

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

PANEL MEETING

FEBRUARY 20, 2020

7:00 P.M.

CITY HALL, HEARING ROOM #2

ONE FRANK H. OGAWA PLAZA

OAKLAND, CA

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. APPEALS*
 - a) T19-0231, Liebmann v. Brustein et al
 - b) T19-0451, Kaiser v. Goldstone Management
5. ADJOURNMENT

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

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

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

* 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

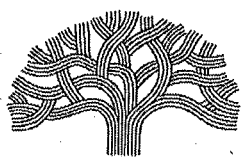
Case No.: T19-0231
Case Name: Liebmann v. Brustein et al
Property Address: 1632 Myrtle St., Apt. #B, Oakland, CA
Parties: Coleen Liebmann (Tenant)
Jennifer Brustein (Owner)
Kara Palanuk, (Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	March 22, 2019
Owner Response filed	August 20, 2019
Hearing Decision mailed	December 18, 2019
Tenant Appeal filed	January 8, 2020

000003

T19-0231 RC/MA LM did the B/U HRB

 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 2019 MAR 22 AM 11:43
	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 COLEEN LIEBMAN	Rental Address (with zip code) 1632 MYRTLE ST Apt B OAKLAND, CA 94607	Telephone:
		E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) JENNIFER BRUSTEIN KARA PALANUK	Mailing Address (with zip code) 1632 MYRTLE ST APT B OAKLAND, CA 94607	Telephone:
		Email: / k
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 4

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

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

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

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

(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
(g) The increase I am contesting is the second increase in my rent in a 12-month period:
(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
(n) The rent was raised <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: 5/20/2013 Initial Rent: \$ 1100 /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: _____ . 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		Yes	No
		\$	\$	Yes No	Yes No	
		\$	\$	Yes No	Yes No	
		\$	\$	Yes No	Yes No	
		\$	\$	Yes No	Yes No	
		\$	\$	Yes No	Yes No	
		\$	\$	Yes No	Yes No	

* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

Are you being charged for services originally paid by the owner?

Yes No

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

Yes No

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

Yes No

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature

3/21/2019
Date

- loss of services of patio/deck
- Threat of loss of exclusive use of deck

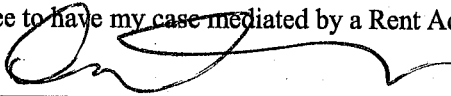
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

3/21/2019
Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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

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

Cor n Liebmann
3/21/2019

loss of services.txt

1632 Myrtle St., Apt B is a studio apartment in a converted Edwardian house. The apartment is on the top/third floor of the house and consists of a studio opening through french doors to a more than 500 sq foot patio that runs along the front of the house and down one side in an L shape. The patio is surrounded by a tall fence in back with a locked gate opening to a landing and an outside staircase going down to the backyard. Since moving here in 2013, the patio has been for my exclusive use, and only I and the owner(s) have a key to the gate, which I keep locked. I rented the apartment for \$1100 and now pay \$1222.

May 2013 I rented the apartment, described by the then owner, Nicole Collette, as "Sunny studio with huge outdoor roof deck/patio" Att 1, email with NC regarding viewing the apartment.

Att 2, photo dated 12/2013 shows a small portion of the patio from the chimney to the front of the patio.

Att 3, patio garden from the front looking down the side of the house to the back, with locked gate in background.

Att 4, view from inside the studio apt looking out to show how the patio is built around the sleeping alcove and therefore part and parcel of the unit.

Att 5, sleeping alcove from outside.

Att 6, view from front to back of empty patio.

July 2016, the house was purchased by Jennifer Brustein and Kara Palanuk, who asked the tenants in some or all of the four units to sign new leases. I emailed them prior to providing a signed copy, clarifying that I was deleting one clause and could still use my drying rack "Given that my patio is private..." They responded affirmatively. Att 7, email communication with JB and KP re: an edit to the signed lease.

Several months later Ms. Brustein moved into the second floor apartment with her boyfriend and child. Ms. Palanuk and her boyfriend moved into one of the first floor apartments some time later.

4/1/2018 I received an email notifying me that the landlords required entrance to the deck to have a structural engineer inspect the chimney and the building. Att 8, Email providing notice of entry.

Around this time I met a man out in front of the house who introduced himself as the father of one of the owners. He said that they were looking into having a new deck floor constructed on the patio.

