

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

PANEL MEETING

NOVEMBER 21, 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. T18-0438, Martinez v. Carino et al.
 - b. T18-0493, Peoples v. Ma Properties
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, Cantonés, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandnet.com o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandnet.com

* Staff recommendation memos for the appeals will be available at the Rent Program and the Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.

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.: T18-0438

Case Name: Martinez v. Carino et al

Property Address: 9701 D Street, Unit 'C', Oakland, CA

Parties: Jesus Martin (Tenant)
Blanca Rodriguez (Tenant)
Xavier Johnson (Tenant Representative)
Myrna Carino (Owner)
Ryan Juan (Owner)

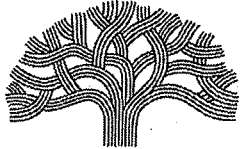
OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	August 20, 2018
Owner Response filed	December 21, 2018
1 st Hearing Decision mailed	July 26, 2019
Owner Appeal filed	August 15, 2019
Corrected Hearing Decision mailed	August 16, 2019

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T18-0438 LM/MA

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. 20 PM 4:01
		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 Federico Martinez and Jesus Martinez	Rental Address (with zip code) 9701 D Street Oakland, CA 94603	Telephone: E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) Myrna M. Carino and Ryan C Juan	Mailing Address (with zip code) 124 Dwight St. San Francisco, CA 94134	Telephone: Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 3

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

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

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

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

* Monolingual Spanish speaker, needs translator

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	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 checked="" type="checkbox"/>	(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.
<input checked="" 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 checked="" 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)
	(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).
	(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: January 2000 Initial Rent: \$ 800 /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		
June 2017	July 2017	\$ 1200	\$ 1320	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Nov 2016	Dec 2016	\$ 800	\$ 1200	<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.

FEDERICOMARTINEZ

Tenant's Signature

8/16/2018

Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

Tenant Petitioner
Federico and Jesus Martinez
9701 D Street
Oakland, CA 94603

Addendum A- Changed Conditions

1. From the start of the tenancy in January 2000 the tenants have been unlawfully paying for water that is not separately metered.
2. From the start of the tenancy in January 2000 the rent has included garbage. The landlord is now trying to charge the tenants for garbage, beginning in August 2018.

PLEASE NOTE: Tenant Petitioner is a monolingual Spanish speaker and requests an interpreter.

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Tenant Petitioner
 Federico and Jesus Martinez
 9701 D Street
 Oakland, CA 94603

Description of Bad Conditions	Approximate Date Bad Conditions Began	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Changed conditions
The rug throughout the house is unhealthy; dirty, smells, and damaged <i>1 rug still in house 1 rug is being replaced 1 rug is being replaced</i>	January 2000	January 2000, they notified landlord verbally	N/A	15%
One of the bathroom lights does not work does not work -1 <i>lights in bathroom do not work</i>	December 2016	December 2016, they notified landlord verbally	N/A	5%
The large room's lights do not function <i>- no overhead light</i>	December 2016	December 2016, they notified landlord verbally	N/A	5%
The drawers in the kitchen do not open and close, they are damaged and very old	January 2016	January 2016, they notified landlord verbally	N/A	5%
The bathtub leaks when they take a shower <i>over the tub to get closer from curtain no more</i>	January 2000	January 2000, they notified landlord verbally	N/A	10%
The hot water for their laundry was turned off <i>no more</i>	January 2016	January 2016, they notified landlord verbally	N/A	10%

Handwritten notes:
 ... 2019
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Tenant Petitioner
 Federico and Jesus Martinez
 9701 D Street
 Oakland, CA 94603

Description of Bad Conditions	Approximate Date Bad Conditions Began	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Changed conditions
There is mold in the bathroom, in the boiler area, and in the 2 bedrooms	January 2000	January 2000, they notified landlord verbally	N/A	10%
There are cables hanging in the bathroom from where the fan has been removed, there is also water seeping in here	June 2017	January 2017, they notified landlord verbally	N/A	5%
The front and back door are not secure, the locks do not function	January 2011	January 2011, they notified landlord verbally	N/A	20%
The heater does not work	January 2000	January 2000, they notified landlord verbally	N/A	20%
There are no functioning smoke detectors	January 2000	January 2000, they notified landlord verbally	N/A	5%
There are no carbon monoxide detectors	January 2000	January 2000, they notified landlord verbally	N/A	5%

Extensive handwritten notes:
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Centro Legal de la Raza

2019 MAR 15 PM 4:18

*Working for Justice
Strengthening Community
Since 1969*

March 15, 2019

Analyst Keith Mason
City of Oakland
Rent Adjustment Program
Department of Housing and Community Development
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Via Hand Delivery

RE: Notice of Tenant Representative

Dear Analyst Keith Mason:

Please find the evidence submission in support of Case No. T18-0438. The included notice of violation had not been created prior to the evidence submission date, and the tenants seeks to include it into evidence now with good cause. In addition, I will be serving as the Tenant Representative. Please contact me if you have any questions or concerns at (510) 947-9912.

Sincerely,

Xavier Johnson
Legal Fellow
Tenants' Rights Program

March 8, 2019



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department
Bureau of Building
Building Permits, Inspections and Code Enforcement Services
inspectioncounter@oaklandnet.com

(510) 238-6402
FAX: (510) 238-2959
TDD: (510) 238-3254

NOTICE OF VIOLATION

March 8, 2019

Certified and Regular mail

To: JUAN RYAN C & CARINO MYRNA M
124 DWIGHT ST
SAN FRANCISCO CA 94134-1910

Code Enforcement Case No.: 1900877
Property: 9701 D ST, OAKLAND 94603
Parcel Number: 044- -4979-012-00
Re-inspection Date/Correction Due Date: April 12, 2019

Code Enforcement Services inspected your property on 3/6/19 and confirmed:

- that the violations of the Oakland Municipal Code (OMC) identified below are present and need to be addressed as specified under "Required Actions". Photographs of the violations are enclosed where applicable.
- that work was performed without permit or beyond the scope of the issued permit and you are receiving this Notice of Violation because you did not get the required permit within three (3) days of receiving the Stop Work Order. You must contact the inspector indicated below before the Re-inspection Date to stop further code enforcement action.
- Investor Owned Program - Per OMC 8.58
- Foreclosed and Defaulted Properties - Per OMC 8.54

At this point, no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and contact Inspector John Marlette, who is assigned to your case, before the re-inspection date shown above to schedule an inspection. Your inspector is available by phone at 510-238-4722 and by email at jmarlette@oaklandnet.com.

If the Property Owner Certification is included in this notice you may also complete the form and include photographs of the corrected violations.

Note: If a complaint is filed regarding the same or similar violation(s) and it is confirmed within 24 months from the date of this notice an immediate assessment of \$1,176.00 will be charged as a Repeat Violation. In addition, if violation(s) remain uncorrected after you receive a 30-day Notice of Violation, further enforcement action(s) will include additional fees.

- If you do not contact your inspector to discuss why you cannot comply or if applicable, complete the Property Owner Certification form and the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total \$2,665.00.
- The City may also abate the violations and charge you for the contracting and administrative costs, which can also total over \$1,000.00.
- Priority Lien fees in the amount of \$1,349.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims Court.
- The Notice of Violation may be recorded on your property with associated fees for processing and recording.


You have a right to appeal this Notice of Violation. You must complete the enclosed Appeal form and return it with supporting documentation in the enclosed envelope. If Code Enforcement Services does not receive your written Appeal within the appeal deadline dated: 4/12/19 you will waive your right for administrative review. *Note: Incomplete appeals including, but not limited to an oral notification of your intention to appeal, a written appeal postmarked but not received by us within the time prescribed or a written appeal received by us without a filing fee are not acceptable and will be rejected.*

Note: The appeal period may be reduced based on prior noticing i.e., Courtesy notice, Repeat Violation and the Property Owner Certification on record.

If you choose to file an appeal no further action can be taken by Code Enforcement Inspectors until you have had the opportunity to be heard by an independent Administrative Hearing Examiner pursuant to the Oakland Municipal Code Section 15.08.380 (B)(3) and a Final Decision is determined. An appeal will be scheduled within 60 days from the end of the appeal period. A filing fee in the amount of \$110.00 is due at the time of submittal. Payments may be made in person at the Bureau of Building, 250 Frank Ogawa Plaza, 2nd Floor, or by phone by calling 510-238-4774 (Please include the receipt number and date on your appeal). MasterCard and Visa are accepted.

Investor-Owned Residential Property OMC 8.58	Foreclosed and Defaulted OMC 8.54
<p>Administrative/Civil penalties will be Assessed for failure to abate (OMC Sections 8.24.020, 1.08.60, 1.12). Penalties may be assessed for up to 21 days at \$1,000 a day. You will be notified separately if penalties have accrued.</p> <p>Nuisance Abatement Lien (Notice of Violation) A Nuisance Abatement Lien may be filed with the Alameda County Clerk-Recorder for recordation on the property title which shall have the force, effect and priority of a Judgment Lien. The Nuisance Abatement Lien may be foreclosed by an action brought by the City of Oakland for a money judgment.</p> <p>(Priority Lien) (OMC 8.58.430) A Constructive notice of the pendency of a collection action for an Assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder</p>	<p>Civil penalties will be Assessed for failure to abate (OMC Sections 8.24.020, 1.08.60, 1.12). Penalties may be assessed for up to 21 days at \$1,000 a day. You will be notified separately if penalties have accrued.</p> <p>(Priority Lien) (OMC 8.54.430) A Constructive notice of the pendency of a collection action for an Assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder</p>

Sincerely,



John Marlette
Specialty Combination Inspector
Planning and Building Department

Enclosures as applicable:

- Blight brochure
- Property Owner Certification
- Lead Paint brochure
- Photographs

- Residential Code Enforcement brochure
- Mold and Moisture brochure
- Undocumented Dwelling Units brochure
- Stop Work brochure

- Vehicular Food Vending brochure
- Pushcart Food Vending brochure
- Smoke Alarms brochure
- Condominium Conversion brochure

cc:

Administrative Hearing Fees

Filing Fee	\$ 110.00
Conduct Appeals Hearing	Actual Cost Appeal (Fee charged only if Appellant loses appeal)
Processing Fee	\$ 931.00
Reschedule Hearing	\$ 329.00

Fee Includes 9.5% Records Management Fee and 5.25% Technology Enhancement Fee

Property Maintenance (Blight) - (Checklist of Violations attached)

Description of Violation	Required Action	OMC Section
There is open storage on the side and back of the property.	Remove items on the premises including those on top of and inside the carport.	8.24.020 D 1 & 3

Building Maintenance (Housing)

Description of Violation	Required Action	OMC Section
A water heater in unit 3 was installed without permits.	Obtain a mechanical permit for the water heater and have its installation inspected.	15.08.120 15.08.140
The heater in unit 3 is not operating.	Render the heater operational.	15.08.260 A
The bathroom vent in unit 3 is missing/damaged.	Render the bathroom vent operational.	15.08.260 B
There are holes in the walls in unit 3 that allow for redient intrusion. Wall holes are in the bedroom and in the closet adjacent to the bathroom.	Patch any holes (not limited to those identified) in the finished walls.	15.08.250 A
There is water intrusion in the wall above the larger kitchen window in unit 3.	Obtain a permit to repair the source of water intrusion and to replace and restore damaged interior wall.	15.08.250 C
There are missing smoke and CO detectors in unit 3.	Establish the required smoke and carbon monoxide detectors.	15.08.320

Zoning

Description of Violation	Required Action	OMC Section

Description of Property Maintenance Violations

Property Address: 9701 D ST, OAKLAND 94603

Complaint #: 9701 D St. Oakland, CA

Property Maintenance— OMC 8.24.020

Abandoned building or structure (OMC 8.24.020 A)

- A building or structure which is not occupied, inhabited, used, or secured; a building or structure is unsecured when it is unlocked or the public can gain entry without the consent of the owner. OMC 8.24.020 (1)
- Any partially constructed, reconstructed or demolished building or structure upon which work is abandoned - No valid and current building or demolition permit or no substantial work on the project for six months. OMC 8.24.020 (2)

Attractive Nuisance (OMC 8.24.020 B)

- Property which is in an unsecured state so as to potentially constitute an attraction to children, harbor vagrants, criminals, or other unauthorized persons.

