

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

**June 13 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. CONSENT ITEMS
  - a. Board Minutes for approval May 9, 2019 and May 23, 2019
  - b. Panel Minutes for review May 16, 2019
4. OPEN FORUM
5. OLD BUSINESS  
See Item 7
6. NEW BUSINESS
  - A. Appeal Hearings in:
    - i. L17-0062, Kahan v. Tenants
    - ii. T17-0577, Patrick v. Um et al.
7. STANDING POLICY COMMITTEE
  - A. Draft letter to City Council
8. SCHEDULING AND REPORTS
  - A. Board Attendance Policy Recommendations
  - B. Report of Cases Appealed to Superior Court and Disposition
9. ADJOURNMENT

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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.

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**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.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
Full Board Meeting  
May 9, 2019  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB was called to order at 7:15 p.m. by Board Chair Jessie Warner

**2. ROLL CALL**

| MEMBER      | STATUS         | PRESENT | ABSENT | EXCUSED |
|-------------|----------------|---------|--------|---------|
| T. Hall     | Tenant         | X       |        |         |
| H. Flanery  | Tenant Alt.    |         |        | X       |
| E. Lai      | Homeowner Alt. | X       |        |         |
| R. Stone    | Homeowner      | X       |        |         |
| J. Warner   | Homeowner      | X       |        |         |
| K. Friedman | Landlord       | X       |        |         |
| B. Scott    | Landlord Alt.  |         |        | X       |
| T. Williams | Landlord       | X       |        |         |

Staff Present

Ubaldo Fernandez     Deputy City Attorney  
 Chanee Franklin Minor     Program Manager  
 Barbara Kong-Brown     Senior Hearing Officer  
 Kelly Rush     Program Analyst 1

**3. CONSENT ITEMS**

a. Approval of Minutes from April 25, 2019.

J. Warner moved to approve the minutes with changes to reflect E. Lai's votes, and Mr. Stone's request to schedule a future report regarding the status of cases decided by the Rent board and appealed to the Superior Court. The motion was seconded by R. Stone.

The Board voted as follows:

Aye: T. Hall, R. Stone, J. Warner, T. Williams, E. Lai

Nay: 0  
Abstain: K. Friedman

The motion carried.

4. OPEN FORUM SPEAKERS

None

5. OLD BUSINESS

None

6. NEW BUSINESS

A. Appeal Hearings

T18-0328, Amberg v. Rockridge Real Estate

R. Stone will recuse himself from this appeal.

|              |                |                                 |
|--------------|----------------|---------------------------------|
| Appearances: | Stanley Amberg | Tenant Appellant Representative |
|              | Ray McFadden   | Owner Appellee Representative   |

The tenant filed an appeal from the hearing decision. She claimed a rent increase over the CPI, that there was no RAP notice, decreased housing services, that she had received a rent increase in the last 12 months, and the exemption granted was due to fraud or mistake. The hearing officer dismissed the tenant's petition in an administrative decision, took official notice of a decision which found that she had received the RAP notice in 2012, and the challenge to the 2017 rent increase was untimely. The hearing officer also found that the owner rescinded the 2018 rent increase and refunded any overpayments. The hearing officer also denied the tenant claim of failure to provide a resident manager, on the grounds that it was a discrete act and was time barred.

The tenant filed the appeal on the grounds that the decision is inconsistent with the ordinance, regulations state, federal and local law, is not supported by substantial evidence, and denied opportunity to present her claim. The owner's failure to provide an onsite manager is an ongoing decrease in services, not a discrete act, and the claim should not have been barred. The administrative decision deprived the tenant of the opportunity to present evidence, including evidence of a leak at the property.

The tenant representative contends there was no hearing decision because there was no hearing. The tenant has been denied due process of law because she was precluded from introducing evidence about the decreased housing service claim. The owner has continued deliberately to have no onsite manager live in the apartment house. This is not a discrete problem. It is like having a roof that leaks. Every day that it leaks the

tenant is deprived of a dry apartment. The absence of an onsite manager means that the tenant is deprived on a daily basis of an onsite manager, which is required by California law. Because there was no resident manager there was no one to make necessary repairs.

The owner representative of the current owner, Mandana Properties (purchased property in November 2018), contends this is a red herring. There is a resident manager, and there has been one for the last six months. There was a gap in 2017 and part of 2018. The former resident manager moved out, and there has been a resident manager for several months. The representative states that he is the property manager, and the tenants have his phone number. The tenants know who the resident manager is. This increase is about a banked C.P.I. increase. The tenant's rent started at \$1,215 in 2011, and she has not had a C.P.I. increase in several years, until 2018

On rebuttal the tenant representative contends that the tenant has paid the C.P.I. increase every year, and that she has not paid the overpayment by the prior owner.

The tenants have filed five petitions and request a mediation of all the pending tenant petitions with Ms. Kong-Brown. She mediated one of the disputes four years ago and they would like her to mediate these disputes.

On rebuttal, the owner representative stated that there was a gap regarding resident manager but no loss of decreased housing services and the repair issues were dealt with. The claim was dismissed based on timeliness and should be upheld.

Ms. Amberg's rent was increased to \$1,215 in June 2011. This was her last rent increase for several years until the 2017 rent increase.

After the parties' arguments, questions and Board discussion, J. Warner moved to remand the hearing decision to the hearing officer to hear the issue of absence of an on site resident manager being a continuing decreased housing service and have this decision trail the current proceeding scheduled to determine whether the building is exempt from the Rent Adjustment Program and will proceed only if the rent program has jurisdiction. E. Lai seconded.

E. Lai offered a friendly amendment, which was accepted, to eliminate the language to instruct the hearing officer that this is an ongoing decreased housing service and to determine after hearing the evidence whether the absence of an onsite resident manager is a discrete act or ongoing decreased service as well as the other issues in the ultimate decision.

The Board voted as follows:

Aye: E. Lai, J. Warner, K. Friedman

Nay: T. Williams

Abstain: T. Hall

The motion carried.

ii. T18-0089, Billingsley v. Marr

Appearances: Rosemary Marr            Owner Appellant  
                  Joseph Billingsley        Tenant Appellee

This is an owner appeal of a tenant petition. The tenant claimed unlawful increases, no RAP notice and decreased housing services. The tenant claimed that window bars do not open, and there was mold and water damage. The tenant moved out after filing the petition but before the hearing. The hearing officer awarded \$2,070 rent reduction for failure to repair.

The owner filed an appeal on the grounds that the decision violates, federal, state or local law, and is not supported by substantial evidence, and questioned the tenant's testimony of prior complaints to the prior owner.

The owner contended she served the RAP notice 60 days before the petition and the tenant should not get restitution for three years. She should not be penalized for the prior owner's failure to address the mold and tenant should have continued to complain to the prior owner. She also raised a defense about the legality of placing bars on windows that don't open and whether they were legal at the time they were installed.

The owner argued that the tenant petition was incomplete, that the tenant did not check the box for decreased housing services on his petition, there was no description of the alleged decreased housing services on the petition and there was nothing for her to respond to. When she went to the hearing she did not have any information for her to respond to.

The tenant contended that there were decreased housing services. Although he did not check the box on the petition he also filed a declaration with his petition about the decreased housing services. The owner did not raise any of these due process issues with the hearing officer.

After arguments made by the parties, questions and Board discussion, J. Warner moved to affirm the hearing decision based on substantial evidence. T. Hall seconded.

The Board voted as follows:

Aye: R. Stone, J. Warner, E. Lai, K. Friedman. T. Hall  
Nay: 0  
Abstain: T. Williams

The motion carried.

The Board took a short break and resumed the meeting.

- iii. L17-0233, Udinsky v. Tenant  
L17-0236, Udinsky v. Tenants

Appearances: George Shafazand, Owner Appellant Representative

Xavier Johnson, Tenant Appellees Representative

The owner filed a petition for a rent increase based on capital improvements for a roof, sewer lateral, solar panel, paint, and structural work. The petition was granted in part. The structural work was disallowed due to dry rot resulting from deferred maintenance. Other repairs were deemed as priority 1 or priority 2 and could not be passed through to the tenants.

The owner appeals the hearing decision on the grounds that it is not supported by substantial evidence.

The owner representative contended that the work that was denied should be allowed. There are four buildings on this parcel. One of the buildings is built on a slope. Earth moves and there was ground movement. They installed a shear wall to strengthen this building totaling \$77,708.00 and requests that this item be reconsidered. This was not deferred maintenance or a priority 1 or 2 condition. This was nothing the owner could have prevented.

The tenant representative contended that the owner is limited to what is stated in his appeal. The owner did not meet its evidentiary burden. Much of the work was done due to dry rot. Dry rot constitutes deferred maintenance and priority 1 or 2 conditions. The owner failed to provide invoices and receipts for all the work performed.

After arguments made by the parties, questions and Board discussion, R. Stone moved to affirm the hearing decision based on substantial evidence. T. Williams seconded.

The Board voted as follows:

Aye: R. Stone, J. Warner, E. Lai, T. Williams, K. Friedman, T. Hall

Nay: 0

Abstain: 0

The motion was approved by consensus.

#### B. ESTABLISHMENT OF A POLICY COMMITTEE

The Board discussed the formation of the policy committee, members of the committee, staffing, and generation of a list of issues, regarding drafting updates to the regulations or provide clarity of issues seen in cases, There was discussion of rotating

participation of board members on the committee based on issues and inviting all stakeholders to participate in a discussion of what problems need to be addressed.