10/9/2018 I was out on the patio, when I turned around to walk back in, I saw a man squatting on the landing, peaking at me through a crack in the gate. He seemed to be startled when he saw me looking at him and then demanded to be let in to check the roof. I told him that I needed notice for the landlords to come in, absent an emergency. He again demanded to be let in, stating that it was the roof, therefore they did not have to give me notice. He did not identify himself, but I believe he

loss of services.txt

was the boyfriend of one of the owners.

10/10/2018 I received an email from the owners stating that they needed to have a contractor enter to check the roof, as well as a follow-up email stating that the inspection was delayed until 10/15. Att 9, Notice of entry. A day or two later I found a large rotten tomato on my patio, most likely thrown from the back staircase.

2/4/2019 I found a notice taped to my door notifying me of access to the roof to inspect and repair water intrusion.

2/6/2019 I found a notice taped to my door notifying me of access for workers on 2/6 and 2/17.

2/12/2019 I found a notice taped to my door notifying me of access for roof workers 2/13-15.

2/20/2019 Ms. Brustein emailed me asking me to meet her somewhere. We met at a cafe the next day and she told me that they were 'shutting down the roof' and that the patio may not be included in my lease - I responded that it was included. She said that she had three engineering reports showing major structural damage and agreed to provide them to me. Att 10, request to meet.

2/27/2019 I found a notice taped to my door notifying me of roof access for water removal and to exhibit to contractor.

3/5/2019 Ms. Brustein emailed me attaching an engineering report dated 3/3/2019. The report indicated that the roof was not properly constructed to be used as a patio and could not support the weight of the plants. It also indicated that the owners had told the engineer that balls and debris were blocking the drains. Ms. Brustein informed me that everything needed to be moved out by the 12th. I told her that I still wanted the use of the patio after repairs and after several contentious communications, we agreed to have the plants and furniture moved down to the back yard on 3/11. I also requested that she keep me updated and asked for compensation for the loss of the patio and loss of quiet enjoyment during the time of construction, given that I work from home and would not be able to do so. Att 11, email from JB and Att 12, cont'd email from JB

3/11/2019 I found a notice taped to my door notifying me of access for roof contractors.

3/12/2019 I found a notice taped to my door notifying me of access for roof contractors.

3/13/2019 I found a notice taped to my door notifying me of access for roof contractors.

3/18/2019 I received an email from Ms. Brustein telling me that the roof could no longer be used except as an emergency exit, that it was never intended for my exclusive use and that I needed to get rid of some of my plants which had been moved down into the backyard. She said that they were still talking to contractors about the work, and they decided to give me a \$72 discount on my monthly rent. Att 13,

email from JB

I am filing this complaint because I don't believe the owners and I will be able to come to any mutually acceptable agreement on our own. I rented this apartment because of the large deck with nice views. The studio itself is rather small and spartan. The deck is the only feature of note with the apartment. I have been using it as my private deck for over 5 years. They are claiming they need to repair the roof. I'm happy to let their workers do all that they need to do, I simply would like to be no worse off after the work is completed. Frankly, the position of the new landlords is so unreasonable that it appears to be a thinly veiled ruse to drive me out so they can re-rent the apartment at market rate or have the patio for their own use.

I am also concerned about the assertion that "although you may have treated it as such, the roof was never here for your exclusive use." Although I don't believe they will try to use the roof deck if that they are claiming it is unsafe, I am concerned they may attempt entry without my permission. This would be extremely problematic given that the gate opens up to a window in front of my toilet, and the patio runs along my living space with the french doors and the huge picture windows framing the sleeping alcove. There would be no way to maintain any sense of privacy if they felt free to enter the space and were able to stand at my bedroom windows. (Att 4 and 5)

3/21/2019

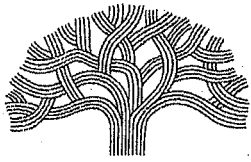
COLEEN LIEBMAN

Additional documents

7 notices of entry 2/4 - 3/13

Notice of rent increase - just FYI

Extra photo of front of patio before ~~plants~~ plants removed



CITY OF OAKLAND

Housing and Community Development
Department
Rent Adjustment Program
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

(510) 238-3721

RAM

For date stamp RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2019 AUG 20 PM 1:00

PROPERTY OWNER
RESPONSE

PC/AAA
LM

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 T19-0231

Your Name <i>JENNIFER BRUSTAN KARA PALANUK</i>	Complete Address (with zip code) <i>1630 MYRTLE ST APT A OAKLAND CA 94607</i>	Telephone: <i>510-238-3721</i>
		Email: <i>jenbrustan@oaklandca.gov</i>
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone:
		Email:
Tenant(s) Name(s) <i>OLIVIA LIEBMAN</i>	Complete Address (with zip code) <i>1632 MYRTLE ST APT B OAKLAND CA 94607</i>	
Property Address (If the property has more than one address, list all addresses) <i>1630-1632 MYRTLE ST OAKLAND CA 94607</i>		Total number of units on property <i>4</i>

Have you paid for your Oakland Business License? Yes No Lic. Number: 00195252
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: 5-384-10
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: 06/17/16

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 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

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

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

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

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

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

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

The tenant moved into the rental unit on _____.

