

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
PANEL MEETING**

SEPTEMBER 19, 2019

7:00 P.M.

**CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. APPEALS*
 - a. T18-0400 Abernathy v. Best Bay Apartments
 - b. T18-0301 Lowery v. Abdul
T18-0325 Lowery v. Abdulla
 - c. T18-0055, Vargas et al. v. 3000 Nicol Avenue Properties LLC
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, Cantonese, 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,

* Staff recommendation memos for the appeals will be available at the Rent Program and the Clerk's office at least 72 hours prior to the meeting pursuant to O.M.C. 2.20.080.C and 2.20.090.

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

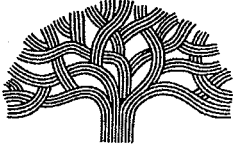
Case No.: T18-0400
Case Name: Abernathy v. Best Bay Apartments
Property Address: 2701 High St., #213, Oakland, CA
Parties: Dante Abernathy (Tenant)
A. Russell Taplin (Owner Representative)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	July 27, 2018
Owner Response filed	November 29, 2018
Hearing Decision mailed	March 21, 2019
Tenant Appeal filed	April 10, 2019

T18-0400 RC/ECL

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 2018 JUL 27 PM 4:05
	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 <i>Dante Abernathy</i>	Rental Address (with zip code) <i>2701 High St #213 Oakland, CA 94619</i>	Telephone: E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s)	Mailing Address (with zip code)	Telephone: Email:
Property Manager or Management Co. (if applicable) <i>Best Bay Apartments</i>	Mailing Address (with zip code) <i>2744 E 11th St Oakland, CA 94601</i>	Telephone: Email:

Number of units on the property: _____

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

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

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

<input 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 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.

<input checked="" type="checkbox"/>	(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.)
<input checked="" type="checkbox"/>	(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).
<input type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input checked="" type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input type="checkbox"/>	(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)
<input type="checkbox"/>	(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)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input checked="" type="checkbox"/>	(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).
<input type="checkbox"/>	(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)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(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: 8-27-14 Initial Rent: \$ 1363.00 /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.

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		
7-31-17	10-1-17	\$ 1363.00	\$ 1698.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6-4-18	8-1-18	\$ 1698.00	\$ 1998.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" 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	<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? Yes No
Have you lost services originally provided by the owner or have the conditions changed? Yes No
Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

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

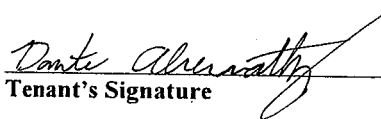
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

7-25-18

Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File

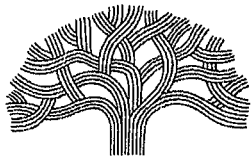
This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. 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): _____



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**
P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp.

2018 NOV 29 PM 5:38

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 18- 0400

Your Name <i>BEST Bay Apartments</i>	Complete Address (with zip code) <i>2244 E 11th Street Oakland, Ca 94601</i>	Telephone: _____ Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: _____ Email: _____
Tenant(s) Name(s) <i>DAVID ABERNATHY</i>	Complete Address (with zip code) <i>2701 High Street #213 Oakland, CA 94619</i>	
Property Address (If the property has more than one address, list all addresses) _____		Total number of units on property <i>32</i>

Have you paid for your Oakland Business License? Yes No Lic. Number: 00148590
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 032 2058 098
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Date on which you acquired the building: 8/12/2011.

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

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

EXEMPTION: THIS BUILDING IS EXEMPT See Page 3
I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition.

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent
SEE ATTACHED CERTIFICATE OF EXEMPTION

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

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

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

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

The tenant moved into the rental unit on _____.

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

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

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

Is the tenant current on the rent? Yes _____ No _____

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
		\$	\$	<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

III. EXEMPTION

CITY OF OAKLAND
RENT ADJUSTMENT
2008.05.29 11:31:00

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

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

- 1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
- 2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
- 3. Was the prior tenant evicted for cause?
- 4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
- 5. Is the unit a single family dwelling or condominium that can be sold separately?
- 6. Did the petitioning tenant have roommates when he/she moved in?
- 7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

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

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

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

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

The 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.

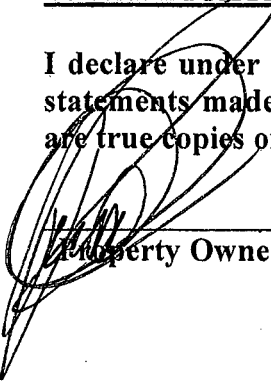
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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



Property Owner's Signature

11-29-2018
Date

IMPORTANT INFORMATION:

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2018 NOV 29 PM 5:38

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2018 NOV 29 PM 5:38



CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CALIFORNIA 94612-0243

Community and Economic Development Agency
Rent Adjustment Program

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

NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM

- The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Chapter 8.22 of the Oakland Municipal Code) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.
- You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing.
- If there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office or online at <http://www.oaklandnet.com/government/hcd/rentboard/tenant.html>
- If you contest a rent increase, you must pay your rent, with the contested increase, until you file a petition. After you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has not been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.
- Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

Oakland charges landlords a Rent Program Service Fee of \$30 per unit per year. If the landlord pays the fee on time, the landlord is entitled to get half of the fee (\$15) per unit from you. The \$15 you pay for the annual fee is not part of the rent.

The Nuisance Eviction Ordinance (O.M.C. Chapter 8.23) may require that a tenant who commits or permits certain illegal acts in the Rental Unit or on the land on which the unit is located or in the common areas of the rental complex **must** be evicted. If the owner does not evict, the City Attorney may do so.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or ~~IS NOT~~ permitted in Unit 213, the unit you plan to rent.
- Smoking (circle one) IS or ~~IS NOT~~ permitted in other units of your building. (If both smoking and non-smoking units exist in the tenant's building, attach a list of units in which smoking is permitted.)
- Smoking is ~~PROHIBITED~~ in all common areas, both indoors and outdoors.
- There (circle one) IS or ~~IS NOT~~ a designated outdoor smoking area. It is located at 2701 High Street

I received a copy of this notice on 8/28/2014

JKE	SC	DVA	ELK
-----	----	-----	-----

此份屋崙 (奧克蘭) 市租客權利通知書附有中文版本。請致電 (510) 238-3721 索取副本。

La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

Baun Thoang Baun quyean loi cuua ngoooi thuea trong Oakland nay cuong cou baeng tieang Vieat. Nea cou moat baun sao, xin goi (510) 238-3721.

CITY OF OAKLAND



2017 SEP 28 PM 4:40

2018 NOV 29 PM 5:38

250 FRANK H. OGAWA PLAZA, SUITE 5313
P.O. BOX 70243, OAKLAND, CA 94612-2043

Housing and Community Development Agency
Rent Adjustment Program

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

CERTIFICATE OF EXEMPTION
O.M.C. § 8.22.030(B)

Pursuant to the Final Agency Decision in the City of Oakland Rent Adjustment Program (Case No. T12-0112, Williams v. Best Bay Apts), the residential rental units described below are permanently exempt from application of the City of Oakland Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22, Article 1.

Situs Address: 2701 High Street, No. 204
Oakland, CA

Alameda County Assessor Parcel No. 032-2058-098-00

Date: August 16, 2013



Connie Taylor
Program Manager
Rent Adjustment Program
City of Oakland

250 FRANK H. OGAWA PLAZA, SUITE 5313
P. O. BOX 70243
OAKLAND, CALIFORNIA 94612-0243

Housing and Community Development Department
Rent Adjustment Program

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

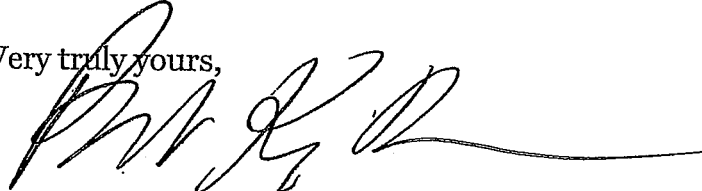
August 16, 2013

Russell Taplin
Best Bay Apartments
160 Franklin Street, Ste. 300
Oakland, CA 94607

Re: T12-0112, Williams v. Best Bay Apts.

Dear Mr. Taplin:

Enclosed please find a Certificate of Exemption in the above-captioned case.

Very truly yours,

BARBARA KONG-BROWN
Hearing Officer
Rent Adjustment Program



250 FRANK OGAWA PLAZA, OAKLAND, CA 94612

CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA RELAY 711

HEARING DECISION

CASE NUMBERS: T18-0400, Abernathy v. Best Bay Apts.
T18-0424, Castillo v. Best Bay Apts.

PROPERTY ADDRESS: 2701 High St., Units 205 & 213, Oakland, CA

DATE OF HEARING: February 21, 2019

DATE OF DECISION: March 21, 2019

APPEARANCES: Servio Castillo (Tenant, Unit #205)
Sarai Gordon (Tenant, Unit #205)
Dante Abernathy (Tenant, Unit #213)
A. Russell Taplin (Owner Representative)

SUMMARY OF DECISION

The tenants' petitions are dismissed.

CONTENTIONS OF THE PARTIES

Tenant Abernathy filed a petition which alleges that a current proposed rent increase from \$1,698 to \$1,998 per month, effective August 1, 2018, and a prior rent increase, exceed the CPI Adjustment and are unjustified or are greater than 10%; that the current proposed rent increase would exceed an overall increase of 30% in 5 years; that the current proposed rent increase is the second increase in a 12-month period; and that he has never received the form Notice to Tenants (RAP Notice).

Tenant Castillo filed a petition which alleges that a current proposed rent increase from \$1,698 to \$2,098 per month, effective October 1, 2018, and prior rent increases, exceed the CPI Adjustment and are unjustified or are greater than 10%; that the current proposed rent increase would exceed an overall increase of 30% in 5 years; that he received a rent increase notice before the property owner received approval from the Rent Adjustment Program; that the current

000015

proposed rent increase is the second increase in a 12-month period; that he has never received the form Notice to Tenants (RAP Notice); and that the rent increase notice(s) was (were) not given to him in compliance with State law.

The owner filed responses to the petitions, which allege that the tenants' units are exempt from the Rent Adjustment Ordinance as being "newly constructed."

THE PRIMARY ISSUE

Are the subject rental units exempt from the Rent Adjustment Program as "New Construction?"

EVIDENCE

The owner's representative testified that he attempted to obtain a Certificate of Occupancy for the subject building from the City Building Services Division. He was told by Timothy Low, who was the Inspections Manager for that agency, that a Certificate of Occupancy was not available. The owner submitted a certified copy of a City of Oakland printout entitled "Update / Query Project Information regarding 2701 High St. in Oakland."¹ This document states, in part: "Project Descr: New 32 Unit Apt Bldg."

This document also states that a building permit for this project was "finaled" on September 15, 1989. This document also contains a photocopy of Mr. Low's business card, under which Mr. Low wrote, above his signature: "We can not locate the C. O. at this time. Please accept this as the final document."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Oakland Rent Adjustment Ordinance² states that dwelling units are not "covered units" under the Ordinance if such units "were newly constructed and received a certificate of occupancy on or after January 1, 1983." The dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.

Official Notice is taken of Case No. T05-0110, et al., Peacock, et al. v. Vulcan Props. LLP, in which tenants filed petitions contesting rent increases. The owners filed a response which alleged that the subject units were newly constructed, and therefore exempt from the Rent Adjustment Ordinance. The owner's agent testified that he was unable to obtain a Certificate of Occupancy for the units. However, the owner did submit copies of "finaled" building permits for the subject units.

At the Hearing in that case, Ray Derania, who was then the City Code Compliance Manager, testified that a "finalized" building permit is the practical equivalent of a Certificate of Occupancy. The Hearing Officer in that case found that the units were exempt as new construction, and this finding was upheld on appeal.

¹ Exhibit No. 1, which was admitted into evidence without objection.

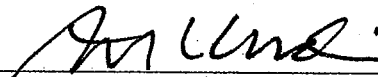
² O.M.C. Section 8.22.030(A)(5)

The subject rental units meet the legal requirement. It is found that the subject units are exempt from the Rent Adjustment Ordinance on the ground that they are newly constructed. It is therefore not necessary to consider other issues in this case.

ORDER

1. Petitions T18-0400 and T18-0424 are dismissed.
2. The subject units are exempt from the Rent Adjustment Ordinance.
3. Certificates of Exemption for the subject rental units will be issued upon this Decision becoming final.
4. **Right to Appeal:** **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: March 21, 2019



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

000017

PROOF OF SERVICE
Case Number T18-0400

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

Best Bay Apartments
2744 East 11th Street
Oakland, CA 94601

Tenant

Dante Abernathy
2701 High Street #213
Oakland, CA 94619

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 **March 21, 2019** in Oakland, CA.

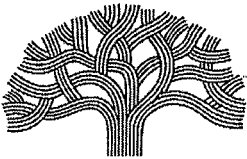


Nia Johnson

Oakland Rent Adjustment Program

000018

PC/SK

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. 2019 APR 10 PM 4:32
		<u>APPEAL</u>

Appellant's Name Dante Abernathy		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 2701 High St #213			
Appellant's Mailing Address (For receipt of notices) 2701 High St #213		Case Number T18-0400	
		Date of Decision appealed 4-10-19	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.


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

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

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

I declare under penalty of perjury under the laws of the State of California that on _____, 20____, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Best Bay Apartments
<u>Address</u>	2744 E 11 th St #
<u>City, State Zip</u>	Oakland, CA 94601
<u>Name</u>	Rent Adjustment Program
<u>Address</u>	250 Frank H. Ogawa Plaza
<u>City, State Zip</u>	Oakland, CA 94612

	4-10-19
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.

Date: 4/10/19

Dante Abernathy
2701 High St #213 Oakland, CA 94619
(510) 712-8386
danteabernathy@gmail.com

Rent Adjustment Program
250 Frank H Ogawa Plaza

Appeal Letter for Petition of Rent Increase Hearing Decision

Dear Mr. Costa,

I have been living in my residence for four going on 5 years now. In that time I've seen old and new residents come and go, and in this time I hadn't considered the stress some of the tenants who had been forced to leave must have been going through. I've had the pleasure of living among some wonderful people and I find it a shame that I haven't been able to meet them all. When I first started the petition process one of my neighbors came to me in tears about her own struggle with the property managers of our building and I wish I could have done more to help her before she had to move out.

I'm filing this appeal because it is my opinion that if Mr. Taplin wants to increase the rent of any unit in this building while saying he's exempt from the rent adjustment program due to "new construction" then his property company needs to provide specific reasons for rent increases, respond to maintenance requests in a timelier manner, and quit bullying his residents. In the time I've lived here it has taken 4 fours to get a functioning oven despite numerous requests, I've had rent payments go missing causing me to be harassed with three day notices and outstanding balance notices, despite having receipts, and my calls and messages have gone unanswered regarding necessary repairs and maintenance required for the post office to deliver our mail. They need to remove the rodents from garage, fix the call box that has been out of service for years, and fix the persistent plumbing issues that have been a problem in mine and neighbors' units.

I filed my petition in July of 2018 and have gone through every legal course of action presented to me to handle the situation amicably and I've been gaslit and dismissed during every meeting with Best Bay Apartments. Thank you for taking the tie to read through this appeal on behalf of myself and the other residents of Best Bay Apartments also fighting against unfair housing policies in Oakland.

Sincerely,

Dante Abernathy

000022

CHRONOLOGICAL CASE REPORT

Consolidated Case Nos.: T18-0301, Lowery v. Abdullah
T18-0325, Lowery v. Abdullah

Property Address: 8728 International Blvd., Unit 'A', Oakland, CA

Parties: Domonique Lowery (Tenant)
Xavier Johnson (Tenant Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petitions filed	June 5 th & 21 st , 2018
Owner Response filed	February 11, 2019
Hearing Decision mailed	April 11, 2019
Owner Appeal filed	May 1, 2019

T18-0301 KM/SK

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. RECEIVED JUN 05 2018 TENANT PROGRAM RENT ADJUSTMENT PROGRAM OAKLAND
--	--	---

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 Domonique Lowery	Rental Address (with zip code) 8728 International Blvd Apt# A Oakland ca94621	Telephone: E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) Haneff abdul	Mailing Address (with zip code) 8728 International Blvd Oakland ca 94621(down stairs unit)	Telephone: Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 10

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

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

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

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input 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.

(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.)

(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.

(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)

(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)

(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.

(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 illegally 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: June 20 th 2016 Initial Rent: \$ 550.00 /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.

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		
05/31/2018	08/01/2018	\$ 550.00	\$ 900.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" 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	<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?