The program manager discussed the gap in the program regulations and appeals backlog and the need for a review of the rent regulations which could be done by a peer review from other jurisdictions, and where there are gaps, the dearth of staff and the appeals backlog, to address these issues in an organized manner. She stated there are three options: 1) peer review; 2) hire a consultant; 3) hire an assistant program manager to identify gaps, set priorities, and work with the City Attorney to draft the regulations, so we can accomplish a complete overhaul, to guide the Board in the hearings. This will happen in the next year.

Regarding staffing, there is no staff to support any committees at this time, and RAP will not be fully staffed until September. To adequately staff the policy committee this probably will not occur until this time next year.

The Board expressed disappointment about this information and raised concerns about problems in the regulations and ordinance and that they make decisions that are flawed, that there is not an adequate remedy in the regulations or ordinance and there are issues that needed to be addressed in the appeal decisions. They believe there would be staff support if a City Council member was interested.

The program manager stated that staff for the Rent Board is the RAP program and the City Attorney. The City Council has the City Attorney's office for staff. Staff for the committee for the Board will come in the coming fiscal year, but not now because the RAP has been largely underfunded.

There is a remedy regarding the appeal decisions. There will be more robust appeal decisions recommendations from the City Attorney's office in the near future. For each decision they will research and give recommendations. Where there are gaps they will research and provide options directly related to how to make a decision, which should lead to more consistent Board appeal decisions. The anticipated start date is August 2019, and the goal is to decrease the appeals backlog. The backlog is partially due to lack of a quorum and a limit of hearing only 3 cases per meeting. There is a possibility to hear 4 cases per meeting in order to decrease the backlog. This needs to be considered in the discussions of the policy committee.

J. Warner moved to extend the Board meeting past 10:00 p.m. E. Lai seconded.

The Board voted as follows:

Aye: R. Stone, J. Warner, E. Lai, T. Williams

Nay: K. Friedman, T. Hall

Abstain: 0

The motion carried.



There was discussion of why Santa Monica and Berkeley would be the jurisdictions for a peer review.

The Board identified the following issues for future discussion:

1. Information about the Building Code and intersection with the Regulations; e.g. window bars-there is a code that applies to this.
2. Should dry rot be treated differently from other deferred maintenance items?
3. Clarification of deferred maintenance v. items that benefit tenants?
4. Ambiguous terms in the regulations and in the Ordinance;
5. How is the value of the Decreased Housing Services determined?
6. What constitutes a burden of proof regarding expenses for capital improvements?

The Board will have the policy committee as a standing item on the Board Agenda so there is an opportunity to raise issues at a Board meeting.

## 7. SCHEDULING AND REPORTS

a. RAP staffed the second outreach event on May 9, 2019, at Bike to Workday and started Listserve and distributed Landlord and Tenant packets.

b. The Board has requested a report about cases that have been decided by the Board and been appealed to Superior Court in the past two to three years, the disposition, and which cases are pending

## 8. ADJOURNMENT

The Board meeting was adjourned by consensus at 10:00 p.m.

**CITY OF OAKLAND**  
**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**  
**Full Board Meeting**  
**May 23, 2019**  
**7:00 p.m.**  
**City Hall, Hearing Room #1**  
**One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB was called to order at 7:10 p.m. by Board Chair Robert Stone

**2. ROLL CALL**

| MEMBER      | STATUS         | PRESENT | ABSENT | EXCUSED |
|-------------|----------------|---------|--------|---------|
| T. Hall     | Tenant         | X       |        |         |
| H. Flanery  | Tenant Alt.    | X       |        |         |
| E. Lai      | Homeowner Alt. | X       |        |         |
| R. Stone    | Homeowner      | X       |        |         |
| J. Warner   | Homeowner      |         |        | X       |
| K. Friedman | Landlord       | X       |        |         |
| B. Scott    | Landlord Alt.  |         |        | X       |
| T. Williams | Landlord       | X       |        |         |

Staff Present

|                    |                        |
|--------------------|------------------------|
| Kent Qian          | Deputy City Attorney   |
| Barbara Kong-Brown | Senior Hearing Officer |
| Kelly Rush         | Program Analyst 1      |

**3. CONSENT ITEMS**

None

**4. OPEN FORUM SPEAKERS**

None

**5. CEREMONIAL MATTER**

The Board thanked Mary Jo Cook for her service as a neutral board member from April 18, 2017 to February 9, 2019.

**6. OLD BUSINESS**

a. Discussion of Ad Hoc Committee

E. Lai suggested moving this item to after new business. The Board members agreed and the item was moved to discussion after hearing the appeal case.

6. NEW BUSINESS

a. Appeal Hearing

i. T16-0258, Sherman v. Michelsen

Appearances: Francis McKeown, Esq. Owner Appellant Representative  
Owner Cross Appellee  
Leah Hess, Esq. Tenant Appellee Representative  
Tenant Cross Appellant

The tenant filed a petition contesting several rent increases in case T12-0332, entitled Sherman v. Michelson. At that time his monthly rent was \$1,225.00. He prevailed and the hearing decision was upheld by the Rent Board.

The owner filed a subsequent petition for exemption from the Rent Ordinance in L13-0054, entitled Michelsen et al. v. Sherman. The petition was denied. The owner appealed to the Rent Board, which affirmed the hearing decision. The owner filed a Writ of Administrative Mandamus in 525-655 Hyde Street St., CNML Props., LLP v. City of Oakland HCD, RAP, RG17-862841. On December 18, 2018, the Court granted the owner's petition for writ of mandate directing the Rent Adjustment Program to vacate the Appeal Decision in L14-0065, and to reconsider the Appeal Decision.

Tenant Sherman also filed a petition for a Writ of Administrative Mandamus, in Sherman v. City of Oakland, RG15-785257. The Court denied the Writ and he appealed to the Court of Appeals, which denied his appeal on April 26, 2017, in A147769.

On March 21, 2016, the owner served a rent increase notice, from \$1,817.28 monthly to \$4,000. On May 20, 2016, the tenant filed a petition which contested the rent increase from \$1,817.28 to \$4,000, and claimed that the exemption was based on fraud or mistake. An Administrative Decision was issued on July 26, 2016, which dismissed the petition on the grounds of the prior issuance of a Certificate of Exemption.

The tenant filed an appeal to the Rent Board. The tenant filed a second writ to the Superior Court. The City of Oakland contended that it had erred by not providing the tenant the opportunity to be heard on the claim of fraud or mistake in granting the exemption. The Court remanded the case back to the Rent Board for a hearing on the tenant's claim that the exemption was based on fraud or mistake.

On remand the Board vacated the Administrative Decision and the Board's Administrative Appeal Decision and ordered a hearing.

The hearing decision determined that the exemption was based on fraud, and that there was substantial evidence of prior residential use, and set the monthly base rent at \$1,817.89.

Both parties filed an appeal.

#### Owner Appeal

The owner filed an appeal on the grounds that the issue of exemption has been decided and the decision is in contravention of the Court of Appeal's decision in A147769, and ignores principles of res judicata (claim preclusion) and collateral estoppel (issue preclusion). The owner contends that the tenant should not have a second bite at the apple.

The tenant contends that this is not the same as the old claim and res judicata does not apply. The Rent Ordinance set up a new claim for fraud and this is different from a claim for exemption.

#### Appeal Decision

After questions to the parties' representatives and Board discussion R. Stone moved to deny the owner appeal on the grounds that there is substantial evidence to show that the certificate of exemption was based on fraud and to rescind the certificate of exemption. E. Lai offered a friendly amendment, which was accepted, to direct staff to issue a rescission of the certificate of exemption. T. Hall seconded.

The Board voted as follows:

Aye: T. Hall, R. Stone, H. Flanery, J. Powers, E. Lai

Nay: K. Friedman

Abstain: T. Williams

The motion carried.

#### Tenant Appeal

The tenant representative filed an appeal on the grounds that the decision is inconsistent with decisions issued by other hearing officers, and seeks to set the monthly rent at \$1,225.00 instead of \$1,817.89, based on a prior 2013 hearing decision.

The owner representative contended this is a direct attack on Judge Grillo's Order with a specific accounting, after hearing all the evidence, setting the rent at \$1,817.89.

and the tenant cannot ignore a prior court order.

R. Stone moved to remand the hearing decision to the hearing officer to determine the rent owed by the tenant, and any credit, or amounts owed to the owner, in light of the prior decisions, and if a final decision is made by the Court of Appeal while the issues are before her, that she consider the Court of Appeal decision in her determination of current rent, and in calculating over payment or under payments, if any.

The Board voted as follows:

Aye: H. Flanery, R. Stone, J. Powers, T. Williams, E. Lai, T. Hall, K. Friedman

Nay: 0

Abstain: 0

The motion was approved by consensus.

#### **6a. Discussion of Policy Committee**

There was Board discussion about why the policy committee could not be staffed by the RAP, that the Rent Board is an independent body that reports to the City Council, not to the RAP office, and the RAP office should not be able to control the Board by not providing administrative support

E. Lai moved that the Board present a letter to the City Council informing it of the current efforts to create a policy committee and the obstacles, and to ask for further direction on how the Rent Board should proceed. K. Friedman seconded.

The Board voted as follows:

Aye: H. Flanery, R. Stone, J. Powers, T. Williams, E. Lai, K. Friedman

Nay: 0

Abstain: T. Hall

### **7. SCHEDULING & REPORTS**

- a. Report on elimination of owner occupied duplex-triplex exemption
- b. Owens Case-A writ where the Court decided an owner occupied single family residence where owner rents out separate rooms is not exempt under Costa-Hawkins
- c. Report on Pending and Decided Writs in Superior Court for the past 3 years

d. Presentation of Certificate of Stellar Attendance to K. Friedman

**8. ADJOURNMENT**

The meeting was adjourned by consensus at 9:15 p.m.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**PANEL MEETING  
May 16, 2019  
7:00 p.m.  
City Hall, Hearing Room #2  
One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB Panel was called to order at 7:03 p.m. by Panel Chair, Julia Ma Powers.