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

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

Yes _____ No _____ I don't know _____

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

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

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

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.

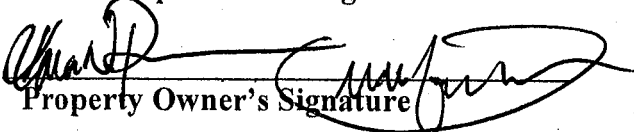
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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

8/19/19
Date

IMPORTANT INFORMATION:

250 Frank Ogawa
Plaza, Suite 5313

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.

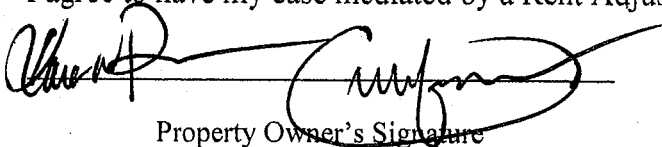
Mediation Program

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

8/19/19
Date

Property Owner Response, Case No. T19-0231

The building at 1630-1632 Myrtle Street is a four unit structure with a flat roof that protects three apartment units below. Access to the roof is achieved by climbing an outdoor flight of external stairs, located at the rear of the building. At the uppermost stair landing, an exterior gate leads directly onto the roof. The roof, and the stairs to the roof, are common areas of the building used to maintain and service the building; they protect the building, all of the apartments, and habitants. Tenant's unit has a separate egress to the roof, which serves as a second safety egress out of the unit and opens onto the roof. The roof is made of a standard Torch-Down Modified Bituman material that is an asphalt roofing product, and delicate to abrasions.

On October 9, 2018, Owner Kara Palanuk, and her boyfriend, Brooks Harris, noticed a large amount of water cascading down the side of the building, originating from the roof and streaming down the first and second floor walls and windows.

After noticing the leaks, Mr. Harris ran up the stairs to figure out where the cause and origin of the leaks. After running up the backstairs to the roof, he saw Tenant Petitioner Coleen Liebmann (Tenant) holding a watering device and appeared to be cleaning the roof with water, and watering various plants she arranged about the roof. It was immediately clear to Mr. Harris that the roof's drains were not properly removing this excess water, and Mr. Harris informed Tenant that there was a major leak occurring down the house, and that he needed to inspect and stop the leak.

Tenant refused to let him onto the roof and abruptly yelled that the roof was "her roof," that it was "her patio" and that she would not allow Mr. Harris onto the roof without notice. Without knowing that a notice was neither required for access to common areas, nor to address an emergency, Mr. Harris went downstairs to print the notice that she requested, and to call roofers and plumbers to address the water damage.

On or about the next day, on October 10, Ms. Palanuk and Mr. Harris inspected the roof and removed fresh gardening debris, potting soil, and worm compost castings from the drains. The roof was brimming with potted plants, up to roughly 3 feet in circumference, potted trees up to roughly 5 feet tall, a 3-foot concrete bird bath, and a small pond. There was sitting water on the roof, surrounding the clogged storm drains. In the Northwest section of the roof, there was an eight foot "bubble" of water that had seeped between layers of the roofing material.

On about October 15, after several phone calls to roofers in the area, Owners Ms. Palanuk and Ms. Brustein were able to get a roofer to examine the roof. The roof contractor stated that the roof needed to be replaced because the items on the roof caused significant damage to the

roofing material, which could lead to a roof failure. They stated that they would not be able to schedule the project for several months due to backlog of current projects. Many roofers similarly could not start work on the roof in the winter months and advised to patch the roof and begin repair work in Spring. In this time, the leak temporarily stopped.

On about February 2nd, Ms. Brustein noticed leaking water into her second-story bedroom and onto her child's changing table, in the same area corner of the previous leak. Ms. Brustein, again, immediately contacted roofers to begin work repairing and replacing sections of the roof.