Yes No

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

Yes No

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

Yes No

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

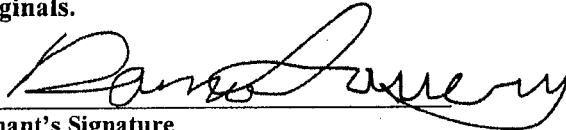
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

06/04/2018

Date

[Empty rectangular box]

[Empty rectangular box]

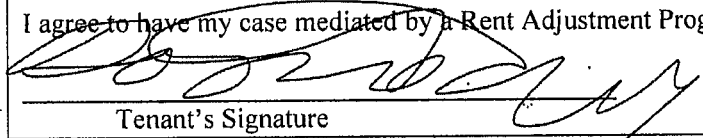
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

06/04/2018

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): City of Oakland Ray Leon

T18-0325 KM/SK

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	2018 For date stamp JUN 21 PM 12:55
	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 Dominique Lowery	Rental Address (with zip code) 8728 International Blvd, Apt. A Oakland, CA 94621	Telephone:
		E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) Haneff and Stephanie Abdulla	Mailing Address (with zip code) 8728 International Blvd, Oakland, CA 94621	Telephone:
		Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 10

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

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

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

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

X	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
X	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
X	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
X	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
X	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(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: June 20, 2016 Initial Rent: \$ 550.00 /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.

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		
5/ 31 / 2018	08/01/2018	\$ 550.00	\$ 900.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" 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	<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:
Filed on June 6, 2018 but not yet given a case number.

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

Are you being charged for services originally paid by the owner? Yes No
Have you lost services originally provided by the owner or have the conditions changed? Yes No
Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

06-21-18

Date

Addendum A- Decrease in Services

Dominique Lowery
8728 International Boulevard
Oakland, CA 95624

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
Oven doesn't work	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	20%
Refrigerator does work.	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	20%
Bathroom door is broken	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	15%
Electrical switch or receptacle defective	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	
Lights not working in the bathroom, and kitchen	November 2017	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.		20%

000031

Addendum A- Decrease in Services

Dominique Lowery
8728 International Boulevard
Oakland, CA 95624

Walls need new paint	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	30%
Lights not working in the hallways, bathroom, and kitchen	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	40%
Bathroom	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	20%
Heater not working	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	50%
Stairways broken and uneven in the back.	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	35%
Roach infestation	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	50%

000032

Addendum A- Decrease in Services

Dominique Lowery
8728 International Boulevard
Oakland, CA 95624

Rat infestation	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	50%
No smoke detectors	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	40%
No carbon monoxide alarms	June 2016	Landlord has known about the issue since moving in and has been alerted of the issue in person and in writing various times.	N/A	40%

000033



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
 P.O. Box 70243
 Oakland, CA 94612-0243
 (510) 238-3721

For date stamp.

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T -

RECEIVED
 CITY OF OAKLAND
 RENT ADJUSTMENT PROGRAM
 2019 FEB 11 PM 12:31

Your Name <i>Haneef Abdullah</i>	Complete Address (with zip code) <i>8728 International Blvd Oakland, CA 94621</i>	Telephone: _____ Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: _____ Email: _____
Tenant(s) Name(s) <i>Demique Loney</i>	Complete Address (with zip code) <i>8728 International Blvd Oakland, CA 94621</i>	
Property Address (If the property has more than one address, list all addresses) <i>8724 - 8728 International Blvd</i>		Total number of units on property <i>2</i>

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

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: _____
 The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: *3/1/2000*

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

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

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

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

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

The tenant moved into the rental unit on 6-1-2016.

The tenant's initial rent including all services provided was: \$ 550~~00~~ / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?

Yes No I don't know

If yes, on what date was the Notice first given? 6-1-2018

It was a new contract agreement with her and her boyfriend on the lease.

Is the tenant current on the rent? Yes No

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u> <i>Contract Change</i>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
<u>6-1-2018</u>	<u>9-1-2018</u>	\$ <u>600</u>	\$ <u>900</u>	<input type="checkbox"/> Yes <input checked="" 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

III. EXEMPTION

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

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

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the petitioning tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

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

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

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

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

The 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.

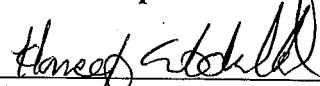
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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



Property Owner's Signature

2-8-19

Date

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

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

File Review

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

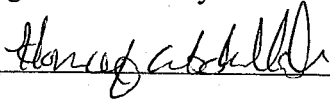
Mediation Program

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

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

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

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



Property Owner's Signature

2-8-19

Date

CITY OF OAKLAND



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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBERS: T18-0301, Lowery v. Abdul
T18-0325, Lowery v. Abdulla

PROPERTY ADDRESS: 8728 International Blvd, Unit A
Oakland, CA

DATES OF HEARING: January 8, 2019
February 13, 2019

DATE OF DECISION: April 1, 2019

APPEARANCES:
Both Days: Domonique Lowery,
Xavier Johnson, Tenant Representative

January 8, 2019: Ronell Jonson, Tenant Witness

SUMMARY OF DECISION

The Tenant's petition is granted.

INTRODUCTION

The tenant filed the first petition on June 5, 2018, which contests a rent increase from \$550.00 to \$900.00, effective August 1, 2018, on the following grounds:

- Rent Increase Exceeds CPI¹ or more than 10%;

¹ Consumer Price Index

- No Concurrent RAP Notice;
- No RAP Notice at Inception or 6 Months Prior;
- There is a current health, safety, fire or building code violation in my unit, or there are serious problems with the conditions of the unit because the owner failed to do requested repair and maintenance; and
- The owner is providing me with fewer housing services than I received previously.

Subsequently, the tenant filed the petition on June 21, 2018, which contests a rent increase effective August 1, 2018, on the following grounds:

- Rent Increase Exceeds CPI² or more than 10%;
- No Pre-Approval of Increase;
- No Concurrent RAP Notice;
- No RAP Notice at Inception or 6 Months Prior;
- Rent Increase Notice Violates State Law;
- There is a current health, safety, fire or building code violation in my unit, or there are serious problems with the conditions of the unit because the owner failed to do requested repair and maintenance; and
- The owner is providing me with fewer housing services than I received previously.

The owner did not file a response to either petition. Further, the owner did not attend the either hearing and was not represented at either hearing.

During the first Hearing, it was determined that the owner had revoked the authority of the owner's local representative to act on her behalf. At that juncture, the Hearing was continued to February 13, 2018 to provide notice to the property owner at her address in the state of Virginia.

ISSUE(S) PRESENTED

1. When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?

² Consumer Price Index

2. Has the tenant suffered decreased housing services?
3. If so, what, if any, restitution is owed to the tenant and how does that impact the rent?

EVIDENCE

Owner Notice

The tenant's representative alleged that the address in Exhibit A, which shows a different address for the property owner than the tenant petition was the proper address to use for service of the Notice of Petition and Hearing because over the course of the performance of the lease, the owner had been using the address provided in the tenant's petition.

Additionally, the tenant confirmed that the owner's representative was aware of the Hearing and had actual notice.

Exhibits A, and C through W, were admitted without objection. Exhibit B was withdrawn by the tenant.³

Rental History

The tenant moved in to the subject unit in June of 2016 at an initial rent of \$550.00 per month⁴. When she signed a lease at the inception of her tenancy, she did not receive a RAP Notice. The tenant's rent was increased to \$600.00, per month, in March 2017 and she continues to pay that amount.

The tenant testified that she rents one of several rooms. The other tenants have separate leases for separate rooms. In the part where she lives, there used to be ten separate tenants, now there are only three. There is a one-bedroom downstairs that is rented out on Airbnb.

On July 11, 2018, the tenant received an amendment to her lease agreement, which purported to increase her rent from \$600.00 to \$900.00, effective August

³ The Exhibits were admitted at the second hearing.

⁴ Exhibit A. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection.

1, 2018.⁵ She did not receive a RAP Notice with the July 11, 2018, Notice of Rent Increase.

Decreased Housing Services

The tenant testified that all the conditions listed in the petition started at the inception of her tenancy and that she reported them, at that time, to the property manager. At the inception of her tenancy, the property manager told her he would repair all the things listed in her petition.

Oven

The tenant testified that the inside of the oven is filled with newspaper. The only part of the range that works is the burners. She notified the property owner's representative when she moved in. She's been unable to use the oven for the entire tenancy.

Refrigerator

The tenant testified that although there was a refrigerator when she moved in it did not keep food cold. She requested that it be replaced but it was not. The tenant further testified that she and the other residents each obtained their own refrigerators and heaters, which according to the property manager, increased the utility costs.

Heater

The tenant testified that the heater has not worked in the subject unit since the inception of her tenancy. She also testified that at some point she obtained a personal refrigerator and heater.

Infestation

The tenant provided a report a vector control report.⁶ The report detailed the measures necessary to eradicate the German Cockroaches, Rodents, and Bed Bugs. The report indicated that it was sent to the property owner, Stephanie Abdullah, at her Virginia address. The Alameda County Vector Control Letter was addressed to the property owner in the state of Virginia. Additionally, the

⁵ Exhibit C.

⁶ Exhibit G.

code enforcement history, order and appeal indicated that the prior contact, Haneef Abdulla, no longer had authority to act on the property owner's behalf as of September 12, 2018.⁷

The tenant testified that there was an infestation at the inception of their tenancy.

Smoke and Carbon Monoxide detectors

The tenant testified that she reported the lack of smoke detectors and carbon monoxide detectors to the owner's local property manager at the inception of her tenancy, in June 2016. She also testified that in January 2019, smoke detectors were installed but not carbon monoxide detectors.

Bathroom

The tenant testified that the bathroom door is off the hinges and you are unable to have privacy in the bathroom. The bathroom door was working and on the hinges when she moved in. The door came off the hinges when another tenant broke the sink and the door. The tenant testified that she notified the property manager, almost immediately, when it came off the hinges. The tenant was unable to recall when the incident happened, but indicated that by September 2016 the property manager was aware of the problem.

Additionally, the tenant testified that the toilet is "off the hinges" as well and needs to be repaired.

Electrical/Lights

The tenant testified that there were no lightbulbs and the switches did not have covers; wires could be seen inside the wall. The lights to enter the kitchen and the bathroom did not work. Most of the switches were broken when she moved into the unit. She requested repairs at the inception of her tenancy.

At the inception of her tenancy, there was a light in the hallways that did work. However, the property manager removed the one working lightbulb after telling the tenants that the utility bill was too much. The PG&E is not billed in the tenant's name. The light was in the common area of the unit. She estimated that the light bulb was taken out in November 2018.

⁷ Exhibit H, page T-40

On the second day of Hearing, the tenant testified that the property owner had started making repairs in January 2019. The kitchen lights were repaired, the walls were painted, the hallway lights were repaired. The bathroom door is back on the hinges and the bathroom lights have been repaired. The stairway was painted and smoke detectors were installed, but carbon monoxide detectors were not.

However, she testified that the following had not been repaired or replaced: the oven, the refrigerator, the heater, the toilet, the carbon monoxide detectors, and that the infestation had not been abated. The tenant testified that to her knowledge the Notice of Violation has not been abated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy⁸ and together with any notice of rent increase or change in the terms of a tenancy.⁹

The tenant's testimony that she was not given a copy of the RAP Notice when she signed the lease is undisputed. Moreover, the testimony of the tenant that she did not received a RAP notice with the rent increase is credited. Accordingly, it is found that the tenant has not given written notice of the RAP Program.

What is the allowable rent?

The Rent Adjustment Ordinance requires an owner to serve a RAP Notice at the start of a tenancy¹⁰ and together with any notice of rent increase or change in any term of the tenancy.¹¹ An owner may cure the failure to give notice at the start of the tenancy. However, a notice of rent increase is not valid if the effective date of increase is less than six months after a tenant first receives the required RAP notice.¹²

⁸ O.M.C. § 8.22.060(A)

⁹ O.M.C. § 8.22.070(H)(1)(A)

¹⁰ O.M.C. Section 8.22.060(A)

¹¹ O.M.C. Section 8.22.070(H)(1)(A)

¹² O.M.C. Section 8.22.060(C)

The owner did not serve the tenant a RAP Notice either at the inception of her tenancy or with the notice of rent increase, effective August 1, 2018. Therefore, the rent increase given to the tenant is invalid because the tenant has not been given the RAP Notice. Accordingly, the tenant's rent is \$550.00 per month. As the tenant, has been paying more than that amount of rent, restitution is due.

Has the tenant suffered decreased housing services?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹³ and may be corrected by a rent adjustment.¹⁴ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is also a time limit for claiming decreased housing services. If the decreased service is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within 90 days after of whichever is later: (1) the date the tenant is noticed or first becomes aware of the decreased housing service; or (2) the date the tenant first receives the RAP Notice.

If the decreased housing service is for a condition that is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for 90 days before the petition is filed.¹⁵ Since the evidence established that the tenant did receive the RAP notice at the inception of her tenancy, the tenant is limited to restitution for 90 days before her petition was filed.

For a tenant's claim for decreased housing services to be granted, an owner must have notice of a problem and a reasonable opportunity to make needed repairs.

Oven

The evidence of that the oven in the subject unit is inoperable and has been so since the inception of the tenancy is without contradiction. Moreover, the lack of oven is a violation of the housing of building code which affects the habitability of the tenant's unit. Thus, the tenant is entitled to a 25% rent credit from June

¹³ O.M.C. § 8.22.070(F)

¹⁴ O.M.C. § 8.22.110(E)

¹⁵ O.M.C. § 8.22.090(A)(3)

2016 through April 30, 2019. Additionally, she is entitled to an ongoing rent credit, in the amount of 25%, until the owner has repaired or replaced the oven.

Refrigerator

The evidence of that the refrigerator in the subject unit is inoperable and has been so since the inception of the tenancy undisputed. Moreover, the lack of refrigerator is a violation of the housing of building code which affects the habitability of the tenant's unit. Thus, the tenant is entitled to a 25% rent credit from June 2016 through April 30, 2019. Additionally, she is entitled to an ongoing rent credit, in the amount of 25%, until the owner has repaired or replaced the refrigerator.

Heater

The evidence of that the subject unit is without adequate heat and has been so since the inception of the tenancy is uncontroverted. Moreover, the lack of adequate heat is a violation of the housing of building code which affects the habitability of the tenant's unit. Thus, the tenant is entitled to a 25% rent credit from June 2016 through April 30, 2019. Additionally, she is entitled to an ongoing rent credit, in the amount of 25%, until the owner has repaired or replaced the heat source.

Infestation

The evidence of that the subject unit is infested and has been so since the inception of the tenancy is without contradiction. Moreover, the infestation is a violation of the housing of building code which affects the habitability of the tenant's unit. Thus, the tenant is entitled to a 10% rent credit from June 2016 through April 30, 2019. Additionally, she is entitled to an ongoing rent credit, in the amount of 10%, until the owner is providing pest abatement treatment by a licensed pest abatement company and the infestation is abated.

Smoke and Carbon Monoxide detectors

The evidence of that the subject unit was without smoke and carbon monoxide detectors and has been so since the inception of the tenancy is without dispute. Moreover, the failure to install smoke and carbon monoxide detectors is a violation of the housing of building code which affects the habitability of the tenant's unit. Thus, the tenant is entitled to a 1% rent credit from June 2016

through April 30, 2019. Additionally, she is entitled to an ongoing rent credit, in the amount of 1%, until the owner installs the carbon monoxide detectors.

Bathroom

The evidence of that the toilet in subject unit requires repair or replacement is undisputed. Moreover, the lack of working toilet is a violation of the housing of building code which affects the habitability of the tenant's unit. Thus, the tenant is entitled to a 1% rent credit from June 2016 through April 30, 2019.

Additionally, she is entitled to an ongoing rent credit, in the amount of 1%, until the owner has repaired or replaced the toilet.

What, if any, restitution is owed to the tenant and how does that impact the rent?

As indicated above, the legal rent for the unit is \$550.00 per month. The tenant has been paying \$600.00 since March 2017. She is entitled to restitution for the overpayments of rent in the amount of \$1,300.00. Additionally, as noted above, the tenant is entitled to an ongoing rent decrease of 86% for the lack of a working oven, refrigerator, heater, missing carbon monoxide detectors, and continued infestation.

Additionally, as noted on the chart below, the tenant is entitled to restitution of \$18,073.00 for the past decreased housing services. The chart below indicates rent overpayments of \$1,300.00 and decreased housing services valued at \$18,073.00, for a total restitution amount of \$19,373.00.