**2. ROLL CALL**

| MEMBER          | STATUS    | PRESENT | ABSENT | EXCUSED |
|-----------------|-----------|---------|--------|---------|
| Hannah Flanery  | Tenant    | X       |        |         |
| Julia Ma Powers | Homeowner | X       |        |         |
| Benjamin Scott  | Owner     | X       |        |         |

Staff Present

|                   |   |
|-------------------|---|
| Kent Qian         | Deputy City Attorney, Office of the City Attorney |
| Maimoona S. Ahmad | Hearing Officer, Rent Adjustment Program          |
| Kelly Rush        | Program Analyst                                   |

**3. OPEN FORUM**

No speakers.

**4. NEW BUSINESS**

- i. Appeal Hearing in cases:
  - a. T18-0411, Lee v. Dixon
  - b. T18-0128, Aguirre et al. v. 2300 Fruitvale;  
T18-0241, Aguirre et al. v. 2300 Fruitvale
  - c. T17-0494, Worekneh v. Lankford;  
T18-0035, Worekneh v. Lankford;  
T18-0079, Worekneh v. Lankford

**a. T18-0411, Lee v. Dixon**

Appearances: Mary Lee Tenant Appellant  
No Appearance by Owner

The tenant appealed the Hearing Decision which denied the tenant petition and upheld a rent increase because the petition was untimely.

Board Discussion

After arguments made by the tenant, Board questions to the tenant and Board discussion, B. Scott moved to affirm the Hearing Decision based on substantial evidence. J. Powers seconded.

The Board panel voted as follows:

Aye: B. Scott, J. Powers

Nay: 0

Abstain: H. Flanery

The Motion carried.

**b. T18-0128, Aguirre et al. v. 2300 Fruitvale;  
T18-0241, Aguirre et al. v. 2300 Fruitvale**

Appearances: Angela Sandoval Owner Appellant Representative  
Jackie Zaneri Tenant Appellee Representative

The owner appealed the Hearing Decision which granted the tenant petition and invalidated a rent increase because it was the second increase in a twelve-month period.

Board Discussion

After arguments made by the owner representative and tenant representative, questions to both parties and Board discussion, H. Flanery moved to remand the case to the Hearing Officer to make a determination as to whether the owner is entitled to a Costa Hawkins increase based on the evidence currently in the record, without a further hearing. J. Powers seconded.

The Board panel voted as follows:

Aye: J. Powers, H. Flanery

Nay:

Abstain: B. Scott

The Motion carried.



- c. **T17-0494, Worekneh v. Lankford;**  
**T18-0035, Worekneh v. Lankford;**  
**T18-0079, Worekneh v. Lankford**

Appearances: Lavette Lankford                      Owner Appellant  
                  Jackie Zaneri                                Tenant Appellee Representative

The owner appealed the Hearing Decision which granted the tenant petition, invalidating a rent increase and awarding restitution for decreased housing services. The owner did not respond or appear at the underlying hearing.

Board Discussion

After arguments made by the owner and tenant representative, questions to both parties and Board discussion, H. Flanery moved to uphold the Hearing Decision based on substantial evidence. B. Scott seconded.

The Board panel voted as follows:  
Aye: J. Powers, H. Flanery, B. Scott  
Nay: 0  
Abstain: 0

The Motion passed.

**5. ADJOURNMENT**

The meeting was adjourned at 8:13 p.m.

MEMORANDUM

To: Oakland City Council  
From: Oakland Rent Board  
Date: June 13, 2019  
Re: Ad Hoc Policy Committees

Over six years ago, the Oakland City Council had authorized the Rent Board to form ongoing Ad Hoc Policy Committees to (1) review and revise existing rent ordinances and (2) draft recommended language for new proposed rent ordinances.

The Policy Committees are comprised of three volunteer commissioners from the Rent Board: a tenant Commissioner, a landlord Commissioner and a neutral Commissioner who also served as the Committee Chairperson. The Committee usually meet for 1 - 1 ½ hours prior to the regularly convened Rent Board meetings held the second and last Thursdays of each month. The Policy Committees are duly noticed, with the anticipated Committee agendas published before hand. After hearing comments from the public via Open Forum, the Committees would then work with RAP Staff, with advice from the City Attorneys Office, to propose new or revised language for the subject Ordinances. These proposals would then be presented to the full Rent Board, revised and amended as necessary and then voted upon for approval. Once approved, the proposed Ordinance would be presented to the City Council for its review, vote and approval.

In the past, the City Council has instructed the Rent Board, through these Policy Committees, to address and propose new language for Ordinances that the Council itself had recognized as needing review and revision. Through the process described above, the Rent Board and its Policy Committees were able to present revised language on Ordinances for Capital Improvements, Earthquake Retrofit, Citations, Banking and Gold Plating, all of which were subsequently approved by the City Council and implemented into effect.

However, in the ongoing review of cases presented to the Rent Board, the Board frequently encounters Rent Regulations and Ordinances that were written over 50 years ago, are vague and in need of clarification or revision, and simply fail to meet the evolving needs of a dynamic community such as the City of Oakland. Such ambiguity has caused confusion not only for the Rent Board, but also for the RAP Office and Building Department Officials tasked with enforcing these laws, and for the general public at large who want to abide by the law, but are uncertain how to proceed because of unclear and confusing Ordinance language. Examples of terms and statutory language that are part of Ordinances currently the law of the land, but are in

need revision or clarification include (1) "substantial completion", (2) "new construction" and (3) "substantial rehabilitation".

Many months ago, the Rent Board had voted to have its Policy Committees address these Ordinances. However, when following up with the RAP Office, the Board was informed that there was insufficient funding and staffing to provide the administrative support needed to hold these Policy Committee meetings at this time. This was confusing to the Board and contradictory to the Annual Budget which was presented to the Board as part of its Agenda for the March 28, 2019 meeting (pages 75-108) which showed budget surpluses (at least from 2014-2015 through 2017-2018) of just under \$2M (starting on page 91).

The Board emphasizes that it recognizes that the RAP Office has a newly appointed Director who took over a very difficult and challenging position. There are no criticisms to the RAP Office, its Director or its staff. In fact, the opposite is true, as the Board and RAP Office have always worked efficiently together to accomplish their respective assigned tasks. However, at the same time, the Rent Board does not take its direction from the RA Office. Similarly, the RAP Office does not take its direction from the Rent Board. Both the Rent Board and the RAP Office are independent entities that report directly to, and take their direction from, the City Council.

As the City Council has directed and authorized the Rent Board to go forward with these Policy Committees, and we are currently unable to go forward with this task that has been specifically designated and authorized to us by the Council, the Board has agreed it would be prudent to inform the Council of the present situation involving (1) the need for an ongoing process to review and present Ordinance revisions to the Council and (2) the difficulty in going forward with the Ad Hoc Policy Committees which were authorized by the Council to specifically address issue # 1, and (3) to seek the Council's instruction as to how the City Council wishes the Rent Board to Proceed.

Thank you.

Jesse Warner, Esq.  
Chairperson  
City of Oakland Rent Board

## HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

### ATTENDANCE POLICY RECOMMENDATIONS

1. Regular Board Members
  - a. Regular board members may not miss more than three consecutive regular meetings unless it is due to illness or absence by permission of the Board
2. Alternate Board Members
  - a. Alternate board members are expected to be available for 50% of all panel meetings unless it is due to illness or absence by permission of the Board. Participation in a full board meeting counts toward the meeting requirement.
3. Procedure
  - a. Staff will send out member availability schedule for each quarter 30 days in advance of the next quarter;
  - b. Board member will respond in writing within one week;
  - c. Staff will send out the attendance schedule for the next quarter one week before the next quarter starts;
  - d. Board member will notify staff if they are unable to attend a meeting
  - e. Staff will make effort to find replacement.
4. Board Attendance
  - a. Board attendance shall be recorded and reported annually to the Mayor and the City Council pursuant to section 8.22.040 B (3) of the Rent Adjustment Ordinance
5. Removal of Board Member
  - a. Removal of a board member for attendance may be recommended by staff to the Board;
  - b. Board may recommend removal of a board member for cause to the city council;
  - c. Removal of a board member is governed by Section 8.22.040(B)(2) of the Rent Adjustment Ordinance Section 601 of the City Charter states that members of board may be removed for cause, after hearing, by the affirmative vote of at least six members of the city council.

## CHRONOLOGICAL CASE REPORT

Case No.: L17-0062  
Case Name: Kahan v. Tenants  
Property Address: 2642 35<sup>th</sup> Ave., Oakland, CA  
Parties: Irma Galvez (Owner Representative)  
(No Appearance by Tenants)

### OWNER APPEAL:

| <u>Activity</u>          | <u>Date</u>    |
|--------------------------|----------------|
| Landlord Petition filed  | March 29, 2017 |
| No Tenant Response filed | -----          |
| Hearing Decision issued  | May 9, 2018    |
| Owner Appeal filed       | May 29, 2018   |

RECEIVED

RECEIVED

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

For date stamp.  
 CITY OF OAKLAND  
 RENT ADJUSTMENT PROGRAM  
 2017 MAR 29 AM 10:52

**LANDLORD PETITION**  
**FOR CERTIFICATE OF EXEMPTION**  
**(OMC §8.22.030.B)**

**Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.**

**Section 1. Basic Information**

L17-0062 KM/MA

|  |                               |   |  |
|--|-------------------------------|---|--|
| Your Name<br><b>Tobias Kahan</b>   |                               | Complete Address (with zip code)<br><b>2501 Channing Way<br/>Berkeley, CA 94704</b> | Telephone<br>Day: (510)<br><b>8414228</b>            |
| Your Representative's Name   |                               | Complete Address (with zip code)  | Telephone<br>Day:                                    |
| Property Address<br><b>2642 35th Ave, Oakland, CA 94619</b>  |                               |   | Total number of units in bldg or parcel.<br><b>4</b> |
| Type of units (circle one)   | Single Family Residence (SFR) | Condominium   | <u>Apartment</u> or Room                             |
| If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property? |                               | Yes   | No   |

**Section 2. Tenants.** You must attach a list of the names and addresses, with unit numbers, of all tenants residing in the unit/building you are claiming is exempt.