A building or structure which is in a state of disrepair (OMC 8.24.020 C)

- Any building or structure which by reason of rot, weakened joints, walls, floors, underpinning, roof, ceilings, or insecure foundation, or other cause has become dilapidated or deteriorated. OMC 8.24.020 (1)
- Any building or structure with exterior walls and/or roof coverings which are become so deteriorated as to not provide adequate weather protection and are likely to, or have resulted in, termite infestation or dry rot. OMC 8.24.02 (2)
- Buildings or structures with broken or missing windows or doors which constitute a hazardous condition or a potential attraction to trespassers OMC 8.24.020 (3) Violation Location: Front Side Rear/Backyard
- Buildings or structures including but not limited to, walls, windows, fences, signs, retaining walls, driveways, or walkways which are obsolete, broken, deteriorated, or substantially defaced to the extent that the disrepair visually impacts on neighboring property or presents a risk to public safety i.e. writings, inscriptions, figures, scratches, or other markings referred to as "graffiti" and peeling, flaking, blistering, or otherwise deteriorated paint. OMC 8.24.020 (4)

Property inadequately maintained (OMC 8.24.020 D) Violation Location: Front Side Rear/Backyard

- Property which is not kept clean and sanitary and free from all accumulations of offensive matter or odor including, but not limited to, overgrown or dead or decayed trees, weeds or other vegetation, rank growth, dead organic matter, rubbish, junk, garbage animal intestinal waste and urine, and toxic or otherwise hazardous liquids and substances and material - Combustible and noncombustible waste materials, residue from the burning of wood, coal, coke, and other combustible material; paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, hay, straw, tin cans, metal mineral matter, glass, crockery, and dust; animal feed and the products of and residue from animal quarters. OMC 8.24.020 (1)
- Property which constitutes a fire hazard or a condition considered dangerous to the public health, safety and general welfare. OMC 8.24.020(2)
- Property which is likely to or does harbor rats or other vectors, vermin, feral pet, or other non-domesticated animal nuisances OMC 8.24.020 (3)
- Property which substantially detracts from the aesthetic and economic values of neighboring properties including, but not limited to, personal property and wares and foodstuffs, premises garbage and refuse receptacles, and commercial and industrial business activities which are inadequately buffered from any street, sidewalk, or other publicly trafficked area or such buffering which is inadequately maintained. OMC 8.24.020 (4) and OPC Chapter 17.110

Violation Location: Front Side Rear/Backyard

- Landscaping which is inadequately maintained or which is not installed as required by city codes or any permit issued in accordance with such codes. OMC 8.24.020 (5) Violation Location: Front Side Rear/Backyard
- Matter including but not limited to smoke, odors, dust, dirt, debris, fumes, and sprays which is permitted to be transported by wind or otherwise upon any street, course, alley, sidewalk, yard, park, or other public or private property and which is determined to be a violation of federal, state, regional, or local air quality regulations. OMC 8.24.020 (6)

Violation Location: Front Side Rear/Backyard

- Property including, but not limited to building facade, window, doorway, driveway, walkway, fence, wall, landscaped planter or area, sidewalk, curb, and gutter, and edge of street pavement on which dirt, litter, vegetation, garbage refuse, debris, flyers, or circulars have accumulated. OMC 8.24.020 (7) Violation Location: Front Side Rear/Backyard
- Property on which a swimming pool, pond, stream, or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted. OMC 8.24.020 (8)

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Property Maintenance (cont'd)

- Parking lots, driveways, paths, and other areas used or intended to be used for commercial and industrial business activities including, but not limited to, selling, manufacturing, processing, packaging, fabricating, treating, dismantling, processing, transferring, handling, transporting, storing, compounding, or assembling which are inadequately maintained and pose a risk of harm to public health or safety including, but not limited to, unpaved surfaces which generate fugitive dust and paved surfaces with cracks, potholes, or other breaks. OMC 8.24.020 (9)
- Property on which recyclable materials (goods, vehicles, machinery, appliances, product or article, new or used), are openly stored (not in an enclosed building). OMC 8.24.020 (10) Violation Location: Front Side Rear/Backyard
- Property which is not securely fenced or adequately lighted to prevent illegal access and activity related to the dumping of garbage, waste, debris and litter. OMC 8.24.020 (11)

Property which creates a dangerous condition (OMC 8.24.020 E)

- Property having a topography, geology, or configuration which, as a result of grading operations, erosion control, sedimentation control work, or other improvements to said property, causes erosion, subsidence, unstable soil conditions, or surface or subsurface drainage problems as to harm or pose a risk of harm to adjacent properties. OMC 8.24.020 (1)
- Property where any condition or object obscures the visibility of public street intersections to the public so as constitute a hazard including, but not limited to, landscaping, fencing, signs, posts, or equipment. OMC 8.24.020 (2)
- Conditions which due to their accessibility to the public pose a hazard including, but not limited to, unused and broken equipment, abandoned wells, shafts, or basements, hazardous or unprotected pools, ponds, or excavations structurally unsound fences or structures, machinery which is inadequately secured or protected, lumber, trash, fences or debris that may pose a hazard to the public, storage of chemicals, gas, oil, or toxic or flammable liquids OMC 8.24.020 (3)

Parking, Storage or Maintenance of Areas Zoned for Residential Use (OMC 8.24.020 F)

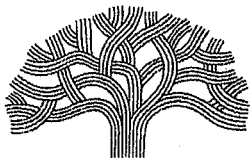
- Any construction or commercial equipment, machinery, material, truck or tractor or trailer or other vehicle have a weight exceeding 7,000 pounds, or recyclable materials, except that such items may be temporarily kept within or upon residential property for the time required for the construction of installation of improvements or facilities on the property. OMC 8.24.020 (1) Violation Location: Front Side Rear/Backyard
- Trailers, campers, recreational vehicles, boats, and other mobile equipment for a period of time in excess of 72 consecutive hours in front or side yard area. OMC 8.24.020 (2) Violation Location: Front Side Rear/Backyard
- Any parking, keeping or storing of items in the side or rear yard areas shall be either in an accessory building constructed in accordance with the provisions of this code or in an area which provides for a 5-foot setback from any property line. OMC 8.24.020 (2a) Violation Location: Front Side Rear/Backyard
- 1500 sq. feet or at least 60 percent of the remaining rear yard, whichever is less, must be maintained as usable outdoor recreational space. 8.24.020 (2b)
- No item shall be parked, stored or kept within 5 feet of any required exit, including existing windows. OMC 8.24.020 F. (2c)
- Any motor vehicle which has been wrecked, dismantled or disassembled, or any part thereof, or any motor vehicle which is disabled or which may not be operated because of the need for repairs or for any other reason for a period of time in excess of 72 hours. OMC 8.24.020 (3) Violation Location: Front Side Rear/Backyard
- Any refrigerator, washing machine, sink, stove, heater, boiler, tank or any other household equipment, machinery, furniture, or other than furniture designed for outdoor activities, appliances, or any parts of any of the listed items for a period of time in excess of 72 hours. OMC 8.24.020 (4) Violation Location: Front Side Rear/Backyard
- Storing or keeping packing boxes, lumber, dirt and other debris, except as allowed by this code for the purpose or construction, in any setback areas visible from public property or neighboring properties for a period of time in excess of 72 hours. OMC 8.24.020 (5) Violation Location: Front Side Rear/Backyard
- No item covered by this section shall be parked, stored, or kept between the front lot line and the front wall of the facility, including the projection of the front wall across the residential property lot line, except where such item is located in an approved driveway or approved parking space. OMC 8.24.020 (6) Violation Location: Front Side Rear/Backyard

Activities Prohibited in Areas Zoned for Residential Uses (OMC 8.24.020 G)

- Wrecking, dismantling, disassembling, manufacturing, fabricating, building, remodeling, assembling, repairing, painting, washing, cleaning or servicing, in any setback area of any airplane, aircraft, motor vehicle, boat, trailer, machinery, equipment, appliance or appliances, furniture or other personal property. OMC 8.24.020 (1)
- Any owner, leasee or occupant of residential property may repair, wash, clean or service any personal property which is owned, leased or rented by such owner, leasee or occupant of such property. Any such repairing or servicing performed in any such areas shall be completed within a 72 hours period. OMC 8.24.020 (1a)
- A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property. OMC 8.24.020 (1b)
- A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer or a junkyard which is a legal nonconforming use. OMC 8.24.020 (2c)

Tenant Evidence Submission

<u>Exhibit</u>	<u>Document Description</u>	<u>Page Numbers</u>
A	Addendum A (1) - Water that is not separately metered	T3-T6
B	Condition (1) - Rat Infestation	T7-T11
C	Condition (2) - Roaches	T12-T13
D	Condition (3) - Stove/Fan	T14-T16
E	Condition (5) - Walls Need Paint and Damaged	T17-T30
F	Condition (7) - Rug Damaged	T31-T33
G	Condition (10) - Drawers in Kitchen Do Not Work	T34-T37
H	Condition (12) - Hot Water for Laundry	T38-T39
I	Condition (13) - Mold in Bathroom and Bedrooms	T40-T42
J	Condition (17) - No Smoke Detectors	T43-T44
K		
L		
M		



CITY OF OAKLAND

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

For date stamp. CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2018 DEC 21 PM 5:26
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 - 18-0438

Your Name MYRNA C. CARINO AND RYAN C. JUAN	Complete Address (with zip code) 124 DWIGHT ST SAN FRANCISCO, CA 94131	Telephone: Email:
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) FEDERICO MARTINEZ AND JESUS MARTINEZ	Complete Address (with zip code) 9701 D. STREET OAKLAND, CA 94603	
Property Address (If the property has more than one address, list all addresses)		Total number of units on property 3

Have you paid for your Oakland Business License? Yes No Lic. Number: **002 07852**
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: **044-4979-012**
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: **12/20/2016**

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.

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 JAN. 1 2000 *SEE COPY OF RENTAL AGREEMENT*

The tenant's initial rent including all services provided was: \$ 1200⁰⁰ / 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? N/A

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>	
<u>DEC. 1 2017</u>	<u>FEB 1, 2018</u>	<u>\$ 1200.00</u>	<u>\$ 1320.00</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.

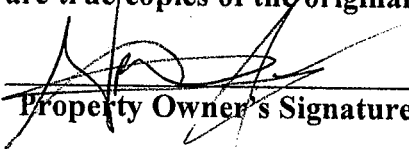
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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

12/19/18
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

Date

Response To ADDENDUM A - DECREASE IN SERVICE / BAD CONDITION

DESCRIPTION OF BAD CONDITIONS	APPROXIMATE DATE BAD CONDITIONS BEGAN	DATE TENANT NOTIFIED LANDLORD AND HOW	DATE FIXED IF ANY	REMEDY
RAT INFESTATION	JANUARY 2000	XXXXXXXXXX (MC) ACQUIRED PROPERTY DEC. 19, 2016. NO ISSUE BROUGHT WAS NOTIFIED IN JUNE 2017	JUNE 3, 2017	JUNE 2017 PROVIDED ELECTRIC PEST CONTROL DEVICES OCT 2017 TERMINIX SERVICES
COCKROACH INFESTATION	JANUARY 2000	XXXXXXXXXX (MC) NOTIFIED JUNE 2017	JUNE 3, 2017	PROVIDED ELECTRIC DEVICES
NO STOVE, TENANT BROUGHT ONE THAT IS NOT FULLY FUNCTIONAL TOP HAVE TO GET WORK	JANUARY 2015	NOT NOTIFIED BY TENANT. PREVIOUS OWNER DID NOT FIX		
THE REFRIGERATOR IS NOT FULLY FUNCTIONAL LIGHTS DONT WORK ON IT AND THERE IS A LOUD NOISE	JANUARY 2015	NOT NOTIFIED NOT ACQUIRED UNTIL 12/19/16		
THE WALLS IN ALL RDMMS, KITCHEN AND BATHROOM ARE STAINED AND DAMAGED NEED PAINT AND FIX	JANUARY 2000	NO NOTIFIED AS STATED BY TENANT. WALLS WERE CLEAN AT CLOSE OF ESCROW 12/15/2016		
THE WINDOWS IN BOTH BEDROOMS ARE NOT FUNCTIONAL. SOME CRACKED	JANUARY 2000	NOT NOTIFIED DAMAGE	N/A	

LANDLORD
RESPONSE
TO TENANT PETITION

Tenant Petitioner
Federico and Jesus Martinez
9701 D Street
Oakland, CA 94603

Description of Bad Conditions	Approximate Date Bad Conditions Began	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Changed conditions
The rug throughout the house is unhealthy; dirty, smells, and damaged	January 2000 RESPONSE: ACQUIRED PROPERTY 12/19/2016	January 2000, they notified landlord verbally RESPONSE: NOT NOTIFIED	N/A	15%
One of the bathroom lights does not work	December 2016 RESPONSE: A. NOTIFIED 2/21/2017	December 2016, they notified landlord verbally RESPONSE: NOTIFIED 2/21/2017	N/A 2/21/2017 2/21/2017	5%
The large room's lights do not function	December 2016 ACQUIRED 12/19/16 NOTIFIED PREVIOUS OWNER RESPONSE: NOT NOTIFIED	December 2016, they notified landlord verbally RESPONSE: NOT NOTIFIED	N/A	5%
The drawers in the kitchen do not open and close, they are damaged and very old	January 2016 N/A	January 2016, they notified landlord verbally RESPONSE: NOT NOTIFIED	N/A	5%
The bathtub leaks when they take a shower	January 2000 PROPERTY ACQUIRED 12/19/2016	January 2000, they notified landlord verbally RESPONSE: PROPERTY ACQUIRED 12/19/2016	N/A FIXED 2/21/17	10%
The hot water for their laundry was turned off	January 2016 NA PROPERTY ACQUIRED DECEMBER 12/19/16	January 2016, they notified landlord verbally RESPONSE: NA ACQUIRED 12/19/2016 FIXED AT ESCROW	N/A 10/10/18	10% CALLED WHEN BROKEN FIXED SAME DAY

REMEDY
ESTABLISHED UNDER THE
CHANGED CONDITIONS

DATE
FIXED, IF
ANY

APPROXIMATE DATE BAR DATE TENANT NOTIFIED
LANDLORD AND HOW
CONDITION BEGAN

DESCRIPTION OF BAD
CONDITIONS

THERE IS MOLD IN THE BATHROOM, IN THE POINTE AREA, AND IN THE 2 BEDROOMS	ACQUIRED PROPERTY 12/19/16	WAS NOTIFIED 2/2017	2/2017	REPLACED TILES INSTALLED FIXTURE PAINT. INSTALLED OPES REPAIRED LEAK
THERE ARE CABLE HANGING IN BATHROOM FROM WHERE THE FAN HAS BEEN REMOVED, THERE ALSO WATER COMING IN WHERE THE FRONT AND BACK DOOR ARE NOT SECURE, LOCKS DO NOT FUNCTION	?	NOT NOTIFIED HOW CAN TENANT NOTIFY IN JAN. 2017 IF PROBLEM STARTING IN JANUARY 12/19/16	N/A	INSTALLED FAN 2017. NEW FIXTURE ADDED TO REMOVE MOISTURE
THE HEATER DOES NOT WORK	PROPERTY ACQUIRED 12/19/16	NOTIFIED. FIRST WEEK OF JANUARY 12/19/16	1/2/17	INSTALLED LOCKS SAME DAY OF NOTIFICATION AND ISSUED KEY
THERE ARE NO FUNCTIONING SMOKE DETECTOR	ACQUIRED PROPERTY 12/19/2016	NOT NOTIFIED BY TENANT N/A	N/A	
THERE ARE NO CARBON MONOXIDE DETECTORS	UN KNOWN	NOT NOTIFIED BY TENANT. CHECKED BY REALTOR. MC ENSURE COMPLIANCE. B	12/2010	PROVIDED SMOKE DETECTORS AS REQUIRED BY LAW AT CLOSING OF ESCROW 12/2010
	UN KNOWN	NOT NOTIFIED BY TENANT. CHECKED BY REALTOR MC ENSURE COMPLIANCE	12/2010	PROVIDED SMOKE DETECTORS AS REQUIRED BY LAW AT CLOSING OF ESCROW 12/2010

RESPONSE TO ADDENDUM A. CHANGED CONDITIONS

1) FROM THE START OF TENANCY IN JAN 2000 THE TENANTS HAVE BEEN UNLAWFULLY PAYING FOR WATER THAT IS NOT SEPARATELY METERED

1) RESPONSE: THE WATER IS METERED AMONGST THE 2 UNITS. UNIT B HAS A WASHER WHICH ACCOUNTS FOR MORE USAGE

2) FROM THE START OF THE TENANCY IN JAN 2000 THE RENT HAS INCLUDED GARBAGE. THE LANDLORD IS NOW TRYING TO CHARGE TENANTS FOR GARBAGE BEGINNING AUGUST 2018.