On about February 4, roofers inspected the damage and found garden debris, dirt, and worm castings clogging the storm drain. The roofers were shocked to see so much weight of gardening objects sitting on the roof, estimating that Tenant's pond weighed several hundred pounds itself.

On about February 13, the independent adjuster, a catastrophe specialist, examined the roof and mentioned that no standing water should ever be on a roof and the roof is not designed to be walked on, let alone used as a patio. Thereafter, Ms. Palanuk and Ms. Brustein's insurer denied their home-owners insurance claim for water damage due to the inappropriate use of the roof; he found that the garden on top of the roof caused the damage, and not normal wear-and-tear of the roofing material. Ms. Palanuk and Ms. Brustein gathered five roofing repair estimates and inspections that all stated that the inappropriate use of the roof caused the water damage.

On about February 21, Ms. Brustein informed Tenant she must clear the roof of her plants, bags of planting soil, ponds, tables, chairs and other items. Ms. Brustein also mentioned that the weight of the items could cause the roof to fail and collapse and that it could no longer be used as a patio. In response, Tenant refused and demanded to see an "engineering report."

On about March 5, Ms. Brustein obtained and provided Tenant an engineering report. The report reiterated the unsafe nature of using the roof as a patio deck, and stated "The use of the existing roof as a 'roof deck' is unsafe and should be stopped immediately." It also states, "The use of the roof as a roof deck...[and] recent blockage of the roof drains by toy balls and plant debris could have resulted in a catastrophic roof collapse." (*Please See Attachment #1; Engineering Report; and Attachment #2 Roofing Estimate Emails*). In several emails, from March 5th through March 8th, Ms. Brustein reiterated to Tenant that items on the roof needed to be removed to repair damage and that the roof could no longer be used as a patio due to structural and safety issues.

On about March 18, in order to maintain the roof and the units below, and sustain the quiet enjoyment of the entire building, Ms. Palanuk and Ms. Brustein notified Tenant that the roof is to be closed to tenants for non-emergency use, and to cease using the roof in a dangerous matter for

both its structural integrity and to limit the possibility of future water intrusion. Ms. Palanuk and Ms. Brustein also notified Tenant that they would regularly inspect and service the roof going forward. Further notices of entry onto the roof are not required because the roof is a common area and is not, and was never, designated for Tenant's exclusive use. The new roofing material is the same Torch-Down Modified Bituman that is neither designed to protect against abrasions, nor routine walking.

On about May 23, the roofers completed the roof repair, with a current cost of roughly \$31,000 thus far. The work is still ongoing to repair the water damage inside the second story apartment and the exterior siding of the building. The costs are paid out-of-pocket by Ms. Palanuk and Ms. Brustein, as their insurance carrier denied the claim for the roof and siding because the damage was created by "inappropriate use of the roof." Throughout this process, Ms. Palanuk and Ms. Brustein have managed nearly daily walkthroughs by inspectors, remediation experts, contractors, insurance adjusters and cleaners at the building. Despite their attempts to work quickly to remediate the safety hazards in a household with children, Ms. Brustein, her partner, and infant have spent nearly three months living in their living room to reduce exposure to the mold, falling debris and dust.

On or about June 5, after Ms. Palanuk and Ms. Brustein repaired the roof and notified Tenant of the roof closer, Tenant again began arranging more gardening equipment and about 20 flower pots and gardening supplies on the roof. To reduce further damage to the new roof, the gardening materials were relocated to the backyard.

Although never required to give notice of entry onto the roof to Tenant, Ms. Palanuk and Ms. Brustein diligently provided notices and updates to Tenant throughout the roofing repair work. Ms. Palanuk and Ms. Brustein have always given notice to enter Tenant's apartment when required. Ms. Palanuk and Ms. Brustein have always provided ample communication regarding the building in general, and have been responsive to issues in a timely fashion. Ms. Palanuk and Ms. Brustein are not required to offer Tenant a decrease in rent for use of common spaces, and never agreed that Tenant holds exclusive use of the roof. (*Please see Attachment #2, Tenant's Prior Lease Agreement; and Attachment #3, Tenant's Current Lease Agreement*). However, in the interest of coming to a common solution, Ms. Palanuk and Ms. Brustein offered Tenant a reduction of her rent from \$1,222.00 to \$1,150.00. Instead, Tenant asked for a reduction of nearly 40% of her rent, from \$1,222.00 down to about \$757.00.