Restitution is usually awarded over a 12-month period but when the tenant is owed 3522% of the monthly rent, it is proper to extend the restitution period to 270 months.¹⁶ Amortized over 270 months the restitution amount is \$71.25 per month.

//

//

//

//

¹⁶ Regulations, § 8.22.110(F)

Service Lost	From	To	VALUE OF LOST SERVICES		Decrease /month	No. Months	Overpaid
			Rent	% Rent Decrease			
Oven	1-Jun-16	30-Apr-19	\$550	25%	\$ 137.50	35	\$ 4,812.50
Refrigerator	1-Jun-16	30-Apr-19	\$550	25%	\$ 137.50	35	\$ 4,812.50
Heater	1-Jun-16	30-Apr-19	\$550	25%	\$ 137.50	35	\$ 4,812.50
Infestation	1-Jun-16	30-Apr-19	\$550	10%	\$ 55.00	35	\$ 1,925.00
Carbon Monoxide	1-Jun-16	30-Apr-19	\$550	1%	\$ 5.50	35	\$ 192.50
Toilet	1-Jun-16	30-Apr-19	\$550	1%	\$ 5.50	35	\$ 192.50
Bathroom Door	1-Sep-16	31-Jan-19	\$550	5%	\$ 27.50	29	\$ 797.50
Electric/Lights	1-Jun-16	31-Jan-19	\$550	1%	\$ 5.50	32	\$ 176.00
Wall/paint/stairway	1-Jun-16	31-Jan-19	\$550	1%	\$ 5.50	32	\$ 176.00
Smoke detectors	1-Jun-16	31-Jan-19	\$ 550.00	1%	\$ 5.50	32	\$ 176.00
TOTAL LOST SERVICES							\$18,073.00
OVERPAID RENT							
	From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
	1-Mar-17	30-Apr-19	\$600.00	\$550	\$ 50.00	26	\$ 1,300.00
TOTAL OVERPAID RENT							\$ 1,300.00
RESTITUTION							
MONTHLY RENT							\$550
TOTAL TO BE REPAYED TO TENANT							\$19,373.00
TOTAL AS PERCENT OF MONTHLY RENT							3522%
AMORTIZED OVER				270	MO. BY REG. IS		\$ 71.75
OR OVER				MONTHS BY HRG. OFFICER IS			

Therefore, the tenant's monthly restitution amount is subtracted from the current legal rent of \$550.00 for a total of \$5.25. From May 2019 through October 2041, the rent will be \$5.25. The rent will revert to the current legal rent in January 2020.

ORDER

1. Petitions T18-0301 and T18-0325 are granted.
2. The current base rent for the subject unit is \$550.00.
3. The total overpayment by the tenant is \$18,073.00 for past decreased housing services and \$1,300.00 for overpaid rent, for a total overpayment of \$19,373.00.

000047

4. The tenant's rent for the months of May 1, 2019 through October 31, 2041, is \$5.25. The rent will revert to the current legal rent of \$550.00, effective November 1, 2041.

5. The base rent for the subject unit was \$550.00 per month before deductions for decreased housing services. Due to ongoing conditions, the tenant is entitled to an 86% rent decrease.

6. The tenant's rent is stated below as follows:

Base rent	\$ 550.00
Less restitution	\$ 71.75
Less ongoing decreased services	\$ 473.00
Net Rent on September 1, 2018	\$ 5.25

7. If the owner repairs or replaces the oven, and upon proper notice in accordance with Section 827 of the California Civil Code, they can increase the rent by 25% (\$137.50).

8. If the owner repairs or replaces the refrigerator, and upon proper notice in accordance with Section 827 of the California Civil Code, they can increase the rent by 25% (\$137.50).

9. If the owner repairs or replaces the heater, and upon proper notice in accordance with Section 827 of the California Civil Code, they can increase the rent by 25% (\$137.50).

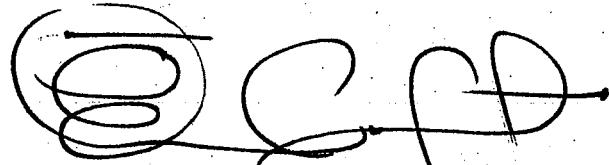
10. If the owner abates the infestation, and upon proper notice in accordance with Section 827 of the California Civil Code, they can increase the rent by 10% (\$55.00).

11. If the owner installs carbon monoxide detectors, and upon proper notice in accordance with Section 827 of the California Civil Code, they can increase the rent by 1% (\$5.50).

12. If the owner wishes to, they can repay the restitution owed to the tenant at any time. If they do so, the monthly decrease for restitution ends at the time the tenant is provided restitution.

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: April 3, 2019

A handwritten signature in black ink, appearing to read 'E. Lambert', written over a horizontal line.

Élan Constrella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0325

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

Haneff Abdulla
8728 International Blvd.
Oakland, CA 94621

Owner

Stephanie Abdullah
8724 International Blvd
Oakland, CA 94621

Owner

Stephanie Abdullah
5604 Bismach Drive #202
Alexandria, VA 22312

Tenant

Dominique Lowery
8728 International Blvd. #A
Oakland, CA 94621

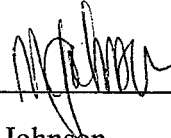
Tenant Representative

Xavier Johnson
3022 International Blvd Suite 410
Oakland, CA 94601

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

000050

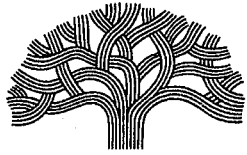
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **April 11, 2019** in Oakland, CA.



Nia Johnson

Oakland Rent Adjustment Program

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp.
2019 MAY -1 PM 2:22

APPEAL

Appellant's Name Haneef Abdullah / Stephanie Abdullah		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 8728 In International Blvd Oakland, CA 94621			
Appellant's Mailing Address (For receipt of notices) 8724 International Blvd Oakland, CA 94621		Case Number T18-0301; T18-0325	
		Date of Decision appealed 4-1-19	
Name of Representative (if any) Haneef Abdullah		Representative's Mailing Address (For notices)	

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

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

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.)

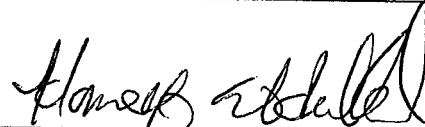
For more information phone (510) 238-3721.

- 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.)
see attachments

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: _____.

- 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 May 1, 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	Domonique Lowery
Address	8128 International Blvd
City, State Zip	Oakland, CA 94621
Name	Xavier Johnson
Address	3022 International Blvd
City, State Zip	Oakland, CA 94601

	5-1-2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

Appeal Doc1

Haneef Abdullah
8724 International Blvd
Oakland, Ca 94621

April 30, 2019

To: City of Oakland Rent Adjustment Program

Case Numbers T18-0301 Lowery v. Abdul
T18-0325 Lowery v. Abdulla

Re: Appeal April 1, 2019 decision

I am writing this letter to appeal your April 1, 2019 decision that was granted to tenant, Domonique Lowery. I am appealing this decision based on math/clerical errors, the decision was not supported by substantial evidence and I never intended to raise or increase rent but update contract to include her boyfriend, Ronnell Johnson who was not on the original agreement but later moved in with Domonique Lowery and still resides with her today.

On June 1, 2016 Domonique Lowery signed a rental agreement with me. Before we signed the agreement we had a verbal agreement that she would only need to reside in the room for a period of 3 to 4 months. Prior to her becoming a tenant she and her boyfriend Ronnell Johnson needed a room for a few days and I rented the same room to them a few days out of the month. Domonique Lowery was then interested in renting the room for a few months which means or implies that she was satisfied with the condition of the property. I agreed to rent to her because of her boyfriend Ronnell Johnson, who I have know for over 15 years told me that she and her son had no place to live. Ronnell Johnson also told me that Domonique Lowery was on a list to get an apartment and was number 5 on the list at that time in June of 2016. Because it was suppose to be short term, I agreed and I didn't charge a higher amount because I wanted Domonique Lowery to save money for when the time came for them to move.

On the rental agreement that Domonique Lowery signed Clause 11 section 3 final paragraph it states: "Tenant has examined the premises, including appliances, fixtures, carpet, drapes, and paint and has found them to be in good, safe, and clean condition and repair, except as noted in the Landlord-Tenant Checklist." Because we had a verbal agreement that she would move out in 3 to 4 months and the fact that she stayed at the place prior to becoming a tenant, we didn't do a checklist. But everything was working fine.

Domonique Lowery claims that there were several services denied from the inception but she signed an agreement that states otherwise. She has never complained to me in person or by letter about anything that was broken or in need of repair. Between June 2016 and May 2018 there has been 2 refrigerators in this unit. I had taken the last one out in May of 2018 due to cock roaches and no one ever cleaned it. Furthermore tenants had personal refrigerators because no one wanted their personal

Appeal Doc1

food stolen by other tenants. No one used the kitchen refrigerator. But it was present and working but not maintained by tenants.

Tenant said heater never worked. The pilot light went out and no one ever informed me in person or writing about the heater ever. I had my plumber come and turn on the pilot in November of 2018. Heater works fine. I never agreed to change light bulbs on the interior but I will change the exterior light bulbs when problem is known. Tenant has had a smoke detector in her room since inception of her tenancy. The battery went out and tenant never replaced the battery or ever told me that battery was out. Carbon monoxide detectors are in the kitchen and near heater. I don't know if Domonique Lowery knows what a carbon monoxide detector look like. I had one present near the heater and when the city of Oakland code enforcement came to inspect they said I need an additional one in the kitchen and I had it installed by June 2018.

The city of Oakland code enforcement came in and fined me on 4/12/2018. Since then I have been cleaning behind tenants and fixing other issues with the property. I stopped collecting rent in May and June of 2018 from all tenants and started repairs. But since I complied with early work and started fixing things, they allowed me to keep tenants in unit 8728 while work was being done. After paying for fines and permit fees I suffered financially and still not collecting rent. After repairs were made in 8728 International Blvd around November 2018 one tenant resumed paying agreed upon rent. I waived three months rent as I was working on repairs. I did the same thing for Domonique Lowery and she hasn't paid anything since June of 2018. And in May of 2018 she never made a payment but I waived it. For the last 10 months Domonique Lowery has not paid one dime to me for rent and still uses all of the services. I pay Mortgage, PG&E, water,garbage and maintenace plus I'm doing repairs. All with no rent being collected from Domonique Lowery.

Other clerical errors are from March 2017 the \$50.00 increase. That was for PG&E. Since Domonique Lowery didn't find a place to stay within the 3 to 4 month verbal agreement time frame, I told her that I was going to have to start collecting her portion of the PG&E which to be fair and divided between four tenants at that time would be \$50.00 additional per month. I told her to include it with rent payment because the power bill is in my name. The months prior I gave Domonique Lowery a break so that she can save up money for her move which never happened. In the rental agreement signed by Ms. Lowery in June of 2016 Clause 9 states: "Tenant will pay all utility charges, except for the following, which will be paid by Landlord:water,garbage." From June 2016 to March 2017 I waived Ms. Lowery's PG&E payments only because it was suppose to be short term.

I ask that the rent board do not allow Domonique Lowery to abuse the system by stating lots of unproven charges thats has caused tremendous mathematical/clerical errors.

While myself and painters,electrician and contractors were fixing up the place Domonique Lowery changed the lock on her door to prohibit entrance from manager after serving a 24 notice to enter unit/room to perform repairs/inspections. I

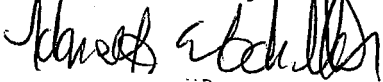
Appeal Doc1

believe this was done in late January or early February 2019. This is in violation of clause 12 section b in rental agreement which states: "Tenant will not, without landlord prior written consent, alter, rekey or install any locks to the premises or install any burglar alarm system. Tenant will provide Landlord with a key or keys capable of unlocking all such rekeyed or new locks as well as instructions on how to disarm any altered or new burglar alarm system." Domonique Lowery refuses to give me a key so that myself and workers can maintain and repair necessary items.

In June of 2018 I was asking Domonique Lowery to change into a contract that would include her boyfriend that she moved. She didn't want to and I was ok with that but made her aware that he couldn't live here unless he is on her lease. This is when she went to rent board to complain and never moved him out and he still to this day resides with her at 8728 International Blvd.

I ask that the rent board please reconsider decision and/or strongly modify this decision. Several improvements have been made but if you open this case back up and allow me to prove my case, I'll be happy to provide pictures and other documentaion to prove my case.

Haneef Abdullah, Landlord



THREE-DAY NOTICE TO PAY RENT OR QUIT

DATE: February 19, 2019

TO: Domonique Lowery, DOES 1 to 10; and all others claiming a right to possession of the premises described below.

NOTICE IS HEREBY GIVEN that, pursuant to the agreement by which you hold possession of the premises located in the City of Oakland, County of Alameda, State of California, described as: 8728 International Blvd Number A, Oakland, CA 94621 under which the monthly rent is \$550.00, there is now due and unpaid rent for these premises as follows:

Date Unpaid Rent Became Due	Amount Due	Amount Paid	Amount Due and Unpaid	Period For Which Rent Was Due
August 1, 2018	\$550	\$0	\$550	8/1/2018 - 8/31/2018
September 1, 2018	\$550	0	\$550	9/1/2018 - 9/30/2018
October 1, 2018	\$550	0	\$550	10/1/2018 - 10/31/2018
November 1, 2018	\$550	0	\$550	11/1/2018 - 11/30/2018
December 1, 2018	\$550	0	\$550	12/1/2018 - 12/31/2018
January 1, 2019	\$550	0	\$550	1/1/2019 - 1/31/2019
February 1, 2019	\$550	0	\$550	2/1/2019-2/28/2019
TOTAL	\$3,850		\$3,850	

WITHIN THREE (3) DAYS after the service of this Notice on you (excluding the date of service), you are required to pay the above Amount Due and Unpaid rent in full \$3,850.00, OR to surrender possession of the premises by delivering all keys to the Landlord or the Landlord's authorized agent and vacating the premises. You are further notified that the Landlord has elected to, and hereby does, declare your tenancy in the premises to be completely forfeited in the event you fail to pay the rent in full as herein required.

If you fail to pay the above rent OR surrender possession of the premises within three (3) days, the Landlord will institute legal proceedings against you to: (1) recover possession of the premises, (2) declare forfeiture of the agreement under which you occupy the same and the tenancy completely forfeited, and (3) recover the rent demanded herein, damages for each day that you occupy the premises after the period covered by this Notice, statutory damages, and costs and attorney's fees, to the extent they may be available.

This Notice supersedes all notices served on you prior to this Notice.

Payment of Amount Due and Unpaid shall be made to: Enrique Rosales

Address where payment to be made: §
Phone number of person to receive rent: 510
Usual hours for personal delivery of rent: Monday through Saturday, 9:00 a.m. - 6:00 p.m.

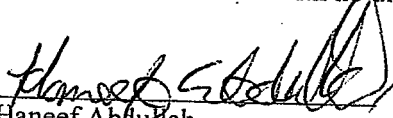
If rent is mailed to the above address, it is deemed received by Landlord on the date of the postmark. You are advised to retain proof of mailing.

The basis for the eviction is set forth in Section 6(A)(1) of City of Oakland's Just Cause for Eviction Ordinance ("Measure EE"), the pertinent part of which states: "The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under provisions of state or local law, and said failure has continued after service on the tenant of a written notice correctly stating the amount of rent then due and requiring payment within a period, stated in the notice, of not less than three (3) days." Payment must be made in either money order or cashier's check.

Advice regarding this Notice is available from the City of Oakland, Housing, Residential Rent and Relocation Board, located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612, telephone: (510) 238-3015. Parties seeking legal advice concerning evictions should consult with an attorney.

The Landlord is providing this Notice with good faith, honest intent and with no ulterior motive.

Date: February 19, 2019


Haneef Abdullah

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, served this notice, of which this is a true copy, on 02/ 19/2019 Dominique Lewis, one of the occupants listed above as follows:
(Name of Person Served)

- On 2-19-19, I delivered the notice to the occupant personally.
(Date)
- On _____, I delivered the notice to a person of suitable age and discretion
(Date) at the occupant's residence/business after having attempted personal service at the occupant's residence, and business if known. On, February 19, 2019, I mailed a second copy to the occupant at her/his residence.
- On February 19, 2019, I posted the notice in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On February 19, 2019, I mailed a second copy to the occupant at the property. (Date)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 19, 2019

Haneef Abdullah
Haneef Abdullah

**SEVEN DAY NOTICE TO CEASE
OAKLAND MUNICIPAL CODE SECTION 8.22.300, et. Seq.**

DATE:

TO: Domonique Lowery, and DOES 1 to 5; and all others claiming a right to possession of the premises described below, Tenant(s) in possession of the premises at 8728 International Blvd., City of Oakland, County of Alameda, State of California 94621.