2) RESPONSE: PLEASE SEE ATTACHED LEASE AGREEMENT.

IN ADDITION, TENANT REFUSED TO PAY FOR GARBAGE

ADDENDUM TO RENTAL AGREEMENT OR LEASE

THIS ADDENDUM is entered into this 1 day of FEB (month), 2017 (year),
by and between RYAN JUAN AND UYANA CARINO, "Owner/Agent"
and FEDERICO MARTINEZ, "Resident".

IN CONSIDERATION OF THEIR MUTUAL PROMISES, OWNER AND RESIDENT AGREE AS FOLLOWS:

1. Resident is renting from Owner/Agent the premises located at:

9701 D ST, Unit # (if applicable) B
OAKLAND (Street Address), CA 94603
(City) (Zip)

2. This Addendum shall be and is incorporated into the Rental Agreement /Lease between Owner/Agent and Resident.

RR TENANT FOR UNIT B AND C SHALL BE RESPONSIBLE FOR THE PAYMENT OF WATER EFFECTIVE IMMEDIATELY AND SHOULD BE DIVIDED PER HEAD

RR THE PREMISES SHALL BE USED EXCLUSIVELY A RESIDENCE FOR NO MORE THAN LISTED IN THE CONTRACT.

RR THE TENANT SHALL NOT ASSIGN THIS AGREEMENT OR SUBLET ANY PORTION OF THE PREMISES.

RR TENANT ON MONTH TO MONTH BASIS THEREAFTER, UNTIL EITHER PARTY SHALL TERMINATE THE SAME BY GIVING THE OTHER PARTY 30 DAYS WRITTEN NOTICE DELIVERED BY CERTIFIED MAIL.

RR TWO 96 GALLONS GARBAGE TOTEZ WILL BE PROVIDED TO BE SHARED BY UNIT A B AND C

RR NO CAR WASH ALLOWED

RR PARKING LIMITED FOR 2 CARS PER UNIT

+ Federico Martinez

x Blanca Rodriguez

FEDERICO MARTINEZ

RYAN JUAN

000027



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA. SUITE 5313 • OAKLAND.

Housing and Community Development
Department Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T18-0438 Martinez v. Carino et al
PROPERTY ADDRESS: 9701 D. Street, Unit C, Oakland, CA
DATE OF HEARING: March 18, 2019
DATE OF SITE INSPECTION: March 22, 2019
DATE OF DECISION: July 23, 2019
APPEARANCES: Xavier Johnson, Tenant Representative
Jesus Martinez, Tenant
Blanca Rodriguez, Tenant
Eduardo Alegrett, Interpreter
Myrna Carino, Owner
Ryan Juan, Owner
Alexis Douglas, Owner Witness

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

On August 20, 2019, tenant Jesus Martinez filed a petition contesting two (2) rent increases, alleging unlawful splitting of utilities and claiming that his housing services have decreased. The basis for the tenant's petition includes the following:

- The CPI and/or banked rent increase notice I was given was calculated incorrectly;
- The increases exceed the CPI Adjustment and are unjustified or are greater than 10%;
- I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such as increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase;

- No written notice of Rent Program was given to me together with the notice of increases I am contesting;
- The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increases;
- The rent increase notices were not given to me in compliance with State law;
- There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance;
- The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner; and
- The proposed rent increase would exceed an overall increase of 30% in 5 years.

The owner filed a timely response denying the allegations.

THE ISSUES

- (1) When, if ever, did the tenant receive the form Notice to Tenants (RAP Notice)?
- (2) Are the contested rent increases valid?
- (3) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Rent History

On his petition, the tenant stated that he moved into the subject unit in January of 2000, at an initial monthly rent of \$800.00. The subject unit is located in a residential building consisting of three (3) units. At the hearing the tenant testified that in November of 2016, the prior owner of the subject property notified him verbally that the rent was being raised to \$1,200.00 monthly effective December 1, 2016. The tenant never received written notice of the rent increase but began paying \$1,200.00 in rent as of December 1, 2016. On December 20, 2016, the property was sold to Myrna Carino, the current owner of the subject property. On December 1, 2017, the tenant received a notice of rent increase from the current owner, proposing to increase the rent from \$1,200.00 to \$1,320.00 monthly, effective February 1, 2018.¹ The tenant testified that he began paying \$1,320.00 in rent monthly in April of 2018. The tenant submitted copies of rent receipts from January of 2017, through August of 2018, verifying that he paid \$1,200.00 monthly from January of 2017, through March of 2018, and began paying \$1,320.00 in April of 2018.² The tenant did not produce any rent receipts for

¹ Exhibit 10

² Exhibit 1

prior rent payments in the amount of \$800.00, testifying that he did not have any receipts because he paid that rent in cash.

The owner disputed the tenant's testimony regarding the initial monthly rent for the subject property. She testified that the tenant's initial rent as of January 1, 2000, was \$1,200.00. She testified that when she purchased the property in December of 2016, she received a copy of the original lease from the prior owner. The lease is dated January 1, 2000, and shows an initial monthly rent of \$1,200.00 for the subject unit. A copy of the 2000 lease was received into evidence.³ She further testified that she also received a Tenant Estoppel Certificate dated October 18, 2016, at the time of purchase, and it showed a current rent of \$1,200.00 for the subject unit.⁴ Finally, she submitted a copy of the rent roll provided by the previous owner at the time of the purchase, showing a monthly rent of \$1,200.00 for the subject unit.⁵ Based on this information, the owner believes the tenant's rent has been \$1,200.00 since the inception of the tenancy. Further, the owner testified that if she had known the tenant's rent was \$800.00, she would not have purchased the property because she cannot afford her mortgage with that rent amount.

The tenant disagreed, testifying that he never signed a written lease at the inception of the tenancy, he only had a verbal agreement with the prior owner. A review of the 2000 lease shows that it was not signed by the tenant, Jesus Federico, but rather, Federico Martinez, the tenant's brother who moved into the unit with him in 2000. The tenant maintained that the initial rent for the subject unit was \$800.00 and it was only raised to \$1,200.00 immediately before the sale of the property to the current owner.

RAP Notice

The tenant stated on his petition and testified at the hearing that he never received the RAP Notice. This testimony was not disputed.

Splitting of Utilities

Water: The tenant testified that he received an Addendum to the Rental Agreement, dated February 1, 2017, from the owner stating that "the tenants in Unit B and Unit C (his unit) shall be responsible for the payment of water effective immediately, and the water bill should be divided per head".⁶ He testified that the two units are not separately metered and the EBMUD water bill is in the owner's name. The tenant submitted photographs of the shared meter.⁷ He also submitted a copy of an EBMUD water bill, verifying that the bill is in the owner's name.⁸ He testified that he has been

³ Exhibit 8

⁴ Exhibit 9

⁵ Exhibit 11

⁶ Exhibit 4

⁷ Exhibit 7

⁸ Exhibit 3

paying for water and submitted copies of twelve (12) receipts for water payments in 2017, totaling \$2,451.00.⁹

Garbage: The tenant testified that garbage was always included in his lease but the owner is now asking him to pay \$30.00 a month for garbage. The owner proposed a new Addendum to the Rental Agreement asking the tenants in unit A, B, and C to split the bill for waste management effective July of 2018.¹⁰ The tenant testified that he did not sign this addendum and has not paid for garbage to date.

Decreased Housing Services

With his petition, the tenant submitted a list of decreased housing services. The parties testified as follows regarding the tenant's list of decreased housing services.

Rodent/Cockroach Infestation: The tenant testified that there is a rodent and cockroach infestation in the unit, and he has had this issue since he moved into the unit in 2000. He notified the prior owner approximately four years ago, and the prior owner gave him some traps. After the current owner took over ownership, he notified her of the rodent/cockroach issue but the problem has still not been resolved. The tenant submitted photographs of rodents and cockroaches.¹¹

The owner testified that she first received notice of the rodent/cockroach issue in June of 2017. At that time, she provided the tenant electric pest control devices. The issue persisted so in October of 2017 she retained Terminix to treat the property, and Terminix now services the property once a month. She further testified that the tenant's unit is unsanitary and that's why the rodents/cockroaches keep returning.

Stove: The tenant testified that his old stove stopped working approximately two years ago so he bought his own stove. He testified that the exhaust fan for the stove doesn't work and it has never worked. He submitted a photograph of the exhaust fan.¹²

The owner testified that she was never notified of any issues with the stove prior to the filing of the petition.

Refrigerator: The tenant testified that the refrigerator is not fully functional. It's old, dirty, and the food spoils quickly. He notified the owner of the issue approximately six months ago.

The owner testified that she was never notified of any issues with the refrigerator prior to the filing of the petition.

⁹ Exhibit 2

¹⁰ Exhibit 5

¹¹ Exhibit 7

¹² Exhibit 7

Walls: The tenant testified that the walls are stained and damaged and need to be repainted. There are also holes in the walls. The tenant submitted photographs of the holes.¹³ The tenant notified the owner of the issue after she took over ownership.

The owner testified that after she received notice of the problem, she conducted a walkthrough of the unit in October of 2017 with the tenants and patched up the holes at that time. She did not receive any further complaints about holes in the walls.

The tenant submitted a copy of a Notice of Violation dated March 8, 2019. The Notice of Violation states that there are still wall holes in the bedroom and in the closet adjacent to the bathroom.¹⁴

Windows: The tenant testified that the windows in both bedrooms are not functional. They do not close properly. He notified the prior owner of the issue when he moved into the unit.

The owner testified that she was never notified of any issues with the windows prior to the filing of the petition.

Rug: The tenant testified that the rug is dirty, smells, and needs to be replaced. The tenant submitted a photograph of the rug.¹⁵

The owner testified that she was never notified of any issues with the rug prior to the filing of the petition.

Bathroom Fan/Loose Cables: The tenant testified that the bathroom fan stopped working and he notified the owner of the issue after she purchased the property.

The owner testified that she received notice of the broken bathroom fan, as well as other issues in the bathroom, in February of 2017. At that time, multiple repairs were completed in the bathroom, including replacement of the bathroom fan. The cover over the fan was not installed because the tenant told them he would do it himself later.

The tenant testified that the new fan was too loud, so he disconnected it himself in October of 2017, and now there are loose cables hanging from the ceiling.

Living Room Light: The tenant testified that there is no overhead light in the living room.

Kitchen Cabinets: The tenant testified that some of the kitchen cabinets and drawers do not open and close properly. The tenant submitted photographs of the kitchen cabinets.¹⁶ He notified the owner of this issue when she took over ownership.

¹³ Exhibit 7

¹⁴ Exhibit 6

¹⁵ Exhibit 7

¹⁶ Exhibit 7

The owner testified that she never received any complaints about the kitchen cabinets prior to the filing of the petition.

Bathroom Tub: The tenant testified that the bathtub leaks when he takes a shower and the floor gets wet.

The owner testified that she was notified of issues in the bathroom in February of 2017, and repairs to the bathroom were made at that time. She testified that if it's just the floor that's getting wet, the tenant may not be closing the shower curtain properly.

Hot Water: The tenant testified that the hot water pressure is low. He noticed this approximately a year ago, it happened when the owners were doing repairs to the upstairs unit.

The owner testified that she never received notice of this issue.

Mold: The tenant testified that there is mold in the bathroom, the boiler area, and the two bedrooms. The tenant submitted photographs of the mold.¹⁷

The owner testified that extensive repairs were made to the bathroom in February of 2017, and any mold in the bathroom was remediated during those repairs. The owner testified that she never received notice of mold in other areas of the unit prior to the filing of the petition.

Front/Back Door: The tenant testified that the front and back door were not secure, the locks did not function properly. He notified the owner when she purchased the property.

The owner testified that after she received notice of this problem, she installed new locks the same day and issued new keys to the tenant.

Heat: The tenant testified that the heater does not work, and it has never worked. He notified the prior owner of this issue when he moved into the unit and also notified the current owner. The heater was also cited for being non-operational in the Notice of Violation dated March 8, 2019.¹⁸

The owner testified that she believes the heater was working at the time she purchased the property because it was not raised as an issue in the inspection report prepared for the sale of the property. She further testified that she was never notified of any issues with the heater prior to the filing of the petition.

¹⁷ Exhibit 7

¹⁸ Exhibit 6

Smoke/CO Detectors: The tenant testified that there are no smoke/CO detectors in the unit. The lack of smoke/CO detectors was also cited in the Notice of Violation dated March 8, 2019.¹⁹

The owner testified that functional smoke/CO detectors were provided at the close of escrow in December of 2016.

The tenant responded by stating that he disconnected the smoke/CO detector because the smoke from the kitchen sets off the alarm.