**Section 3. Claim(s) of Exemption:** A Certificate of Exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance.

**New Construction:** This may apply to individual units. The unit was newly constructed and a certification of occupancy was issued for it on or after January 1, 1983.

**Substantial Rehabilitation:** This applies only to entire buildings. An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

**Single-Family or Condominium (Costa-Hawkins):** Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

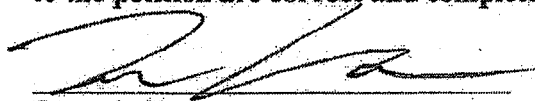
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, 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?
8. When did the tenant move into the unit?

**I (We) petition for exemption on the following grounds (Check all that apply):**

|                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/>            | New Construction                                       |
| <input checked="" type="checkbox"/> | Substantial Rehabilitation                             |
| <input type="checkbox"/>            | Single Family Residence or Condominium (Costa-Hawkins) |

**Section 4. Verification Each petitioner must sign this section.**

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

  
\_\_\_\_\_  
Owner's Signature

9 March 2017  
\_\_\_\_\_  
Date

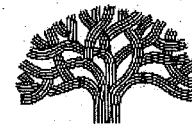
\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

**Important Information**

**Burden of Proof** The burden of proving and producing evidence for the exemption is on the Owner. A Certificate of Exemption is a final determination of exemption absent fraud or mistake.

**File Review** Your tenant(s) will be given the opportunity 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 tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## **HEARING DECISION**

**CASE NUMBER:** L17-0062, Kahan v. Tenants  
**PROPERTY ADDRESS:** 2642 35<sup>th</sup> Avenue, Oakland, CA  
**DATE OF HEARING:** January 29, 2018  
**DATE OF DECISION:** April 30, 2018  
**APPEARANCES:** Irma Galvez, Owner Representative

### **SUMMARY OF DECISION**

The owner's petition is denied. The units in the subject building are not exempt from the Rent Adjustment Ordinance.

### **CONTENTIONS OF THE PARTIES**

The owner filed a petition on March 29, 2017, for a Certificate of Exemption on the grounds that the subject building was "substantially rehabilitated," pursuant to Oakland Municipal Code (O.M.C.) Section 8.22 and Rent Adjustment Program Regulations. No tenant filed a response to the owner's petition.

### **THE ISSUE**

Is the subject building exempt from the Rent Adjustment Ordinance as being a "substantially rehabilitated" building?

### **EVIDENCE**

At the Hearing, the owner representative testified that the owner, Tobias Kahan, purchased the subject property in November of 2015. At the time, the property was vacant and uninhabitable due to fire damage. Shortly after purchasing the property, the

000024



owner began construction to restore and renovate the entire four-unit building. The owner representative testified that the renovation project began in January of 2016, and construction was completed by October of 2016. The owner contracted with Clovis Management, a construction management company owned by Mr. Kahan's mother, Gail Giffen, and her partner Christopher Pisarra, to do the construction. The owner representative testified that Mr. Kahan made a verbal agreement with his mother, whereby Clovis Management would manage and pay for the entire renovation, and Mr. Kahan would repay Clovis Management in two years, after the construction was complete and he was able to get a refinancing loan for the property. On January 16, 2018, Mr. Kahan repaid Clovis Management with a one-time lump sum payment totaling \$316,218.00. The owner representative submitted the following documents regarding the building:

- (1) A Final Invoice from Clovis Management dated January 18, 2017, totaling \$316,218.00 in construction costs for the restoration and renovation project.<sup>1</sup> This document includes an itemized list of construction expenses for the renovation project.
- (2) A check dated January 16, 2018, in the amount of \$316,218.00 issued to Clovis Management from the Tobias Kahan 2010 Living Trust.<sup>2</sup>
- (3) A Permit Inspection Record and Permits issued by the City of Oakland.<sup>3</sup> The Permit Inspection Record states that the permit was issued on January 6, 2016, and "finalized" on October 12, 2016. The work listed on this document includes fire repair to unit #3; remodel kitchens & bathroom for 4-plex; replace 25 windows with retrofits.
- (4) Receipts for payment of permit fees totaling \$5,549.15.<sup>4</sup>
- (5) A Compliance Certificate for Private Sewer Lateral dated May 3, 2016.<sup>5</sup>
- (6) Credit card statements of Christopher Pisarra, owner of Clovis Management, showing purchases at Home Depot.<sup>6</sup> Highlighted portions of these statements indicate purchases made at Home Depot from February 2016 through May 2016.
- (7) Photographs of the subject property before and after the restoration and renovation project.<sup>7</sup>
- (8) An Incident Report dated March 13, 2015, for a fire on the property.<sup>8</sup>

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

O.M.C. § 8.22.030(A)(6) states that dwelling units located in "substantially rehabilitated buildings" are not "covered units" under the Rent Ordinance. Additionally, the Ordinance states that:

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<sup>1</sup> Exhibit No. 1

<sup>2</sup> Exhibit No. 2

<sup>3</sup> Exhibit No. 3

<sup>4</sup> Exhibit No. 4

<sup>5</sup> Exhibit No. 5

<sup>6</sup> Exhibit No. 6

<sup>7</sup> Exhibit No. 7

<sup>8</sup> Exhibit No. 8

- a. "In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project and performed substantial work on each of the units in the building.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.
- c. An Owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was required to be issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C. 8.22.30B.2.c. for which an Owner claims exemption as substantially rehabilitated, the Owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed vacated."<sup>9</sup>

Here, the owner is seeking an exemption from the City of Oakland's Rent Adjustment Ordinance. The general rule of law about exemptions is that they are to be "strictly construed." See *DaVinci v. San Francisco Residential Rent Board*, (1992) 5 Cal. App. 4<sup>th</sup> 24, 27. In *DaVinci* the Court cited *Barnes v. Chamberlain* (1983) 147 Cal. App. 3<sup>rd</sup> 762 in stating that:

"In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception. ... One seeking to be excluded from the sweep of the general statute must establish that the exception applies."

Additionally, the Court in *DaVinci* stated that the rules regarding the interpretation of a municipal ordinance are the same rules as those that govern the construction of statutes. *DaVinci* at 27; citing *City of Los Angeles v. Los Olivos Mobile Home Park* (1989) 213 Cal. App. 3d 1427, 1433. In other words, an owner has the burden to prove an exemption, and any attempt to exempt a property from the Ordinance must be strictly construed.

It is well established that an owner cannot seek a substantial rehabilitation exemption until the work has been completed and paid for. The record reflects that the invoice from Clovis Management was dated January 18, 2017, and the check for the payment issued to Clovis Management was dated January 16, 2018. Therefore, the renovation project was not completed and paid for until January 16, 2018, almost a year after the petition filing date of March 29, 2017, and mere days before the hearing date.

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<sup>9</sup> O.M.C. § 8.22.030(B)(2)(a-c)

The regulations clearly require that all work be completed and paid for prior to filing for an exemption based on substantial rehabilitation.

In addition, the owner only submitted a final invoice listing a summary of construction expenses and failed to submit contracts, invoices/receipts, or proof of payments to substantiate the breakdown of construction expenses listed in the final invoice. The owner also failed to provide evidence of the square footage of the subject property. The owner has failed to sustain his burden of proof for an exemption based on substantial rehabilitation and the owner petition is denied.

**ORDER**

1. Petition L17-0062 is denied. The subject property is not exempt from the Rent Adjustment Ordinance.

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

Dated: April 30, 2018



---

Maimoona Ahmad  
Hearing Officer  
Rent Adjustment Program

PROOF OF SERVICE  
Case Number L17-0062

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

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

Documents Included  
Hearing Decision

Owner

Tobias Kahan  
2501 Channing Way  
Berkeley, CA 94704

Tenants

Carrie Golston  
2642 35th Ave #D  
Oakland, CA 94619

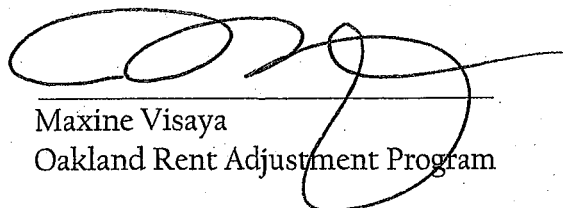
Katrina Jenkins  
2642 35th Ave #B  
Oakland, CA 94619

Khalilah El-Amin  
2642 35th Ave #A  
Oakland, CA 94619

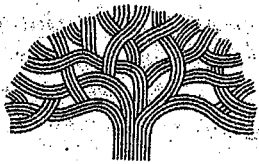
Tynesha Staten  
2642 35th Ave #C  
Oakland, CA 94619

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 9, 2018 in Oakland, CA.