YOU ARE HEREBY NOTIFIED that you are substantially in violation of the following lease or rental agreement under which you occupy these premises because you have violated the covenant(s) of that lease or rental agreement by engaging in the following specific conduct:

1. Clause 13 of rental agreement
2. Clause 15 of rental agreement
3. Burning candle wax in sink
4. Stop pulling cigarettes out on floor
5. Stop keeping water on floor after showers
6. Slamming door

YOU ARE HEREBY REQUIRED to remedy the violation(s) and perform the covenant(s) within the following frames.

1. If you were personally given this notice, then you have seven (7) days after the date you were given to you the notice to correct the violation(s) and perform the covenant(s);
2. If this notice was affixed to the premises and a copy was personally delivered to a person residing there, you have seven (7) days after the date of receipt by that person to correct the violation(s) and perform the covenant(s); or
3. If the notice was left with a person residing at the premises or at your usual place of business and a copy of the notice was mailed to you, you have fifteen (15) days from the date of mailing to correct the violation(s) and perform the covenant(s); or
4. If the notice was mailed to you by certified or registered mail, you have fifteen (15) days from the date of mailing to correct the violation(s) and perform the covenant(s).

If you fail to correct the violation(s) and perform the covenant(s) within the timeframes stated above, the landlord may institute legal proceedings against you to recover possession of the premises, to declare forfeiture of the agreement under which you occupy the same, to declare the tenancy completely forfeited,

and to seek judgment for the rent owed, damages, costs and attorneys fees, to the extent they may be available.

Advice regarding this Notice and evictions is available from the City of Oakland, Housing, Residential Rent and Relocation Board, located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612, telephone: (510) 238-3015.

The landlord is providing this notice with good faith, honest intent and with no ulterior motive.

DATE: 2-19-19

Haneef Abdullah
Haneef Abdullah

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, served this notice, of which this is a true copy, 2-19-19 on Ramonique Lowery, one of the occupants listed above as follows:
(Name of Person Served)

On _____, I mailed a copy of this notice by certified or registered mail addressed to the occupant at her/his residence.
(Date)

OR

On 2-19-19, I delivered the notice to the occupant personally.
(Date)

On _____, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business if known. On _____, I mailed a second copy to the occupant at her/his residence.
(Date)

On _____, I posted the notice in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On _____, I mailed a second copy to the occupant at the property.
(Date)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 2-19-19
Signature

Haneef Abdullah



Oakland - Webster

October 22, 2018 2:14 PM

Edit

After being painted and fixed up
and cleaned

 LIVE





Oakland - Webster
November 11, 2018 2:54 PM

Edit

Tenant not maintaining cleanliness





Oakland - Webster

December 3, 2018 1:21 PM

Edit

Tenants using toilet as a trash can this can
clo 8 toilet
tobacco
product



000064



Oakland - Webster

February 9 5:44 PM

Edit

toilet seat is broken the top part





Oakland - Webster

March 21 11:00 AM

Edit

Female weeve hair in toilet now toilet just broken too.





Oakland - Webster

November 11, 2018 2:54 PM

Edit

Tenants cooked but didn't clean mess this keep reaching around.





Oakland - Webster

November 11, 2018 2:55 PM

Edit

Tenants neglecting property. Causing roads to remain

📍 LIVE



000068



Oakland - Webster

Edit

January 25 9:50 AM

Tenant burned a candle in sink creating drain to clog

LIVE



000000

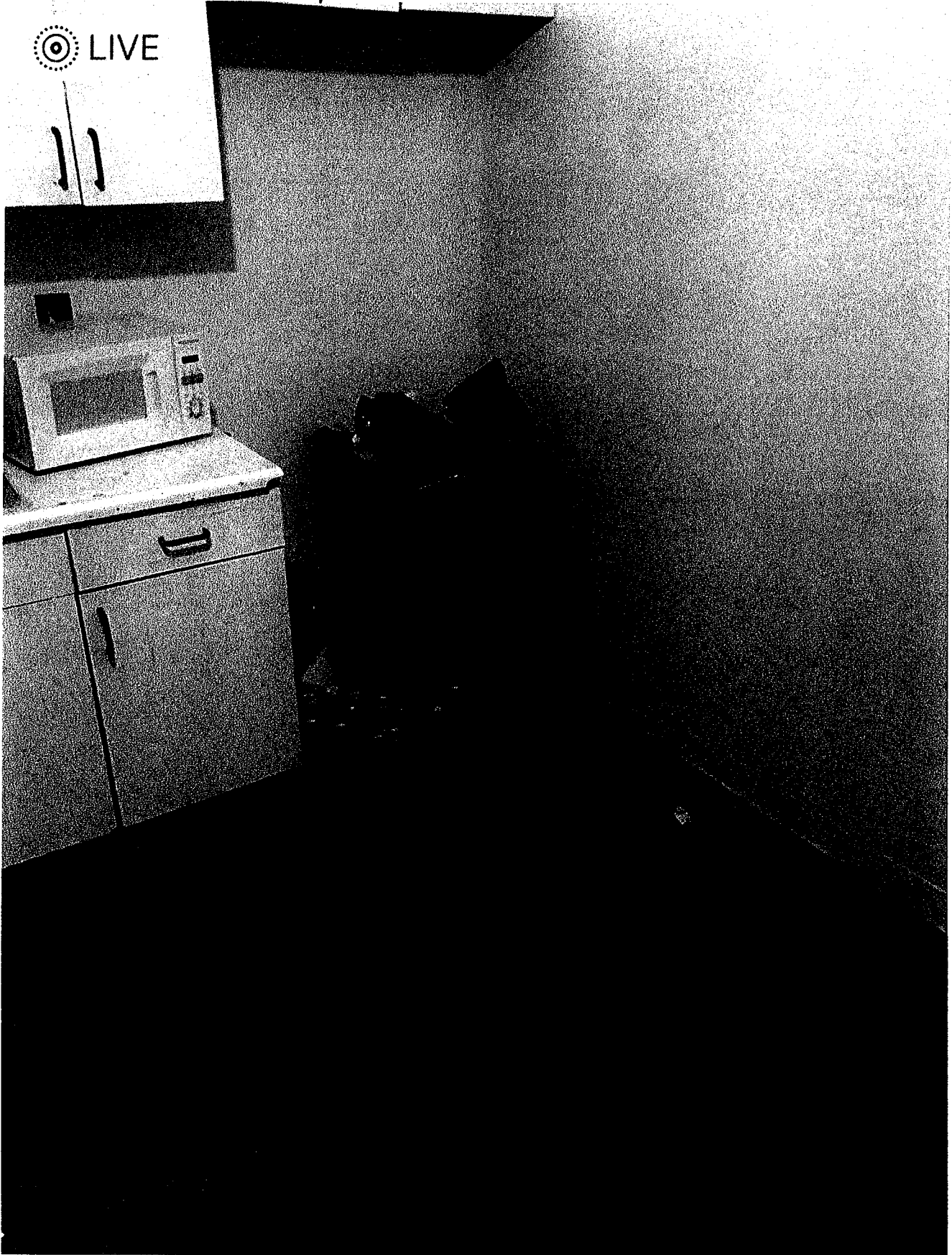


Oakland - Webster

February 9 5:44 PM

Edit

Garbage piled up by tenants





Oakland - Webster

February 22 12:37 PM

Edit

Tennants cooked but didn't clean mess. cause of roaches





Oakland - Webster

Edit

March 6 6:16 PM



Damonique Lowery Room. This clutter will create roaches, mice



Damonica Leventy Peom. Feed that should be in kitchen
but since the beginning of tenancy she has always kept food in
Peom and in small refrigerator so no one should take her food.



CHRONOLOGICAL CASE REPORT

Case No.: T18-0055

Case Name: Vargas et al v. 3000 Nicol Avenue Properties, LLC

Property Address: 3000 Nicol Ave., #11, Oakland, CA


Parties: Michele Vargas (Tenant)
Robert Lopez (Tenant)
Karyn Erickson (Attorney for Tenant)
Betsy Brazy (Attorney for Tenant)
Owen Jerez (Owner)
Angie Sandoval (Attorney for Owner)
Clifford Fried (Attorney for Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 22, 2017
Owner Response filed	April 6, 2018
Hearing Decision mailed	August 30, 2018
Owner Appeal filed	September 19, 2018
Tenants' Response to Owner's Appeal filed	October 19, 2018
Tenants' Amended Response To Owner's Appeal filed	May 2, 2019
Owner's Objection to Tenants' Amended Response to Appeal filed	May 9, 2019
Tenants' Reply to Owner's Objection to Amended Response to Appeal filed	May 28, 2019

000074

T18-0055 MS / SK

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND For date stamp 2017 DEC 22 PM 3:34 RENT ADJUSTMENT PROGRAM 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 MICHELE VARGAS AND ROBERT LOPEZ	Rental Address (with zip code) 3000 NICOL AVENUE UNIT 11 OAKLAND, CA 94601	Telephone: E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) JAIKRIT SIKIKANTHAPORN	Mailing Address (with zip code) C/O JAMES C. LU LU & ASSOCIATES ACCOUNTANCY C/O 800 S. BARRANCA AVE., STE 360 EDUINA, CA 91723	Telephone: Email:
Property Manager or Management Co. (if applicable) 3000 NICOL AVE. PROPERTY, LLC	Mailing Address (with zip code) 261 13th STREET #32353 OAKLAND, CA 94604	Telephone: Email:

Number of units on the property: 11

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

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

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

<input type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input 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.

Rev. 7/31/17

For more information phone (510) 238-3721.

1

	(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.)
	(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.
	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
X	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(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: 2/1/2014 Initial Rent: \$ 1350⁰⁰ /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: 10/16/17. If never provided, enter "Never."

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
		\$	\$	<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	<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
		\$	\$	<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?

Yes No

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

Yes No

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

Yes No

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

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

PLEASE SEE OUR ATTACHED DECLARATION AND EXHIBITS.

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature *Michelle Varon*

12-22-17
Date

Tenant's Signature *ROBERT LOPEZ*

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

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

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

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

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

_____ Tenant's Signature _____ Date

VI. IMPORTANT INFORMATION:

Time to File

This form must be received at the offices of the 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): Public Attorney

1 MICHELE VARGAS
ROBERT LOPEZ
2 3000 NICOL AVENUE, APT. 11
BERKELEY, CA 94702
3 Tel

4 In Pro Per

7 CITY OF OAKLAND RENT ADJUSTMENT BOARD

9 Case Number: TO BE ASSIGNED

10 MICHELE VARGAS

11 and

12 ROBERT LOPEZ,

13 v.

14 3000 NICOL PROPERTY, LLC.

15 and their agents.

**DECLARATION OF MICHELE VARGAS
AND ROBERT LOPEZ IN SUPPORT OF
TENANT PETITION FOR REDUCTION
OF RENTAL SERVICES**

Hearing: TBD

Time: TBD

Dept: Oakland Rent
Adjustment Board, Dalziel
Building, 250 Frank H. Ogawa
Plaza Suite 5313, Oakland, CA
94612

19
20 I, **MICHELE VARGAS** and, I, **ROBERT LOPEZ**, declare as follows:

21 1. We are tenants living within the Oakland city limits
22 at 3000 Nicole Avenue, Oakland, California 94602 (hereinafter,
23 the "SUBJECT PROPERTY.")

24 2. We have been tenants at the SUBJECT PROPERTY since on
25 or about February 1, 2014, lease Unit 11, and live there with
26 our two children.

27 3. After our 12-month fixed term lease expired, our lease
28 terms were converted to a month-to-month tenancy.

1 4. There are a total of 11 units in the building all of
2 which are townhouses and consist of two floors. The first floor
3 has a front door and also a backdoor which opens onto a small,
4 fenced-in backyard. A back door on the second floor opens onto a
5 narrow balcony which wraps around the building and is shared by
6 all adjoining units.

7 5. We had full use of a garage and parking spot on the
8 premises and full use of the laundry facilities.

9 6. We also had access to a locked back-gate next to our
10 garage which afforded easier access to our unit than through the
11 locked front-entranceway.

12 7. On September 8, 2017, three notices were posted on our
13 door which together notified us that the property had been sold
14 and that our 2014 lease agreement and \$1,500 security deposit
15 had been transferred to a new owner. True and correct copies of
16 two of these notices are attached as Exhibits 1 and 2.

17 8. On information and belief, the SUBJECT PROPERTY is
18 currently co-owned by JAKKRIT SIRIKANTRAPORN (hereinafter, "
19 JAKRRIT") and one other owner under the name of 3000 NICOL
20 AVENUE PROPERTY, LLC. A true and correct copy of the publicly
21 available record from the Secretary of State of California is
22 attached as Exhibit 3.

23 9. The property manager is ALEXANDER ESPARZA ("ALEX") who
24 appears to be the assistant of OWEN JEREZ. Both are reachable
25 via email at propertymanagementcloud@gmail.com.

26 10. On information and belief, one of their construction
27 agents now resides on the property - 24/7 - in one of the vacant
28 units. We believe that at least three units are vacant.

1 11. Although we had full use of a garage since 2014,
2 because the garage was not specified in our lease agreement, **the**
3 **new owners removed our access to the garage and parking space,**
4 required us to remove our car and property in the garage, and
5 changed the locks.

6 12. Because I, Robert, had no place to park my Mustang
7 car, I was forced to sell my vehicle since parking my Mustang on
8 the street would present a high risk of my car being stolen
9 and/or vandalized. A true and correct copy of a photograph of my
10 Mustang car parked in the garage is attached as Exhibit 4.

11 13. Our apartment is 850 square feet and the garage is
12 about 264 square feet, thus, the total square footage leased was
13 1,114 square feet. Our current rent is \$1,399.47 and our rent
14 per square foot is \$1.26 per square foot. **We are demanding a**
15 **rent reduction due to loss of the garage and parking space of**
16 **\$332.64 per month.**

17 14. Effective September 8, 2017, the laundry room which
18 was accessed and used by all tenants was removed from our use,
19 allegedly for "60-days."

20 15. On or about October 27, 2017, the new owners applied
21 for building permits to convert the laundry facilities from gas
22 to electric **well after construction** on the laundry room **had**
23 **actually begun.** A true and correct copy of a report available
24 from <https://aca.accela.com/oakland/default.aspx> is attached as Exhibit 5.

25 16. As of the filing of this petition, **the laundry room is**
26 **still locked and inaccessible by tenants.**

27 17. Due to the loss of the laundry room, we now have to
28 use public facilities to do our laundry for two adults and two

1 children and average \$20.00 per week to do the laundry. **We are**
2 **demanding a rent reduction of \$20.00 per week of every week that**
3 **we lack use of the on premise laundry room.**

4 18. Exhibit 5 also shows that **Unit 3 is being**
5 **substantially remodeled** and, in fact, the owners are advertising
6 at least one converted unit on Zillow as a "two-bedroom,
7 luxurious executive apartment" for \$2,995 monthly rent. A true
8 and correct copy of the Zillow ad is attached as Exhibit 6.

9 19. On or about October 19, 2017, a notice was posted on
10 our door relating to AT&T wiring and other matters. A true and
11 correct copy of this notice is attached as Exhibit 7.

12 20. On or about October 23, 2017, the AT&T wiring
13 immediately outside our upstairs backdoor was disconnected and
14 the main junction box removed. We had signed a one-year contract
15 with AT&T the week before for landline telephone and wireless
16 internet service.

17 21. The AT&T service was in my, Robert's name, and was for
18 a 12-month contract. **We are paying \$30.00 per month plus an**
19 **\$80.00 installation fee which was paid over 3-months.** Robert has
20 been unable to cancel this contract so we are "locked-in" for
21 one year.

22 22. We were informed by the property manager(s) that we
23 could sign-up with Comcast for internet, cable TV, and wireless
24 services but the price for even one of these services was cost
25 prohibitive. We dropped Comcast for AT&T and had previously paid
26 \$280 per month for Comcast TV, Internet, and Telephone service.
27 To re-up with Comcast for internet services alone, Comcast will
28 now charge us \$100.00 per month. **We are now demanding a rent**

1 **reduction of \$70.00 per month** (e.g. increase of \$70.00 per month
2 for Comcast services over AT&T) **plus a \$440.00 refund for the**
3 **non-useable AT&T services** over the life of the one-year
4 contract.

5 23. Since our AT&T services were severed by the building
6 owner, we have had to resort to using our cell phones and have
7 no wireless service.