Ms. Palanuk and Ms. Brustein have not made attempts to use the roof or contradict Tenant's claims until it became clear that her continued misuse of the roof endangered the children below, and the structural integrity of the building. Instead, their primary concern is the safety of the house, and for all inhabitants to have quiet enjoyment of this multi-family home. They have

been open and willing to come to an amicable resolution with Tenant, and it is their hope to come to an agreement that would allow Tenant to feel safe and secure. Yet, as owners of the building, they must have unimpeded access to the roof, with the ability to access the roof for cleaning, maintenance and water removal when necessary, as was recommended by the catastrophe adjuster and building engineer.

Attachment #1 - Roofing Engineering Report

Attachment #2 - Roofing Estimate Emails

Attachment #3 - Tenant's Prior Lease Agreement

Attachment #4 - Tenant's Current Lease

Attachment #5 - Emails Showing Tenant Confuses the Roof with her "Residence"

Attachment #6 - Photos of Tenant's Damaging Use of Roof

CITY OF OAKLAND



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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T19-0231, Liebmann v. Brustein, et al.
PROPERTY ADDRESS: 1632 Myrtle St., Apt. #B, Oakland, CA
DATE OF HEARING: November 18, 2019
DATE OF DECISION: December 13, 2019
APPEARANCES: Coleen Liebmann, Tenant
Jennifer Brustein, Owner
Kara Palanuk, Owner

SUMMARY OF DECISION

The tenant petition is granted.

CONTENTIONS OF THE PARTIES

On March 22, 2019, the tenant filed a petition alleging decreased housing services due to a loss of use of an outdoor roof deck/patio.

The owners filed a time response, alleging that this is a roof which cannot be used as a deck in order to prevent leaks and moisture intrusion into the building.

THE ISSUE

Has the tenant sustained a loss of housing services, and if so, by what amount?

EVIDENCE

The tenant moved into the subject unit on May 20, 2013, at an initial rent of \$1,000.00 per month. The tenant's current monthly rent is \$1,222.00. There is no pending rent increase.

000019

The subject unit is a studio apartment with a roof-top deck, which is located in a residential building, consisting of four (4) residential units. The current owners acquired the building on June 17, 2016.

Decreased Housing Services

The tenant testified that when she first moved into the unit, she had an exclusive use of an outdoor rooftop deck, which is about 600 sq. ft. Since March 11, 2019, she can no longer use the patio as her outdoor space and she lost use of that deck.

The tenant submitted photographs of the patio, depicting how the patio looked when she used it and how it looks now.¹ The tenant also submitted an advertisement from Craigslist from 2013 by the prior which states "sunny studio with huge outdoor roof deck/patio."²

The owners testified that in the winter of 2018/2019, the building sustained major damage due to the leaking roof/patio. They consulted with a structural engineer who evaluated the damage and advised them that the patio/deck is a roof with a roofing material which is not meant to walk on or used for anything other than the roof and that the patio must be closed off and its usage as a patio/deck must cease in order to preserve the structural integrity of the building.

The owners closed off the patio use as a deck as of March 11, 2019, and offered the tenant an alternative accommodation to use the backyard for the plants and some storage space in the garage.

The parties acknowledge that this situation represent a loss of housing service, they just cannot agree on the amount this loss of housing service represents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered an increase in rent³ and may be corrected by a rent adjustment.⁴ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided. "Living with lack of painting, water leaks and defective Venetian blinds may be unpleasant, aesthetically unsatisfying, but does not come with the category of habitability. Such things will not be considered in diminution of the rent."⁵ The tenant has the burden of proving decreased

¹ Exhibit A

² Exhibit B

³ O.M.C. §8.22.070(F)

⁴ O.M.C. §8.22.110(E)

⁵ *Green v. Superior Court* (1974) 10 Cal. 3d 616 at p. 637

housing services by a preponderance of the evidence. In a decreased services case, the tenant must establish he has given the owner notice of the problems and the opportunity to fix the problems before he is entitled to a relief.⁶

Prior Hearing Decision Re Loss of Housing Service – T17-0327

Official Notice is taken of Case No. T17-0327, *Didrickson v. Commonwealth Co.* The Order granted an ongoing rent decrease of 10% due to the loss of the tenants' wooden patio deck.