  
\_\_\_\_\_  
Maxine Visaya  
Oakland Rent Adjustment Program

000028



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For date stamp,

2018 MAY 29 PM 2:23

**APPEAL**

|   |  |  |  |
|---|--|--|--|
| Appellant's Name<br><b>TOBIAS KAHAN</b>   |  | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant                                |  |
| Property Address (Include Unit Number)<br><b>2642 - 35<sup>TH</sup> AVENUE, OAKLAND, CA</b>             |  |  |  |
| Appellant's Mailing Address (For receipt of notices)<br><b>2501 CHANNING WAY<br/>BERKELEY, CA 94704</b> |  | Case Number<br><b>L17-0062</b>   | Date of Decision appealed<br><b>APRIL 30, 2018</b> |
| Name of Representative (if any)<br><b>MARK E. RUBKE</b>   |  | Representative's Mailing Address (For notices)<br><b>1999 HARRISON, SUITE 1800<br/>OAKLAND, CA 94612</b> |  |

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.

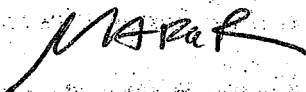
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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 are limited to 25 pages from each party. Please number attached pages consecutively.  
 Number of pages attached: 2.

**You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.**

I declare under penalty of perjury under the laws of the State of California that on 5/29, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

|                        |                           |
|------------------------|---------------------------|
| <b>Name</b>            | SEE ATTACHED MAILING LIST |
| <b>Address</b>         |                           |
| <b>City, State Zip</b> |                           |
| <b>Name</b>            |                           |
| <b>Address</b>         |                           |
| <b>City, State Zip</b> |                           |

|   |           |
|---|-----------|
|  | 5/29/2018 |
|---|-----------|

**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, 23 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 of the information required or your appeal cannot be processed and may be dismissed.
- Any supporting argument or documentation to be considered by the Board must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal.
- 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 as to jurisdiction, 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.**

MAILING LIST

2018 MAY 29 PM 2:24

Tenants:

Carrie Golston  
2642 35th Ave #D  
Oakland, CA 94619

Katrina Jenkins  
2642 35th Ave #B  
Oakland, CA 94619

Khalilah El-Amin  
2642 35th Ave #A  
Oakland, CA 94619

Tyncsha Staten  
2642 35th Ave #C  
Oakland, CA 94619

---

000032



EXPLANATION RE APPEAL  
L17-0062  
Kahan v Tenants

2018 MAY 29 PM 2:26

This appeal is based on the grounds that the underlying decision is inconsistent with the OMC, Chapter 8.22 and the Rent Board Regulations.

Owner contends the evidence submitted at the hearing on January 29, 2018 constituted substantial evidence of exemption based on substantial rehabilitation contrary to the finding(s) of the hearing officer.

It should be emphasized at the outset that not one of one of the four (4) tenants filed any opposition to the owners petition.

It should be further noted that the evidence at the hearing established that the subject property was vacant and uninhabitable due to fire damage.

In establishing and implementing the Residential Rent Adjustment Program the City of Oakland found that a shortage of housing existed in Oakland, that the welfare of all persons who live and/or work in Oakland depend, in part, on attracting persons who are willing to invest in residential rental property in Oakland, and that the City of Oakland take action that encourages investment in residential housing. See OMC, Section 8.22.010, et seq.

Here, the uncontradicted evidence established that the subject property, which was vacant and uninhabitable, was purchased in November, 2015, that construction began in January, 2016, and was completed in October 2016, when the permit was finalized by the City. The project was paid for by owner's agent, Clovis Management in the sum of \$316,218.

In its first finding, the Hearing Officer found that the project was not completed and paid for until January 16, 2018, the date the management company was reimbursed by the owner, yet the uncontested evidence established that the project was completed and paid for by owner's

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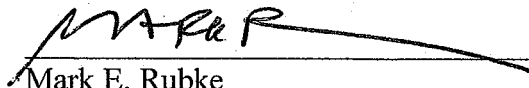
agent on October 12, 2016, when it was signed off by the City. The fact that the agent was not reimbursed until some time later does not comport with the OMC as to project completion. The Code defines project completion as the date of "finalized permit." OMC, 8.22.030 (B)(2)c Thus, the project was completed prior to the filing for exemption.

In its next finding, the hearing officer found that the owner "only submitted a final invoice...and failed to submit contracts...or proof of payments to substantiate the breakdown of construction expenses..." As to contracts, the uncontradicted evidence established that the contract between owner and agent was verbal. Next, despite the finding of the hearing officer, the uncontested evidence offered "an itemized list of construction expenses for the renovation project." (See Exhibit #1)

Finally, in its third finding, the officer stated that the owner filed to provide evidence of square footage of the property, however a careful reading of both the OMC and the Regulations does not bar an exemption based on failure to submit square footage figures.

May 29, 2018

Respectively Submitted,



Mark E. Rubke  
Attorney for Tobias Kahan,  
Owner

## CHRONOLOGICAL CASE REPORT

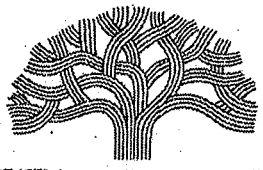
Case No.: T17-0577  
Case Name: Patrick v. Um et al  
Property Address: 6248 "A" Bromley Ave., Oakland, CA  
Parties: Heidi Patrick (Tenant)  
(No Appearance by Owner)

### OWNER APPEAL:

| <u>Activity</u>         | <u>Date</u>      |
|-------------------------|------------------|
| Tenant Petition filed   | October 18, 2017 |
| Owner Response filed    | December 1, 2017 |
| Hearing Decision issued | August 3, 2018   |
| Owner Appeal filed      | August 15, 2018  |

T17-0577 LM MA

RECEIVED  
CITY OF OAKLAND  
ARBITRATION PROGRAM

|  |  |  |
|--|--|--|
| <br>CITY OF OAKLAND | <b>CITY OF OAKLAND</b><br><b>RENT ADJUSTMENT PROGRAM</b><br>P.O. Box 70243<br>Oakland, CA 94612-0243<br>(510) 238-3721 | For date stamp:<br>2017 OCT 18 PM 2:51 |
|  | <b>TENANT PETITION</b>   |  |

**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<br><i>Heidi Patrick</i>   | Rental Address (with zip code)<br><i>6248-A Bromley Ave<br/>OAKLAND, Ca 94621</i>              | Telephone:<br><i>510 638-3007 Home</i> |
|   |  | E-mail:<br><i>PATRICKHEIDI@ATT.net</i> |
| Your Representative's Name  | Mailing Address (with zip code)  | Telephone:                             |
|   |  | Email:                                 |
| Property Owner(s) name(s)<br><i>Tom Ull<br/>Kong Ing Houn</i>                   | Mailing Address (with zip code)<br><i>6248 Bromley Ave<br/>OAKLAND, Ca 94621</i>               | Telephone:<br><i>510-969-4848 Houn</i> |
|   |  | Email:<br><i>510 677-8585 LM</i>       |
| Property Manager or Management Co.<br>(if applicable)<br><i>Shaleigh Hilton</i> | Mailing Address (with zip code)<br><i>77 8<sup>th</sup> St Suite 205<br/>OAKLAND, Ca 94607</i> | Telephone:<br><i>510 969-4848</i>      |
|   |  | Email:                                 |

Number of units on the property: 5

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

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

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

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

|                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)   |
| <input 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: 2009 Initial Rent: \$ \_\_\_\_\_ /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: 2014. 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                |   |   |
| <u>10-16-17</u>                            | <u>1-1-18</u>                                | <u>\$ 1000.00</u>     | <u>\$ 1300.00</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
|  |  | \$                    | \$                | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No            |
|  |  | \$                    | \$                | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No            |
|  |  | \$                    | \$                | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No            |
|  |  | \$                    | \$                | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No            |
|  |  | \$                    | \$                | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No            |

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

Have you ever filed a petition for this rental unit?

- Yes
- No

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

unk 2014 with Tom Um

**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.

Heidi Patrick  
Tenant's Signature

10-17-17  
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).

*Heidi Patrick*

Tenant's Signature

*10-17-17*

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, 6<sup>th</sup> 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): \_\_\_\_\_

RECEIVED KV



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

For date stamp.  
DEC 01 2017  
RENT ADJUSTMENT PROGRAM  
OAKLAND  
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/7-0577

|  |  |  |
|--|--|--|
| Your Name<br>SHALEIGH HILLTON  | Complete Address (with zip code)<br>6248 BROMLEY AVE.<br>OAKLAND, CA 94621 | Telephone:<br>510-969-4848             |
|  |  | Email:<br>SHALEIGHHILLTON@YAHOO.COM    |
| Your Representative's Name (if any)  | Complete Address (with zip code)   | Telephone:                             |
|  |  | Email:                                 |
| Tenant(s) Name(s)  | Complete Address (with zip code)   |  |
| Property Address (If the property has more than one address, list all addresses)<br>6242 - 6244 - 6246 - 6248A - 6248B<br>BROMLEY ave. Oakland, CA 94621 |  | Total number of units on property<br>5 |

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

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

Date on which you acquired the building: 11/20/2015

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>                  |
|-----------------------------------|--|--|-----------------------------|--|--------------------------|-------------------------------------|
| <u>10/17</u>                      | <input type="checkbox"/>                   | <input checked="" type="checkbox"/>    | <input type="checkbox"/>    | <input checked="" type="checkbox"/> Planned to Remodel 500sqm. | <input type="checkbox"/> | <input checked="" 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 signed lease on 1/1/2016. (Existing Tenants from previous owner)

The tenant's initial rent including all services provided was: \$ 1000.00 / 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? \_\_\_\_\_

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>10/16/17</u>                         | <u>1/1/18</u>                  | <u>\$ 1000.00</u>     | <u>\$ 1300.00</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.