8 24. The October 19 notice also precluded any children from
9 playing on the property.

10 25. The townhouses are enclosed by gates and a fence; our
11 children had previously been able to play in the common outside
12 areas. As of service of this notice, our children are now
13 required to play in a nearby park (Nicol Park) which is in a
14 high-crime area.

15 26. In addition, we have received 3 water shut-off notices
16 between end of October and mid-November 2017.

17 27. **In total, between September 8, 2017 and November 30,**
18 **2017, we received 27 notices.**

19 28. Notices were typically taped to our front-door and
20 included notice that the back yard-gate could no longer be used
21 for ingress, that security cameras were installed throughout the
22 exterior building areas, notices concerning installation of
23 smoke and CO2 detectors, notices about relocation of garbage
24 cans, and notices concerning mandated signing of a new lease
25 agreement.

26 29. In an email to me, Ms. Vargas, dated September 19,
27 2017 relating to the laundry room conversion, Alex stated that "
28 we do not see [this conversion] as a reduction in services" but

1 of repairs. A true and correct copy of the email is attached as
2 Exhibit 8.

3 30. We were also required to sign a new lease agreement
4 that was materially different from our 2014 lease agreement.

5 31. Alex would not provide a copy of the new lease
6 agreement in advance without a "personal explanation" and, if we
7 wanted the lease agreement to be pre-reviewed by an attorney, we
8 were required to provide a "short description" as to why we
9 wanted this. See Exhibit 8.

10 32. It was clear from the communications that asking for
11 pre-review of the lease agreement would be onerous, was
12 impliedly frowned upon by the owner and his property manager(s),
13 and we found the requirement to provide a "short description"
14 about why we wanted a lease review intimidating.

15 33. The 2017 lease agreement also required us to agree to
16 temporarily relocate for **substantial repairs** without informing
17 us about our rights under Oakland's municipal code.

18 34. A true and correct copy of our 2014 and 2017 lease
19 agreements are attached as Exhibits 9 and 10.

20 35. Since the new owner(s) have taken control of the
21 property, some of the tenants have left without explanation.

22 36. In summary, we are alleging loss of services related
23 to: 1) loss of use of the laundry room since 9/8/17 to the time
24 that these services are restored; 2) loss of the use of the
25 garage which we had full use of since 2/1/14 through 9/29/17
26 when the new owners took access to garage away; and 3) loss of
27 use of AT&T landline and wireless services since 10/23/17
28

1 because these services were affirmatively removed by the
2 building owners and their agents.

3 37. Moreover, we believe that receipt of 27 notices is
4 excessive and is **interfering with our right to quiet enjoyment**
5 **of the property**. We feel that these notices and a mandate to
6 sign a new and materially different lease agreement with
7 prohibitive requirements discouraging lease review by an
8 attorney to be intimidating, if not coercive.

9 38. Pursuant to O.M.C. 8.22.640 (A), "No Owner or such
10 Owner's agent...shall do any of the following in bad faith:

- 11 1. Interrupt, terminate, or fail to provide housing
12 services required by contract or by State, County, or
13 municipal housing, health or safety laws;
- 14 6. Influence or attempt to influence a Tenant to vacate a
15 Rental Unit through ... intimidation or coercion...
- 16 7. Substantially and directly interfere with a Tenant's
17 right to quiet use and enjoyment of a rental housing
18 unit as that right is defined by California law;
- 19 8. Removing a housing service for the purpose of causing
20 the Tenant to vacate the Rental Unit. For example,
21 taking away a parking space knowing that a Tenant
22 cannot find alternative parking and must move."

23 39. In addition to petitioning the rent board for a rent
24 reduction related to a reduction of housing services, we are
25 exercising our rights under O.M.C. chapter 8.22.640 since we
26 feel that 27 notices posted on our door within 84-days is
27 excessive and these notices together with the reduction of
28 housing services, installation of security cameras, and 24-hour

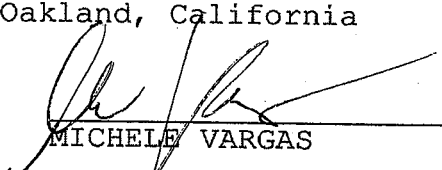
1 presence of the owner's agent is tantamount to an insidious form
2 of harassment that is in violation of the Oakland Tenant
3 Protection Ordinance.

4 40. We understand that a 6-month moratorium for eviction
5 due to substantial repairs was enacted by the City of Oakland on
6 or about November 8, 2017 to provide the city time to "close
7 loopholes" in the municipal code related to evictions for
8 substantial repairs.

9 41. On information and belief, a similar story to ours
10 played out at 2300 Fruitvale Avenue, Oakland. This property is
11 registered to 2300 Fruitvale Avenue Property, LLC and is
12 registered to Owen Jerez. Mr. Jerez is one of the property
13 managers for the property in which we reside. A true and correct
14 copy of the publicly available record from the Secretary of
15 State of California is attached as Exhibit 12.

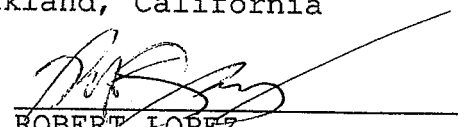
16 I, **MICHELE VARGAS**, declare under penalty of perjury under
17 the laws of the State of California that the foregoing is
18 true and correct.

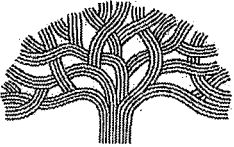
19 Executed on December 22, 2017 at Oakland, California

20 
21 MICHELE VARGAS

22 I, **ROBERT LOPEZ**, declare under penalty of perjury under the
23 laws of the State of California that the foregoing is true
24 and correct.

25 Executed on December 22, 2017 at Oakland, California

26 
27 ROBERT LOPEZ

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. APR - 6 PM 3:46
		<u>PROPERTY OWNER</u> <u>RESPONSE</u>

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

CASE NUMBER T 18 - 055

Your Name 3000 Nicol Avenue Property LLC	Complete Address (with zip code) 5425 Sunol Blvd. Suite 10146 Pleasanton, CA 94566	Telephone:
		Email:
Your Representative's Name (if any) Fried & Williams LLP Clifford E. Fried, Esq., SBN 118288 Angelica A. Sandoval, Esq., SBN 318093	Complete Address (with zip code) 1901 Harrison Street, 14th Floor Oakland, CA 94612	Telephone:
		Email:
Tenant(s) Name(s) Michele Vargas Robert Lopez	Complete Address (with zip code) 3000 Nicol Avenue #11 Oakland, CA 94601	Telephone:
		Email:
Property Address (If the property has more than one address, list all addresses) 3000 Nicol Ave., Oakland, CA 94602		Total number of units on property 11

Have you paid for your Oakland Business License? Yes No Lic. Number: 00201721
 The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 00201722
 The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 09 / 08 / 2017

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

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

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

2018 APR -6 PM 3:16

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

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

The tenant moved into the rental unit on 2-01-2014

The tenant's initial rent including all services provided was: \$ 1,350.00 / month.

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

If yes, on what date was the Notice first given? 10-16-2017

Is the tenant current on the rent? Yes No

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
12-22-2017	2-01-2018	\$ 1,399.44	\$1,431.62	<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

III. EXEMPTION

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

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

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the petitioning tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

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

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

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

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

The 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.


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.

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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



Property Owner's Signature

4-1-2018
Date

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2018 APR -5 PM 3:43

1 Clifford E. Fried, Esq., SBN 118288
2 Angelica A. Sandoval, Esq., SBN 318093
3 Fried & Williams LLP
4 1901 Harrison Street
5 Oakland, CA 94612
6 Tele:
7 Facsimile: 510-550-3621

8 Attorney for Landlord
9 3000 Nicol Avenue Property LLC

10 COMMUNITY AND HOUSING DEVELOPMENT AGENCY
11 RENT ADJUSTMENT PROGRAM

12 Michelle Vargas,
13 Robert Lopez

14 Petitioners/Tenants,

15 v.

16 3000 Nicol Avenue Property LLC,

17 Respondent/property
18 manager/owner.

CASE NO: T18-0055

**LANDLORD'S NARRATIVE
RESPONSE AND SUPPORTING
EVIDENCE**

Hearing Date: June 19, 2018
Time: 10:00 a.m.
Suite: 5313

FACTUAL SUMMARY

19 Respondent is the property manager of the real property commonly known as 3000 Nicol
20 Ave. #11, Oakland, CA 94602 (the "Premises"). In February 2014 Respondent's predecessor-in-
21 interest rented the Premises to Michelle Vargas and Robert Lopez ("Petitioners"). On September 8
22 2017 Respondent became the owner of the Premises.

23 On December 22, 2017, Petitioners filed this Petition. The owner of the Premises has a
24 current business license and has paid the Rent Adjustment Program (RAP) fees for 2018. (A copy
25 of proof of payment of the City of Oakland Business Tax License and a copy of Proof of Payment
26 of Rent Adjustment Program ("RAP") fees are attached as **Exhibit A.**)

27 In their Petitioner, Petitioners allege a decrease in housing services due to "1) loss of use of
28 the laundry room since 9/8/2017 to the time that these services are restored; 2) loss of use of the
garage which we had full use of since 2/1/2014 through 9/29/2017 when the new owners took access
to garage away; and 3) loss of use of AT&T landline and wireless services since 10/23/2017."

000090

1 **DECREASE IN HOUSING SERVICES**

2010 APR -6 PM 3:43

2 Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an
3 increase in rent and may be corrected by a rent adjustment. However, in order to justify a decrease
4 in rent, a decrease in housing services must be the loss of a service that seriously affects the
5 habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being
6 provided. A landlord must be first notified about the substandard condition and be given a reasonable
7 opportunity to correct the condition before a claim for decrease in housing services will be granted.
8 The court in *Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration*
9 *Board* (1999) 73 Cal. App. 4th 1204, held that a landlord who undertakes to perform a reasonable
10 necessary repair and maintenance work on rental property, which has the effect of temporarily
11 interfering with or preventing the tenant's full use of housing services, but does not substantially
12 interfere with the right to occupancy of the premises as a residence does not effectuate a decrease
13 in housing services. *Id.* At p 1213. In this case the Court held that the tenant were not allowed a
14 reduction in rent for a loss of use of their deck during a 4-month period because it did not
15 substantially interfere with the right to occupancy of the premises as a residence. *Id.*

16 **Laundry room**

17 Petitioners allege they are entitled to a rent reduction because they were temporarily unable
18 to use such facilities. On September 8, 2017, Respondent gave notice to Petitioner of repair work
19 that would be done to the laundry room. See Petitioner's Exhibit 2. The laundry room was reopened
20 in December 2017. Thus, this claim should be dismissed as without merit.

21 **Parking spot - garage**

22 Petitioners allege they are entitled to a rent reduction because they don't have access to the
23 parking garage. A parking space was never provided to Petitioner in the lease with Respondent's
24 predecessor-in-interest and is not provided for in lease with Respondent. See Petitioners Exhibit 9
25 and Exhibit 10. Petitioners acknowledges this in there petition, "the garage was not specified in our
26 lease" [Petitioners Petition ¶11]. Since this was never provided for in any lease, it should not
27 considered a decrease in housing service.

28 ///

///

000091

1 **Loss of land-line and wireless services**

2018 APR -6 PM 3:44

2 RAP does not have jurisdiction to award compensation from fees associated with switching
3 between internet and cable providers. Respondent allows their tenants to choose the service that best
4 suits their needs. Respondent's only requirement is that tenants are in compliance with all applicable
5 laws. Thus, this claim should be dismissed.

6 **CONCLUSION**

7 Respondent took all necessary steps to ensure problems at the property are fixed and in
8 compliance with health and safety codes and all other applicable statutes. Thus, Petitioners petition
9 should be dismissed in its entirety as without merit.

10 Date: April 6, 2018

Fried & Williams LLP



By: Angelica A. Sandoval
Attorney for Respondent
3000 Nicol Avenue Property LLC

CITY OF OAKLAND



250 FRANK H. 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: T18-0055, Vargas v. 3000 Nicol Avenue Properties, LLC

PROPERTY ADDRESS: 3000 Nicol Avenue, Unit 11, Oakland, CA

DATE OF HEARING: June 19, 2018

DATE OF DECISION: August 19, 2018

APPEARANCES: Michele Vargas, Tenant
Robert Lopez, Tenant
Karyn Erickson, Attorney for Tenant
Betsy Brazy, Attorney for tenant
Owen Jerez, Owner
Alexis Esparza, Witness
Angie Sandoval, Attorney for Owner
Clifford Fried, Attorney for Owner
Khalid Aljamal, Observer

SUMMARY OF DECISION

The tenant's petition is for decreased housing services is partially granted. The legal rent for the tenant's unit is set forth below.

000093

CONTENTION OF THE PARTIES

The tenant filed the petition, on December 22, 2017, which contests the rent increase on the following grounds:

- The owner is providing me with fewer housing services than received previously or is charging me for services originally paid by the owner.

The list of decreased services includes 4 separate bases discussed below.

The owner filed a timely Owner Response to the tenant petition in which he disputed the claims made by the tenants. The owner indicated that the laundry room had re-opened in December 2017, that the tenant's lease did not include a parking garage and the owner had not never provided telephone or cable services.

ISSUE(S) PRESENTED

1. When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?
2. Have the tenant's housing services decreased and if yes, in what amount?
3. What, if any, restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Rental History

The tenants testified that they moved into the apartment on February 1, 2014, at an initial monthly rent of \$1,350.00. The testimony was that their lease did not list the garage as included. They further testified that upon initial inspection of the unit, they found rodents and indicated a lack of interest in the unit. As a result, the previous owner offered the garage to them for free in exchange for cleaning the apartment themselves. They testified that they were given keys to the garage and the mailbox when they signed the lease agreement, at move in. The signed lease

does not include the garage or parking space because the agreement for the garage was a verbal agreement. The tenant currently pays \$1,431.62 per month.

The owner's response alleged that the tenant was provided a RAP Notice on October 16, 2017. The owner provided a copy of the RAP Notice signed by the tenant on October 16, 2017¹.

Garage

The tenant testified that she received the email dated Tuesday, September 19, 2017, from Alex Esparza, a representative of the owner.² The email indicated that Alex would be checking to see if they (the owner and property manager) had a key to her garage. The tenant had access to the garage and was using it until September 29, 2017. The tenant testified that she has not had access to a garage since September 29, 2017.

The owner's witness, Alex Esparza, testified that he is familiar with the subject property because he is the assistant of the owner and property manager. He acknowledged that they were told that the tenants in unit 11 had a verbal agreement for parking but that there was nothing written.

He inspected the garage. He testified that the garage was being used for storage, contained a junk car, charcoal barbeque, and hazardous materials including oil tanks.

He further testified that there are 7 spaces available for the building. The garage that the tenant was using needed to be repaired as it was falling down. He knew that they were using the space. He informed them that they were not permitted to use the space. He requested that they remove their belongings.

On October 9, 2017, he issued a notice indicating that only residents with valid permits can park. The tenants in unit 11 do not have permits. On November 30, 2017, he again issued a notice which indicated again that only residents with valid parking permits residents were allowed to park. Currently, only three units have parking and new tenants pay \$200.00 per month for parking.

//

¹Exhibit H. This Exhibit, and all exhibits referred to in this Hearing Decision other than exhibit A was admitted into evidence without objection. Exhibit A was admitted over the objection.

²Exhibit B.

Laundry Room

The tenant testified that the building had a laundry room by the main entrance. The laundry room contained two washers, two dryers and cubbies for people to put their stuff in. The floors were cement and there was no counter for folding clothes. The machines cost \$1.75 to wash and \$1.75 to dry. The owner assumed ownership of the building on September 8, 2017, and advised the tenants that the laundry room would be closed for remodeling. The laundry room was unavailable from September 29, 2017, to December 20, 2017.

After the remodel, the laundry room has new machines and a marble looking counter top. The machines now cost \$2.00 to wash and \$2.00 to dry. She testified that she does not know what the capacity of the laundry machines was but that you can't put as many clothes in as before. She does not know what the capacity of the old machines were. The laundry room floor is now laminate.

The owner testified that he has undertaken more extensive repairs and renovations to every part of the building, including the laundry room. During his inspections, he noted that the laundry room was "inhumane". He observed that there was a constant inch of water on the floor, the machines were loud, and it smelled bad. There were broken bottles and a tenant reported prostitution and drug deals in the laundry room, which he suspected after he cleaned the laundry room. The project was initially intended to provide a beautiful, secure, non-leaking laundry room.