This case is factually similar to the cited case above. While the closure of the roof was done for the tenants' benefit to preserve the roofing material and prevent any further damage to the building, it still represents a loss of service for the tenant in Unit #B because she had an exclusive use of this outdoor patio when she initially moved into her unit. Therefore, this claim represents a decreased housing service and reduced the package of housing services by 10% (\$122.00) per month from March of 2019. Therefore, the tenant is entitled to a credit due to past decreased services from March of 2019 and an on-going decreased service as shown in the Table below as follows:

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Loss of outdoor deck/patio	11-Mar-19	18-Nov-19	\$1,222	10%	\$ 122.20	9	\$1,099.80
					\$ -		-
TOTAL LOST SERVICES							\$ 1,099.80

RESTITUTION

MONTHLY RENT	\$1,222
TOTAL TO BE REPAYED TO TENANT	1,099.80
TOTAL AS PERCENT OF MONTHLY RENT	90%
AMORTIZED OVER 12 MO. BY REG. IS	\$ 91.65

ORDER

1. The Tenant Petition T19-0231 is granted.
2. Due to the permanent loss of the outdoor deck/patio, the tenant is entitled to an ongoing rent decrease of 10% of the rent, which is \$122.20.
3. Before applying restitution for past loss of housing service, the tenants new current rent is \$1,099.80 per month.

⁶ Hearing Decision T11-0191, *Howard v. Smith* (2012)

4. The tenant is entitled to a credit of \$1,099.80, which will be applied by a monthly rent reduction for the next twelve (12) months in the amount of \$91.65 as follows:


New Base Rent which includes 10% permanent reduction	\$1,099.80
Tenant's credit for past loss of decreased housing services amortized over 12 months	-91.65
rent to be for the next 12 months	\$1,008.15

5. On January 1, 2021, the monthly rent will go back to \$1,008.15 as the credit expires per chart above. This is not a rent increase but end of the restitution period.

6. The owner is otherwise entitled to increase the tenant's rent in compliance with the Rent Adjustment Ordinance and California Civil Code §827.

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: December 13, 2019



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T19-0231

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

Jennifer Brustein
1632 Myrtle Street Unit A
Oakland, CA 94607

Owner

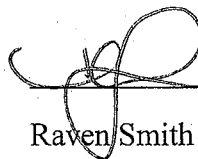
Kara Palanak
1632 Myrtle Street Unit A
Oakland, CA 94607

Tenant

Coleen Liebmann
1632 Myrtle Street Unit B
Oakland, CA 94607

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

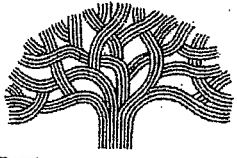
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **December 18, 2019** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program

000023

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp 2020 JAN -8 PM 2:14
		APPEAL

Appellant's Name COLSEN LIEBMAN		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1632 MYRTLE ST APT B			
Appellant's Mailing Address (For receipt of notices) 1632 MYRTLE ST APT B		Case Number 719-0231	
		Date of Decision appealed 1/8/20	
Name of Representative (if any) _____		Representative's Mailing Address (For notices) _____	

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

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

2) Appealing the decision for one of the grounds below (required):

- a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. (In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)
- b) The decision is inconsistent with decisions issued by other Hearing Officers. (In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)
- c) The decision raises a new policy issue that has not been decided by the Board. (In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)
- d) The decision violates federal, state or local law. (In your explanation, you must provide a detailed statement as to what law is violated.)
- e) The decision is not supported by substantial evidence. (In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)

For more information phone (510) 238-3721.

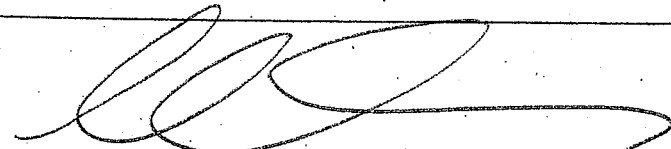
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

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

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

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

Name	JENNIFER BRISTEIN
Address	1632 MYRTLE ST, APT A
City, State Zip	OAKLAND CA 94607
Name	KARA PALANIK
Address	1630 MYRTLE ST APT B
City, State Zip	OAKLAND CA 94607

	1/8/20
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

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

For more information phone (510) 238-3721.

usa5604@fedex.com

From: Coleen Liebmann
Sent: Wednesday, January 8, 2020 1:30 PM
To: usa5604@fedex.com
Subject: [EXTERNAL] Fwd:

[Get Outlook for Android](#)

From: Coleen Liebmann
Sent: Wednesday, January 8, 2020, 11:35 AM
To: Coleen Liebmann
Subject:

Hello,

I am requesting a clarification of the decision in T19-0231, Liebmann v. Brustein, as I believe there may have been a couple of math errors.