Site Inspection

The Hearing Officer conducted a site inspection of the subject unit on March 22, 2019. During the inspection, the Hearing Officer did not see any signs of a rodent/cockroach infestation. She did not note any issues with the stove or refrigerator. The Hearing Officer tested the windows, and the windows did open and close. The rug was dirty due to wear and tear but the Hearing Officer did not note any tripping hazards. Some of the kitchen cabinets were missing the cabinet fronts but the kitchen drawers did open and close. The Hearing Officer did not observe any mold in the unit. The front and back door locks were functional. The Hearing Officer was unable to determine if the heater was functional.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice and Rent Increases

Initial Rent: There was conflicting testimony about the initial rent for the subject unit. The owner claims the initial rent for the subject unit was \$1,200.00 and produced a lease dated January 1, 2000, which lists the rent as \$1,200.00. The tenant claims that the initial rent was \$800.00. However, the tenant failed to produce anything in writing to support his claim. He did not provide an alternate lease showing \$800.00 as the initial rent and did not produce any rent receipts verifying that he ever paid \$800.00 in rent. The tenant has failed to sustain his burden of proof regarding the initial rent. Therefore, it is found that the initial rent for the subject unit was \$1,200.00.

Notice and Filing Requirements: The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy²⁰ and together with any notice of rent increase.²¹

The tenant testified that he was never provided the RAP Notice. This testimony was undisputed. Therefore, the 2018 rent increase is invalid and the tenant's rent remains \$1,200.00. Since the tenant has been paying the increased rent of \$1,320.00

¹⁹ Exhibit 6

²⁰ O.M.C. Section 8.22.060(A)

²¹ O.M.C. Section 8.22.070(H)(1)(A)

since April 1, 2018, the tenant is entitled to restitution for rent overpayments as stated in the chart below.

Splitting of Utilities

When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the public Utilities Commission Code and Rule 18 of PG&E.²²

The best way to remedy this situation is to install individual meters. Alternatively, the owner may choose to pay for the bill or include it in the tenant's rent as part of the rent, but it cannot be separately paid and split among the tenants. It is undisputed that the tenant has been splitting the water bill with other units and has been asked to split the garbage bill as well. Therefore, the tenant's petition is granted and the tenant is entitled to a credit in the amount of \$2,451.00, which represents the amount the tenant paid for water based on the receipts that were received into evidence. Additionally, the tenant is not required to pay for water or garbage moving forward. The tenant will receive a credit for the water payments and the restitution will be amortized over twenty-four (24) months as stated in the order below.

Decreased Housing Services

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent²³ and may be corrected by a rent adjustment.²⁴ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy, or one that is required to be provided in a contract between the parties, or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Further, an owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted.

Additionally, the tenants have the burden of proof with respect to each claim.

Rodent/Cockroach Infestation: The owner testified credibly that she provided pest control devices to the tenant after being notified of the rodent/cockroach problem, and when that wasn't sufficient to remediate the issue, she retained Terminix to treat the property. Terminix now treats the property monthly. She further testified that any recurring issues with rodents/cockroaches are due to tenant's lack of cleanliness. The owner's response was reasonable. Therefore, compensation for this claim is denied. Additionally, the tenant contributed to the problem by failing to maintain cleanliness of the unit. That is further reason to deny compensation for this claim.

²² RAP Regs 10.1.10

²³ O.M.C. Section 8.22.070(F)

²⁴ O.M.C. Section 8.22.110(E)

Stove: The lack of an exhaust fan does not affect the functionality of the stove. Therefore, compensation for this claim is denied.

Refrigerator: The owner testified credibly that she never received notice of any issues with the refrigerator. Further, the Hearing Officer did not observe any issues with the refrigerator during the site inspection. Compensation for this claim is denied.

Walls: After the tenant notified the owner of holes in the walls, the owner conducted a walkthrough of the unit in October of 2017 with the tenant and patched up any holes at that time. However, the Notice of Violation dated March 8, 2019, states that there are still some wall holes in the bedroom and in the closet adjacent to the bathroom. This claim affects the habitability of the unit and the tenant is entitled to a 2% rent reduction, until all holes are repaired. Additionally, the tenant is entitled to restitution for past decreased housing services as of March 8, 2019, when the Notice of Violation was issued. (See chart below)

Windows: The owner testified credibly that she never received notice of any issues with the windows. Additionally, the windows were not cited in the Notice of Violation dated March 8, 2019, and the Hearing Officer did not observe any issues with the windows during the site inspection. Compensation for this claim is denied.

Rug: The tenant testified that the rug is dirty and needs to be replaced. During the site inspection, the Hearing Officer noted that the rug was dirty and showed wear and tear but did not pose any tripping hazards. A dirty and worn rug does not affect the habitability of the unit. Compensation for this claim is denied.

Bathroom Fan/Loose Cables: The tenant testified that he removed the bathroom fan himself after the owner replaced it because it was too loud. Because the tenant removed the fan himself, compensation for this claim is denied.

Living Room Light: An overhead light is not required in a living room. Compensation for this claim is denied.

Kitchen Cabinets: The owner testified credibly that she never received notice of any issues with the kitchen cabinets. Further the kitchen cabinets were not cited in the Notice of Violation issued on March 8, 2019. During the site inspection, the Hearing Officer did note that some cabinets did not have cabinet fronts but that did not affect the functionality of the cabinets. Therefore, compensation for this claim is denied.

Bathroom Tub: Based on the testimony of the parties, it is more likely than not that the bathroom floor gets wet because the shower curtain is not closed properly. Compensation for this claim is denied.

Hot Water: The owner testified credibly that she never received notice of this issue. Additionally, the hot water pressure was not cited in the Notice of Inspection dated March 8, 2019. Compensation for this claim is denied.

Mold: The owner testified credibly that she never received notice of this issue. Additionally, mold was not cited as an issue in the Notice of Violation dated March 8, 2019, and the Hearing Officer did not observe any mold during the site inspection. Therefore, compensation for this claim is denied.

Front/Back Door: The owner replaced the locks on the front and back door shortly after being notified of the problem. Compensation for this claim is denied.

Heat: There was conflicting testimony about the heater in the unit. The tenant testified that the heater has not worked since 2000, when he first moved into the unit and he notified the prior and current owner of this issue. The owner testified that she never received notice of any issues with the heater, and believed it was operational because it was not raised as an issue in the inspection report prepared for the sale of the property in December of 2016. Finally, the Notice of Violation dated March 8, 2019, cites the heater as being non-operational.²⁵

Based on the evidence and the testimony of the parties, the Hearing Officer finds that the owner has been on notice of this issue since at least August of 2018, when the tenant petition was filed, and has failed to make repairs. Lack of heat affects the habitability of the unit and the tenant is entitled to a 15% rent reduction until the heater is repaired. Additionally, the tenant is entitled to restitution for past decreased housing services for the broken heater as of August 20, 2018, when the tenant petition was filed. (See chart below)

Smoke/CO Detectors: The owner testified credibly that functional smoke/CO detectors were provided at the close of escrow in December of 2016. Further the tenant testified that he disconnected the smoke/CO detectors himself because the smoke from the kitchen sets off the alarm. Compensation for this claim is denied, and the tenant is directed to replace the smoke/CO detectors that he disconnected.

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Wall Holes	8-Mar-19	1-Jul-19	\$1,200	2%	\$ 24.00	5	\$ 120.00
Heater	20-Aug-18	1-Jul-19	\$1,200	15%	\$ 180.00	12	\$ 2,160.00
TOTAL LOST SERVICES							\$ 2,280.00

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Apr-18	1-Jul-19	\$1,320	\$1,200	\$ 120.00	16	\$ 1,920.00
TOTAL OVERPAID RENT						\$ 1,920.00

²⁵ Exhibit 6

RESTITUTION

		MONTHLY RENT	\$	1,200.00
		TOTAL TO BE REPAID TO TENANT	\$	4,200.00
		TOTAL AS PERCENT OF MONTHLY RENT		350%
	AMORTIZED			
	OVER	MO. BY REG. IS		
OR				
OVER	24	MONTHS BY HRG. OFFICER IS	\$	175.00

ORDER

1. Petition T18-0438 is partly granted.
2. The 2018 rent increase is invalid. The tenant's base rent remains \$1,200.00.
3. The tenant is entitled to restitution for rent overpayments and decreased housing services. The restitution is amortized over twenty-four (24) months as follows:

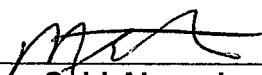
Base Rent	\$1,200.00
-restitution for water payments	- \$102.12
-restitution for rent overpayments and past decreased housing services	- \$175.00
-current decreased housing services – wall holes (2%) and heater (15%)	- \$204.00
Rent payment from August 2019 through July 2021	\$718.88
Rent payment commencing August 2021	\$996.00

4. Once the owner repairs the wall holes, the owner may increase the tenant's rent by 2% (\$24.00) and once the owner repairs the heater the owner may increase the tenant's rent by 15% (180.00) upon proper notice in accordance with Section 827 of the California Civil Code.
5. The remaining claims of decreased housing services are denied.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on

the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: July 23, 2019



Maimoona Sahi Ahmad
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0438

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

Owner

Myrna M Carino
124 Dwight Street
San Francisco, CA 94134

Owner

Ryan C. Juan
124 Dwight Street
San Francisco, CA 94134

Tenant

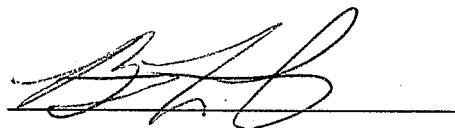
Federico & Jesus Martinez
9701 D Street
Oakland, CA 94603

Tenant Representative

Xavier Johnson, Centro Legal de la Raza
3022 International Blvd., Suite #410
Oakland, CA 94601

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **July 26, 2019** in Oakland, CA.



Brittni Lothlen

Oakland Rent Adjustment Program

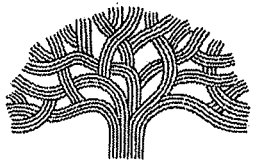
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KM/MA

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

For date stamp.

2019 AUG 15 AM 11:09



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

APPEAL

Appellant's Name MYRNA CARINO, RYAN JUAN		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 9701 D. STREET UNIT C, OAKLAND CA 94608 ^{MC} 94603			
Appellant's Mailing Address (For receipt of notices) 124 DWIGHT ST. SAN FRANCISCO, CA 94134		Case Number T18-0438 MARTINEZ V. CARINO	Date of Decision appealed JULY 23, 2019
Name of Representative (if any) ALEXIS DOUGLAS	Representative's Mailing Address (For notices) 124 DWIGHT ST SAN FRANCISCO CA. 94134		

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.)*

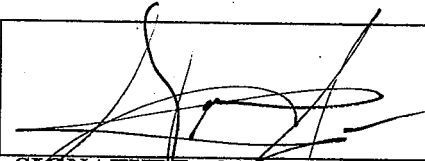
For more information phone (510) 238-3721.

- 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>	JESUS MARTINEZ
<u>Address</u>	9701 D. STREET UNIT UNIT C
<u>City, State Zip</u>	OAKLAND CA. 94603
<u>Name</u>	BIANCA RODRIGUEZ
<u>Address</u>	9701 D. STREET UNIT
<u>City, State Zip</u>	OAKLAND CA. 94603

	AUG 15 2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE
MYRNA CAPINO	

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.

- INCORRECT DATE LISTED ON HEARING DECISION. COMPLAINTS CANNOT BE FURTHER DATED. (CONTENTION OF PARTIES)

- OWNERS DID NOT RECEIVE NOTIFICATION ~~BE~~^{MC} FROM TENANT STATING HEATER WAS BROKEN.

- VIOLATION DATED MARCH 8, 2019 WAS RECEIVED. HOWEVER RECEIVED NO PRIOR NOTICE OF BROKEN HEATER.

- INSPECTION CONDUCTED BY JOHN MARLETTE, OAKLAND BUILDING INSPECTOR, ON APRIL 10, 2019. MARLETTE PROPERTY PASSED ON ALL AREAS. PLEASE REFER TO BUILDING INSPECTION DOCUMENTS

- HEATER WAS FIXED AS OF APRIL 8, 2019 PLEASE SEE ATTACHED. WAS FIXED WITHIN THE AUDITED TIME FRAME

- HOLES WERE NOT PRESENT IN WALLS AT THE END OF INSPECTION. HOLES FIXED ON ~~APRIL 10, 2019~~^{APRIL 10, 2019}

For more information phone (510) 238-3721.

Stove: The lack of an exhaust fan does not affect the functionality of the stove. Therefore, compensation for this claim is denied.

Refrigerator: The owner testified credibly that she never received notice of any issues with the refrigerator. Further, the Hearing Officer did not observe any issues with the refrigerator during the site inspection. Compensation for this claim is denied.

#7 Walls: After the tenant notified the owner of holes in the walls, the owner conducted a walkthrough of the unit in October of 2017 with the tenant and patched up any holes at that time. However, the Notice of Violation dated March 8, 2019, states that there are still some wall holes in the bedroom and in the closet adjacent to the bathroom. This claim affects the habitability of the unit and the tenant is entitled to a 2% rent reduction, until all holes are repaired. Additionally, the tenant is entitled to restitution for past decreased housing services as of March 8, 2019, when the Notice of Violation was issued. (See chart below)

Windows: The owner testified credibly that she never received notice of any issues with the windows. Additionally, the windows were not cited in the Notice of Violation dated March 8, 2019, and the Hearing Officer did not observe any issues with the windows during the site inspection. Compensation for this claim is denied.

Rug: The tenant testified that the rug is dirty and needs to be replaced. During the site inspection, the Hearing Officer noted that the rug was dirty and showed wear and tear but did not pose any tripping hazards. A dirty and worn rug does not affect the habitability of the unit. Compensation for this claim is denied.

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Mold: The owner testified credibly that she never received notice of this issue. Additionally, mold was not cited as an issue in the Notice of Violation dated March 8, 2019, and the Hearing Officer did not observe any mold during the site inspection. Therefore, compensation for this claim is denied.

Front/Back Door: The owner replaced the locks on the front and back door shortly after being notified of the problem. Compensation for this claim is denied.