Once repairs started, the owner found that there were extensive leaks than expected, that the gas dryers had valves that were low, so low that children could touch them and that people had been moving them too. He decided to convert to electricity, which required permits. Thereafter, he obtained the necessary permits and the job was completed.

The machines in the laundry room were not owned by the owner of the subject property, current or previous. The machines in the laundry room were owned by a third party. He installed new washers and dryers and they are the latest model in efficiency and quietness. They have them at the Google campus. They are no other more efficient machines. When he started the laundry room project, he did not anticipate needing permits. However, once the project changed and he realized that the work was going to be more extensive, he obtained permits. The owner testified that the laundry room was finished. However, the re-opening was delayed by the strike at the City of Oakland, in December 2017.

AT&T Services

The tenant testified that she was notified, by the owner, in September 2017, that she could subscribe to either AT&T or Comcast. At the time, she had Comcast service. Thereafter, she switched to AT&T internet service, delivered through a wired phone line in the unit. Subsequently, the owner notified the tenant, in October 2017, that the AT&T wiring was an electrical fire hazard and was going to be removed by October 30, 2017. The removal of the AT&T wires on October 23, 2017, stopped her service. She now subscribes to Comcast at a higher cost.

The owner's witness testified that the junction box for cable and internet was old and not functional. Some of the cables were working and some were not. He called AT&T and Comcast to repair. AT&T declined to work on the junction box. Comcast agreed and came out to work on it. There were a lot of wires; from the junction box, wires went to the unit and out to the exterior. Now the wires are underground.

Originally, Mr. Esparza did tell then tenants they could have AT&T, but AT&T declined to work on the junction box. He further testified that he never limited the tenants' ability to contract with any provider. He only advised that the illegally installed wiring would be removed.

The junction box was inspected by his father, a Direct TV technician, and by a technician from AT&T. His father told him the junction box should be removed. The technician from AT&T came out and inspected the junction box. Additionally, the AT&T technician told him it was a fire hazard, that he wasn't going to fix it, and he left. The AT&T technician didn't mention anything about the landlines.

//

//

//

//

//

//

FINDINGS OF FACT AND CONCLUSIONS OF LAW

When, if ever, was the tenant given written notice of the Rent Adjustment Program?

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy³ and together with any notice of rent increase or change in the terms of a tenancy.⁴

The owner alleged that the tenant was provided a RAP Notice on October 16, 2017. The owner provided documentary evidence which supports that the tenant was provided a RAP Notice on October 16, 2017. There was no evidence that the tenant was provided a RAP Notice at any earlier date. Therefore, it is found that the tenant was given a RAP Notice on October 16, 2017.

Has the tenant suffered decreased housing services?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁵ and may be corrected by a rent adjustment.⁶ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is also a time limit for claiming decreased housing services. If the decreased service is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within 90 days after of whichever is later: (1) the date the tenant is noticed or first becomes aware of the decreased housing service; or (2) the date the tenant first receives the RAP Notice

If the decreased housing service is for a condition that is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for 90 days before the petition is filed.⁷

³ O.M.C. § 8.22.060(A)

⁴ O.M.C. § 8.22.070(H)(1)(A)

⁵ O.M.C. § 8.22.070(F)

⁶ O.M.C. § 8.22.110(E)

⁷ O.M.C. § 8.22.090(A)(3)

For a tenant's claim for decreased housing services to be granted, an owner must have notice of a problem and a reasonable opportunity to make needed repairs, except for those items the owner should have been aware of based upon a reasonable annual inspection.

Garage

The tenant established that they had use of the garage from the inception of the tenancy until their access was restricted, by the owner, on September 29, 2017. Therefore, the tenant is entitled to a 10% rent credit from September 2018, until the use of the garage is returned to them.

Laundry Room

The tenant established that the owner provided a laundry room until the laundry room underwent remodeling. The laundry room was unavailable for tenant use from September 29, 2017 until December 20, 2017. The evidence clearly established that the laundry room repairs were a temporary interference with the tenant's full use of housing services but did not substantially interfere with the right to occupancy of the premises as a residence. As such, it did not effectuate a decrease in housing services. Therefore, the claim is denied.

AT&T Landline Services

There is no evidence that the owner provided landline services through AT&T or any other company. The evidence established that AT&T declared the junction box a fire hazard and the owner remedied the hazard by removing the hazard. Therefore, the tenant's claim regarding the AT&T Landline Services is denied.

Cost of Laundry Room Machines

There was no evidence that on the capacity of the prior machines in the laundry room. Likewise, there was no evidence of the capacity of the current machines in the laundry room. The only evidence was that the cost of the current machines are twenty-five cents more than the prior tenants. It is found that the increase has had a minimal impact on tenants and therefore this claim is denied.

//

//

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

As indicated above, the legal rent for the unit is \$1,431.62 per month. The tenant is entitled to restitution for the decreased housing services in the amount of \$1,574.78. Additionally, as noted above, the tenant is entitled to an ongoing rent credit in the amount of 10% for the ongoing loss of use, of the garage.

Service Lost	From	To	VALUE OF LOST SERVICES			No. Months	Overpaid
			Rent	% Rent Decrease	Decrease /month		
Garage	1-Oct-17	31-Aug-18	\$1,431.62	10%	\$ 143.16	11	\$ 1,574.78
TOTAL LOST SERVICES							\$ 1,574.78
RESTITUTION							
MONTHLY RENT							\$1,432
TOTAL TO BE REPAID TO TENANT							\$ 1,574.78
TOTAL AS PERCENT OF MONTHLY RENT							110%
AMORTIZED OVER			12	MO. BY REG. IS		\$ 131.23	
OR OVER			MONTHS BY HRG. OFFICE				

The chart above indicates restitution for decreased housing services valued at \$1,574.78. Because of the ongoing decrease in housing services, the tenant is entitled to a monthly rent credit in the amount of \$143.16, for the loss of use of the garage. The tenant's monthly restitution amount is subtracted from the current legal rent, less any ongoing decreased housing services rent credit.

Restitution is awarded over a 12-month period. Accordingly, the restitution amount is \$131.23 per month.

ORDER

1. Petition T18-055 is granted in part and dismissed in part.
2. The current legal rent for the subject unit is \$1,431.62 per month before deductions for decreased housing services.
3. The total overpayment by the tenant is \$1574.78 past decreased housing services.

4. The tenant's rent is stated below:

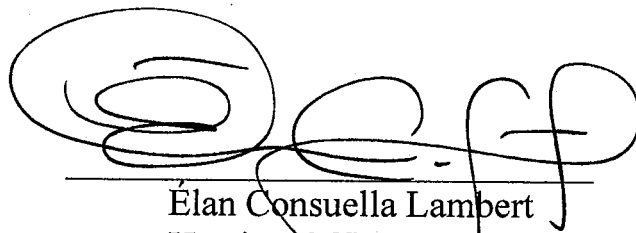
Base rent	\$1,431.62
Less restitution	\$ 131.23
Less garage	\$ 143.16
Net Rent on September 1, 2018	\$1,157.23

5. The tenant's rent for the months of September 2018, through August 2019, is \$1,157.23. The rent will revert to the current legal rent of \$1,431.62 in September 2019, less any ongoing decrease housing services rent credit.

6. When the owner returns the use of the garage to the tenant, and upon property notice in accordance with Section 827 of the California Civil Code, the rent may be increased by \$143.16.

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: August 13, 2018



Elan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0055

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

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

Documents Included
Hearing Decision

Manager

3000 Nicol Avenue Properties LLC
201 13th Street #32353
Oakland, CA 94604

Owner

Jakkrit Sirikantraporn
c/o James C. Lu
Lu & Associates & Accountancy Corp.
800 S. Barrasca Avenue, Suite 360
Covina, CA 91723

Owner Representative

Clifford E. Fried, Esq.,
Fried & Williams LLP
1901 Harrison St. 14th Floor
Oakland, CA 94612

Tenants

Michele Vargas
3000 Nicol Avenue #11
Oakland, CA 94601

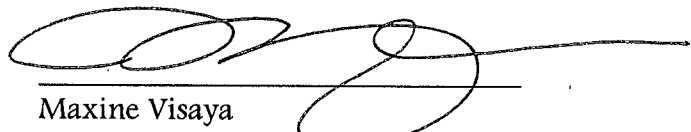
Robert Lopez
3000 Nicol Avenue #11
Oakland, CA 94601

Tenant Representative

Karyn L. Erickson
Law Office of Karyn L. Erickson
P.O. Box 22941
Oakland, CA 94609

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

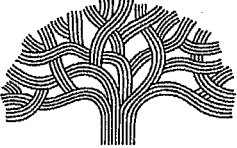
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 30, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

000102

2018 SEP 19 PM 4:01
For Date Stamp

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

Appellant's Name 3000 Nicol Avenue Property, LLC		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 3000 Nicol Avenue, Unit 11, Oakland, CA 94602			
Appellant's Mailing Address (For receipt of notices) c/o Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612		Case Number T-18-0055	
		Date of Decision appealed 8/13/2018	
Name of Representative (if any) Clifford E. Fried, Esq., SBN 1182288 Angelica A. Sandoval, Esq., SBN 318093		Representative's Mailing Address (For notices) Fried & Williams LPP 1901 Harrison Street, 14th Floor Oakland, CA 94612	

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.

2018 SEP 19 PM 4:01


- 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: 2 .

• 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 September 19, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Karyn L. Erickson, Esq. / Betsy Brazi Law Offices of Karyn L. Erickson
<u>Address</u>	P.O. Box 22941
<u>City, State Zip</u>	Oakland, CA 94609
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	9/19/18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

2019 SEP 19 PM 4:01

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.

EXPLANATION FOR EACH GROUND UPON WHICH APPEAL IS BASED

2019 SEP 19 PM 4:01

Owners and Appellants 3000 Nicol Avenue Properties, LLC hereby submit the following pursuant to RAP Regulations, Sec. 8.22.120.A.1 and the Appeal form currently posted on the RAP website (dated June 18, 2018).

I. INTRODUCTION

Michelle Vargas and Robert Lopez ("Petitioners" and "Respondents") petitioned for a decrease in housing services claiming the loss of a parking space.

RAP precedent has held that a tenant has the burden of proving decrease in housing services by preponderance of the evidence. *Howard v. Smith*, T11-0191. There is no substantial evidence in the record that the parking space was provided for at the start of the tenancy or that a parking space was ever provided as part of the tenancy. The two lease agreements signed by the tenants do not provide for parking.

II. GROUNDS FOR APPEAL

A. 2)d) The Hearing Decision Violates Federal, State, or Local Law.

1) The Hearing Decision Violates Evidence Code Section 622

California Evidence Code Section 622 provides that the facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, and their successors in interest. Despite the tenants signing 2 written instruments that failed to provide for a parking spot, the Hearing officer ruled that the tenancy included parking. This is a violation of Evidence Code Sec. 622. The Hearing Decision does not explain why Section 622 should not apply.

2) The Hearing Decision Violates the Parol Evidence Rule.

The parol evidence rule, codified in Evidence Code Sections 1856 and 1625 protects the integrity of written contracts by prohibiting evidence of any prior oral or written representations that contradict the terms of a final written contract. In this case, the tenant signed two agreements that did not provide the tenant with parking at the premises. The second agreement expressly excluded parking. The written agreements are the exclusive evidence that the tenancy did not include parking. The decision violates the parol evidence rule

RECEIVED
CITY OF GARLAND
RENT ARBITRATION PROGRAM
2018 SEP 19 PM 4:01

by changing the written agreement of the parties. The Hearing Decision does not explain why the parol evidence rule should not apply.

3) There Was no Decrease in Housing Services.

A housing service must be part of the tenancy at the inception either by contract or implied by law. *Garbe v. Kumana*, T08-0146. Thus, rent cannot adjust rent for a service that was not provided as a housing service. If parking was indeed negotiated, it should have been included in the written agreement of the parties. It was not. There is no housing service that was taken away as a matter of law.

B. 2)f) The Decision is Not Supported by Substantial Evidence

There is no substantial evidence that parking was provided as a housing service at the inception of the tenancy or at the time Appellant purchased the premises. Any such evidence would violation the parol evidence rule and Evidence Code Sec. 622. Thus, the only substantial and admissible evidence before the Hearing Officer were the two written agreement in which the tenants agreed that parking was not part of the tenancy.

C. 2)h) Other: The Hearing Decision is Wrong as a Matter of Law

For the reasons stated above, the Hearing Decision is wrong as a matter of law and should be reversed on appeal.



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

RECEIVED

OCT 19 2018

RENT ADJUSTMENT PROGRAM
OAKLAND

Response to

APPEAL

Respondent's Names MICHELE VARGAS, ROBERT LOPEZ		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 3000 NICOL AVENUE, UNIT U, OAKLAND, CA 94602			
Appellant's Mailing Address (For receipt of notices) RESPONDENT'S 3000 NICOL AVE., UNIT U, OAKLAND, CA 94602		Case Number T18-0055	
		Date of Decision appealed 8/13/2018	
Name of Representative (if any) KARYN L. ERICSSON, ATTORNEY LAW OFFICE OF KARYN L. ERICSSON		Representative's Mailing Address (For notices) P.O. BOX 22941 OAKLAND, CA 94609	

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): } NOTE: THIS IS A RESPONSE TO AN APPEAL.

- 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.

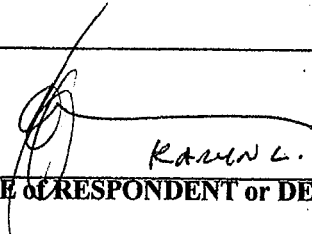
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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 ^{response to the} 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: 4.

- You must serve a copy of your response on the opposing parties within 35-days of being served with the opposing parties' appeal.

I declare, under penalty of perjury, under the laws of the State of California that on October 16, 2018, 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 of at least as expeditious as first class mail, with all pages or charges fully prepaid, address to each opposing party as follows:

Name	CLIFFORD B. FINEO, ATTORNEY
Address	FINEO & WILLIAMS, LLP 1901 HARRISON STREET, 14th FLOOR, OAKLAND, CA 94612
City, State Zip	
Name	ANGELICA A. SANDOVAL, ATTORNEY
Address	FINEO & WILLIAMS, LLP, 1901 HARRISON STREET, 14th FLOOR
City, State Zip	OAKLAND, CA 94612

 RAMON L. BROCKSON, ATTORNEY	10/16/2018
SIGNATURE of RESPONDENT 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.

RESPONSE TO APPEAL – CASE NUMBER: T18-0055

RESPONSE TO APPELLANT’S EXPLANATION FOR EACH GROUND UPON WHICH THEIR APPEAL IS BASED.

Respondents Michele Vargas and Robert Lopez (original Petitioners) hereby submit their response to Owners/Appellants 3000 Nicol Avenue Properties, LLC, appeal Case No. T18-0055. Respondents request that the Hearing Decision be affirmed and believe that Appellants arguments are without merit.

INTRODUCTION

Respondents petitioned for a rent decrease based upon the loss of the use of a parking garage, not a “parking space” as described by Appellants. In their petition and at the administrative hearing, Respondents proved, by substantial evidence, that the former owner granted them access to a parking garage beginning 2/15/2014 until 9/29/2017 when Appellants illegally removed this access within weeks after Appellants purchased the property at 3000 Nicol Avenue, Oakland, CA 94602 (“SUBJECT PROPERTY.”) See *Howard v. Smith*, T11-0101, a hearing decision that granted rent reduction for loss of use of a garage and was supported by substantial evidence on appeal.

I. THE HEARING DECISION IS CONSISTENT WITH LOCAL, STATE, AND FEDERAL LAW

1) LEASE AGREEMENTS SUPPORT RESPONDENTS’ PETITION:

Respondents executed a 2014 lease agreement with the original owners and a 2017 lease agreement with Appellants (See Exhibits 9 and 10 to Petition.)

A. 2014 Lease Agreement

The original lease agreement was executed on 2/1/2014 with tenancy to begin on 2/15/2014. Respondents testified that on or about 2/15/2014, they prepared to move into the SUBJECT PROPERTY but, upon arriving, discovered that their leased apartment was filthy and rat feces indicated vermin infestation. The property manager orally agreed that if Respondents cleaned the apartment and moved in, he would provide parking garage access to them for the duration of their tenancy. Respondents accepted his offer, cleaned the apartment, moved in, and used the parking garage from 2/15/2014 until Appellants ended garage access on 9/29/2017 and demanded their garage key. Respondents produced this key at the rent board hearing.¹

B. 2017 Lease Agreement Is Invalid

While on 9/8/2017 Respondents received a notice concerning changes in lease terms (see Exhibit 1.1 to Appellants’ “Submission of Tangible Evidence”), the terms of the new lease were materially different than the 2014 lease, changed the lease period from month-to-month to 15 days, and failed to list Respondent’s occupant children. (CC §§ 827(a), 827(b)(1).)