According to the Value of Lost Services chart on page 3, the no. of months for over payment is 9 months. However, the chart does not account for the months of December 2019 and January 2020 (processed by the bank at the same time the decision arrived on Dec 27) , which had also been paid at \$1222. According to my calculations, the total over payment between March and January would be 122.20×11 months, \$1344.20. Amortized over 11 months (so that the repayment time ends with the calendar year) would be $1099.80 - 122.20 = \$977.60$ per month until January 1, 2021.

To date, the landlords have not contacted me about the over payment for January, nor have I attempted to contact them for reimbursement. Further, given the open hostility at the house, I believe it would be in the interests of both parties to have the matter clarified by the RAP rather than amongst ourselves. Also, the date of appeal may have past, but given the holiday season and the delay in delivery, I hope this is a matter that you may still consider.

Thank you for your consideration.

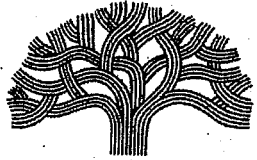
CHRONOLOGICAL CASE REPORT

Case No.: T19-0451
Case Name: Kaiser v. Goldstone Management
Property Address: 4421 Gilbert Street, Unit 122 Oakland, CA
Parties: Jean Kaiser (Tenant)
Mr. Goldstone (Owner Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 1, 2019
No Owner Response filed	-----
Administrative Decision mailed	December 24, 2019
Owner Appeal filed	January 10, 2020

T19-0451 MS/EL

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Ste. 5313 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: OCT -1 2019 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 JEAN KAISER	Rental Address (with zip code) 4421 GILBERT ST OAKLAND 94611 No. 122	Telephone: E-mail: mo
Your Representative's Name no representative at this time	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) Mrs. Doldstone	Mailing Address (with zip code) I have only his office address which is ↓	Telephone: Email: telia is the no. of Tim Hansen VA
Property Manager or Management Co. (if applicable) Doldstone Mgmt	Mailing Address (with zip code) 82 Shattuck Sq Berkeley, Ca. 94704	Telephone: who sent notice of the increase Email: See enclosed letter from him

Number of units on the property: 16

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

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

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

<input type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input checked="" type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase. <i>the notice of increase did not say whether or not it was approved.</i>

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

II. RENTAL HISTORY: (You must complete this section)

Date you moved into the Unit: in the late 1960s Initial Rent: \$ 140 /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: 1960s 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		
8-26-2019	9-1-19	\$ 91.19	\$ 930.25	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

I also received a phone notice of increase of 43.95 from the bldg,

mgr a few days before 000030
9-1-19

* 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:

Handwritten: there was one maybe 20 years ago. I no longer have this info

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?
Have you lost services originally provided by the owner or have the conditions changed?
Are you claiming any serious problem(s) with the condition of your rental unit?

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Handwritten signature: Jean Kaiser
Tenant's Signature

Handwritten date: 9-20-19
Date

Empty rectangular box for additional information or notes.

Empty rectangular box for additional information or notes.

RECEIVED

OCT -3 2019

Sept. 28, 2019

Rent Adjustment Program

250 Frank Ogawa Plaza

Suite 6301

Oakland, Ca. 94612-2034

On Sept. 26 I mailed you a petition for a hearing due to improper rent increase by my landlord. I neglected to include my request to schedule the hearing in the morning. This is because I am 90 years old & use a wheelchair due to old polio. I have very limited energy in the afternoon and in fact take a nap every afternoon.

Thank you,

Frank Kaiser
4421 GILBERT #122
Oakland Ca. 94611

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Goldstone Management Inc.

August 26, 2019

Re: Revised invoice, 2019 Oakland CPI Rent Adjustment

Enclosed please find an adjusted invoice for the 2019 Oakland CPI rent adjustment. I regret that the earlier invoice did not include the adjustment and apologize for any confusion this may have caused. If you have already written and mailed your September 1, 2019 rent check from the prior invoice, the adjusted amount will be reflected on the October 1, 2019 balance due line of the invoice. Please contact me if you have any questions or concerns. Thank you.

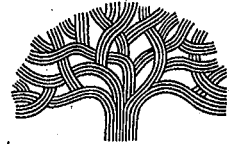
Tim Hansen

VP – Goldstone Management Inc.