#2

Heat: There was conflicting testimony about the heater in the unit. The tenant testified that the heater has not worked since 2000, when he first moved into the unit and he notified the prior and current owner of this issue. The owner testified that she never received notice of any issues with the heater, and believed it was operational because it was not raised as an issue in the inspection report prepared for the sale of the property in December of 2016. Finally, the Notice of Violation dated March 8, 2019, cites the heater as being non-operational.²⁵

Based on the evidence and the testimony of the parties, the Hearing Officer finds that the owner has been on notice of this issue since at least August of 2018, when the tenant petition was filed, and has failed to make repairs. Lack of heat affects the habitability of the unit and the tenant is entitled to a 15% rent reduction until the heater is repaired. Additionally, the tenant is entitled to restitution for past decreased housing services for the broken heater as of August 20, 2018, when the tenant petition was filed. (See chart below)

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VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
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Heater	20-Aug-18	1-Jul-19	\$1,200	15%	\$ 180.00	12	\$ 2,160.00
TOTAL LOST SERVICES							\$ 2,280.00

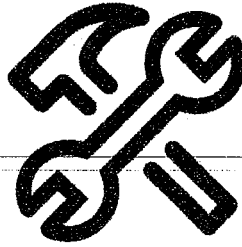
OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Apr-18	1-Jul-19	\$1,320	\$1,200	\$ 120.00	16	\$ 1,920.00
TOTAL OVERPAID RENT						\$ 1,920.00

²⁵ Exhibit 6

INVOICE

Anthony Lorencillo



2459 Hemlock Ave
Concord Ca 94520

(510) 932-0391
lorencillo87@yahoo.com

Bill To Myrna Carino
9701 D St
Oakland Ca 94603

Invoice Num 79
Date Apr 8, 2019
Due Date Apr 22, 2019
Terms 14 days

Description	Quantity	Rate	Amount
Material	1	\$425.00	\$425.00
Labor	1	\$300.00	\$300.00
Ran T&p discharge drain for water heater to the exterior per code requirement.			
		Subtotal	\$725.00
Replaced bad gas valve and pilot assembly to wall furnace heater.		Tax (0%)	\$0.00
Replaced gas shut off and gas flex.		Total	\$725.00
Also Replaced bad thermostat and tested wall heater for safe and correct operation		Paid	\$725.00
Used shop vac to clean exhaust chamber.		Balance Due	\$0.00

Refer to pictures for more details

I appreciate your business,
Thank you

000046



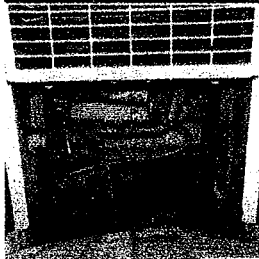
ATTACHMENTS



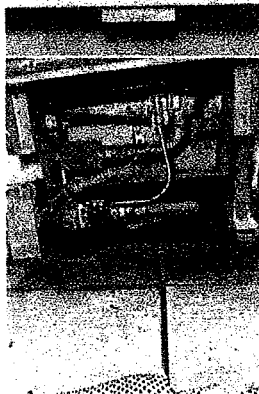
Attachment #1



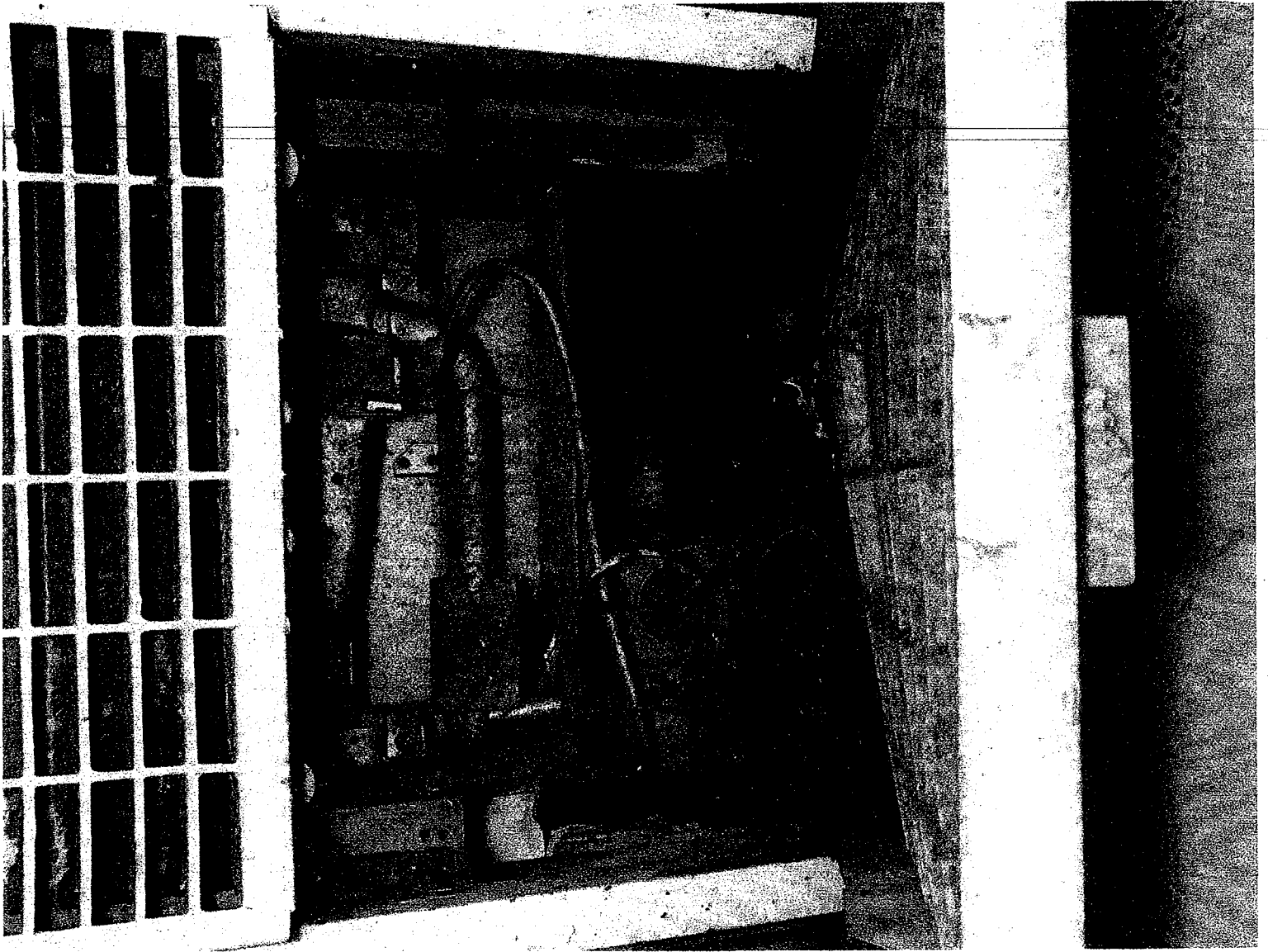
Attachment #2

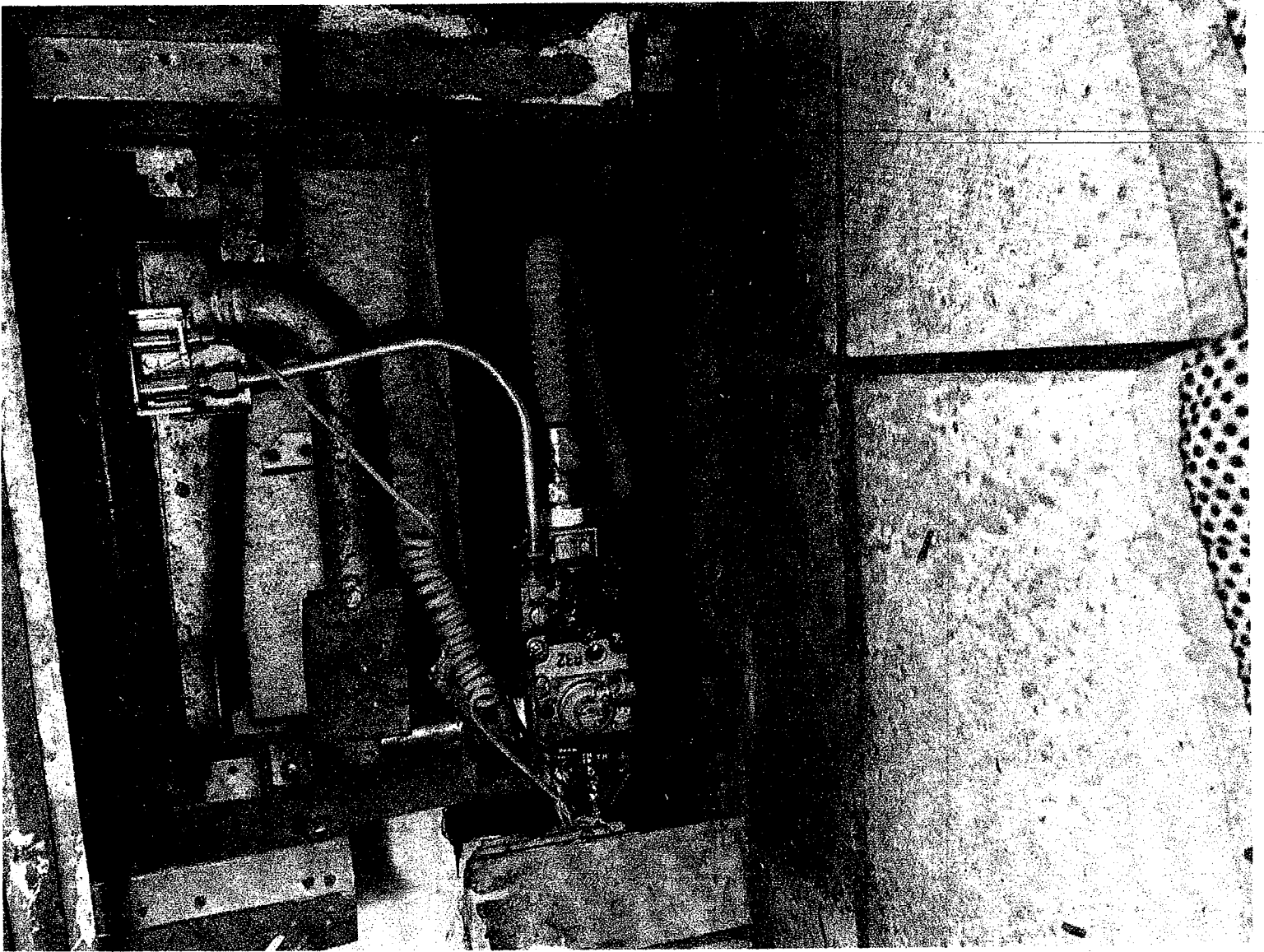


Attachment #3



Attachment #4





March 8, 2019



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department
Bureau of Building
Building Permits, Inspections and Code Enforcement Services
inspectioncounter@oaklandnet.com

(510) 238-6402
FAX: (510) 238-2959
TDD: (510) 238-3254

NOTICE OF VIOLATION

March 8, 2019

Certified and Regular mail

To: JUAN RYAN C & CARINO MYRNA M
124 DWIGHT ST
SAN FRANCISCO CA 94134-1910

Code Enforcement Case No.: 1900877
Property: 9701 D ST, OAKLAND 94603
Parcel Number: 044- -4979-012-00
Re-inspection Date/Correction Due Date: April 12, 2019

*FINAL INSPECTION 2/10/19
JOHN MARLETTE*

Code Enforcement Services inspected your property on 3/6/19 and confirmed:

- that the violations of the Oakland Municipal Code (OMC) identified below are present and need to be addressed as specified under "Required Actions". Photographs of the violations are enclosed where applicable.
- that work was performed without permit or beyond the scope of the issued permit and you are receiving this Notice of Violation because you did not get the required permit within three (3) days of receiving the Stop Work Order. You must contact the inspector indicated below before the Re-inspection Date to stop further code enforcement action.
- Investor Owned Program - Per OMC 8.58
- Foreclosed and Defaulted Properties - Per OMC 8.54

At this point, no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and contact Inspector John Marlette, who is assigned to your case, before the re-inspection date shown above to schedule an inspection. Your inspector is available by phone at 510-238-4722 and by email at jmarlette@oaklandnet.com.

If the Property Owner Certification is included in this notice you may also complete the form and include photographs of the corrected violations.

Note: If a complaint is filed regarding the same or similar violation(s) and it is confirmed within 24 months from the date of this notice an immediate assessment of \$1,176.00 will be charged as a Repeat Violation. In addition, if violation(s) remain uncorrected after you receive a 30-day Notice of Violation, further enforcement action(s) will include additional fees.

- If you do not contact your inspector to discuss why you cannot comply or if applicable, complete the Property Owner Certification form and the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total \$2,665.00.
- The City may also abate the violations and charge you for the contracting and administrative costs, which can also total over \$1,000.00.
- Priority Lien fees in the amount of \$1,349.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims Court.
- The Notice of Violation may be recorded on your property with associated fees for processing and recording.

Property Maintenance (Blight) - (Checklist of Violations attached)

Description of Violation	Required Action	OMC Section
There is open storage on the side and back of the property.	Remove items on the premises including those on top of and inside the carport.	8.24.020 D-1 & 3

Building Maintenance (Housing)

Description of Violation	Required Action	OMC Section
A water heater in unit 3 was installed without permits.	Obtain a mechanical permit for the water heater and have its installation inspected.	15.08.120 15.08.140
The heater in unit 3 is not operating.	Render the heater operational.	15.08.260 A
The bathroom vent in unit 3 is missing/damaged.	Render the bathroom vent operational.	15.08.260 B
There are holes in the walls in unit 3 that allow for redient intrusion. Wall holes are in the bedroom and in the closet adjacent to the bathroom.	Patch any holes (not limited to those identified) in the finished walls.	15.08.250 A
There is water intrusion in the wall above the larger kitchen window in unit 3.	Obtain a permit to repair the source of water intrusion and to replace and restore damaged interior wall.	15.08.250 C
There are missing smoke and CO detectors in unit 3.	Establish the required smoke and carbon monoxide detectors.	15.08.320

Zoning

Description of Violation	Required Action	OMC Section

6:51



Jesus Martinez >

Text Message
Thu, Sep 27, 1:13 PM

Hi am going to have the rent ready Thursday oct 4 after 8am so can come and pick up thank you Jesus

Wed, Oct 3, 3:03 PM

Jesus
Water bill \$211
I'll give you copy of bill
I'll come Friday 4pm

Ok

Fri, Oct 5, 2:18 PM

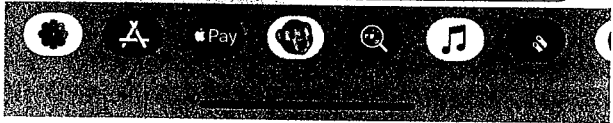
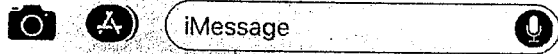
Might be after 4
Thanks

Ok

Wed, Oct 10, 3:18 PM

Hi good afternoon just want to let know the boiler is leaking water and I would like to know if you can send someone to fix it thank you!!