Respondents first executed the new lease agreement in early October 2017 and added the words “signed under duress.” Appellants rejected this signed lease agreement, and required Respondents to meet with Alex Esparza, the property manager, to personally explain the lease terms. If Respondents then wanted the new lease agreement to be reviewed by counsel *after* this explanation, they were required to provide Appellants with “a short timeline” for review but Appellants demanded

¹ Because Appellants replaced all garage locks, Appellants rescinded their demand for the garage key.

RESPONSE TO APPEAL – CASE NUMBER: T18-0055

that the agreement be subsequently signed without modification. In addition to making the lease term for 15-days, the new lease did not include Respondent's access to their garage and, in fact, required an additional fee for parking garage access.

Pursuant to Oakland Municipal Code 8.22.360(A)(3), a Just Eviction Cause is where "The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration and under such terms which are materially the same as in the previous agreement . . ." Here, the implications were clear. Sign the 2017 lease agreement or face eviction.

Both because the new lease agreement is *materially different* from the original lease and was signed **under duress** with no opportunity for a bargained-for exchange, the 2017 Lease Agreement is invalid and the 2014 lease agreement controls.² See Declaration of Attorney Karyn L. Erickson in Support of Tenant Petition filed on 6/14/2018. See Exhibit 8 attached to Declaration of Respondents in Support of their Petition.

2) THE 2014 GARAGE ACCESS CHANGE DID NOT VIOLATE THE PAROL EVIDENCE RULE:

Cal. Civ. Code § 1625 and Cal. Code of Civ. Proc. § 1856 codify the Parol Evidence Rule: the Parol Evidence Rule excludes evidence of a **prior** or a **contemporaneous** oral agreement that contradicts the original agreement.³ Here, the 2014 lease agreement was executed on 2/1/2014. An oral agreement modifying the lease agreement was entered into on or about 2/15/2014, fully fifteen days *after* the lease agreement was executed. Thus, because the oral agreement was not a prior or a contemporaneous agreement, the Parol Evidence Rule is inapplicable.

3) THERE WAS A DECREASE IN A HOUSING SERVICE WITHOUT RENT REDUCTION:

From 2/15/2014 forward, Respondents were provided with access to a parking garage as part of their monthly lease terms until Appellants terminated garage access on 9/29/2017 without compensation and prior to their execution of the 2017 lease agreement on 10/16/17. Thus, there was a decrease in housing services with no reduction in rent offered by Appellants.

4) THE DECREASE IN A HOUSING SERVICE IS SUPPORTED BY SUBSTANTIAL EVIDENCE:

Alex Esparza, witness for Appellants, admitted in his testimony at the hearing that he was aware of the oral agreement between the former owner and Respondents concerning their use of a parking garage at the SUBJECT PROPERTY. Moreover, in email communications with Respondents, Alex continuously referred to Respondent's garage as "your garage." See Exhibits 4 and 8 attached to the Declaration of Respondents in Support of their Petition. See Exhibits A and B and Exhibits 1-6 and 1-9 attached to the Supplemental Declaration of Respondents in Support of their Petition.⁴

² "Even when a writing is integrated, parol evidence is admissible to prove that the instrument is void or voidable for mistake, fraud, duress, undue influence. . . or other invalidating causes. . . Most of these types of problems do not appear on the face of the writing, and so parol evidence is needed to evaluate them." *Pacific State Bank v. Green* (2003), 110 Cal. App.4th 375, 387. Matthew Bender Practice Guide: California Contract Litigation (2017) Sec. 21.51.

³ Appellants wrongly claimed that the Parol Evidence Rule is codified in the California *evidence* code.

⁴ All Exhibits to these two supporting declarations were marked and admitted into evidence.

5) THE HEARING DECISION RECOGNIZES THE ORAL MODIFICATION OF THE 2014 LEASE AGREEMENT AND THE CONDUCT OF THE PARTIES:

“Parties to a written agreement may modify the agreement by an executed oral agreement [Cal. Civ. Code § 1698(b).] The written contract remains in effect to the extent that it has not been modified. [Conley v. Matthes (1997) 56 Cal. App. 4th 1453, 1465].” Matthew Bender Practice Guide: California Contract Litigation, Sec. 21.58. Thus, the written lease executed on 2/1/2014 can be presumed to be true pursuant to Cal. Evid. Code § 622 after which there was a subsequent oral modification to the agreement concerning the garage.

In the instant matter, Clause 25 of the 2014 lease agreement states, “No oral representation shall be effective to modify this Lease. If, as per the terms of this paragraph, any provision of this lease is newly added, modified, or stricken out, the remainder of this Lease shall remain in full force and effect.”

Despite the “No Oral Modification” clause, a written contract *can* be modified by executed oral agreements and is a question of fact. “An agreement to modify a written contract will be implied if the conduct of the parties is inconsistent with the written contract so as to warrant the conclusion that the parties intended to modify it.” *Daugherty Co. v. Kimberly-Clark Corp.* (1971) 14 Cal.App.3d 151, 158. Judicial Council of California Civil Jury Instructions (2018 edition), CACI No. 313.

Preliminary to the hearing, Appellants submitted a letter from Peter Pagones, a Realtor at Berkshires Hathaway Homes Services addressed to “To Whom It May Concern,” stating that there were no verbal agreements between the former owner concerning the parking garages and only tenants who had a garage specifically assigned to them in a lease agreement had access to a garage. Testimony from Alex Esparza confirmed that Mr. Pagones represented Appellants (e.g. the *Buyer*.) However, in Appellant’s “Submission of Tangible Evidence” dated 6/12/2018, page 3, Lines 16-19, they stated that Mr. Pagones represented the *Seller* and that Mr. Pagones’ letter was sent to *Respondents*. Mr. Esparza’s testimony at the hearing contradicted the written statements in Appellant’s “Submission of Tangible Evidence” both as it relates to Mr. Pagones’ letter and to the oral agreement between Respondents and the former owner.

Respondents testified that they never received the 5/21/2018 letter from Mr. Pagones and, in fact, did not know who Mr. Pagones was. Notably, Mr. Pagones’ letter, submitted as Exhibit N to the “Submission of Tangible Evidence,” is simply hearsay and not a declaration signed under penalty of perjury. Thus, its reliability is questionable.

Here, while the 2014 lease agreement did not specify a parking garage to Respondents, a *subsequent* oral agreement contradicted the express lease terms and the lease was impliedly modified by the *conduct* of the parties. For nearly four years, Respondents relied on full use of the parking garage for the duration of their tenancy to park Respondent Lopez’s valuable Mustang car until Appellants removed access to the garage. When Appellants removed garage access, Respondent Lopez was forced to sell his Mustang or risk its loss if parked on the Fruitvale neighborhood public streets. Thus, not only did Appellants remove Respondent’s access to their garage, but they did so with **full knowledge** of the 2014 oral agreement between Respondents and the original Landlord and the conduct of the parties. They cemented this reduction in housing services by *mandating* that Respondents sign a new and materially different lease agreement under duress on 10/16/2018.

RESPONSE TO APPEAL – CASE NUMBER: T18-0055

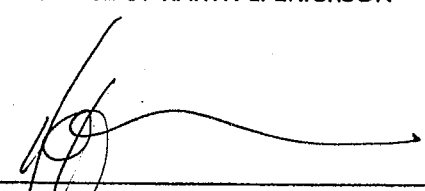
CONCLUSION:

For the reasons stated above, the Hearing Decision is correct as a matter of law and should be affirmed upon appeal.

Respectfully submitted,

LAW OFFICE OF KARYN L. ERICKSON

October 16, 2018
Dated _____



KARYN L. ERICKSON, SBN 278121
Attorney for MICHELE VARGAS and
ROBERT LOPEZ

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2019 MAY -2 PM 3:04

To: City of Oakland Rent Board
Clifford Fried, Esq.
Angelica Sandoval

Date: May 2, 2019

Re: Case No. T18-0055

AMENDED RESPONSE TO APPEAL IN CASE NO. T18-0055

000115

AMENDED RESPONSE TO APPEAL – CASE NUMBER: T18-0055

RESPONSE TO APPELLANT’S EXPLANATION FOR EACH GROUND UPON WHICH THEIR APPEAL IS BASED.

Respondents Michele Vargas and Robert Lopez (original Petitioners) hereby submit their response to Owners/Appellants 3000 Nicol Avenue Properties, LLC, appeal Case No. T18-0055. Respondents request that the Hearing Decision be affirmed and believe that Appellants arguments are without merit. Having had the benefit of listening to the audio recording, we are amending our response consistent with the testimony.

INTRODUCTION

Respondents petitioned for a rent decrease based upon the loss of the use of a parking garage, not a “parking space” as described by Appellants. In their petition and at the administrative hearing, Respondents proved, by substantial evidence, that the former owner granted them access to a parking garage beginning 2/15/2014 until 9/29/2017 when Appellants illegally removed this access within weeks after Appellants purchased the property at 3000 Nicol Avenue, Oakland, CA 94602 (“SUBJECT PROPERTY.”) See *Howard v. Smith*, T11-0101, a hearing decision that granted rent reduction for loss of use of a garage and was supported by substantial evidence on appeal.

I. THE HEARING DECISION IS CONSISTENT WITH LOCAL, STATE, AND FEDERAL LAW

1) LEASE AGREEMENTS SUPPORT RESPONDENTS’ PETITION:

Respondents executed a 2014 lease agreement with the original owners and a 2017 lease agreement with Appellants (See Exhibits 9 and 10 to Petition.)

A. 2014 Lease Agreement

The original lease agreement was executed on 2/1/2014 with tenancy to begin ~~that day on~~ 2/15/2014. Respondents testified that on or about 2/15/2014, they prepared to move into the SUBJECT PROPERTY but, upon arriving, discovered that their leased apartment was filthy and rat feces indicated vermin infestation. The property manager orally agreed that if Respondents cleaned the apartment and moved in, he would provide parking garage access to them for the duration of their tenancy. Respondents accepted his offer, cleaned the apartment, moved in, and used the parking garage from 2/15/2014 until Appellants ended garage access on 9/29/2017 and demanded their garage key. Respondents produced this key at the rent board hearing.¹ See audio recording at about 13:18 and at about 26:27.

B. 2017 Lease Agreement Is Invalid

While on 9/8/2017 Respondents received a notice concerning changes in lease terms (see Exhibit 1.1 to Appellants’ “Submission of Tangible Evidence”), the terms of the new lease were materially different than the 2014 lease, changed the lease period from month-to-month to 15 days, and failed to list Respondent’s occupant children. (CC §§ 827(a), 827(b)(1).)

Respondents first executed the new lease agreement in early October 2017 and added the words “signed under duress.” Appellants rejected this signed lease agreement, and required Respondents to meet with Alex Esparza, the property manager, to personally explain the lease terms. If

¹ Because Appellants replaced all garage locks, Appellants rescinded their demand for the garage key.

AMENDED RESPONSE TO APPEAL – CASE NUMBER: T18-0055

Respondents then wanted the new lease agreement to be reviewed by counsel *after* this explanation, they were required to provide Appellants with “a short timeline” for review but Appellants demanded that the agreement be subsequently signed without modification. In addition to making the lease term for 15-days, the new lease did not include Respondent’s access to their garage and, in fact, required an additional fee for parking garage access.

Pursuant to Oakland Municipal Code 8.22.360(A)(3), a Just Eviction Cause is where “The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration and under such terms which are materially the same as in the previous agreement . . .” Here, the implications were clear. Sign the 2017 lease agreement or face eviction.

Both because the new lease agreement is *materially different* from the original lease and was signed **under duress** with no opportunity for a bargained-for exchange, the 2017 Lease Agreement is invalid and the 2014 lease agreement controls.² See Declaration of Attorney Karyn L. Erickson in Support of Tenant Petition filed on 6/14/2018. See Exhibit 8 attached to Declaration of Respondents in Support of their Petition.

2) THE 2014 GARAGE ACCESS CHANGE DID NOT VIOLATE THE PAROL EVIDENCE RULE:

Cal. Civ. Code § 1625 and Cal. Code of Civ. Proc. § 1856 codify the Parol Evidence Rule: the Parol Evidence Rule excludes evidence of a **prior** or a **contemporaneous** oral agreement that contradicts the original agreement.³ Here, the 2014 lease agreement was executed on 2/1/2014. An oral agreement modifying the lease agreement was entered into after lease execution on or about 2/15/2014, fully fifteen days after the lease agreement was executed. Thus, because the oral agreement was not a prior or a contemporaneous agreement, the Parol Evidence Rule is inapplicable.

3) THERE WAS A DECREASE IN A HOUSING SERVICE WITHOUT RENT REDUCTION:

From 2/15/2014 forward, Respondents were provided with access to a parking garage as part of their monthly lease terms until Appellants terminated garage access on 9/29/2017 without compensation and prior to their execution of the 2017 lease agreement on 10/16/17. Thus, there was a decrease in housing services with no reduction in rent offered by Appellants.

4) THE DECREASE IN A HOUSING SERVICE IS SUPPORTED BY SUBSTANTIAL EVIDENCE:

Alex Esparza, witness for Appellants, admitted in his testimony at the hearing that he was aware of the oral agreement between the former owner and Respondents concerning their use of a parking garage at the SUBJECT PROPERTY. Moreover, in email communications with Respondents, Alex continuously referred to Respondent’s garage as “your garage.” See Exhibits 4 and 8 attached to the Declaration of Respondents in Support of their Petition. See Exhibits A and B and Exhibits 1-6 and 1-9

² “Even when a writing is integrated, parol evidence is admissible to prove that the instrument is void or voidable for mistake, fraud, duress, undue influence. . . or other invalidating causes. . . Most of these types of problems do not appear on the face of the writing, and so parol evidence is needed to evaluate them.” *Pacific State Bank v. Green* (2003), 110 Cal. App.4th 375, 387. Matthew Bender Practice Guide: California Contract Litigation (2017) Sec. 21.51.

³ Appellants wrongly claimed that the Parol Evidence Rule is codified in the California *evidence* code.

AMENDED RESPONSE TO APPEAL – CASE NUMBER: T18-0055

attached to the Supplemental Declaration of Respondents in Support of their Petition.⁴ See audio recording at about 02:40:00.

5) THE HEARING DECISION RECOGNIZES THE ORAL MODIFICATION OF THE 2014 LEASE AGREEMENT AND THE CONDUCT OF THE PARTIES:

“Parties to a written agreement may modify the agreement by an executed oral agreement [Cal. Civ. Code § 1698(b).] The written contract remains in effect to the extent that it has not been modified. [*Conley v. Matthes* (1997) 56 Cal. App. 4th 1453, 1465].” Matthew Bender Practice Guide: California Contract Litigation, Sec. 21.58. Thus, the written lease executed on 2/1/2014 can be presumed to be true pursuant to Cal. Evid. Code § 622 after which there was a subsequent oral modification to the agreement concerning the garage.

In the instant matter, Clause 25 of the 2014 lease agreement states, “No oral representation shall be effective to modify this Lease. If, as per the terms of this paragraph, any provision of this lease is newly added, modified, or stricken out, the remainder of this Lease shall remain in full force and effect.”

Despite the “No Oral Modification” clause, a written contract **can** be modified by executed oral agreements and is a question of fact. “An agreement to modify a written contract will be implied if the conduct of the parties is inconsistent with the written contract so as to warrant the conclusion that the parties intended to modify it.” *Daugherty Co. v. Kimberly-Clark Corp.* (1971) 14 Cal.App.3d 151, 158. Judicial Council of California Civil Jury Instructions (2018 edition), CACI No. 313.

Preliminary to the hearing, Appellants submitted a letter from Peter Pagones, a Realtor at Berkshires Hathaway Homes Services addressed to “To Whom It May Concern,” stating that there were no verbal agreements between the former owner concerning the parking garages and only tenants who had a garage specifically assigned to them in a lease agreement had access to a garage. Testimony from Alex Esparza confirmed that Mr. Pagones represented Appellants (e.g. the **Buyer**.) However, in Appellant’s “Submission of Tangible Evidence” dated 6/12/2018, page 3, Lines 16-19, they stated that Mr. Pagones represented the **Seller** and that Mr. Pagones’ letter was sent to *Respondents*. Mr. Esparza’s testimony at the hearing contradicted the written statements in Appellant’s “Submission of Tangible Evidence” both as it relates to Mr. Pagones’ letter and to the oral agreement between Respondents and the former owner. See audio recording at about 02:15:33.

