[Quoted text hidden]

Bally Singh <bally@smceastbay.com>
To:
Cc: ruben.cedano@yahoo.com

Sat, Nov 17, 2018 at 3:32 PM

Dear Barbara
See below

FYI
This is not first time, he denied the entry / repairs. Ruben and other over 16 handyman's are fed up on his excuses.

This is being going on over few years. I want you to be aware off. I have over 2000 tenants and we follow our policies equally on all.

20

3 Safety and urgent issues we take care of ASAP (less than within 24 hours)

Please advice on this case, i know you are very experienced handling these kind of issues as you deal with many of these cases everyday

I hope you provide a justice and adjudicate the case accordingly.

Thanks

Begin forwarded message:

From: "Ruben Cedano" via Maintenance Group" <maintenancegroup@smceastbay.com>
Date: November 17, 2018 at 10:54:27 AM PST
To: Maintenance SMC <maintenance@smceastbay.com>
Subject: Re: 1068-70 10 th st Oakland
Reply-To: Ruben Cedano <ruben.cedano@yahoo.com>

[Quoted text hidden]

Cohen, Barbara >
To: Bally Singh <bally@smceastbay.com>
Cc: "ruben.cedano@yahoo.com" <ruben.cedano@yahoo.com>

Sun, Nov 18, 2018 at 12:03 PM

Mr Singh- you may not contact me outside the Hearing other than what I asked for.

Get Outlook for iOS

From: Bally Singh <bally@smceastbay.com>
Sent: Saturday, November 17, 2018 3:33 PM
To: Cohen, Barbara
Cc: ruben.cedano@yahoo.com
Subject: Fwd: 1068-70 10 th st Oakland

[Quoted text hidden]

Bally Singh <bally@smceastbay.com>
To: "Cohen, Barbara"
Cc: "ruben.cedano@yahoo.com" <ruben.cedano@yahoo.com>

Sun, Nov 18, 2018 at 12:05 PM

Got it.
Have a great weekend

[Quoted text hidden]

21

Appeal Response for Case # T17-0221

Dear Rent Board:

I, Jennifer Nguyen, owner of 4016 Kansas Street respectfully asks you to affirm the decision rendered by Hearing Officer Stephen Kasdin on September 8, 2017.

I have complied with proper notification requirements for rent increase under banking justification for my tenant, Mr. Michael Kauffman.

I will not be able to attend the appeal hearing scheduled for June 20, 2019 but please take this letter as my testimony in favor of upholding the rightful hearing officer's decision for case # T17-0221.

Additionally, I will be requesting a Compliance Hearing from the Rent Adjustment Program office to assist my tenant and myself to calculate the underpayments that I have incurred since April 1, 2017 the effective date of the justified rent increase,

I thank you in advance for your objective and fair decision for this appeal hearing case.

Sincerely,



Jennifer Nguyen

Oakland Property Owner

2019 JUN -3 AM 11:17

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

000074