That's the water heater?



6:51



Jesus Martinez

That's the water heater?

Yes the water heater.

I'll get back to you.
I'll find someone.

Ok thank you

Wed, Oct 10, 6:04 PM

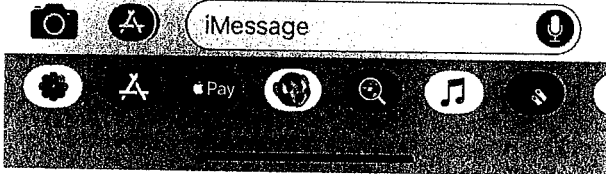
Ok
Since you are not available today
I cancel the appointment
I told him maybe tomorrow Friday
Saturday.
How about Monday (lunes)?

Next available is Monday

Jesus he is available on Monday.
Not available tomorrow Friday
Saturday.

Ok its good

Sat, Oct 20, 5:56 AM



6:52



J

Jesús Velázquez

Ok its good

Sat, Oct 20, 5:56 AM

Good morning Sergio I hope you
this early but I just want to tell you if
you can stop tell your son why to
stop sending me messages with
Sergio this is not Sergio's house its
your property

I told Sergio to let you know
because it was late.
I don't want to call you.

I the future I will let you know
Myself.

It was late amigo. You might not
pickup the phone.

Please you let me know what in the
future we are in the present you
should be responsible for your kids
Sergio I hope you don't do anything
happen to my kids you going to be
responsible

Your kids are your responsibility
That's your negligence



iMessage



Apple Pay



6:52



Jesse Martinez

Please you to let me know not in the future we are in the present you should it be told miss like you told Sergio 6 months ago if something happen to my kids you going to be responsible

Your kids are your responsibility
That's your negligence

iMessage
Tue, Oct 30, 5:47 PM

Hi I would have the rent money on the 3rd of nov thank you

Fri, Nov 30, 6:04 PM

Hi just want to let you know I would have the water and rent money ready Tuesday Dec 4 at any time you want to pick up after 4pm
Thank you

In the future pls have your rent no later than the 3rd day.
I have to pay mortgage.
And since your paying check.
Pls put in the mailbox.
Then call me.
I can put the receipt in your mailbox.
Thank you.



iMessage



Pay



6:52



Jesus Martinez

In the future pls have your rent no later than the 3rd day. I have to pay mortgage. And since your paying check. Pls put in the mailbox. Then call me. I can put the receipt in your mailbox. Thank you.

K me dijo

Thanks you.

I appreciate it. Thanks

Sat, Dec 1, 8:59 AM

3. Ok perfet

Mon, Dec 3, 7:21 AM

Jesus I'll call you. I don't have key for mailbox. Don't drop it yet. Thanks

Read

Mon, Dec 3, 9:12 AM



iMessage



6:52



Jesus Martinez >

Mon, Dec 3, 7:21 AM

Jesus
I'll call you.
I don't have key for mailbox.
Don't drop it yet.
Thanks

Read

Mon, Dec 3, 9:12 AM

Ok

Fri, Dec 7, 2:06 PM

See you tomorrow Saturday
Is morning ok

Perfet

Sat, Dec 8, 8:13 AM

Good morning
Water bill 223

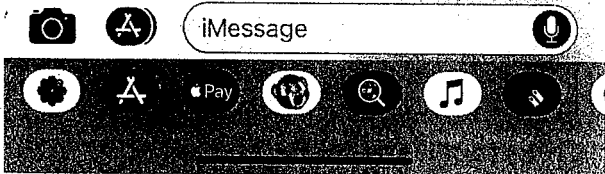
Is 11: o'clock okay

Sat, Dec 8, 9:23 AM

Ok

Thank you

Sat, Dec 8, 10:28 AM



6:52



Jesus Martinez >

Thank you

Sat, Dec 8, 10:28 AM

Call me I'm here!
Thanks

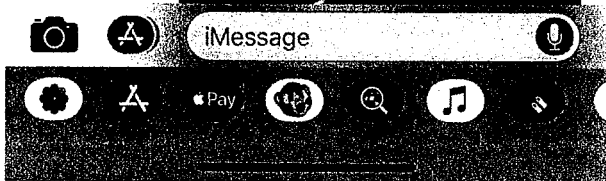
Sun, Dec 30, 11:48 AM

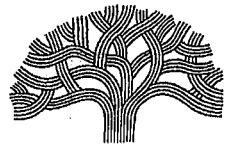
Jesus,
Can you give me a call back.
Receive a call from the Sergio
There gray car got scratches

Sun, Dec 30, 3:41 PM

Jesus,
Can you give me a call back.
Receive a call from the Sergio
There gray car got scratches

From the metal from the bed.





DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND.

Housing and Community Development
Department Rent Adjustment Program

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

CORRECTED HEARING DECISION

CASE NUMBER: T18-0438 Martinez v. Carino et al
PROPERTY ADDRESS: 9701 D. Street, Unit C, Oakland, CA
DATE OF HEARING: March 18, 2019
DATE OF SITE INSPECTION: March 22, 2019
DATE OF DECISION: August 15, 2019
APPEARANCES: Xavier Johnson, Tenant Representative
Jesus Martinez, Tenant
Blanca Rodriguez, Tenant
Eduardo Alegrett, Interpreter
Myrna Carino, Owner
Ryan Juan, Owner
Alexis Douglas, Owner Witness

REASON FOR CORRECTED DECISION

On July 26, 2019, a Hearing Decision was mailed to all parties. Due to a clerical error, the date of filing for the Tenant Petition provided in that Hearing Decision was incorrect. This Decision contains the correct filing date for the Tenant Petition. Other than the correction to the date the Tenant Petition was filed, the Hearing Decision remains the same.

This CORRECTED HEARING DECISION does not set a new appeal period.

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

On August 20, 2018, tenant Jesus Martinez filed a petition contesting two (2) rent increases, alleging unlawful splitting of utilities and claiming that his housing services have decreased. The basis for the tenant's petition includes the following:

- The CPI and/or banked rent increase notice I was given was calculated incorrectly;
- The increases exceed the CPI Adjustment and are unjustified or are greater than 10%;
- I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such as increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase;
- No written notice of Rent Program was given to me together with the notice of increases I am contesting;
- The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increases;
- The rent increase notices were not given to me in compliance with State law;
- There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance;
- The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner; and
- The proposed rent increase would exceed an overall increase of 30% in 5 years.

The owner filed a timely response denying the allegations.

THE ISSUES

- (1) When, if ever, did the tenant receive the form Notice to Tenants (RAP Notice)?
- (2) Are the contested rent increases valid?
- (3) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Rent History

On his petition, the tenant stated that he moved into the subject unit in January of 2000, at an initial monthly rent of \$800.00. The subject unit is located in a residential building consisting of three (3) units. At the hearing the tenant testified that in November of 2016, the prior owner of the subject property notified him verbally that the rent was being raised to \$1,200.00 monthly effective December 1, 2016. The tenant never received written notice of the rent increase but began paying \$1,200.00 in rent as of December 1, 2016. On December 20, 2016, the property was sold to Myrna Carino, the current owner of the subject property. On December 1, 2017, the tenant received a notice of rent increase from the current owner, proposing to increase the rent from

\$1,200.00 to \$1,320.00 monthly, effective February 1, 2018.¹ The tenant testified that he began paying \$1,320.00 in rent monthly in April of 2018. The tenant submitted copies of rent receipts from January of 2017, through August of 2018, verifying that he paid \$1,200.00 monthly from January of 2017, through March of 2018, and began paying \$1,320.00 in April of 2018.² The tenant did not produce any rent receipts for prior rent payments in the amount of \$800.00, testifying that he did not have any receipts because he paid that rent in cash.

The owner disputed the tenant's testimony regarding the initial monthly rent for the subject property. She testified that the tenant's initial rent as of January 1, 2000, was \$1,200.00. She testified that when she purchased the property in December of 2016, she received a copy of the original lease from the prior owner. The lease is dated January 1, 2000, and shows an initial monthly rent of \$1,200.00 for the subject unit. A copy of the 2000 lease was received into evidence.³ She further testified that she also received a Tenant Estoppel Certificate dated October 18, 2016, at the time of purchase, and it showed a current rent of \$1,200.00 for the subject unit.⁴ Finally, she submitted a copy of the rent roll provided by the previous owner at the time of the purchase, showing a monthly rent of \$1,200.00 for the subject unit.⁵ Based on this information, the owner believes the tenant's rent has been \$1,200.00 since the inception of the tenancy. Further, the owner testified that if she had known the tenant's rent was \$800.00, she would not have purchased the property because she cannot afford her mortgage with that rent amount.

The tenant disagreed, testifying that he never signed a written lease at the inception of the tenancy, he only had a verbal agreement with the prior owner. A review of the 2000 lease shows that it was not signed by the tenant, Jesus Federico, but rather, Federico Martinez, the tenant's brother who moved into the unit with him in 2000. The tenant maintained that the initial rent for the subject unit was \$800.00 and it was only raised to \$1,200.00 immediately before the sale of the property to the current owner.

RAP Notice

The tenant stated on his petition and testified at the hearing that he never received the RAP Notice. This testimony was not disputed.

Splitting of Utilities

Water: The tenant testified that he received an Addendum to the Rental Agreement, dated February 1, 2017, from the owner stating that "the tenants in Unit B and Unit C (his unit) shall be responsible for the payment of water effective immediately,

¹ Exhibit 10

² Exhibit 1

³ Exhibit 8

⁴ Exhibit 9

⁵ Exhibit 11

and the water bill should be divided per head".⁶ He testified that the two units are not separately metered and the EBMUD water bill is in the owner's name. The tenant submitted photographs of the shared meter.⁷ He also submitted a copy of an EBMUD water bill, verifying that the bill is in the owner's name.⁸ He testified that he has been paying for water and submitted copies of twelve (12) receipts for water payments in 2017, totaling \$2,451.00.⁹

Garbage: The tenant testified that garbage was always included in his lease but the owner is now asking him to pay \$30.00 a month for garbage. The owner proposed a new Addendum to the Rental Agreement asking the tenants in unit A, B, and C to split the bill for waste management effective July of 2018.¹⁰ The tenant testified that he did not sign this addendum and has not paid for garbage to date.

Decreased Housing Services

With his petition, the tenant submitted a list of decreased housing services. The parties testified as follows regarding the tenant's list of decreased housing services.

Rodent/Cockroach Infestation: The tenant testified that there is a rodent and cockroach infestation in the unit, and he has had this issue since he moved into the unit in 2000. He notified the prior owner approximately four years ago, and the prior owner gave him some traps. After the current owner took over ownership, he notified her of the rodent/cockroach issue but the problem has still not been resolved. The tenant submitted photographs of rodents and cockroaches.¹¹

The owner testified that she first received notice of the rodent/cockroach issue in June of 2017. At that time, she provided the tenant electric pest control devices. The issue persisted so in October of 2017 she retained Terminix to treat the property, and Terminix now services the property once a month. She further testified that the tenant's unit is unsanitary and that's why the rodents/cockroaches keep returning.

Stove: The tenant testified that his old stove stopped working approximately two years ago so he bought his own stove. He testified that the exhaust fan for the stove doesn't work and it has never worked. He submitted a photograph of the exhaust fan.¹²

The owner testified that she was never notified of any issues with the stove prior to the filing of the petition.

⁶ Exhibit 4

⁷ Exhibit 7

⁸ Exhibit 3

⁹ Exhibit 2

¹⁰ Exhibit 5

¹¹ Exhibit 7

¹² Exhibit 7

Refrigerator: The tenant testified that the refrigerator is not fully functional. It's old, dirty, and the food spoils quickly. He notified the owner of the issue approximately six months ago.

The owner testified that she was never notified of any issues with the refrigerator prior to the filing of the petition.

Walls: The tenant testified that the walls are stained and damaged and need to be repainted. There are also holes in the walls. The tenant submitted photographs of the holes.¹³ The tenant notified the owner of the issue after she took over ownership.

The owner testified that after she received notice of the problem, she conducted a walkthrough of the unit in October of 2017 with the tenants and patched up the holes at that time. She did not receive any further complaints about holes in the walls.

The tenant submitted a copy of a Notice of Violation dated March 8, 2019. The Notice of Violation states that there are still wall holes in the bedroom and in the closet adjacent to the bathroom.¹⁴

Windows: The tenant testified that the windows in both bedrooms are not functional. They do not close properly. He notified the prior owner of the issue when he moved into the unit.

The owner testified that she was never notified of any issues with the windows prior to the filing of the petition.

Rug: The tenant testified that the rug is dirty, smells, and needs to be replaced. The tenant submitted a photograph of the rug.¹⁵

The owner testified that she was never notified of any issues with the rug prior to the filing of the petition.

Bathroom Fan/Loose Cables: The tenant testified that the bathroom fan stopped working and he notified the owner of the issue after she purchased the property.

The owner testified that she received notice of the broken bathroom fan, as well as other issues in the bathroom, in February of 2017. At that time, multiple repairs were completed in the bathroom, including replacement of the bathroom fan. The cover over the fan was not installed because the tenant told them he would do it himself later.