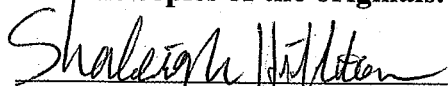
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

### 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

11/15/17  
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.

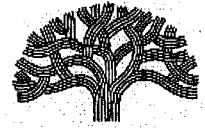
Shaleigh Hillston

Property Owner's Signature

11/15/17

Date

# CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

## HEARING DECISION

**CASE NUMBER:** T17-0577, Patrick v. Um et al  
**PROPERTY ADDRESS:** 6248 A Bromley Avenue, Oakland, CA  
**DATE OF HEARING:** March 29, 2018  
**DATE OF DECISION:** July 21, 2018  
**APPEARANCES:** Heidi Patrick, Tenant

## SUMMARY OF DECISION

The tenant petition is granted.

## INTRODUCTION

The tenant filed a petition on October 18, 2017, which contests a monthly rent increase from \$1,000.00 to \$1,300.00 effective January 1, 2018.

The basis for the tenant's petition includes the following:

- The rent increase exceeds the CPI Adjustment and is unjustified or is greater than 10%; and
- No written notice of Rent Program was given to me together with the notice of increase I am contesting.

---

The owner filed a timely response but failed to appear at the hearing.

## ISSUE

1. Is the rent increase valid?

000044

## EVIDENCE

The tenant testified that she moved into the subject property in 2008, at an initial monthly rent of \$1,300.00. In 2010, her rent was lowered to \$900.00 by the prior owner. On October 16, 2017, she received a notice of rent increase, which proposed to increase the monthly rent from \$1,000.00 to \$1,300.00, effective January 1, 2018.<sup>1</sup> She immediately filed a petition contesting the rent increase. At the hearing, she testified that on November 18, 2017, she met with the owner and both parties agreed to a rent increase of \$1,043.00 based on the banked CPI for the prior two years. On February 19, 2018, the owner gave the tenant a new one-year lease at a monthly rent of \$1,043.00. The tenant refused to sign the new lease because the terms stated that the new rental amount would be retroactive to January 1, 2018. She testified that she wanted the new lease to be effective as of March 1, 2018, and she also wanted to change other terms in the new lease. The tenant submitted a copy of the lease into evidence.<sup>2</sup> To date, she has refused to sign the new lease. The tenant testified that in March of 2018, she began paying \$1,043.00 in rent. Prior to that she was paying \$1,000.00 in rent monthly.

The tenant stated on her petition and testified at the hearing that she first received the notice of the existence of the Rent Adjustment Program (RAP Notice) in 2014 but she did not receive the RAP Notice with the contested rent increase.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Invalid Rent Increase

The Rent Adjustment Ordinance states that an owner seeking a rent increase in excess of the CPI Rent Adjustment or available banking must first petition the Rent Adjustment Program and receive approval for the rent increase before the rent increase can be imposed<sup>3</sup>.

The owner did not receive approval from the Rent Adjustment Program before raising the rent for the subject property from \$1,000.00 to \$1,300.00 monthly, effective January 1, 2018. Therefore, the contested rent increase is invalid and the tenant's rent remains \$1,000.00. Since the tenant has been paying \$1,043.00 in rent monthly as of March 1, 2018, she is owed restitution for overpayment of rent in the amount of \$258.00 (\$43.00 x 6 months).

The Rent Adjustment Program's jurisdiction is limited to the issues raised in the tenant petition. The only issue listed in the tenant petition is the proposed rent increase from \$1,000.00 to \$1,300.00. Therefore, the Rent Adjustment Program does not have jurisdiction to address the other issues raised by the tenant at the hearing.

---

<sup>1</sup> Exhibit 1

<sup>2</sup> Exhibit 2

<sup>3</sup> O.M.C. §8.22.065(A)

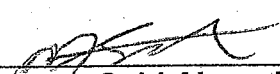
**ORDER**

1. Petition T17-0577 is granted. The tenant's rent remains \$1,000.00.

2. The tenant is entitled to restitution for overpayment of rent in the amount of \$258.00. The restitution is amortized over six (6) months. Therefore, the tenant's rent will be \$957.00 from September 1, 2018, through February 1, 2019. In March of 2019 the rent will revert to \$1,000.00

**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) 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.

Date: July 21, 2018

  
\_\_\_\_\_  
**Maimoona Sahi Ahmad, Esq.**  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T17-0577**

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

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

**Documents Included**  
Hearing Decision

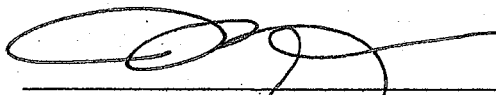
**Owner**  
Tom Um & Kong Ing Houn  
6248 Bromley Ave  
Oakland, CA 94621

**Owner Representative**  
Shaleigh Hilton  
77 8th St Suite 205  
Oakland, CA 94607

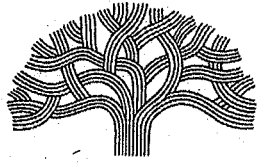
**Tenant**  
Heidi Patrick  
6248 A Bromley Ave  
Oakland, CA 94621

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 03, 2018 in Oakland, CA.

  
\_\_\_\_\_  
Maxine Visaya  
Oakland Rent Adjustment Program

**000047**



CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
250 Frank Ogden Plaza, Suite 315  
Oakland, CA 94612  
(510) 238-3721

RENT ADJUSTMENT PROGRAM  
OAKLAND

RECEIVED

RECEIVED  
Ar 11/15/2018 Program  
RENT ADJUSTMENT PROGRAM  
OAKLAND APPEAL

AUG 15 2018

|  |  |   |   |
|--|--|---|---|
| Appellant's Name<br><b>SHALEIGH HILLTON</b>  |  | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant |   |
| Property Address (Include Unit Number)<br><b>6248A BROMLEY AVE, OAKLAND, CA 94621</b>              |  |   |   |
| Appellant's Mailing Address (For receipt of notices)<br><b>6248 BROMLEY AVE, OAKLAND, CA 94621</b> |  | Case Number<br><b>T17-0577</b>  | Date of Decision appealed<br><b>July 21, 2018</b> |
| 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.)  
*we got verbal agreement with Tenant in the amount of \$1043.00 (See copy check attached)*

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: 7.

• 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 Aug 14, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

|                        |                   |
|------------------------|-------------------|
| <b>Name</b>            | Heidi Patrick     |
| <b>Address</b>         | 6248A Bromley Ave |
| <b>City, State Zip</b> | OAKLAND, CA 94621 |
| <b>Name</b>            |                   |
| <b>Address</b>         |                   |
| <b>City, State Zip</b> |                   |

|   |                 |
|---|-----------------|
| <i>Shaleen Hillborn</i>                             | <u>08/14/18</u> |
| 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.**

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 AUG 15 AM 10:57

**SHALEIGH HILLTON**

AKA

**KONG INGHOUN**

6248 Bromley Avenue

Oakland, CA 94621

Tel: (510) 969-4848

August 14, 18

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

RE: case number: T17-0577

Dear Sir/Madam:

The reason for this appeal is the Tenant agreed to pay rent increase from \$1000.00 to \$1043.00 (see copy check) starting from 03/01/2018 and I accepted it that why I did not appear at the hearing due to it was mutual settled.

Tenant have requested to sign a new lease sometime in January 2018 but I was delayed due to I formed a corporation on my property and took sometime to completed it, However, In March 2018, I gave her a new lease but she did not give it back due to she said she need time to read it, but in fact she went to attend hearing and wait for this decision without let me know, which is not fair to me.

However, I would like to appeal on this decision to have a fair hearing in this matter.

The above statement is true to the best of my knowledge. Thank you.

  
Shaleigh Hillton aka Kong Ing Houn

000051

**Application for Employer Identification Number**  
 (For use by employers, corporations, partnerships, trusts, estates, churches,  
 government agencies, Indian tribal entities, certain individuals, and others.)  
 ▶ Go to [www.irs.gov/FormSS4](http://www.irs.gov/FormSS4) for instructions and the latest information.  
 ▶ See separate instructions for each line. ▶ Keep a copy for your records.

OMB No. 1545-0003  
 EIN \_\_\_\_\_

**1** Legal name of entity (or individual) for whom the EIN is being requested  
**GOLDEN TWO DRAGONS, INC.**

**2** Trade name of business (if different from name on line 1) \_\_\_\_\_ **3** Executor, administrator, trustee, "care of" name \_\_\_\_\_

**4a** Mailing address (room, apt., suite no. and street, or P.O. box) **5a** Street address (if different) (Do not enter a P.O. box.)  
**3225 MCLEOD DR, STE 100** **4778 DEWEY DR**

**4b** City, state, and ZIP code (if foreign, see instructions) **5b** City, state, and ZIP code (if foreign, see instructions)  
**LAS VEGAS, NV 89121** **FAIR OAKS, CA 95628**

**6** County and state where principal business is located  
**SACRAMENTO COUNTY, CALIFORNIA**

**7a** Name of responsible party **7b** SSN, ITIN, or EIN  
**SHALEIGH HILLTON** \_\_\_\_\_

**8a** Is this application for a limited liability company (LLC) (or a foreign equivalent)?  Yes  No **8b** If 8a is "Yes," enter the number of LLC members . . . . . ▶ \_\_\_\_\_