Respondents testified that they never received the 5/21/2018 letter from Mr. Pagones and, in fact, did not know who Mr. Pagones was. Notably, Mr. Pagones’ letter, submitted as Exhibit N to the “Submission of Tangible Evidence,” is simply hearsay and not a declaration signed under penalty of perjury. Thus, its reliability is questionable.

Here, while the 2014 lease agreement did not specify a parking garage to Respondents, a **subsequent** oral agreement contradicted the express lease terms **and** the lease was impliedly modified by the **conduct** of the parties. For nearly four years, Respondents relied on full use of the parking garage for the duration of their tenancy to park Respondent Lopez’s valuable Mustang car until Appellants removed access to the garage. When Appellants removed garage access, Respondent Lopez was forced to sell his Mustang or risk its loss if parked on the Fruitvale neighborhood public streets. Thus, not only

⁴ All Exhibits to these two supporting declarations were marked and admitted into evidence.

AMENDED RESPONSE TO APPEAL – CASE NUMBER: T18-0055

did Appellants remove Respondent's access to their garage, but they did so with **full knowledge** of the 2014 oral agreement between Respondents and the original Landlord and the conduct of the parties. They cemented this reduction in housing services by *mandating* that Respondents sign a new and materially different lease agreement under duress on 10/16/2018.

CONCLUSION:

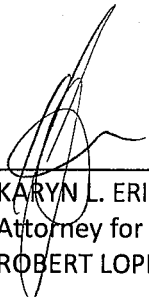
For the reasons stated above, the Hearing Decision is correct as a matter of law and should be affirmed upon appeal.

Respectfully submitted,

LAW OFFICE OF KARYN L. ERICKSON

May 2, 2019

Dated



KARYN L. ERICKSON, SBN 278121
Attorney for MICHELE VARGAS and
ROBERT LOPEZ

1 KARYN L. ERICKSON: SBN 278121
2 3871 Piedmont Ave. #34
3 Oakland, CA 94611

4 Fax: 415-887-1447

5 Attorney for Petitioners/Appelles
6 MICHELE VARGAS
7 ROBERT LOPEZ

8 **OAKLAND RENT ADJUSTMENT BOARD**

9
10 } Case No.: T18-0055

11
12 MICHELE VARGAS and
13 ROBERT LOPEZ,
14 Petitioners/Appellees,
15 v.
16 3000 Nicol Avenue LLC, a Business
17 Entity,
18 Et al.
19 Respondents/Appellants.

20 } **PROOF OF SERVICE OF AMENDED
21 RESPONSE TO RESPONDENT'S
22 APPEAL OF RENT BOARD HEARING
23 DECISION**

24 **PROOF OF SERVICE**

25 Code of Civil Procedure §§ 1013a, 2015.5

26 I am a resident of the State of California and over the age of eighteen years, and not a
27 party to the within action. My business address is 3871 Piedmont Avenue, # 34, Oakland, CA
28 94611.

On May 2, 2019, I served the following document(s):

PROOF OF SERVICE

1 **AMENDED RESPONSE TO APPEAL – CASE NO. T18-0055**

2 By placing the document(s) listed above in a sealed envelope, addressed as set forth
3 below, and placing the envelope for collection and mailing in the place designated for such in
4 our offices, following ordinary business practices.

5 By transmitting via facsimile the document(s) listed above to the fax number(s) set for
6 the below on this date before 5:00 p.m.

7 By causing a true copy thereof to be personally delivered to the person(s) at the
8 address(es) set forth below.

9 By electronically serving the document(s) described above via a Court approved File &
10 Serve vendor on those recipients designated on the Transaction Receipt located on the vendor's
11 Website.

12 **SEE ATTACHED SERVICE LIST.**

13 I am readily familiar with the firm's practice of collection and processing correspondence
14 for mailing within the United States Postal Service (U.S.P.S.). Under that practice, it would be
15 deposited with U.S.P.S. on the same day with postage thereon fully prepaid in the ordinary
16 course of business. I am aware that on motion of the party served, service is presumed invalid if
17 postal cancelation date is more than one day after the date of deposit for mailing in affidavit.

18 I declare, under penalty of perjury, under the laws of the State of California, that the
19 above is true and correct.

20
21 Executed on May 2, 2019 at Oakland, California



Karyn L. Erickson

SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford Fried, Esq.
Angelica Sandoval, Esq.
FRIED & WILLIAMS, LLP
1901 Harrison Street, 14th Floor
Oakland, CA 94612
FAX: (510) 625-0100

ATTORNEYS FOR RESPONDENTS, APPELLANTS
3000 Nicol Avenue, LLC

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2019 MAY -9 PM 2:36

1 Clifford E. Fried, Esq., SBN 118288
2 Angelica A. Sandoval, Esq., SBN 318093
3 Fried & Williams LLP
4 1901 Harrison Street
5 Oakland, CA 94612
6 Telephone: 510-625-0100
7 Facsimile: 510-550-3621
8 asandoval@friedwilliams.com

9 Attorney for Owner
10 3000 Nicol Avenue Properties, LLC

11 COMMUNITY AND HOUSING DEVELOPMENT AGENCY
12 RENT ADJUSTMENT PROGRAM

13 3000 Nicol Avenue Properties, LLC

CASE NO: T18-0055

14 Appellant/Owner,

**OBJECTION TO RESPONDENTS
AMENDED RESPONSE TO
APPEAL**

15 v.

16 Michelle Vargas
17 Robert Lopez

18 Respondents/Tenants.

19 **I. FACTS**

20 On August 13, 2018, Hearing officer Elan Consuella Lambert, issued an Administrative
21 Decision. The Administrative Decision was served by mailing a copy on August 30, 2018. A true
22 and correct copy of that decision is attached hereto as Exhibit 1. Appellant filed and served its
23 Appeal on September 19, 2018. A true and correct copy of the filed endorsed first page of
24 Appellant's Appeal is attached hereto as Exhibit 2. Respondents filed a response on October 19,
25 2018. A true and correct copy of the first 3 pages of Respondents' Response is attached hereto as
26 Exhibit 3.

27 **II. ARGUMENTS**

28 **A. Respondents filed their amended response after the deadline.**

Oakland's RAP Regulation 8.22.120.A.2 states, "A party responding to an appeal **must file any supporting argument and documentation and serve it on opposing party within 15 days**

000123

RECEIVED
CITY OF OAKLAND
HIRENT ARBITRATION PROGRAM
2019 MAY -9 PM 2:36

1 of the service of the supporting documentation along with proof of service". A true and correct copy
2 of the Oakland's RAP Code 8.22.120.A.2 is attached hereto as Exhibit 4.

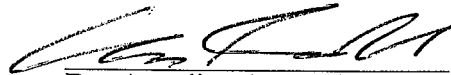
3 According to Oakland's RAP 8.22.120.A.2, a response to a Appellant's appeal would have
4 been due **October 9, 2018**. Respondents' Response has a file stamp of **October 19, 2018** with a
5 letter from Respondents' attorney stating that the Appeal was electronically served on October 16,
6 2019. Respondents did not comply with Oakland's RAP regulations.

7 On May 2, 2019, Respondents attempted to amend their response by submitting an Amended
8 Response. This is again past the deadline. Respondents' Appeal and Amended Response should not
9 be considered.

10 **II. CONCLUSION**

11 There is no good cause for the late filing and here is no legal authority to allow the
12 consideration of a late appeal. Respondents' Response should be denied in it's entirety. Or in the
13 alternative Respondents' Amended Response should be denied.

14 Fried & Williams LLP

15 

16 By: Angelica A. Sandoval
17 Attorney for Appellant

18
19
20
21
22
23
24
25
26
27
28

000124

2019 MAY 28 PM 4:14

1 **LAW OFFICE OF KARYN L. ERICKSON**
KARYN L. ERICKSON SBN #278121
2 3871 Piedmont Avenue, #34
OAKLAND, CA 94611
3 Telephone: 415/272-9630

4 Attorney for
5 Michele Vargas and
6 Robert Lopez

7
8 **CITY OF OAKLAND RENT ADJUSTMENT BOARD**

9
10) Case Number: T18-0055

11 3000 NICOL AVENUE PROPERTY,)
12 LLC.)

**REPLY TO APPELLANT/OWNER'S
OBJECTION TO
RESPONDENT/TENANT'S AMENDED
RESPONSE TO APPEAL**

13 and their agents,)

14 Appellant/Owner;)

15 v.)

Hearing: June 20, 2019
Time: 7:00 P.M.
Dept: Oakland Rent
Adjustment Board, Dalziel
Building, 250 Frank H. Ogawa
Plaza, Suite 5313, Oakland, CA
94612

16 MICHELE VARGAS)

17 and)

18 ROBERT LOPEZ,)

19 Respondent/Tenants.)
20)

21
22 **I. INTRODUCTION**

23 The Appellant/Owner served an appeal of the hearing decision
24 dated August 13, 2018 in Case No. T18-0055 on the Law Office of
25 Karyn L. Erickson on September 19, 2018 by mail. The appeal form
26 used by the Appellant/Owner was created by the Oakland Rent
27 Adjustment Program, version 6/18/2018. The form served by
28 Appellant/Owner was not a filed-endorsed stamped copy. A true

000125

1 and correct copy of the appeal form served is attached as
2 Exhibit A.

3 **II. THE RESPONSE TO THE APPEAL WAS TIMELY SERVED**

4 Page 3 of the Appeal form, ver. 6/18/2018, is entitled
5 "**IMPORTANT INFORMATION.**" Below this caption are seven (7) bullet
6 points, the third (3rd) of which states the following:

7 "Any response to the appeal by the other party must be
8 received by the Rent Adjustment Program with a proof of
9 service on opposing party **within 35 days of filing the
appeal.**"

10 The appeal was served and filed on September 19, 2019. The
11 response to the appeal was served on October 16, 2018, filed
12 electronically the same day, and filed in person on October 19,
13 2018 pursuant to the Rent Adjustment Program form instructions.
14 October 16, 2018 was 27 days after service of the Owner's appeal
15 and October 19, 2018 was 30 days after service of the Owner's
16 appeal, well within the 35-day period stated in the Rent Board
17 form.

18 Thus, and specifically as guided by the Rent Adjustment
19 Program form instructions, the Response to the Appeal was timely
20 served and filed.

21 **III. RENT BOARD STAFF MAY MODIFY OR WAIVE THE REQUIREMENTS
OF O.M.C. 8.22.120A**

22 Pursuant to O.M.C. 8.22.120A(5),

23
24 "Staff, in its discretion, may modify or waive the above
25 requirements [e.g. O.M.C. 8.22.120A(1-4)] for **good cause.**
26 The good cause must be provided in writing by the party
27 seeking a waiver or a modification." [Emphasis added.]

28 Here, there is a conflict between the Rent Board form and the
municipal ordinance. The Rent Board form instructions state that

1 the opposition to the appeal must be served and filed within 35
2 days after service and filing the appeal. However, O.M.C.
3 8.22.120A(3) states that "A party responding to an appeal must
4 file any response. . .and serve it on the opposing party within
5 fifteen (15) days of service..."

6 Here, and in good faith, Respondent/Tenants filed their
7 response within the 35-days stated in the Rent Board form and in
8 reliance on the accuracy of that form.

9 Therefore, Staff has good cause to waive the requirements
10 of O.M.C. 8.22.120A.

11
12 **IV. THE AMENDED RESPONSE TO THE APPEAL DOES NOT PRESENT**
NEW EVIDENCE OR CLAIMS

13 Page 3 of the Appeal form, ver. 6/18/2018, begins with
14 "IMPORTANT INFORMATION" and is followed by seven bullet points,
15 the fourth (4th) and fifth (5th) of which state the following:

16 "The Board will not consider new claims..."

17 "The Board will not consider new evidence at the appeal
18 hearing without specific approval."

19 An Amended Response to the Appeal was filed and served on
20 May 2, 2019 to correct an error in a stated date. No new claims
21 were presented, and no new evidence was provided. Timestamps
22 relating to an audio recording of the hearing on the petition
23 were also provided to pinpoint some of the substantial evidence
24 supporting the hearing decision.

25 Therefore, since the Amended Response to the Appeal
26 detailed diminimis revisions to correct the record and did not
27 present new evidence or claims, the Amendment should be accepted
28 without rejection.

1 **LAW OFFICE OF KARYN L. ERICKSON**
KARYN L. ERICKSON SBN #278121
2 3871 Piedmont Avenue, #34
OAKLAND, CA 94611
3 Telephone: 415/272-9630

4 Attorney for
5 Michele Vargas and
6 Robert Lopez

7
8 **CITY OF OAKLAND RENT ADJUSTMENT BOARD**

9
10 3000 NICOL AVENUE PROPERTY,)
11 LLC.)

12 and their agents,)

13 Appellant/Owner;)

14 v.)

15 MICHELE VARGAS)

16 and)

17 ROBERT LOPEZ,)

18 Respondent/Tenants.)

Case Number: T18-0055

**REPLY TO APPELLANTS/OWNERS
OPPOSITION TO
RESPONDENT/TENANTS AMENDED
RESPONSE TO RESPONDENTS APPEAL**

Hearing: June 20, 2019

Time: 7:00 P.M.

Dept: Oakland Rent

Adjustment Board, Dalziel

Building, 250 Frank H. Ogawa

Plaza, Suite 5313, Oakland, CA

94612

19)
20)
21 **PROOF OF SERVICE**

22 **Code of Civil Procedure §§ 1013a, 2015.5**

23 I am a resident of the State of California and over the age
24 of eighteen years, and not a party to the within action. My
25 business address is **3871 Piedmont Avenue, #34, Oakland, CA**
26 **94611.**

27 PROOF OF SERVICE

28 REPLY TO APPELLANT/OWNER'S OPPOSITION TO RESPONDENT/TENANTS RESPONSE TO THE APPEAL:
CASE NO. T18-0055

1 On May 25, 2019, I served the following document(s):

2 **REPLY TO APPELLANT/OWNER'S OPPOSITION TO RESPONDENT/TENANT'S**
3 **AMENDED RESPONSE TO RESPONDENT'S APPEAL**

4 By placing the document(s) listed above in a sealed
5 envelope, addressed as set forth below, and placing the envelope
6 for collection and mailing in the place designated for such in
7 our offices, following ordinary business practices.

8 By transmitting via facsimile, the document(s) listed above
9 to the fax number(s) set forth below on this date before 5:00
10 p.m.

11 By causing a true copy thereof to be personally delivered
12 to the person(s) set forth below.

13 By electronically serving the document(s) described above
14 via a Court approved File & Serve vendor on those recipients
15 designated on the Transaction Receipt located on the vendor's
16 Website.

17 **SEE ATTACHED SERVICE LIST.**

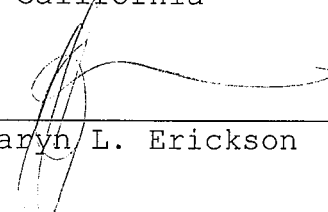
18 I am readily familiar with the firm's practice of
19 collection and processing correspondence for mailing within the
20 United States Postal Service (U.S.P.S.). Under that practice, it
21 would be deposited with U.S.P.S. on the same day with postage
22 thereon fully prepaid in the ordinary course of business. I am
23 aware that on motion of the party served, service is presumed
24 invalid if postal cancellation date is more than one day after
25 the date of deposit for mailing in affidavit.

26
27 PROOF OF SERVICE

28 REPLY TO APPELLANT/OWNER'S OPPOSITION TO RESPONDENT/TENANTS RESPONSE TO THE APPEAL:
CASE NO. T18-0055

1 I declare, under penalty of perjury, under the laws of the
2 State of California, that the above is true and correct.

3
4 Executed on May 25, 2019 at Oakland, California

5
6 
7 _____
8 Karyn L. Erickson
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 PROOF OF SERVICE

28 REPLY TO APPELLANT/OWNER'S OPPOSITION TO RESPONDENT/TENANTS RESPONSE TO THE APPEAL:
CASE NO. T18-0055

SERVICE LIST

1
2
3 Clifford Fried, Esq.
4 Angelica Sandoval, Esq.
5 **FRIED & WILLIAMS, LLP**
6 1901 Harrison Street, 14th Floor
7 Oakland, CA 94612

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
ATTORNEYS FOR APPELLANTS/OWNERS
3000 Nicol Avenue, LLC
and their agents

PROOF OF SERVICE

REPLY TO APPELLANT/OWNER'S OPPOSITION TO RESPONDENT/TENANTS RESPONSE TO THE APPEAL:
CASE NO. T18-0055