The tenant testified that the new fan was too loud, so he disconnected it himself in October of 2017, and now there are loose cables hanging from the ceiling.

¹³ Exhibit 7

¹⁴ Exhibit 6

¹⁵ Exhibit 7

Living Room Light: The tenant testified that there is no overhead light in the living room.

Kitchen Cabinets: The tenant testified that some of the kitchen cabinets and drawers do not open and close properly. The tenant submitted photographs of the kitchen cabinets.¹⁶ He notified the owner of this issue when she took over ownership.

The owner testified that she never received any complaints about the kitchen cabinets prior to the filing of the petition.

Bathroom Tub: The tenant testified that the bathtub leaks when he takes a shower and the floor gets wet.

The owner testified that she was notified of issues in the bathroom in February of 2017, and repairs to the bathroom were made at that time. She testified that if it's just the floor that's getting wet, the tenant may not be closing the shower curtain properly.

Hot Water: The tenant testified that the hot water pressure is low. He noticed this approximately a year ago, it happened when the owners were doing repairs to the upstairs unit.

The owner testified that she never received notice of this issue.

Mold: The tenant testified that there is mold in the bathroom, the boiler area, and the two bedrooms. The tenant submitted photographs of the mold.¹⁷

The owner testified that extensive repairs were made to the bathroom in February of 2017, and any mold in the bathroom was remediated during those repairs. The owner testified that she never received notice of mold in other areas of the unit prior to the filing of the petition.

Front/Back Door: The tenant testified that the front and back door were not secure, the locks did not function properly. He notified the owner when she purchased the property.

The owner testified that after she received notice of this problem, she installed new locks the same day and issued new keys to the tenant.

Heat: The tenant testified that the heater does not work, and it has never worked. He notified the prior owner of this issue when he moved into the unit and also notified the current owner. The heater was also cited for being non-operational in the Notice of Violation dated March 8, 2019.¹⁸

¹⁶ Exhibit 7

¹⁷ Exhibit 7

¹⁸ Exhibit 6

The owner testified that she believes the heater was working at the time she purchased the property because it was not raised as an issue in the inspection report prepared for the sale of the property. She further testified that she was never notified of any issues with the heater prior to the filing of the petition.

Smoke/CO Detectors: The tenant testified that there are no smoke/CO detectors in the unit. The lack of smoke/CO detectors was also cited in the Notice of Violation dated March 8, 2019.¹⁹

The owner testified that functional smoke/CO detectors were provided at the close of escrow in December of 2016.

The tenant responded by stating that he disconnected the smoke/CO detector because the smoke from the kitchen sets off the alarm.

Site Inspection

The Hearing Officer conducted a site inspection of the subject unit on March 22, 2019. During the inspection, the Hearing Officer did not see any signs of a rodent/cockroach infestation. She did not note any issues with the stove or refrigerator. The Hearing Officer tested the windows, and the windows did open and close. The rug was dirty due to wear and tear but the Hearing Officer did not note any tripping hazards. Some of the kitchen cabinets were missing the cabinet fronts but the kitchen drawers did open and close. The Hearing Officer did not observe any mold in the unit. The front and back door locks were functional. The Hearing Officer was unable to determine if the heater was functional.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice and Rent Increases

Initial Rent: There was conflicting testimony about the initial rent for the subject unit. The owner claims the initial rent for the subject unit was \$1,200.00 and produced a lease dated January 1, 2000, which lists the rent as \$1,200.00. The tenant claims that the initial rent was \$800.00. However, the tenant failed to produce anything in writing to support his claim. He did not provide an alternate lease showing \$800.00 as the initial rent and did not produce any rent receipts verifying that he ever paid \$800.00 in rent. The tenant has failed to sustain his burden of proof regarding the initial rent. Therefore, it is found that the initial rent for the subject unit was \$1,200.00.

Notice and Filing Requirements: The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy²⁰ and together with any notice of rent increase.²¹

¹⁹ Exhibit 6

²⁰ O.M.C. Section 8.22.060(A)

²¹ O.M.C. Section 8.22.070(H)(1)(A)

The tenant testified that he was never provided the RAP Notice. This testimony was undisputed. Therefore, the 2018 rent increase is invalid and the tenant's rent remains \$1,200.00. Since the tenant has been paying the increased rent of \$1,320.00 since April 1, 2018, the tenant is entitled to restitution for rent overpayments as stated in the chart below.

Splitting of Utilities

When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the public Utilities Commission Code and Rule 18 of PG&E.²²

The best way to remedy this situation is to install individual meters. Alternatively, the owner may choose to pay for the bill or include it in the tenant's rent as part of the rent, but it cannot be separately paid and split among the tenants. It is undisputed that the tenant has been splitting the water bill with other units and has been asked to split the garbage bill as well. Therefore, the tenant's petition is granted and the tenant is entitled to a credit in the amount of \$2,451.00, which represents the amount the tenant paid for water based on the receipts that were received into evidence. Additionally, the tenant is not required to pay for water or garbage moving forward. The tenant will receive a credit for the water payments and the restitution will be amortized over twenty-four (24) months as stated in the order below.

Decreased Housing Services

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent²³ and may be corrected by a rent adjustment.²⁴ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy, or one that is required to be provided in a contract between the parties, or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Further, an owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted.

Additionally, the tenants have the burden of proof with respect to each claim.

Rodent/Cockroach Infestation: The owner testified credibly that she provided pest control devices to the tenant after being notified of the rodent/cockroach problem, and when that wasn't sufficient to remediate the issue, she retained Terminix to treat the property. Terminix now treats the property monthly. She further testified that any recurring issues with rodents/cockroaches are due to tenant's lack of cleanliness. The

²² RAP Regs 10.1.10

²³ O.M.C. Section 8.22.070(F)

²⁴ O.M.C. Section 8.22.110(E)

owner's response was reasonable. Therefore, compensation for this claim is denied. Additionally, the tenant contributed to the problem by failing to maintain cleanliness of the unit. That is further reason to deny compensation for this claim.

Stove: The lack of an exhaust fan does not affect the functionality of the stove. Therefore, compensation for this claim is denied.

Refrigerator: The owner testified credibly that she never received notice of any issues with the refrigerator. Further, the Hearing Officer did not observe any issues with the refrigerator during the site inspection. Compensation for this claim is denied.

Walls: After the tenant notified the owner of holes in the walls, the owner conducted a walkthrough of the unit in October of 2017 with the tenant and patched up any holes at that time. However, the Notice of Violation dated March 8, 2019, states that there are still some wall holes in the bedroom and in the closet adjacent to the bathroom. This claim affects the habitability of the unit and the tenant is entitled to a 2% rent reduction, until all holes are repaired. Additionally, the tenant is entitled to restitution for past decreased housing services as of March 8, 2019, when the Notice of Violation was issued. (See chart below)

Windows: The owner testified credibly that she never received notice of any issues with the windows. Additionally, the windows were not cited in the Notice of Violation dated March 8, 2019, and the Hearing Officer did not observe any issues with the windows during the site inspection. Compensation for this claim is denied.

Rug: The tenant testified that the rug is dirty and needs to be replaced. During the site inspection, the Hearing Officer noted that the rug was dirty and showed wear and tear but did not pose any tripping hazards. A dirty and worn rug does not affect the habitability of the unit. Compensation for this claim is denied.

Bathroom Fan/Loose Cables: The tenant testified that he removed the bathroom fan himself after the owner replaced it because it was too loud. Because the tenant removed the fan himself, compensation for this claim is denied.

Living Room Light: An overhead light is not required in a living room. Compensation for this claim is denied.

Kitchen Cabinets: The owner testified credibly that she never received notice of any issues with the kitchen cabinets. Further the kitchen cabinets were not cited in the Notice of Violation issued on March 8, 2019. During the site inspection, the Hearing Officer did note that some cabinets did not have cabinet fronts but that did not affect the functionality of the cabinets. Therefore, compensation for this claim is denied.

Bathroom Tub: Based on the testimony of the parties, it is more likely than not that the bathroom floor gets wet because the shower curtain is not closed properly. Compensation for this claim is denied.

Hot Water: The owner testified credibly that she never received notice of this issue. Additionally, the hot water pressure was not cited in the Notice of Inspection dated March 8, 2019. Compensation for this claim is denied.

Mold: The owner testified credibly that she never received notice of this issue. Additionally, mold was not cited as an issue in the Notice of Violation dated March 8, 2019, and the Hearing Officer did not observe any mold during the site inspection. Therefore, compensation for this claim is denied.

Front/Back Door: The owner replaced the locks on the front and back door shortly after being notified of the problem. Compensation for this claim is denied.

Heat: There was conflicting testimony about the heater in the unit. The tenant testified that the heater has not worked since 2000, when he first moved into the unit and he notified the prior and current owner of this issue. The owner testified that she never received notice of any issues with the heater, and believed it was operational because it was not raised as an issue in the inspection report prepared for the sale of the property in December of 2016. Finally, the Notice of Violation dated March 8, 2019, cites the heater as being non-operational.²⁵

Based on the evidence and the testimony of the parties, the Hearing Officer finds that the owner has been on notice of this issue since at least August of 2018, when the tenant petition was filed, and has failed to make repairs. Lack of heat affects the habitability of the unit and the tenant is entitled to a 15% rent reduction until the heater is repaired. Additionally, the tenant is entitled to restitution for past decreased housing services for the broken heater as of August 20, 2018, when the tenant petition was filed. (See chart below)

Smoke/CO Detectors: The owner testified credibly that functional smoke/CO detectors were provided at the close of escrow in December of 2016. Further the tenant testified that he disconnected the smoke/CO detectors himself because the smoke from the kitchen sets off the alarm. Compensation for this claim is denied, and the tenant is directed to replace the smoke/CO detectors that he disconnected.

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Wall Holes	8-Mar-19	1-Jul-19	\$1,200	2%	\$ 24.00	5	\$ 120.00
Heater	20-Aug-18	1-Jul-19	\$1,200	15%	\$ 180.00	12	\$ 2,160.00
TOTAL LOST SERVICES							\$ 2,280.00

OVERPAID RENT

²⁵ Exhibit 6

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Apr-18	1-Jul-19	\$1,320	\$1,200	\$ 120.00	16	\$ 1,920.00
TOTAL OVERPAID RENT						\$ 1,920.00

RESTITUTION

MONTHLY RENT	\$	1,200.00
TOTAL TO BE REPAID TO TENANT	\$	4,200.00
TOTAL AS PERCENT OF MONTHLY RENT		350%
AMORTIZED OVER	MO. BY REG. IS	
OR OVER 24	MONTHS BY HRG. OFFICER IS	\$ 175.00

ORDER

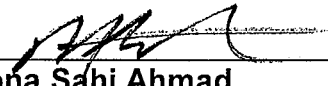
1. Petition T18-0438 is partly granted.
2. The 2018 rent increase is invalid. The tenant's base rent remains \$1,200.00.
3. The tenant is entitled to restitution for rent overpayments and decreased housing services. The restitution is amortized over twenty-four (24) months as follows:

Base Rent	\$1,200.00
-restitution for water payments	- \$102.12
-restitution for rent overpayments and past decreased housing services	- \$175.00
-current decreased housing services – wall holes (2%) and heater (15%)	- \$204.00
Rent payment from August 2019 through July 2021	\$718.88
Rent payment commencing August 2021	\$996.00

4. Once the owner repairs the wall holes, the owner may increase the tenant's rent by 2% (\$24.00) and once the owner repairs the heater the owner may increase the tenant's rent by 15% (180.00) upon proper notice in accordance with Section 827 of the California Civil Code.
5. The remaining claims of decreased housing services are denied.

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

Dated: August 15, 2019



Maimoona Sahi Ahmad
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T18-0438

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

Corrected Hearing Decision

Owner

Myrna M Carino
124 Dwight Street
San Francisco, CA 94134

Owner

Ryan C. Juan
124 Dwight Street
San Francisco, CA 94134

Tenant

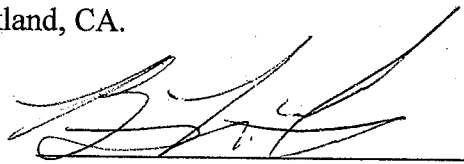
Federico & Jesus Martinez
9701 D Street
Oakland, CA 94603

Tenant Representative

Xavier Johnson,
Centro Legal de la Raza
3022 International Blvd., Suite #410
Oakland, CA 94601

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **August 16, 2019** in Oakland, CA.



Brittni Lothlen

Oakland Rent Adjustment Program

000071

CHRONOLOGICAL CASE REPORT

Case No.: T18-0493
Case Name: Peoples v. Ma Properties
Property Address: 353 Euclid Ave., #204, Oakland, CA
Parties: Jesse Peoples (Tenant)
No appearance by Owner

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	September 17, 2018
Owner Response filed	January 18, 2019
Hearing Decision mailed	July 1, 2019
Owner Appeal filed	July 16, 2019

T18-0493 RC/BC

RECEIVED

SEP 17 2018

City of Oakland Rent Adjustment Program

Tenant Petition

RENT ADJUSTMENT PROGRAM
OAKLAND

Case **Petition: 10005**
Property Address **353 EUCLID AV**

Party	Name	Address	Mailing Address
Tenant	Jesse Peoples	353 EUCLID AVENUE 204 Oakland, CA 94610	353 EUCLID AVENUE 204 Oakland, 94610
Manager	Ma Properties maproperties@att.net	395 Merritt Avenue 304 Oakland, CA 94610	395 Merritt Avenue 304 Oakland, 94610
Owner	Ma Properties maproperties@att.net	395 Merritt Avenue 304 Oakland, CA 94610	395 Merritt Avenue 304 Oakland, 94610

Rental Property Information

Number of Units	20 to 49 Units
Type of unit you rent	Apartment, Room or Live-work
Are you current on your rent?	Yes

Grounds for Petition

Rent Increase Exceeds CPI or more than 10%

Rental History

When did you move into the unit?	4/1/2018
Initial monthly rent	1950
When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?	3/17/2018
Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program?	Yes
Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?	No
Have you ever filed a petition for your rental unit?	No

Rent increases that you want to challenge.