**8c** If 8a is "Yes," was the LLC organized in the United States? . . . . .  Yes  No

**9a** **Type of entity** (check only one box). **Caution.** If 8a is "Yes," see the instructions for the correct box to check.  
 Sole proprietor (SSN) \_\_\_\_\_  Estate (SSN of decedent) \_\_\_\_\_  
 Partnership \_\_\_\_\_  Plan administrator (TIN) \_\_\_\_\_  
 Corporation (enter form number to be filed) ▶ **1120** \_\_\_\_\_  Trust (TIN of grantor) \_\_\_\_\_  
 Personal service corporation \_\_\_\_\_  Military/National Guard  State/local government \_\_\_\_\_  
 Church or church-controlled organization \_\_\_\_\_  Farmers' cooperative  Federal government \_\_\_\_\_  
 Other nonprofit organization (specify) ▶ \_\_\_\_\_  REMIC  Indian tribal governments/enterprises \_\_\_\_\_  
 Other (specify) ▶ \_\_\_\_\_ **Group Exemption Number (GEN) if any** ▶ \_\_\_\_\_

**9b** If a corporation, name the state or foreign country (if applicable) where incorporated **State** **Foreign country**  
**CALIFORNIA** \_\_\_\_\_

**10** **Reason for applying** (check only one box)  
 Started new business (specify type) ▶ **CAPITAL DEVELOPMENT** \_\_\_\_\_  
 Banking purpose (specify purpose) ▶ \_\_\_\_\_  
 Changed type of organization (specify new type) ▶ \_\_\_\_\_  
 Hired employees (Check the box and see line 13.)  Purchased going business \_\_\_\_\_  
 Compliance with IRS withholding regulations  Created a trust (specify type) ▶ \_\_\_\_\_  
 Other (specify) ▶ \_\_\_\_\_  Created a pension plan (specify type) ▶ \_\_\_\_\_

**11** Date business started or acquired (month, day, year). See instructions. **12** Closing month of accounting year **SEPTEMBER**  
**03/16/2018**

**13** Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.  

|              |           |       |
|--------------|-----------|-------|
| Agricultural | Household | Other |
| 0            | 0         | 0     |

**14** If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter.

**15** First date wages or annuities were paid (month, day, year). **Note:** If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) . . . . . ▶ \_\_\_\_\_

**16** Check one box that best describes the principal activity of your business.  Health care & social assistance  Wholesale-agent/broker  
 Construction  Rental & leasing  Transportation & warehousing  Accommodation & food service  Wholesale-other  Retail  
 Real estate  Manufacturing  Finance & insurance  Other (specify) ▶ **CAPITAL DEVELOPMENT**

**17** Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.  
**ASSET MANAGEMENT**

**18** Has the applicant entity shown on line 1 ever applied for and received an EIN?  Yes  No  
 If "Yes," write previous EIN here ▶ \_\_\_\_\_

**Third Party Designee**  
 Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.  
 Designee's name **CHARLEEN GALLETINE** Designee's telephone number (include area code) **800-706-4741**  
 Address and ZIP code **3225 MCLEOD DR, STE 100, LAS VEGAS, NV 89121** Designee's fax number (include area code) **702-805-0869**  
 Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete. Applicant's telephone number (include area code) \_\_\_\_\_  
 Name and title (type or print clearly) ▶ **SHALEIGH HILLTON, PRESIDENT** Applicant's fax number (include area code) \_\_\_\_\_  
 Signature ▶ \_\_\_\_\_ Date ▶ \_\_\_\_\_

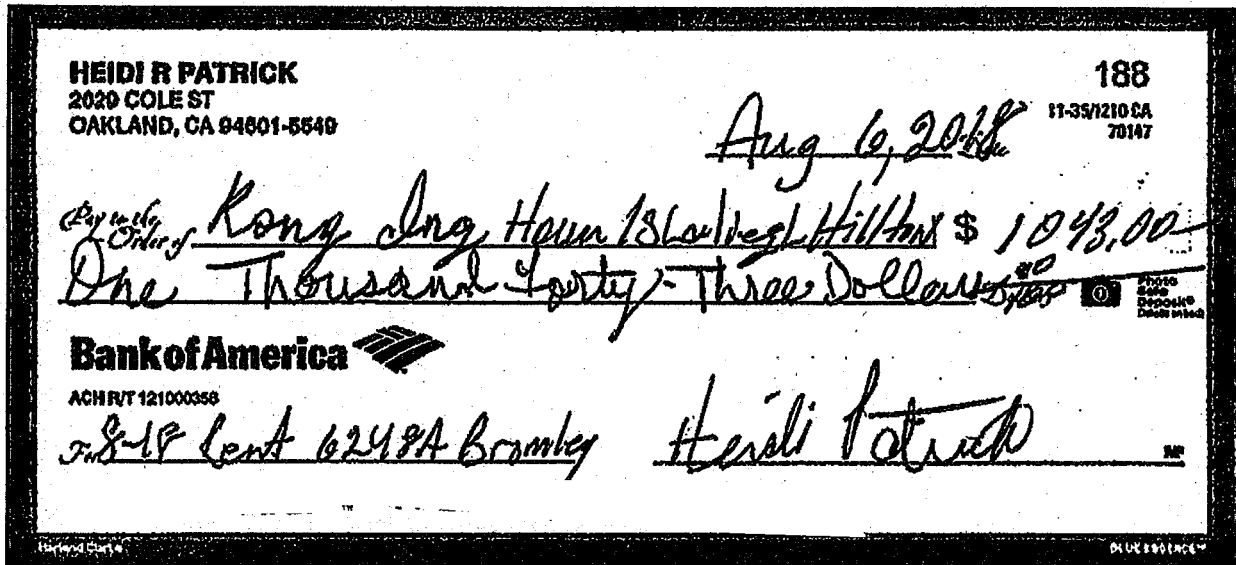
000052



Deposit Overview

| Post date    | Total deposit amount | # of checks deposited |
|--------------|----------------------|-----------------------|
| Aug 13, 2018 | \$1,043.00           | 1                     |

Check



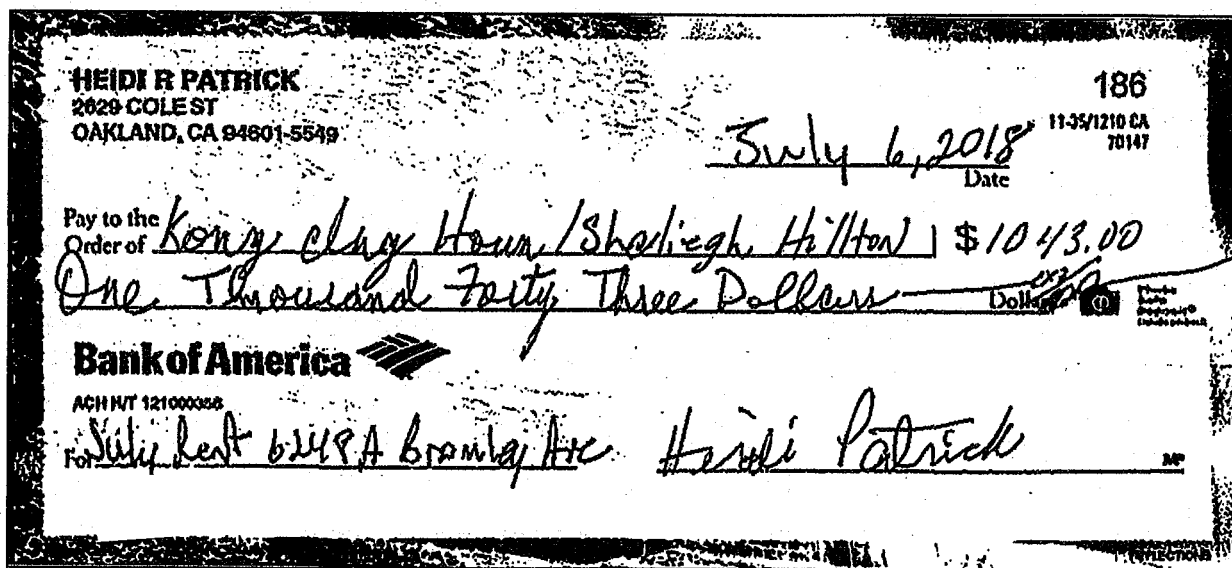
| Check # | Check amount | Account # | Routing # |
|---------|--------------|-----------|-----------|
| 188     | \$1,043.00   | ----      | ----      |



### Deposit Overview

| Post date   | Total deposit amount | # of checks deposited |
|-------------|----------------------|-----------------------|
| Jul 9, 2018 | \$1,043.00           | 1                     |

### Check



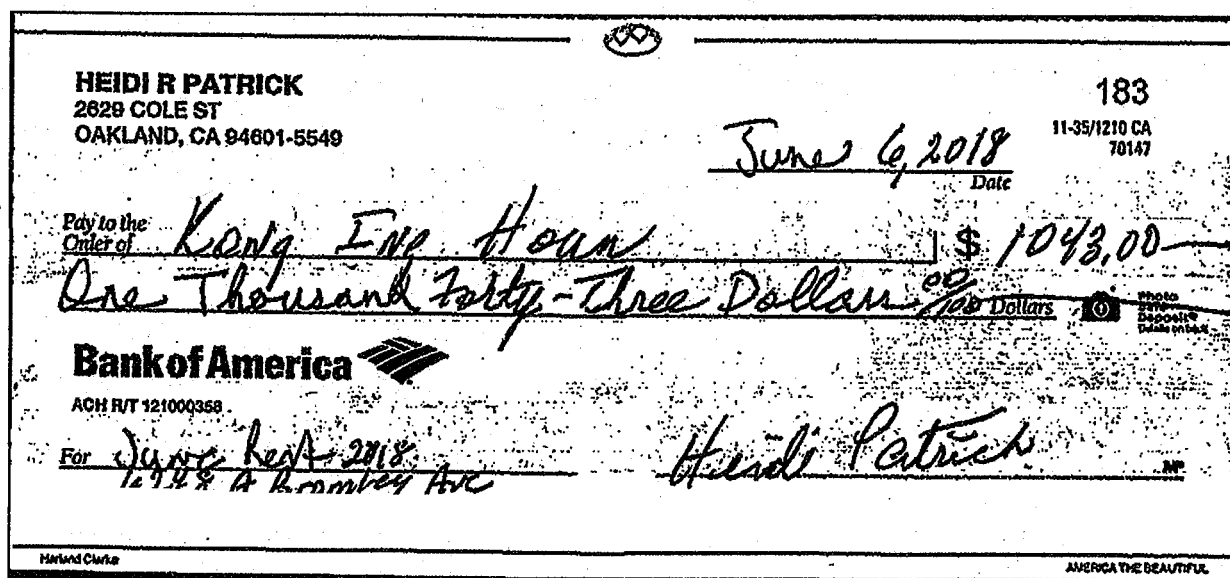
| Check # | Check amount | Account # | Routing # |
|---------|--------------|-----------|-----------|
| 186     | \$1,043.00   |           |           |