82 Shattuck Sq. Berkeley CA 94704

Cell

000033



Housing and Community Development Department
Rent Adjustment Program

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

ADMINISTRATIVE DECISION

CASE NUMBER: T19-0451, Kaiser v. Goldstone Management

PROPERTY ADDRESS: 4421 Gilbert Street, Unit 122
Oakland, CA

PARTIES: Jean Kaiser, Tenant
Mr. Goldstone, Owner Representative

SUMMARY OF DECISION

The Tenant's petition is granted.

INTRODUCTION

Reason for Administrative decision: An Administrative Decision is a decision issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and there are no material facts in dispute. Therefore, an administrative decision, without a hearing, is being issued.

BACKGROUND

On October 1, 2019, the tenant filed a petition contesting a telephonic rent increase, indicating that the rent was increased from \$1255.60 to \$1299.55, effective September 1, 2019. The petition alleged that the tenant had not received a RAP Notice at inception or concurrent with the Notice of Increase; and that the rent increase was not approved the Rent Adjustment Program or exceeded the CPI. The petition states under penalty of perjury that the tenant has never received the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice).

The owner did not file a timely response. To date, no response to the tenant's petition has been received.

RATIONALE FOR ADMINISTRATIVE DECISION

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy¹ and, together with any notice of rent increase or change in the terms of a tenancy.²

The tenant's petition states under penalty of perjury that they did not receive the RAP Notice at the inception of the tenancy. Likewise, the petition states that the tenant did not receive a RAP Notice with the contested rent increases. Accordingly, the tenant's rent increases are invalid, and the rent remains \$1,255.60.

ORDER

1. Petition T19-0369 is granted.
2. The rent remains \$1,255.60.
3. The Hearing scheduled for February 3, 2020, is canceled.

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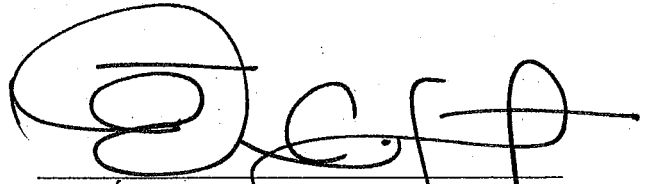
Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly

¹ O.M.C. § 8.22.060(A)

² O.M.C. § 8.22.070(H)(1)(A)

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: December 23, 2019



Elan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T19-0451

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

Administrative Decision

Owner

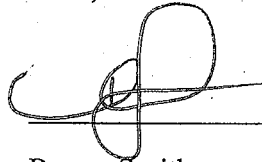
Goldstone Management
82 Shattuck Square
Berkeley, CA 94704

Tenant

Jean Kaiser
4421 Gilbert Street Unit 122
Oakland, CA 94611

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 **December 24, 2019** in Oakland, CA.



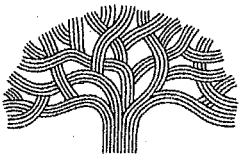
Raven Smith

Oakland Rent Adjustment Program

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MS, EL

RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. 2020 JAN 10 PM 3:15
	<u>APPEAL</u>	

Appellant's Name Goldstone Management		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 4421 Gilbert Street, Unit 122 Oakland, Ca 94611			
Appellant's Mailing Address (For receipt of notices) 82 Shattuck Sq. Berkeley, Ca 94704		Case Number T19-0451	Date of Decision appealed December 24, 2019
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

For more information phone (510) 238-3721.

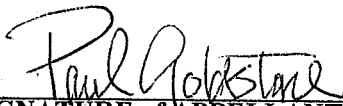
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 1

• 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 1/10, 2020, 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	Jean Kaiser
Address	4421 Gilbert Street, Unit 122
City, State Zip	Oakland, Ca 94611
Name	
Address	
City, State Zip	

	1/10/2020
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

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

For more information phone (510) 238-3721.

Case Number: T19-0451

Petitioner: Jean Kaiser

Landlord Explanation for Appeal

When we sent out 2019 the rent increase notice, we attached a copy of the "RAP Notice". It also provided the website address of the Rent Adjustment information which the petitioner could verify that her rent increase did not exceed the annual CPI adjustment.

By the tenant filing this petition the tenant clearly acknowledges receiving the notice. The tenant's rent payment history also acknowledges the tenant received a Notice of Increase with the RAP Notice in the past and is aware of the program.

Additionally, please refer to Page 2, item #II of tenant's petition the tenant checkmarked 'no' in the column/box "Are you Contesting this Increase in this Petition".

Respectfully,

Goldstone Management

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