Did you receive a RAP Notice with the notice of rent increase?	Date RAP notice served	Date increase goes into effect	Monthly Rent Increase From	Monthly Rent Increase To	Are you contesting this increase in this petition?
No		9/10/2018	1950	2150	Yes

City of Oakland Rent Adjustment Program

Tenant Petition

Case **Petition: 10005**
Property Address **353 EUCLID AV**

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? No

Have you lost services originally provided by the owner or have the conditions changed? No

Are you claiming any serious problem(s) with the condition of your rental unit? No

Mediation

Mediation Requested Yes



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Ste 5313
Oakland, CA 94612-0243
(510) 238-3721

For date stamp: 1/18/2019
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2019 JAN 18 PM 4:07
**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 - 0493

Your Name Sanford Ma	Complete Address (with zip code) 395 Merritt Avenue #304 Oakland, CA 94610	Telephone: Email: maproperties@att.net
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:net
Tenant(s) Name(s) Jesse M. Peoples David O. Sabaria	Complete Address (with zip code) 353 Euclid Avenue, #204 Oakland, CA 94610	
Property Address (If the property has more than one address, list all addresses) 353 Euclid Avenue, Oakland CA 94610		Total number of units on property 33

Have you paid for your Oakland Business License? Yes No Lic. Number: E00058044
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: 01/18/00

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.

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 09/10/2018 (for the current Lease -- see attachment for explanation)

The tenant's initial rent including all services provided was: \$ 2,150.00 / 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? 09/10/2018

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>	
None		\$	\$	<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

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

1/18/19
Date



P.O. BOX 70243, OAKLAND, CA 94612-2043

Community and Economic Development Agency
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-3691
TDD (510) 238-3254

JUST CAUSE FOR EVICTION ORDINANCE (MEASURE EE)

This measure provides that landlords of specified residential properties may evict tenants only for reasons specified in the measure. Landlords may not evict tenants in covered units except for the following reasons:

1. Failure to pay rent;

2. Material violation of rental agreement;

Subletting is not a grounds for termination if the landlord unreasonably withheld the right to sublet after a written request by the tenant if the tenant continues to reside in the unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). Failure to respond to a tenant's request to sublet within 14 days is deemed an approval

Nuisance, includes causes number 4 causing substantial damage, 5 disorderly conduct, or 6 using premises for illegal purpose. The landlord can follow the requirements of those sections instead of section 2. Nuisance also includes conduct by the tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance under Code of Civil Procedures § 1161 (4).

Waste, is defined by State law. Termination of tenancy for any conduct that falls under 4 causing substantial damage and might also be considered waste can follow the requirements of section 4 instead of this section

3. Nonrenewal

Refusal to execute written extension or renewal with terms similar to those in prior agreements after a written request by landlord;

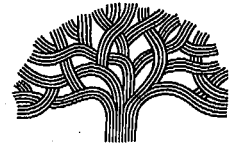
4. Substantial Damage

Tenant must have opportunity to pay reasonable costs of repair of damage;

5. Disorderly Conduct;

6. Illegal Purpose;

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 NUMBER: T18-0493, Peoples v. Ma Properties
PROPERTY ADDRESS: 353 Euclid Avenue, #204, Oakland, CA
DATE OF HEARING: April 11, 2019
DATE OF DECISION: June 25, 2019
APPEARANCES: Jesse Peoples, Tenant
No appearance by Owner

SUMMARY OF DECISION

The tenant petition is granted. The legal rent for the subject unit is set forth in the Order below.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on September 17, 2018, claiming that a rent increase from \$1,950 to \$2,150 a month, effective September 10, 2018, exceeds the CPI allowable rent increase or is greater than 10%. The tenant alleged that he moved into the unit in April of 2018, at an initial rent of \$1,950 a month.

The owner filed a timely response to the owner petition denying that there had been a rent increase. No justification for a rent increase is listed on the owner's response. The owner's response claims that the tenant moved into the unit on September 10, 2018, "for the current lease." It also asserts that his initial rent was \$2,150 a month.

The owner did not appear at the Hearing.

THE ISSUES

1. How does the failure of the owner to appear effect the proceedings and what is the allowable rent?
2. What, if any, restitution is owed between the parties and how does it affect the rent?

///

///

EVIDENCE

The tenant testified that he moved into the rental unit on April 1, 2018, at an initial rent of \$1,950 a month. He was served the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice) when he signed the lease. His initial lease, which shows that a one year lease was signed on March 31, 2018, for a move in date of April 1, 2018, was admitted into evidence.¹ The lease specifies:

“Tenant will not sublet any part of the Premises or assign this agreement without the prior written consent of Owner. The named Tenants are the only “Original” tenants. No person other than the named Tenants will be permitted to regularly or continuously use or occupy the Premises unless all of the following conditions have been met: 1) Tenant notifies Owner in writing, signed by every Tenant, stating a request to have a new person occupy the Premises; 2) said prospective occupant completes and gives to Owner Owner’s rental application; 3) Owner approves of the prospective occupant’s creditworthiness and references from prior landlords; and 4) the new occupant signs Owner’s Change of Tenant Agreement for such occupancy before occupying the Premises, which agreement will include a provision that the new occupant will abide by and perform all the obligations of this Agreement. The rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises.”

In August of 2018, the tenant informed the owner that he wanted his boyfriend, David Sabaria, to move into the unit with him. He was told in writing and by telephone that the only way for his boyfriend to move in was to void his lease and to sign a new lease at which point the rent would be increased to \$2,150 a month. The tenant objected to this increase, asking if there was any other way to just add his David to the lease without increase (as set forth in the lease) and the owner refused.² Ultimately David filled out the application and was approved. The tenant was required to sign a new lease in order for David to move in. The tenant was clear that the only way for the owner to approve David moving in was to sign the lease agreeing to pay the higher rent.³

The tenant further testified that when he rented the apartment he was never informed that his tenancy was limited to one person only; the advertisement for the property did not limit it to one person only and he has never seen any of the one bedroom apartments in the building advertised for more than \$1,950 a month. At the time he filed his petition he checked *Craigslist* and other one bedroom apartments in the building were listed for \$1,950 a month.

The tenant has been paying the new rent since September of 2018. His September of 2018 rent was prorated to account for the fact that the new lease was signed in early September. His additional rent payment in September was \$140. He also paid an additional \$200 because the owner demanded an increase in the security deposit. He

¹ Exhibit 1. All Exhibits referred to in this Decision were admitted into evidence.

² See Exhibit 2, email exchange between the parties.

³ The first page of the new lease was admitted into evidence as Exhibit 4.

has paid \$2,150 a month in all months since October of 2018 and will continue to do so until he gets a Hearing Decision in this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

How does the failure of the owner to appear effect the proceedings and what is the allowable rent?

While the owner responded to the tenant petition, no representative from the owner appeared at the Hearing. Additionally, the owner's response, does not state a justification for the rent increase.

Without the owner's presence, the tenant's testimony is uncontested. He moved into the rental unit in April of 2018, at an initial rent of \$1,950 a month. He signed a one year lease. Even without a lease, no rent increase can be effective any sooner than one year after a tenant moves into a unit. O.M.C. § 8.22.070(A)(1)(a). It has long been held that the addition of another tenant is not grounds for a rent increase under the Ordinance. *Yancy v. Ma Properties*, HRRRB, T00-0276. Furthermore, parties cannot agree to violate a rent control ordinance.⁴ Therefore, requiring the tenant to sign a new lease does not change the fact that no rent increase is allowed in these circumstances.

Based both on the owner's failure to appear, and the facts presented, the tenant's tenancy began on April 1, 2018, and his legal rent is \$1,950 a month, in all relevant months.⁵ The tenant can begin paying rent of \$1,950 effective at the next month's rent payment.

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

The tenant has been overpaying rent since September 8, 2018. In September he paid \$140 more than his base rent. In all months between October of 2018 and June of 2019 (9 months) he has paid an additional \$200 a month. His total overpayment is therefore \$1,940.

An overpayment of this size is normally adjusted over a period of 12 months.⁶

The tenant can begin deducting the restitution once this Hearing Decision is final. The Decision is final 20 days after it has been served on the parties, if no appeal is filed. The deduction for restitution is \$161.66 a month.

ORDER

1. Petition T18-0493 is granted.

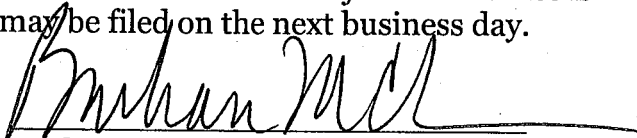
⁴ *Gombiner v. Swartz*, 167 Cal.App. 4th 1365 (2008)

⁵ The RAP does not have jurisdiction over security deposits.

⁶ Regulations, Section 8.22.110(F)

2. The tenant's base rent is \$1,950 a month. He can begin paying the base rent at the next month's rent payment.
3. The owner owes restitution to the tenant of \$1,940.
4. The tenant can begin deducting restitution after the Hearing Decision is final.
5. If the owner wishes to, it can repay the restitution owed to the tenant at any time. If it does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.
6. After the appeal period is over, the tenant can deduct \$161.66 a month from his base rent for a period of 12 months. If the rent is increased during the period of restitution, the restitution should be decreased from the new base rent.
7. **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: June 26, 2019


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0493

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:

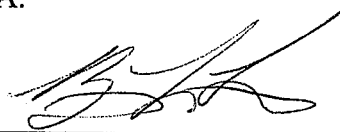
Documents Included
Hearing Decision

Owner
Ma Properties
395 Merritt Avenue 304
Oakland, CA 94610

Tenant
Jesse Peoples
353 EUCLID AVENUE 204
Oakland, CA 94610

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 **July 1, 2019** in Oakland, CA.



Brittni Lothlen

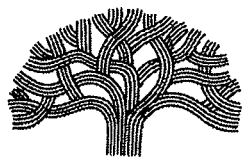
Oakland Rent Adjustment Program

000083

RC/BC

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2019 JUL 16 PM 1:01
For date stamp.



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

APPEAL

Appellant's Name Ma Properties		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 353 Euclid Avenue, #204			
Appellant's Mailing Address (For receipt of notices) 395 Merritt Avenue, #304 Oakland, CA 94610		Case Number T18-0493	
		Date of Decision appealed June 25, 2019	
Name of Representative (if any) Lennon MacDonald Jeffery Dang Gloria Fong Sanford Ma		Representative's Mailing Address (For notices) 395 Merritt Avenue, #304 Oakland, CA 94610	

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.)*

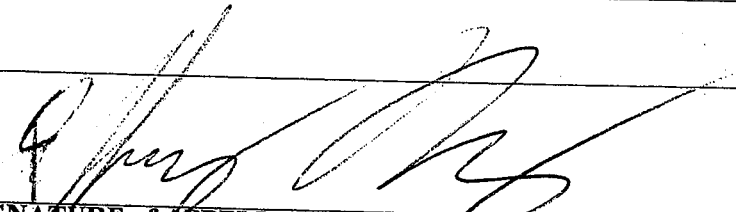
For more information phone (510) 238-3721.

- 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 July 16, 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	Jesse Peoples
Address	353 Euclid Avenue, #204
City, State Zip	Oakland, CA 94610
Name	David O. Sabaria
Address	353 Euclid Avenue, #204
City, State Zip	Oakland, CA 94610

	07/16/2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

For more information phone (510) 238-3721.

Case: T18-0493

Appeal Reason: I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.

Explanation:

In February 2019, our office received a notice that a petition by Jesse Peoples was dismissed without prejudice. But that he had filed a second petition "(10005)". Our office never received a notice of second petition.

Our staff met with representatives from the RAP office and found that the notice to dismiss was for a case that we had never been made aware of.

The hearing for case number T18-0493 took place on June 25, 2019 with the Ma Properties Office having believed the hearing appointment had been canceled by the notice to dismiss without prejudice and continuing to await notice of the second petition "(10005)" and subsequent hearing.

Some additional evidence that would have been presented:

Mr. Peoples and Mr. Sabaria signed a lease for 353 Euclid Avenue, #204 on September 10, 2018. The agreed upon rent was \$2,150.00 per month, priced slightly higher than the unit below, and slightly lower than the unit above.

Their rent was never set at \$1,950.00. No increase in rent occurred.

The hearing decision suggests that Mr. Sabaria's lease is not effective and Mr. Peoples is in violation of his lease by allowing Mr. Sabaria to reside there.



CITY OF OAKLAND

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RENT ADJUSTMENT PROGRAM

2018 SEP 21 PM 12:17

Housing & Community Development
Rent Adjustment Program

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, California 94612

(510) 238-3721
FAX (510) 238-3691
CA Relay Service 711

REQUEST TO DISMISS PETITION

Date 9/21/2018

TO: City of Oakland, Residential Rent Adjustment Program

I, JESSE PEOPLES, filed a petition with the Oakland Rent Adjustment Program.


The Case Number is 10004. I request that my petition be dismissed.

- I've moved and my new address is:

_____ (Street Address)

_____ (City/State/Zip code)

- The reason for dismissing my petition is: I filed a second petition (10005) due to issues with the summary screen and would like to use that one instead

Signed 
Petitioner

Date 9/21/2018

ORDER

At the request of the Petitioner, case number 718-0419 is dismissed without prejudice.

The hearing scheduled for _____ is cancelled.

Dated: 11/6/18



HEARING OFFICER

Retaliation against tenants for using the Rent Adjustment process is prohibited by California Civil Code Section 1942.5 and Oakland Municipal Code Section 8.22.130.

PROOF OF SERVICE

Case Number T18-0419

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

Request to Dismiss Petition

Owner

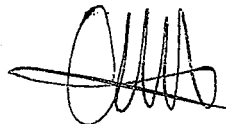
Ma Properties
395 Merritt Ave Apt 304
Oakland, CA 94610

Tenant

Jesse Peoples
353 Euclid Ave Apt 204
Oakland, CA 94610

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

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



Claudette M. Campos
Oakland Rent Adjustment Program

000089