Deposit Overview

| Post date    | Total deposit amount | # of checks deposited |
|--------------|----------------------|-----------------------|
| Jun 11, 2018 | \$1,043.00           | 1                     |

Check



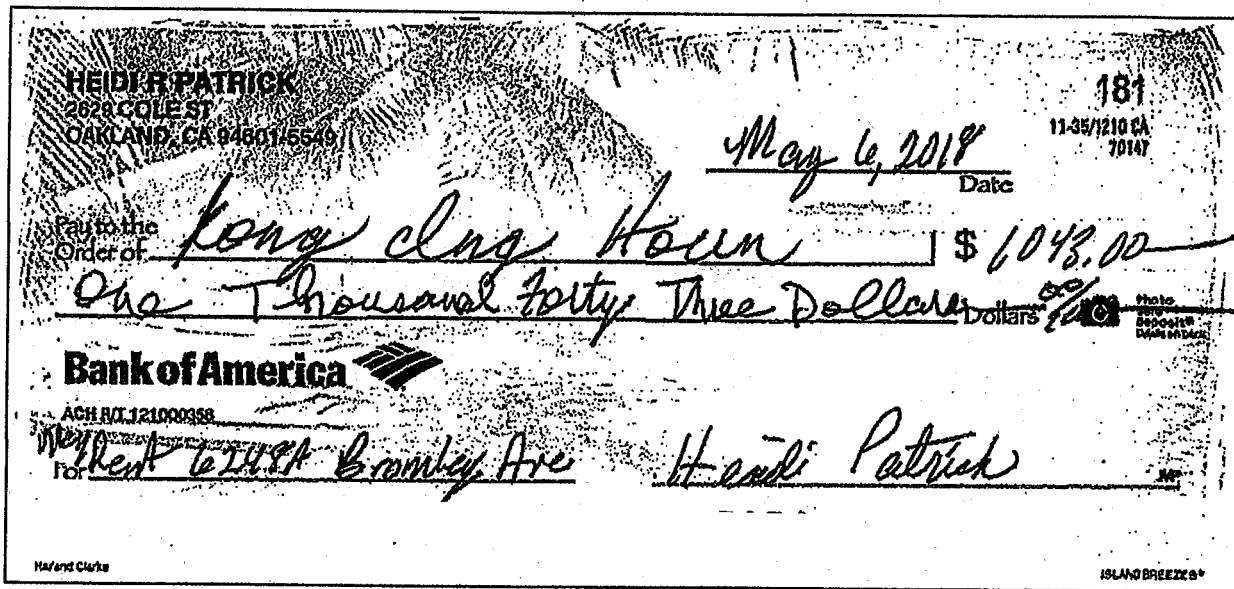
| Check # | Check amount | Account # | Routing # |
|---------|--------------|-----------|-----------|
| 183     | \$1,043.00   |           |           |



Deposit Overview

| Post date   | Total deposit amount | # of checks deposited |
|-------------|----------------------|-----------------------|
| May 8, 2018 | \$1,043.00           | 1                     |

Check



| Check # | Check amount | Account # | Routing # |
|---------|--------------|-----------|-----------|
| 181     | \$1,043.00   |           |           |

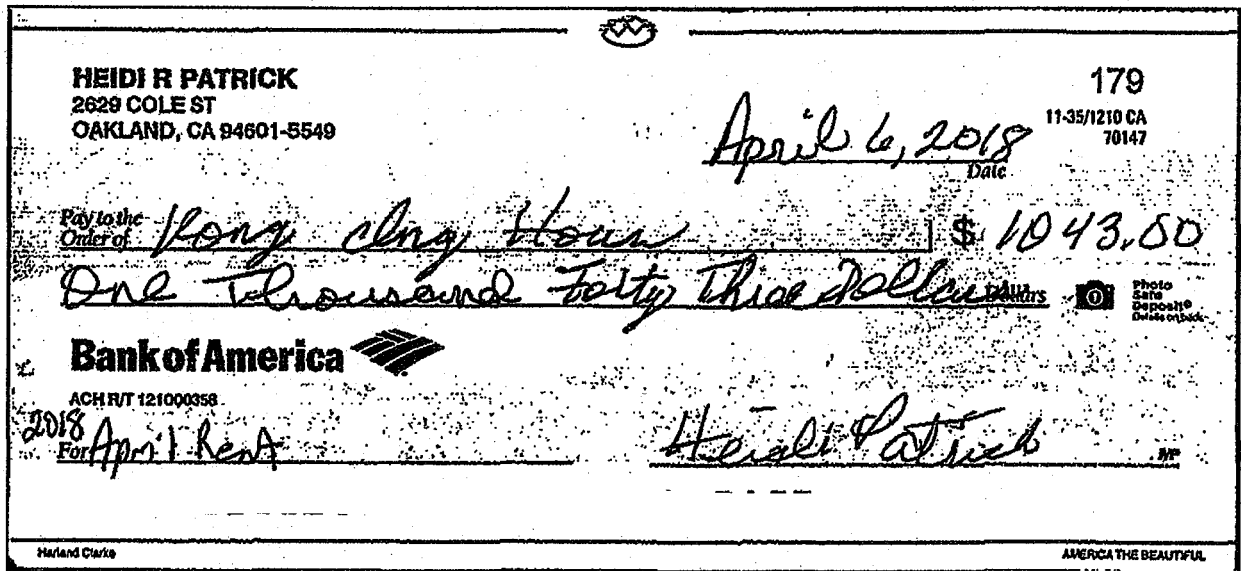




Deposit Overview

| Post date    | Total deposit amount | # of checks deposited |
|--------------|----------------------|-----------------------|
| Apr 17, 2018 | \$1,043.00           | 1                     |

Check



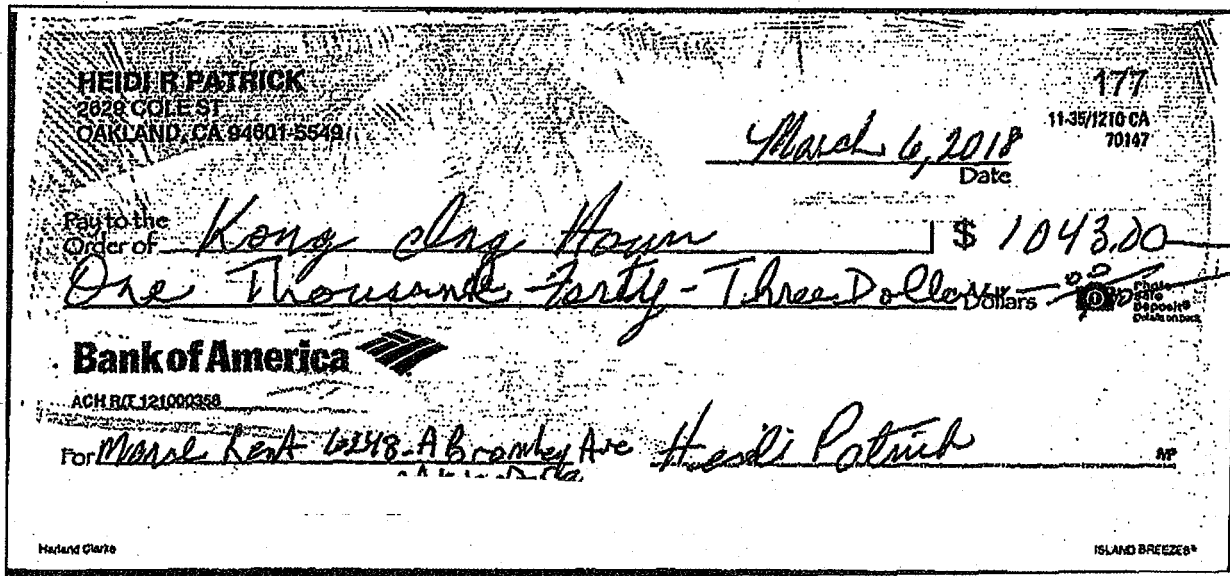
| Check # | Check amount | Account # | Routing # |
|---------|--------------|-----------|-----------|
| 179     | \$1,043.00   |           |           |



Deposit Overview

| Post date    | Total deposit amount | # of checks deposited |
|--------------|----------------------|-----------------------|
| Mar 12, 2018 | \$1,043.00           | 1                     |

Check



| Check # | Check amount | Account # | Routing # |
|---------|--------------|-----------|-----------|
| 177     | \$1,043.00   |           |           |